Akin Gump
STRAUSS HAUER & FELD LLP

International Trade Alert

May 23, 2018

Key Point

- On May 21, 2018, the Trump administration imposed new sanctions on the Government of Venezuela[1] in response to the reelection of President Maduro and the "deepening humanitarian and public health crisis" fueled by the Maduro regime.
- The Executive Order expands the existing Venezuela sanctions program by prohibiting certain transactions by U.S. persons involving debt owed to the Government of Venezuela, including PdVSA, and broadly restricts U.S. persons from engaging in certain dealings involving equity interests of entities that are majority-owned by the Government of Venezuela. Previous restrictions related to dealings in "new debt,"[2] of the Government of Venezuela of a certain maturity, bonds issued by the government of Venezuela, "new equity," and the purchase of securities, but they did not cover debt owed to the Government of Venezuela or as broadly restrict transactions involving existing equity owned by the Government of Venezuela.
- The May 21 sanctions are unique among programs administered by OFAC, particularly with respect to their control of debt owed to an entity. OFAC has yet to issue clarifying guidance or licenses in connection with the new Executive Order. Accordingly, U.S. persons should continue to exercise caution when dealing in debt or equity involving the Government of Venezuela and entities owned by the Government of Venezuela, such as PdVSA and its subsidiaries.

United States Imposes New Sanctions Restricting Transactions with the Government of Venezuela

Introduction

On May 21, 2018, President Trump issued an Executive Order titled "Prohibiting Certain Additional Transactions with Respect to Venezuela" (hereinafter, the "May 21 Executive Order"). The May 21 Executive Order imposes new restrictions on transactions involving debt owed to the Government of Venezuela and its related entities, including accounts receivable, and certain transactions involving the Government of Venezuela with respect to equity interests in any entity in which the Government of Venezuela has a 50 percent or greater ownership interest.

The May 21 Executive Order cites several reasons for these additional sanctions, including "endemic economic mismanagement and public corruption at the expense of the Venezuelan people and their prosperity, and ongoing repression of the political opposition; attempts to undermine democratic order by holding snap elections that are neither free nor fair; and the [Maduro] regime's responsibility for the deepening humanitarian and public health crisis in Venezuela."[3]

Background

On March 9, 2015, former President Barack Obama issued Executive Order 13692, imposing, among other restrictions, list-based sanctions on various individuals connected to the Government of Venezuela. The Executive Order targeted individuals for sanctions designation in response to the government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence in response to protests and significant public corruption.

These sanctions were subsequently expanded, including, as described in our previous Alert, on August 24, 2017 through Executive Order 13808. This Executive Order prohibited U.S. persons from, among other things, "engaging in transactions related to, providing financing for, or otherwise dealing in" certain types of "new debt," bonds, and "new equity" of the Government of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), and the purchase of certain securities. More recently, on March 19, 2018, President Trump issued Executive Order 13827, "Taking Additional Steps to Address the Situation in Venezuela," which clarified the scope of prior executive orders and their applicability to transactions involving Venezuela's government-issued cryptocurrency.

Scope of New Prohibitions

The May 21 Executive Order expands the debt- and equity-related provisions of Executive Order 13808 by prohibiting "[a]ll transactions related to, provision of financing for, and other dealings" by U.S. persons in three categories of transactions as follows:

- the purchase of any debt **owed to** the Government of Venezuela, including accounts receivable
- any debt **owed to** the Government of Venezuela that is pledged as collateral after the effective date of the order, including accounts receivable
- 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.

Under the May 21 Executive Order, the Government of Venezuela includes "any political subdivision, agency or instrumentality of the Government of Venezuela, including the Central Bank of Venezuela" and PdVSA. It also includes persons that are "owned or controlled by, or acting for or on behalf of" the Government of Venezuela.[4] Restrictions apply to U.S. persons, which includes any U.S. citizen and permanent resident (wherever located), companies incorporated in the United States and their foreign branches, and persons in the United States (including non-U.S. persons when present or operating in the United States).[5]

Effect of New Sanctions

These new sanctions further limit the Government of Venezuela's ability to convert its assets into usable capital by restricting dealings by U.S. persons with respect to debt owed to the Government of Venezuela and, moreover, certain equity interests of companies that are majority-owned by the Government of Venezuela. Debt restrictions will also restrict trade of covered debt on the secondary market. This, and the latter restriction related to equity interests, will significantly affect transactions by U.S. persons because the regulations broadly define the Government of Venezuela to include government instrumentalities, as well as persons "owned or controlled by" or "acting for or on behalf of" the Government of Venezuela, such as PdVSA and its majority-owned subsidiaries. Accordingly, the sanctions also broadly restrict U.S. persons, including financial institutions, from engaging in certain equity dealings and debt transactions with companies owned or controlled by the Government of Venezuela (or any number of state-owned companies).

The Department of the Treasury, Office of Foreign Assets Control (OFAC) has not administered measures like these before, and it may further elaborate on their purpose and scope. At the time of this writing, however, OFAC has not issued corresponding guidance or Frequently Asked Questions, nor has it issued a statement regarding the purpose of this action or whether it intends to issue licenses in connection with the new restrictions. Accordingly, U.S. persons should remain cautious when dealing in debt or equity of any kind involving the Government of Venezuela, including PdVSA and its subsidiaries (including U.S. and indirect subsidiaries), to ensure that such actions fall outside of the new and existing restrictions.

Contact Information

If you have any questions concerning this alert, please contact:

Shiva Aminian
saminian@akingump.com
310.552.6476
Los Angeles

Mahmoud Baki Fadlallah
mfadlallah@akingump.com
+971 4.317.3030
Dubai

Jonathan C. Poling
jpoling@akingump.com
202.887.4029
Washington, D.C.

Wynn H. Segall
wsegall@akingump.com
202.887.4573
Washington, D.C.

Nicole M. D'Avanzo
ndavanzo@akingump.com
202.887.4557
Washington, D.C.

Johann Strauss
jstrauss@akingump.com
+971 4.317.3040
Dubai

Chris Chamberlain
cchamberlain@akingump.com
202.887.4308
Washington, D.C.

[1] For purposes of this alert, the term "Government of Venezuela" is defined as follows: "the Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela." Executive Order, May 21, 2018, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_eo_20180521.pdf.

[2] "New debt" and "new equity" are defined in Executive Order 13808.

[3] Executive Order, May 21, 2018, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_eo_20180521.pdf.

[4] *Id.* at § 2(d).

[5] *Id.* at § 2(c).