

## The Trump Administration's New Venezuela Sanctions: Top 10 Takeaways

***President Trump issues an Executive Order prohibiting certain transactions involving the Venezuelan government and state-owned or state-controlled entities.***

### Key Points:

- The Executive Order imposes new sanctions that prohibit US persons from dealing in certain new debt or new equity of the Venezuelan government — including state-owned *Petroleos de Venezuela, S.A. (PdVSA)*.
- The US Treasury Department's Office of Foreign Assets Control (OFAC) [issued four General Licenses](#) authorizing, among other activities, efforts to wind-down contracts and agreements prohibited by the new sanctions, and most dealings with Citgo and Citgo affiliates.

On Friday, August 25, 2017, the Trump Administration released targeted financial sanctions against Venezuela with an [Executive Order](#) titled "Imposing Additional Sanctions with Respect to the Situation in Venezuela." These new sanctions, which are aimed at a broad range of debt and equity transactions involving the Venezuelan government and its owned or controlled entities, build upon the more targeted sanctions that OFAC announced in the past few weeks against Venezuela's President and Vice President, as well as a number of other current and former Venezuelan government officials, all of whom were placed on OFAC's List of Specially Designated Nationals ([SDN List](#)).

In a [White House press release](#), the Press Secretary explained that "[t]hese measures are carefully calibrated to deny the Maduro dictatorship a critical source of financing to maintain its illegitimate rule, protect the United States financial system from complicity in Venezuela's corruption and in the impoverishment of the Venezuelan people, and allow for humanitarian assistance."

This *Client Alert* summarizes the top 10 takeaways from the Trump Administration's new Venezuela-related sanctions.

### 1. PdVSA "new" debt is prohibited.

The Executive Order prohibits US persons from engaging in transactions related to, the provision of financing for, and other dealings in "new debt" of PdVSA with a maturity of greater than 90 days, including any such activities taking place in the United States. The term "US person" includes (a) entities organized under US law and their foreign branches, (b) US nationals and US lawful permanent residents (wherever located) and (c) any person (regardless of nationality) present in the US. This prohibition in the Executive Order extends to all financing that supports such new debt, as well as the provision of services supporting such new debt. The prohibition also extends to the rollover of existing PdVSA debt if the

rollover results in creating new debt with a maturity exceeding 90 days. “New debt” is defined as debt issued on or after August 25, when the new Executive Order took effect. In Frequently Asked Questions ([FAQs](#)) published simultaneously by OFAC, the agency confirmed that the term “debt” includes “bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.” This definition mirrors the definition used by OFAC in the context of Russia-related sectoral sanctions.

## **2. Dealings in “New” debt and equity of the Venezuelan government, government bonds, and dividends are prohibited.**

The new Executive Order prohibits transactions related to, the provision of financing for, and other dealings in the following by a United States person or within the United States:

- “New debt” of the Venezuelan government with a maturity of greater than 30 days, other than debt of PdVSA (where the maturity period is greater than 90 days), and “new equity” of the Government of Venezuela (including PdVSA). In its FAQs, OFAC defines “equity” to include “stocks, share issuances, depositary receipts, or any other evidence of title or ownership.”
- Bonds issued by the Venezuelan government prior to August 25 (but see OFAC [General License 3](#), discussed below).
- Dividend payments or other distributions of profits to the Venezuelan government from any entity that the Venezuelan government owns or controls, either directly or indirectly. In part, this provision aims to ensure that PdVSA’s subsidiary in the United States, Citgo, does not repatriate its profits to the Venezuelan government.

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

## **3. Purchasing securities from the Venezuelan government is prohibited.**

The Executive Order prohibits transactions by US persons and activities in the United States relating to the purchase, directly or indirectly, of securities from the Venezuelan government, other than securities qualifying as new debt with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the Government of Venezuela minus PdVSA). OFAC’s FAQs clarify that the new sanctions “prohibit[] U.S. persons from purchasing any securities — including equity securities issued by a non-sanctioned party — from the Government of Venezuela.”

## **4. Citgo and Citgo affiliates benefit from an OFAC General License.**

Coinciding with the release of the new Executive Order, OFAC issued [General License 2](#), which broadly authorizes US-person dealings and transactions with CITGO Holding, Inc. and CITGO Holding, Inc.’s subsidiaries, if no other sanctioned parties are involved. Citgo is a subsidiary of PdVSA. This general license effectively allows Citgo to maintain its normal operations, with the notable exception of its inability under the new sanctions to repatriate profits to the Venezuelan government, including to Citgo’s parent company.

## **5. OFAC issues wind-down General License.**

OFAC also issued [General License 1](#), which is a “wind down” general license that narrowly permits US persons to participate in activities that are “ordinarily incident and necessary to wind down contracts or other agreements that were in effect prior to August 25, 2017.” Such wind-down activities must be completed before September 25, 2017. US persons taking advantage of this general license must provide a “detailed report” to OFAC within 10 business days after the wind-down transactions take place that includes such information as the name of the parties involved, the value of the transactions, and the date of the transactions. Failure to submit such a report can expose a US party to OFAC penalties.

## **6. OFAC General License permits dealings in certain previously issued Venezuela-related bonds and the financing of humanitarian sales.**

Coinciding with the release of the new Executive Order, OFAC also issued [General License 3](#), which authorizes US persons to engage in all transactions related to the provision of financing for, and other dealings in, bonds that:

- Are specified in an [Annex](#) published by OFAC, or
- Were issued (i) prior to August 25, 2017, and (ii) by US person entities owned or controlled, directly or indirectly, by the Venezuelan government (such as CITGO Holding, Inc.).

However, US persons are not permitted to purchase bonds listed in the OFAC [Annex](#) directly or indirectly from the Venezuelan government.

OFAC [General License 4](#) permits financing activities and dealings in “new debt” related to the exportation or reexportation, from the United States or by a US person, of qualifying agricultural commodities, medicine, medical devices, or replacement parts and components for medical devices.

## **7. The new sanctions do not require blocking.**

OFAC’s FAQs underscore that the new, targeted sanctions against the Venezuelan government do not require US persons to treat the Venezuelan government as an SDN or to block its property. OFAC also notes that “the Government of Venezuela will not be added to the List of Specially Designated Nationals and Blocked Persons (SDN List),” and US persons should reject transactions or dealings that are prohibited by the new Executive Order. Such a rejection can trigger a notification to OFAC within 10 business days.

## **8. Imports of Venezuelan oil and exports of US crude oil to Venezuela are still permitted.**

The current sanctions against Venezuela do not prohibit importing crude oil of Venezuelan origin into the US or processing such crude oil in the United States. The sanctions also do not preclude US persons from selling crude oil to Venezuela, provided no SDNs are involved.

## **9. OFAC’s application of the 50% rule merits consideration.**

OFAC’s FAQs clarify that the prohibitions relating to financing and other activities involving the Venezuelan government also apply to entities that are owned 50% or more by the Venezuelan government. In other words, a 50-50 joint venture with the Venezuelan government, or an entity that meets the definition of “Government of Venezuela” (such as PdVSA), would be subject to the restrictions

and limitations provided for in the Executive Order (unless the entity is CITGO Holding, Inc. or one of its subsidiaries, in which case [General License 2](#) provides relief).

## **10. US persons should exercise caution when dealing with the Venezuelan government, given that certain government officials are on the SDN List.**

In its [FAQ No. 505](#), OFAC reminds the US-regulated community that “the designation of an official of the Government of Venezuela does not mean that the government itself is also blocked” and that the OFAC prohibitions apply “to transactions or dealings with the individuals and entities whose property and interests in property are blocked.” However, OFAC cautions that US persons should be alert to instances where dealings with the Venezuelan government may directly or indirectly involve dealing with an SDN, “for example by entering into contracts that are signed by the SDN, entering into negotiations with an SDN, or by processing transactions, directly or indirectly, on behalf of an SDN.”

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**[Les. P Carnegie](#)**

les.carnegie@lw.com  
+1.202.637.1096  
Washington, D.C.

**[Annie E. S. Froehlich](#)**

annie.froehlich@lw.com  
+1.202.637.2375  
Washington, D.C.

**[William M. McGlone](#)**

william.mcglone@lw.com  
+1.202.637.2202  
Washington, D.C.

**[Andrew P. Galdes](#)**

andrew.galdes@lw.com  
+1.202.637.2155  
Washington, D.C.

**[Robert E. Sims](#)**

bob.sims@lw.com  
+1.415.395.8127  
San Francisco

**[Jennifer Kendrex](#)**

jennifer.kendrex@lw.com  
+1.202.637.2292  
Washington, D.C.

**[Eric S. Volkman](#)**

eric.volkman@lw.com  
+1.202.637.2237  
Washington, D.C.

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