

# Client Alert

August 2017

## Newly Issued Executive Order Prohibits Dealing in Most Venezuelan Government Debt or Equity by United States Persons

On Friday, August 25, 2017, the Department of Treasury's Office of Foreign Assets Control (OFAC) announced that the president issued an executive order titled "Imposing Additional Sanctions with Respect to the Situation in Venezuela," which essentially prohibits United States persons from engaging in transactions related to most new and existing debt, and new equity, of the government of Venezuela. However, engaging in transactions related to equity of the government of Venezuela is generally permissible if the equity was issued prior to the effective date of the executive order, and provided that no United States person purchase securities from the government of Venezuela.

### Prohibited Transactions

The executive order prohibits all transactions by "United States persons" related to and including the financing of:

- (i) new debt with a maturity of greater than 90 days of Petróleos de Venezuela, S.A. (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 by subsection (i) above;
- (iii) bonds issued by the government of Venezuela prior to the effective date of the executive order; and
- (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.

In addition, the executive order prohibits the purchase, directly or indirectly, by a United States person or within the United States, of securities from the government of Venezuela, other than securities qualifying as new debt with a maturity of less than or equal to 90 or 30 days as covered by subsections (i) or (ii) above, respectively.

The prohibitions set forth in the executive order apply *notwithstanding any contract entered into or any license or permit granted before the effective date of the executive order*, unless the subject transaction is permitted by statutes or in regulations, orders, directives or licenses that may be issued pursuant to the executive order.

It is important to note that the executive order broadly defines "United States person" to include not only US citizens, permanent resident aliens and entities organized under US law, but also *any person in the United States*. This means that even a foreigner traveling in or through the United States would be subject to the prohibitions of the executive order.

Further, the prohibitions set forth above apply to the government of Venezuela, its property and its interests in property, which includes entities owned 50 percent or more, individually or in the aggregate,

by the government of Venezuela. United States persons should be wary of engaging in such prohibited transactions not only with counterparties that are clearly part of the government of Venezuela, but also those that may be affiliates thereof.

Finally, the executive order does not require US persons to block the property or interests in property of the government of Venezuela, and the government of Venezuela will not be added to the List of Specially Designated Nationals and Blocked Persons. However, transactions that are rejected by US persons pursuant to the executive order must be reported to OFAC within 10 business days.

### **General Licenses**

Concurrently, OFAC published four general licenses that provide certain exceptions to the general prohibitions set forth in the executive order.

General License 1 authorizes, through September 24, 2017, the transactions prohibited above (except the transactions prohibited by subsection (iv) above) that are ordinarily incident and necessary to wind down contracts or other agreements that were in effect prior to August 25, 2017. However, United States persons who engage in such generally licensed transactions must file a detailed report with OFAC within 10 business days after such transaction takes place, detailing, among other things, the parties involved, the value of the transactions and the dates of the transactions.

General License 2 provides that the prohibitions described above do not apply to transactions where the only Venezuelan government entity involved is CITGO Holding, Inc.

General License 3 exempts from the prohibitions set forth in subsection (iii) above (1) certain bonds set forth in an annex to General License 3<sup>1</sup> and (2) bonds issued prior to August 24, 2017, by US person entities owned or controlled, directly or indirectly, by the government of Venezuela.

Finally, General License 4 exempts from the prohibitions set forth above transactions related to, the provision of financing for, and other dealings in, new debt related to the exportation or re-exportation, from the United States or by a US person, wherever located, of agricultural commodities, medicine, medical devices or replacement parts and components for medical devices to Venezuela, or to persons in third countries purchasing specifically for resale to Venezuela, provided that the exportation or re-exportation is licensed or otherwise authorized by the Department of Commerce.

In conclusion, the executive order denies the government of Venezuela access to most sources of United States investment capital, as the prohibitions set forth in the executive order prohibit most transactions with respect to debt and equity of the government of Venezuela. With respect to debt, United States persons may only deal in the short-term debt of PdVSA and the very short-term debt of the rest of the government of Venezuela, and are prohibited from dealing in all existing debt of the government of Venezuela not otherwise exempted by the general licenses. With respect to equity, United States persons are essentially prohibited from dealing in all new equity of the government of Venezuela, but may continue to deal in existing equity of the government of Venezuela, provided that no securities are purchased, directly or indirectly, from the government of Venezuela. However, the prohibitions do not prohibit US persons from extending credit to nonsanctioned parties for the purpose of purchasing goods or services from the government of Venezuela, so long as the government of Venezuela is not the indirect borrower.

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<sup>1</sup> The full list of exempt bonds is available electronically at [https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ven\\_gl.aspx](https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ven_gl.aspx).

The Latin America and AML and economic sanctions groups at Hunton & Williams LLP will continue to closely monitor related developments. Please contact us if you have any questions or would like further information regarding this executive order or US sanctions toward Venezuela.

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