COVINGTON

United States Imposes New Economic Sanctions on Venezuela; Sanctions 16 Entities and Individuals for Dealings with North Korea

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International Trade Controls

Last week, President Trump issued an Executive Order ("the Order"), effective as of August 25, 2017, imposing new economic sanctions on the Venezuelan government in response to President Nicolás Maduro's increasingly authoritarian actions, including human rights abuses, corruption, repression of political opposition, and the establishment of a Constituent Assembly that has usurped the power of democratically elected branches of government. The new sanctions expand the U.S. restrictions against Venezuela, which previously were comprised of sanctions against a few key individuals, but they do not amount to a comprehensive economic embargo (such as those against Cuba and Iran). Rather, the new measures aim to restrict the Maduro regime's access to financial markets and capital, subject to certain limitations intended to minimize the impact on U.S. businesses and the Venezuelan people. These measures are described in more detail below, as well as in a Frequently Asked Questions document published by the Treasury Department's Office of Foreign Assets Control ("OFAC").

Separately, on August 22, 2017, in response to the threat posed by recent, high-profile advances in North Korea's nuclear and ballistic missile programs, OFAC designated 10 entities and six individuals for violating or evading U.S. and UN sanctions targeting North Korea.

New Sanctions Against Venezuela

Restrictions on Dealings in Debt and Equity

The most significant sanctions imposed by the Order prohibit U.S. persons[1] from engaging in transactions related to, providing financing for, or otherwise dealing in (including provision of services in support of) certain debt and equity issued by, on behalf of, or for the benefit of the Government of Venezuela. Specifically, the Order prohibits such dealings by U.S. persons or within the United States in:

[1] Under the Order, U.S. persons include U.S. citizens, U.S. lawful permanent residents, entities organized under the laws of the United States (including their non-U.S. branches), and any person located in the United States.

- New debt (which includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper) with a maturity of longer than **90 days** issued by, on behalf of, or for the benefit of Petroleos de Venezuela, S.A. ("PdVSA"), Venezuela's state-owned oil and natural gas company;
- New debt with a maturity of longer than **30 days** issued by, on behalf of, or for the benefit of any other segment of the Venezuelan government;
- New equity (which includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership) issued by, on behalf of, or for the benefit of the Government of Venezuela (including PdVSA); and
- Bonds issued by the Government of Venezuela prior to August 25, 2017.

The Order defines the Government of Venezuela to include any political subdivision, agency, or instrumentality of the Government, including the Central Bank of Venezuela, PdVSA, and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela.

Debt or equity is considered "new" and thus restricted if it is issued on or after August 25, 2017. Accordingly, U.S. persons, including U.S. financial institutions, may still deal in debt or equity of the Government of Venezuela issued prior to August 25, *except* for bonds of the Government issued before August 25, which are restricted regardless of maturity date. The prohibitions extend to the rollover of existing debt if such rollover results in the creation of new debt with a maturity longer than 90 days (with respect to PdVSA) or 30 days (with respect to the rest of the Government of Venezuela). They also would reach long-term credit facilities issued prior to the effective date if the terms of the drawdowns or disbursements (including the length of the repayment period, the interest rate, and the maximum drawdown amount) are modified on or after the effective date of the Order.

Importantly, OFAC interprets the term "debt" broadly and takes a particularly expansive approach to extensions of credit. For example, OFAC considers a party that provides goods or services and then bills the recipient by issuing an invoice that requires payment within a particular time period to be extending credit for the length of that time period (e.g., an invoice requiring payment within 30 days would be considered debt with a maturity date of 30 days). Thus, the sanctions imposed by the Order restrict the terms of invoices issued to the Government of Venezuela, if a U.S. person is issuing the invoice or otherwise involved in the transaction.

The Order also prohibits the purchase, directly or indirectly, by U.S. persons or within the United States of securities from the Government of Venezuela. This prohibition applies to both securities issued by the Government and securities issued by a non-governmental party that are being sold by the Government. It reaches such securities regardless of whether they are debt or equity securities. However, the prohibition does not apply to securities that qualify as new debt of PdVSA with a maturity of less than or equal to 90 days, or new debt of any other part of the Government of Venezuela with a maturity of less than or equal to 30 days.

Dividend Payments and Distributions of Profits

In addition to the restrictions imposed on debt and equity described above, the Order prohibits U.S. persons from engaging in transactions related to, providing financing for, or otherwise dealing in 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. This provision is widely viewed as targeting CITGO Holding, Inc. and its subsidiaries. CITGO is PdVSA's American affiliate and thus an "entity owned or controlled" by the Government of Venezuela. As explained below, OFAC has licensed certain transactions in debt, equity, or securities involving CITGO that would otherwise be prohibited, but this restriction on the payment of dividends and profits is intended to ensure that CITGO does not funnel profits from those licensed transactions or other dealings back to the Maduro regime.

Key Authorizations: Four General Licenses

OFAC has issued four general licenses authorizing activities that would otherwise be prohibited by the Order:

General License 1 provides a brief grace period, only through September 24, 2017, authorizing transactions and activities otherwise prohibited by the Order (except those relating to dividend payments and distributions of profits) that are ordinarily incident and necessary to winding down contracts and other agreements that were in effect prior to August 25, 2017. U.S. persons relying on this general license must, within 10 business days of a licensed transaction, file a detailed report with OFAC describing the transaction.

General License 2 authorizes most transactions involving new equity, debt, and other securities so long as the only Venezuelan government entities involved are CITGO Holding, Inc. and any of its subsidiaries. However, this general license does not authorize prohibited transactions relating to (i) dividend payments and distributions of profits to the Government of Venezuela or (ii) bonds issued by the Government of Venezuela prior to August 25, 2017.

General License 3 authorizes all transactions related to, the provision of financing for, and other dealings in, particular Venezuelan government bonds listed in the Annex to General License 3. Additionally, it authorizes all transactions related to, the provision of financing for, and other dealings in, bonds that were issued prior to August 25, 2017 by U.S.-person entities owned or controlled by the Government of Venezuela (e.g., CITGO Holding, Inc. and any of its subsidiaries). Notably, however, OFAC's FAQ document indicates that U.S. persons "are not authorized to purchase, directly or indirectly, bonds on the List of Authorized Venezuela-Related Bonds from the Government of Venezuela."

General License 4 authorizes all transactions related to, the provision of financing for, and other dealings in, new debt related to the exportation or reexportation, from the United States or by a U.S. 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 export or reexport is licensed or otherwise authorized by the U.S. Department of Commerce.

None of these general licenses authorizes dealings with persons or entities on OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List") or entities owned 50% or more by one or more such SDNs, or activities prohibited under other OFAC sanctions programs.

What the New Sanctions Do Not Do

The Order does not require U.S. 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 SDN List. Rather, U.S. persons should reject transactions or dealings that are prohibited by the Order and (to the extent required by OFAC regulations) report such rejections to OFAC within 10 business days. Nor does the Order change the status of the Venezuelan Government officials, including President Maduro, who were previously added to the SDN List by the U.S. government.

U.S. financial institutions are permitted to continue to maintain correspondent accounts and process U.S. dollar clearing transactions for the Government of Venezuela, so long as such activities do not involve engaging in transactions related to, providing financing for, or otherwise dealing in the transactions prohibited by the Order.

The new sanctions do not impose a comprehensive economic embargo on Venezuela. Trade in products and services from or destined for Venezuela is generally still allowed, as is travel to and from Venezuela. In particular, the new sanctions do not ban the import into the United States of Venezuelan oil, although the Trump Administration is reportedly still considering imposing such a ban. As the U.S. market accounts for roughly half of Venezuela's oil exports, a ban could have the effect of further crippling Venezuela's already damaged economy.

North Korea Designations

On August 22, 2017, OFAC announced that it had designated 10 entities and six individuals in China, Russia, Namibia, and Singapore for violating or evading U.S. and UN sanctions against North Korea.

The alleged actions of these 16 persons include providing restricted materials (such as vanadium ore) to sanctioned North Korean entities, financing and facilitating transactions involving North Korean entities, and importing North Korean coal into China, which helps fund North Korea's nuclear and ballistic missile programs. Additional details about the listed entities, as well as their alleged dealings with North Korea, can be found in this Treasury Department press release.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of international sanctions, including with respect to Venezuela and North Korea. We will continue to monitor developments in this area, and are well-positioned to assist clients in understanding how these recent announcements may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade practice:

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