

VENEZUELA: U.S. SANCTIONS

by The Swedish Club and Reed Smith LLP
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BACKGROUND

United States sanctions in relation to Venezuela comprise the following:

- The blocking of all property and interests in property of the Government of Venezuela, so U.S. persons are prohibited from 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 dealings in any digital currency or digital coin issued by, for, or on behalf of the Venezuelan government.

LEGAL FRAMEWORK

The legal framework for the U.S. Venezuela-related sanctions consists of multiple authorities, including executive orders issued by the U.S. President and public laws (statutes) passed by the U.S. Congress. The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) then implements these authorities through its regulations, which are published in the Code of Federal Regulations (CFR).

Executive Orders

- 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)

Statutes

- 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.

Code of Federal Regulations

The Venezuela Sanctions Regulations appear at 31 CFR Part 591.

Federal Register Notices

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

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

APPLICATION: Who do the U.S. sanctions apply to?

U.S. PERSONS

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.

NON-U.S. PERSONS

Under IEEPA (50 USC § 1705), non-U.S. Persons can be penalized if they “cause a violation” of certain U.S. sanctions. For example, a shipowner or the Club could be penalized if it makes a 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 that are prohibited for U.S. persons.

Certain executive orders pertaining to Venezuela authorize OFAC to block non-U.S. persons 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. These executive orders contain broad discretion to block European companies transacting with Petroleos de Venezuela, S.A. (PdVSA) and other designated entities. Before engaging in any transaction involving Venezuela, you should seek legal advice.

OVERVIEW OF U.S. SANCTIONS

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.

Blocking Provisions/Asset Freeze

U.S. persons cannot engage in any transactions 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.

The U.S. 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: Persons who are responsible for serious abuse or violation of human rights as well as actions or policies that are undemocratic.
- Corruption: Individuals 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, including non-Venezuelan persons, who operate in the gold sector of the Venezuelan economy.
- Defense and Security Sector: Persons, including non-Venezuelan persons or entities, who operate in the defense and security sector of the Venezuelan economy.
- Financial Sector: Persons, including non-Venezuelan persons, who operate in the financial sector of the Venezuelan economy.
- Oil Sector: Persons, including non-Venezuelan persons, 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.

PdVSA

On January 28, 2019, the United States designated PdVSA as a SDN. 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.

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”. 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. Furthermore, Section 1(a)(i) of this executive order authorizes the imposition of blocking sanctions on any person, including non-Venezuelan persons, whose transactions with PdVSA/Venezuelan oil are so substantial that

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

their 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.

Government of Venezuela

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.

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.

General Licenses

OFAC maintains a number of general licenses, which authorize a narrow range of transactions: Relevant to the Club and its Members are the following:

- General License 3H: “Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds.”
- General License 4C: “Authorizing Certain New Debt Transactions and Other Transactions Involving Certain Blocked Persons Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates.”
- General License 5F: “Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After July 21, 2021.
- General License 7C: “Authorizing Certain Activities with PDV Holding, Inc. and CITGO Holding, Inc.”
- General License 8H: “Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Necessary for the Limited Maintenance of Essential Operations In Venezuela or the Wind Down of Operations in Venezuela for Certain Entities.”
- General License 9G: “Authorizing Transactions Related to Dealings in Certain Securities.”
- General License 15C: “Authorizing Transactions Involving Certain Banks for Certain Entities.”
- General License 30A: “Authorizing Certain Transactions Necessary to Port and Airport Operations.”

² The term “Government of Venezuela” is defined as 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 President Maduro’s regime.

- General License 39: “Authorizing Certain Activities to Respond to the Coronavirus Disease 2019 (COVID-19) Pandemic.”³

Other Sanctions

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.”

EXPORT CONTROLS

Military/Defense Export Controls (ITAR)

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

Commercial & Dual-Use Export Controls

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. All items subject to EAR, except those designated EAR99 and those controlled only for anti-terrorism and/or crime control, require a license for export or re- export to Venezuela.

Disclaimer: This Member Alert is intended to provide only general guidance and information pertaining to the issues identified and commented upon herein. The content of this Alert is not intended to be and should not be treated as being final and binding legal advice. If Members consider they are likely to or in fact have encountered problems or difficulties as discussed in this Alert, they are asked to contact the Club and obtain further legal advice relevant to their specific circumstances.

³ The General Licenses discussed in this section have varying expiration dates. Therefore, you should carefully review the general license prior to undertaking a transaction in reliance upon it.