

Client Alert

May 2018

Trump Administration Issues New Executive Order Against Venezuela to Prevent a “Fire Sale” Liquidation of Venezuela’s Critical Assets

What Happened: On May 21, 2018, President Donald J. Trump issued an executive order that intends to prevent the Government of Venezuela from selling or collateralizing certain Venezuelan financial assets, and to prohibit it from earning money from the sale of certain entities of the Venezuelan government. The executive order prohibits US persons from participating in all transactions relating to, providing financing for or having other dealings in: (1) the purchase or pledging as collateral of any debt owed to the Government of Venezuela and (2) the sale, transfer, assignment or pledging as collateral by the Government of Venezuela of any equity interest in any entity owned 50 percent or more by the Government of Venezuela.

The Bottom Line: The Trump administration continues to ramp up pressure on the Government of Venezuela by further limiting its access to US capital markets. This is the third executive order regarding sanctions on Venezuela in less than a year—and fourth overall—and other orders could be issued at any time.

The Full Story:

Following elections held on May 20, 2018, and the announcement that Venezuela President Nicolas Maduro had been re-elected for a second six-year term, President Trump issued a new executive order titled “Executive Order Prohibiting Certain Additional Transactions with Respect to Venezuela.”

The executive order prohibits all transactions by “United States persons” related to and including the financing of or dealing in:

- (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 the executive order (May 21, 2018), 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 percent or greater ownership interest.

The executive order, which became effective immediately upon release on May 21, 2018, defines “United States person” 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 of such entities) or any person within the United States. It also broadly defines “Government of Venezuela” as including the Government of Venezuela, any political subdivision, agency or instrumentality thereof, including the Central Bank of Venezuela and Petróleos de Venezuela, S.A. (PdVSA), and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela. In addition, by its terms the

executive order applies “notwithstanding any contract entered into or any license or permit granted before the effective date.”

The new order should be seen as an extension of Executive Order 13808, which was issued on August 24, 2017. While Executive Order 13808 already limited access by the Government of Venezuela to the US capital markets by prohibiting virtually all transactions involving United States persons relating to most new and existing debt of the Government of Venezuela exceeding certain maturities, it did not prohibit all capital transactions involving Venezuela and, in particular, it did not prohibit factoring arrangements whereby debts *owing to* the Government of Venezuela were purchased for cash by third parties. The new executive order closes off this financing method which appears to have been outside the scope of Executive Order 13808.

Similarly, while Executive Order 13808 prohibited transactions relating to *new* equity of the Government of Venezuela, transactions relating to equity issued before Executive Order 13808, such as equity interests owned by the Government of Venezuela before such date in an entity in which the Government of Venezuela has a 50 percent or greater ownership interest, were not per se prohibited. The new executive order closes this loophole as well and prohibits all transactions by United States persons involving equity interests in entities in which the Government of Venezuela has a 50 percent or greater ownership interest. This prohibition now applies whether or not the equity interest is a “new” one.

The Latin America group and the AML and economic sanctions practice at Hunton Andrews Kurth LLP will continue to closely monitor related developments in the US sanctions regime with respect to Venezuela. Please contact us if you have any questions or would like further information regarding US sanctions against Venezuela.

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