

VENEZUELA SANCTIONS - UNITED STATES ¹

By Leigh Hansson, Partner, Reed Smith LLP

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1. Background

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

- The designation of persons and entities involved in corruption and human rights violations in Venezuela (e.g. *Petróleos de Venezuela, S.A* (“PdVSA”).
- 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.

2. Legislative Framework

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

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, 2018).

¹ This publication is provided for your convenience and does not constitute legal advice.

B. Statutes

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

The Venezuela Sanctions Regulations appear at 31 CFR Part 591.

D. Federal Register Notices

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

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

A. U.S. Persons

Under the Venezuela Sanctions Regulations, so called “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.

B. Non-U.S. Persons

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 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.

The Club understands that foreign shipowners often remit funds on account to Venezuelan ship agents to pay port charges and vessel disbursements. Such remittances are often made in U.S. dollar and as such move through the U.S. banking system. It appears that a portion of such advances paid by foreign shipowners may be used by local Venezuelan shipping agents to purchase Petros, which is a designated currency by the U.S. to make the required payments in that digital currency. As a result, US banks would be engaged in a transaction “related to” Petros. The shipowner may then be in breach of US law for “causing a violation” of the same according to Executive Order 13827. Therefore, members should avoid using US dollar as currency in relation to port calls in Venezuela.

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 SDNs blocked under the order, or any activity described above. This authority includes broad discretion to block European companies transacting with PdVSA and other designated entities.

In early March 2019, the Trump administration indicated that it is considering imposing secondary sanctions on PdVSA. Such secondary sanctions could take various forms including the imposition of sanctions on financial institutions who process significant transactions for the benefit of PdVSA or an outright prohibition on trade with PdVSA. Before engaging in any transaction with Venezuela, legal advice should be sought.

4. Overview of U.S. Sanctions against Venezuela

Unlike the comprehensive sanctions and embargos that the United States has established for Iran, Syria, North Korea, and Cuba, U.S. sanctions against Venezuela are more targeted. Most commercial transactions involving Venezuelan individuals and companies remain legal, even for U.S. Persons. However, current sanctions do prohibit certain categories of transactions and activities, as described below.

A. Blocking Provisions/Asset Freeze

By Executive Orders 13857, 13850, and 13692, OFAC has designated a number of non-U.S. Persons and entities in connection the humanitarian crisis in Venezuela. 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.

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 who operate in the gold sector of the Venezuelan economy or in any other sector responsible for or complicit in deceptive practices or corruption and the “Government of Venezuela”.

a. PdVSA

On January 28, 2019 President Trump issued Executive Order 13957 expanding the definition of the Government of Venezuela to include “the state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (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.”

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

These sanctions do not apply to transactions with PdVSA by non-U.S. persons when the transaction does not have a U.S. nexus. OFAC FAQ 657. However, in recent weeks U.S. national security advisor John Bolton stated that “[t]he United States is putting foreign financial institutions on notice that they will face sanctions for being involved in facilitating transactions that benefit Nicolas Maduro and his corrupt network.” The U.S. government has further signaled that they may impose secondary sanctions on non-US persons who engage with PdVSA.

In furtherance of that, 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. Thus, it is theoretically possible that carrying LPG for PdVSA could constitute the provision of support or material assistance to PdVSA such that it exposes Owners to a risk of sanctions. However, we believe that before OFAC chooses to penalize non-US persons for engaging in such transactions, they will make their intentions clear.

b. General Licenses

OFAC maintains a number of general licenses which authorize a narrow range of transactions with a U.S. nexus. Most of these licenses authorize certain transactions with PdVSA.

OFAC issued or amended the following general licenses in connection with the recent imposition of sanctions on Venezuela:

- General License 2: “Authorizing Certain Transactions Involving CITGO Holding, Inc.
- General License 3A: “Authorizing Transactions Related to, Provisions of Financing for, and Other Dealings in Certain Bonds”.
- General License 4: Authorizing New Debt Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, or Replacement Parts and Components.
- General License 5: Authorizing Certain Transactions Related to the Petroleos de Venezuela SA 2020 8.5 Percent Bond.
- General License 6: Authorizing Certain Activities Necessary to the Maintenance or Wind Down of Operations or Existing Contracts with Globovision Tele C.A. or Globovision Tele CA, Corp.
- General License 7A: “Authorizing Certain Activities with PDV Holding, Inc. and CITGO Holding, Inc.”²⁾
- General License 8: “Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Prohibited by Executive Order 13850 for Certain Entities Operating in Venezuela.”
- General License 9C: “Authorizing Transactions Related to Dealings in Certain Debt.”³⁾
- General License 10: “Authorizing the Purchase in Venezuela of Gasoline from Petróleos de Venezuela, S.A. (PdVSA).”
- General License 11: “Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with Petróleos de Venezuela, S.A. (PdVSA).”
- General License 12: “Authorizing Certain Activities Necessary to Wind Down of Operations or Existing Contracts with Petróleos de Venezuela, S.A. (PdVSA).”
- General License 13: “Authorizing Certain Activities Involving Nynas AB.”
- General License 14: “Official Business of the United States Government.”

²⁾ This authorization automatically renews on the first day of every month and is valid for a period of 18 months from March 14, 2019 or the date of any subsequent renewal of General License No. 7A, whichever is later.

³⁾ This General License was most recently updated on March 8, 2019. The expiration of this General License depends on the specific type of transaction.

Most relevant to the Swedish Club and its Members are General Licenses 7A, 12, and 13

- General License 7A authorizes all transactions and activities prohibited by the E.O. with PDV Holding, Inc. (“PDVH”), CITGO Holding, Inc., and any of their subsidiaries, provided the only PdVSA entities involved are PDVH, CITGO Holding, Inc. or any of their subsidiaries.
- General License 12 authorizes transactions and activities with PdVSA that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products until April 28, 2019. Notably, this general license does not authorize the exportation or re-exportation of any diluents from the United States to Venezuela or PdVSA.
- General License 13 authorizes all transactions and activities with Nynas AB or any of its subsidiaries where Nynas is the only PdVSA entity involved in the transaction until July 27, 2019.

c. Restrictions on Debt

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.”

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.

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.

d. 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.

5. Export Controls

A. Military/Defense Export Controls (ITAR)

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. Therefore, only U.S.-origin items subject to the Export Administration Regulations (“EAR”) can be exported or reexported to Venezuela, and there are a number of restrictions in place regarding what EAR items can be sent there.

B. Commercial & Dual-Use Export Controls

The EAR imposes Military End-Use and End-User Controls on Venezuela, 15 CFR 744.21. This means that there are additional license requirements when there is knowledge that the item being exported is intended for a military end-use or military end-user. This license requirement supports the arms embargo against Venezuela.