

Client Alert

November 2018

The Trump Administration Issues Executive Order Sanctioning Persons Who Operate Corruptly in the Gold or Other Identified Sectors of the Venezuelan Economy

What Happened: On November 1, 2018, President Donald J. Trump issued an executive order that requires the blocking of all property and interests in property in the United States or that comes within the possession or control of a US person belonging to any person determined by the Secretary of the Treasury to operate corruptly in the gold or other identified sectors of the Venezuelan economy, with the purpose or effect of misappropriating Venezuelan resources in those sectors for personal, professional or political gain.

The Bottom Line: The Trump administration continues to ramp up pressure on the government of Venezuela by sanctioning persons who are perceived to be plundering Venezuela's wealth for their own corrupt purposes, degrading Venezuela's infrastructure and natural environment through economic mismanagement and confiscatory mining and industrial practices, and catalyzing a regional migration crisis by neglecting the basic needs of the Venezuelan people, in this instance by targeting persons who operate corruptly in the gold or other identified sectors of the Venezuelan economy.

The Full Story:

On November 1, 2018, President Trump issued a new executive order titled "Blocking Property of Additional Persons Contributing to the Situation in Venezuela" (the Executive Order).

The Executive Order blocks, and prohibits the transfer, payment, exportation, withdrawal or other dealing in, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any US person, if such property or interests in property belong to any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;
- (ii) to be responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the government of Venezuela or projects or programs administered by the government of Venezuela, or to be an immediate adult family member of such a person;
- (iii) to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (ii) above, or any person whose property and interests in property are blocked pursuant to this order; or

- (iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

The prohibitions prescribed by this Executive Order apply except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to this Executive Order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this Executive Order. Thus, for example, a specific license previously issued by the Office of Foreign Assets Control (OFAC) to engage in a transaction with a person sanctioned by this Executive Order would be superseded by this Executive Order and any such transaction with a person sanctioned by this Executive Order should cease immediately, unless a future specific license is granted pursuant to this Executive Order.

This Executive Order also suspends the unrestricted immigrant and nonimmigrant entry into the United States of persons determined to meet one or more of the criteria set forth in (i) through (iv) above and prohibits the donation of food, clothing and medicine to such persons. Finally, without limiting the generality of the foregoing prohibitions, the Executive Order clarifies that the prohibitions include the making of any contribution or provision of funds, goods or services by, to or for the benefit of any person whose property and interests in property are blocked pursuant to the Executive Order and the receipt of any contribution or provision of funds, goods or services from any such person. Thus, beyond merely blocking the property and interests in property of such persons, the Executive Order also prohibits essentially all commercial transactions with such persons.

Concurrently with the issuance of the Executive Order, OFAC issued two new frequently asked questions (FAQs) that clarify the objective and scope of the Executive Order. In particular, FAQ 629 clarifies that:

“OFAC expects to use its discretion to target in particular those who operate corruptly in the gold or other identified sectors of the Venezuela economy, and not those who are operating legitimately in such sectors. This includes, for example, persons engaging in dishonest or fraudulent conduct, illicit activity, or deceptive transactions within Venezuela’s gold sector or other identified Venezuela sectors, with the purpose or effect of misappropriating Venezuelan resources in those sectors for personal, professional, or political gain.”

Thus, although the language of the Executive Order appears to block the property and interests in property of all persons operating in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, FAQ 629 clarifies that OFAC expects to use such authority to target those who operate *corruptly* in the gold sector and other sectors of the Venezuelan economy to be identified, and not those who are operating legitimately. However, it is important to note that with respect to those persons deemed to operate corruptly in these sectors, the scope of the sanctions set forth in the Executive Order capture not only those persons operating corruptly in these sectors, but also (i) their immediate adult family members, (ii) persons who materially assist, sponsor or provide support to such persons and (iii) entities owned or controlled by such persons.

The Latin America group 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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