

Venezuela Sanctions – United States

21 February 2020

I. Background

1. U.S. sanctions in relation to Venezuela comprise the following:

- The blocking of all property and interests in property of the Government of Venezuela and thus, a prohibition on U.S. persons engaging in any transaction with the Venezuelan Government, unless exempted.
- The designation of persons and entities involved in corruption and human rights violations in Venezuela.
- Restrictions on the provision of new debt to certain Venezuelan government entities.
- Restrictions on certain transactions related to debt owed to the Government of Venezuela.
- Restrictions on transactions related to dealings in any digital currency, digital coin, or digital currency that was issued by, for, or on behalf of the Venezuelan government.

II. Legislative Framework

2. The legal framework for the U.S. Venezuela-related sanctions consists of multiple legal authorities. Some of these authorities are executive orders issued by the U.S. President. Others are public laws (statutes) passed by the U.S. Congress. These authorities are further implemented by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") in its regulations which are published the Code of Federal Regulations ("CFR").

A. Executive Orders

3. There are six:

- 13692—Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela (March 8, 2015).
- 13808—Imposing Additional Sanctions with Respect to the Situation in Venezuela (August 24, 2017).
- 13827—Taking Additional Steps to Deal with the Situation in Venezuela (March 19, 2018).
- 13835—Prohibiting Certain Additional Transactions with Respect to Venezuela (May 21, 2018).
- 13850—Blocking Property of Additional Persons Contributing to the Situation in Venezuela (November 1, 2018).
- 13857—Taking Additional Steps to Address the National Emergency with Respect to Venezuela (January 28, 2019).
- 13884—Blocking Property of the Government of Venezuela (August 5, 2019)

B. Statutes

4. There are three:

- Venezuela Defense of Human Rights and Civil Society Act of 2014.
- International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§1701-1706.
- National Emergencies Act (“NEA”), 50 U.S.C. §§1601-1651.

C. Code of Federal Regulations

5. The Venezuela Sanctions Regulations appear at 31 CFR Part 591.

D. Federal Register Notices

6. 80 FR 39676-15 – Final Rule Issuing the Venezuela Sanctions Regulations (July 10, 2015).

7. 84 FR 64415-19 – Publication of Amended Venezuela Sanctions Regulations (November 22, 2019).

III. Application: Who do the U.S. sanctions apply to?

A. U.S. Persons

8. Under the Venezuela Sanctions Regulations, “primary sanctions” apply to U.S. persons defined as “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” 31 C.F.R. § 591.312. Primary sanctions also apply to non-U.S. persons when they are conducting transactions in U.S. dollars.

B. Non-U.S. Persons

9. Under IEEPA (50 USC § 1705), non-U.S. Persons can be penalized if they “cause a violation” of U.S. sanctions. For example, a shipowner or the Club could be penalized if it makes or receives payment in U.S. dollars for a transaction involving a Venezuelan Specially Designated National (“SDN”) while concealing the involvement of the SDN in the payment instructions. Such concealment unlawfully “causes” a U.S. bank to violate U.S. sanctions when it processes the payment. Accordingly, it is important that non-U.S. entities ensure their U.S. employees, contractors, vendors, banks, and other third parties with whom they deal, do not participate in transactions from which U.S. Persons are prohibited.

10. Certain Executive Orders pertaining to Venezuela authorize OFAC to block non-U.S. persons and entities found to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of certain sanctioned persons. This authority includes broad discretion to block European companies transacting with Petroleos de Venezuela, S.A. (“PdVSA”) and other designated entities. Before engaging in any transaction with Venezuela, you should seek legal advice.

IV. Overview of U.S. Sanctions against Venezuela

11. Unlike the comprehensive embargos that the United States has imposed against Iran, Syria, North Korea, and Cuba, the U.S. sanctions against Venezuela target the Government of Venezuela rather than private citizens and companies they own. Therefore, most commercial transactions involving Venezuelan individuals and companies remain legal, even for U.S. Persons. Additionally, non-U.S. will be exposed to a risk of sanctions if they engage in certain transactions with some of these SDNs.

A. Blocking Provisions/Asset Freeze

12. U.S. Persons cannot engage in any transactions or dealings with SDNs and property and interests in property of SDNs that are in the possession or control of U.S. Persons or in the U.S. must be blocked or frozen (that is to say they may not be transferred, paid, exported, withdrawn or otherwise dealt in) and reported to OFAC.

13. The President has the power, acting through OFAC, to block and freeze the assets of non-U.S. Persons meeting the following criteria:

- Human Rights Abuses: Individuals and entities who are responsible for serious abuse or violation of human rights as well as actions or policies that are undemocratic.
- Corruption: Individuals and entities involved in public corruption by senior officials within the Government of Venezuela.
- Officials: Persons who are current or former leaders of an entity that has engaged in human rights violations, undemocratic policies, and/or corruption.
- Gold Sector: persons or entities, including non-Venezuelan persons or entities, who operate in the gold sector of the Venezuelan economy.
- Defense and Security Sector: persons or entities, including non-Venezuelan persons or entities, who operate in the defense and security sector of the Venezuelan economy.
- Financial Sector: persons or entities, including non-Venezuelan persons or entities, who operate in the financial sector of the Venezuelan economy.
- Oil Sector: persons or entities, including non-Venezuelan persons or entities, who operate in the oil sector of the Venezuelan economy.¹
- Government of Venezuela: the state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, any person owned or controlled, directly or indirectly, by the foregoing, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing, including as a member of the Maduro regime.

¹This authority has been used to impose blocking sanctions on European shipping companies that have transported oil from Venezuela to Cuba. It was also used to designate Rosneft Trading for brokering the sale and transport of Venezuelan oil.

a. PdVSA

14. On January 28, 2019, the United States designated PdVSA as a SDN and consequently U.S. persons are prohibited from engaging in virtually all transactions with PdVSA and any entity it owns 50% or more, unless a general license or other authorization applies.

15. Generally, the sanctions on PdVSA do not apply to transactions by non-U.S. persons when the transaction does not have a U.S. nexus. OFAC FAQ 657. However, section 1(a)(iii) of Executive Order 13850 provides the U.S. government with authority to impose blocking sanctions on “any person” (including non-U.S. persons) who is determined to have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of... any person whose property and interests in property are blocked pursuant to this order”. To be clear, there is a risk of sanctions when transacting with entities owned 50 percent or more by PdVSA, even if they are not specifically named on the SDN List. Meanwhile, section 1(a)(i) authorizes the imposition of blocking sanctions on any person, including non-Venezuelan persons, whose transactions with PdVSA/Venezuelan oil are so substantial that the persons activities constitute operating in the “oil sector” of the Venezuelan economy. Therefore, carrying cargo to or from PdVSA could create sanctions exposure for non-U.S. persons.

b. Government of Venezuela

16. On August 5, 2019, the United States imposed blocking sanctions on the Government of Venezuela prohibiting U.S. persons from engaging in any transaction with the Government of Venezuela and entities it owns 50% or more.² It follows that U.S. dollars cannot be used for transactions with the Government of Venezuela.

17. Like the sanctions imposed on PdVSA, the sanctions imposed on the entire Government of Venezuela are generally primary, meaning they apply only to U.S. persons. However, certain transactions with Government of Venezuela entities that are specifically named on the SDN List will expose non-U.S. persons to a risk of blocking sanctions. Specifically, section 1(b)(i) of Executive Order 13884, authorizes the imposition of blocking sanctions on non-U.S. persons determined “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of person included on the” SDN List and blocked pursuant to this order. Therefore, carrying cargo to or from an entity on the SDN List could create sanctions exposure for non-U.S. persons.

²The term “Government of Venezuela” is defined in paragraph 13.

c. General Licenses

18. OFAC maintains a number of general licenses which authorize a narrow range of transactions: Relevant to the Club are the following:

- General License 7C: “Authorizing Certain Activities with PDV Holding, Inc. and CITGO Holding, Inc.”
- General License 8E: “Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Prohibited by Executive Order 13850 for Certain Entities Operating in Venezuela.”
- General License 8E: “Authorizing Transactions Involving Petroleos de Venezuela, S.A. (PdVSA) Necessary for Maintenance of Operations in Venezuela.”
- General License 13D: “Authorizing Certain Activities Involving Nynas AB.”
- General License 30: “Authorizing Certain Transactions Involving the Government of Venezuela Necessary to Port and Airport Operations.”
- General License 36: “Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Rosneft Trading S.A.”³

d. Restrictions on Debt

19. Although not entirely relevant to the Swedish Club or its members, we are providing this information for completeness. On May 21, 2018, President Trump issued Executive Order 13835 which expanded the U.S. sanctions imposed on the Government of Venezuela. Under this Executive Order, U.S. Persons are prohibited from “all transactions related to, provision of financing for, and other dealings” in the following:

- i. “the purchase of any debt owed to the Government of Venezuela, including accounts receivable;
- ii. any debt owed to the Government of Venezuela that is pledged as collateral after the effective date of this order, including accounts receivable; and
- iii. the sale, transfer, assignment, or pledging as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50% or greater ownership interest.”

20. Under Executive Order 13808, U.S. Persons are prohibited from all transactions related to, provision of financing for, and other dealings in the following:

- i. new debt with a maturity of greater than 90 days of PDVSA;
- ii. new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela, other than debt of PDVSA covered above;
- iii. bonds issued by the Government of Venezuela prior to the effective date of this order; or
- iv. dividend payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled, directly or indirectly, by the Government of Venezuela.

³ The General Licenses discussed in this section have varying expiration dates and therefore, each license should be considered closely prior to undertaking a transaction authorized thereunder.

21. OFAC has stated that the term “debt” includes “bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, banker’s acceptances, discount notes or bills, or commercial paper.” See Frequently Asked Questions (“FAQs”) No. 511. The term “equity” includes “stocks, share issuances, depositary receipts, or any other evidence of title or ownership.” Id.

e. **Other Sanctions**

22. Under Executive Order 13827, U.S. Persons are prohibited from “all transactions related to, provision of financing for, and other dealings in . . . any digital currency, digital coin, or digital token, that was issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018.

V. Export Controls

A. Military/Defense Export Controls (ITAR)

23. Venezuela is an International Traffic in Arms Regulations (ITAR), Section 126.1 country, which means that exports to Venezuela are subject to a policy of denial for all ITAR-controlled defense articles and defense services. The State Department first imposed this restriction in August 2006.

B. Commercial & Dual-Use Export Controls

24. The United States Department of Commerce has significantly increased the controls for exports to Venezuela. These controls were added to the Military End-Use and End-User Controls, 15 CFR 744.21. Now, all items subject to EAR, except those designated EAR99 and those falling under an ECCN controlled only for anti-terrorism and/or crime control will require a license for export or re-export to Venezuela.