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Venezuelan Sanctions

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August 28, 2017 – On August 24, 2017, the White House issued an Executive Order (E.O. 13808) that restricts access to U.S. financing for the government of Venezuela and its state owned energy company, Petroleos de Venezuela, S.A. (PDVSA). This is the most recent U.S. government action to ratchet up sanctions against Venezuela in response to President Nicolas Maduro’s efforts to expand his power and suppress his political opposition.

Summary

The sanctions do not generally bar transactions with the government of Venezuela or PDVSA. They instead take a more targeted approach – similar to the U.S. sectoral sanctions against Russia – by prohibiting specific types of dealings (mostly financial transactions) in order to increase pressure on the ruling regime. The U.S. government simultaneously offered some relief by carving out transactions with PDVSA’s U.S. subsidiary CITGO Holding, Inc. (“CITGO”), food- and medicine-related transactions, and certain dealings in existing bonds. It also has provided a 30-day wind-down period for contracts that are now prohibited.

Although U.S. persons can continue to engage in most commerce with Venezuela, particularly with entities that are not owned or controlled by the government, it is becoming increasingly complicated to do so. These latest sanctions are an added layer on top of the blocking sanctions already in place against the country’s president Nicolas Maduro, the vice president, the president of PDVSA, and other high profile government and commercial officials. Below is an overview of this latest round of sanctions, followed by practical considerations for companies with U.S. ties that do business in Venezuela.

1. New Executive Order and General Licenses

Highlights of the August 24 Executive Order include the following.

- U.S. persons are restricted from dealing in:
 - new debt of PDVSA with a maturity exceeding 90 days;

- new debt with a maturity exceeding 30 days, or new equity, of the government of Venezuela (other than debt of PDVSA; this provision, thus, includes new equity of PDVSA);
- existing bonds already issued by the government of Venezuela (unless excepted – see discussion below);
- dividend payments or other distributions of profits to the government of Venezuela from any entity it owns or controls. This would prohibit payment of dividends by CITGO to the Venezuelan government, as well as participation by U.S. persons, such as financial institutions, in the payment of such dividends; and
- any other type of security purchased from the government of Venezuela (including equity securities issued by a non-sanctioned party but purchased from the Government of Venezuela).
- The U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) has issued the following General Licenses (“GLs”), which provide authorization to engage in certain activities that otherwise would be prohibited by the Order:
 - Wind-down Period. GL 1 provides a 30-day wind-down period in which U.S. persons may bring existing dealings covered by the Order to a close. However, GL 1 excludes from its scope activities relating to dividend payments or profit distributions to the government of Venezuela, which must be terminated immediately. Persons relying on GL 1 must report to OFAC within 10 days describing their transactions.
 - Exemption for CITGO. GL 2 authorizes U.S. persons to continue dealing in new debt, equity, and other securities of PDVSA’s U.S. subsidiary CITGO and any of its own subsidiaries. GL 2 does not, however, authorize transactions with CITGO where other Venezuelan government entities also are involved, payments of dividends or profits to the government of Venezuela, or dealings in new bonds issued by CITGO.
 - Exemption for Previously Issued Bonds. GL 3 permits U.S. persons to deal in limited categories of bonds, including: certain previously issued bonds that are specifically listed in GL 3, as well as any preexisting bonds issued by U.S. entities owned or controlled by the government of Venezuela, for example CITGO.
 - Humanitarian Exemption. GL 4 allows U.S. persons to participate in financing, including new debt that otherwise would be prohibited, for transactions involving the supply from the United States or by a U.S. person of agricultural commodities, medicines, medical devices and parts and components therefor.

2. OFAC Guidance

OFAC also published a list of Frequently Asked Questions (“FAQs”) on the Order and related authorizations. Many of the new FAQs provide similar guidance to that issued in connection with OFAC’s sectoral sanctions against Russia, concerning how to interpret the restrictions on dealing with new debt and equity of sanctioned parties. In particular, OFAC again has made clear that it takes a broad view in defining debt and equity:

“The term debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper. The term equity includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership.”

OFAC’s Venezuela FAQs are available in an un-numbered format as a standalone document online at: <https://www.treasury.gov/resou...>

Also similar to the Russia sectoral sanctions, OFAC’s FAQs emphasize that the debt restrictions apply only to scenarios where the government of Venezuela (or PDVSA) is the borrower. For example, U.S. persons are not restricted from dealing in new debt where the government of Venezuela is lending to, providing underwriting for, or issuing, advising or confirming a letter of credit for, a non-sanctioned third party. The FAQs also clarify that the Order does not prohibit a U.S. person from engaging in transactions necessary to exit or replace its participation in a pre-existing long-term loan facility extended to the Government of Venezuela, as this would not constitute dealing in new debt.

3. Practical Considerations

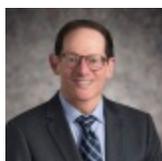
These new sanctions, combined with the existing blocking sanctions against specific high profile individuals in Venezuela, create a complex patchwork of sanctions that must be complied with by U.S. companies, as well as companies that have U.S. ties, such as involvement of U.S. persons in management, U.S. sources of financing or U.S. dollar transactions. Below are some practical measures to consider as companies evaluate their Venezuela business strategies.

- Companies that sell products to the government of Venezuela, PDVSA, or other government-owned businesses should consider whether their standard sales terms might include the issuance of credit for periods of time that exceed the restricted maturity periods for those entities. U.S. persons could not allow repayment longer than 90 days for goods or services provided to PDVSA.
- U.S. persons that remain involved in pre-existing long-term credit facilities extended to the government of Venezuela should ensure that the repayment terms for all newly negotiated drawdowns or disbursements from the facility do not run afoul of the sanctions.
- There is a need for heightened due diligence on the parties to transactions in Venezuela, including looking behind the direct parties to know who is actually benefitting from or executing the business deal.
 - While the Order does not prohibit extending credit to non-sanctioned parties for the purpose of purchasing goods or services from the government of Venezuela, it is important to confirm that the government of Venezuela is not the indirect borrower.
 - Further, under the targeted blocking sanctions already in place, U.S. persons may not engage in transactions where a blocked individual is involved, even if the counter-party is not itself blocked. On February 13, 2017, OFAC issued FAQ #505 advising that, although blocking of a government official does not mean that transactions with the Venezuelan government generally are prohibited:
 - “U.S. persons should be cautious in dealings with the government to ensure that they are not engaged in transactions or dealings, directly or indirectly, with an SDN, for example by entering into contracts that are signed by an SDN, entering into negotiations with an SDN, or by processing transactions, directly or indirectly, on behalf of the SDN, absent authorization or an applicable exemption.”
 - This guidance would apply, for example, to transactions that are permissible with the government of Venezuela or with PDVSA, but where an individually blocked person would need to be involved in negotiating or signing the deal.

Conclusion

Given the involvement of the government and individual members of the Maduro regime throughout most major aspects of the Venezuelan economy, the risks of inadvertently running into one of these parties in a business transaction are high. This increases the risks for U.S. companies and financial institutions doing business in Venezuela. Companies with U.S. ties that operate in Venezuela need to implement a robust approach to due diligence. Also, given the increasing political conflict in that country, companies might consider how to plan their operations going forward with the understanding that sanctions may continue to escalate.

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