# New Sanctions Target the Government of Venezuela's Access to US Capital Markets

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On August 25, 2017, the U.S. government dramatically increased sanctions on the government of Venezuela. Unlike the Venezuela-related sanctions already in effect, which are list-based and to date have targeted only specific individuals,[1] the new measures are aimed at access to U.S. debt and equity markets by the government of Venezuela, including state-owned or controlled entities. The new measures include specific requirements relating to Venezuela's state-owned oil company, Petróleos de Venezuela, S.A. (PdVSA), and its U.S. subsidiary, CITGO Holding, Inc. (CITGO). In developing the new sanctions, the U.S. government adopted the model of sanctions used by the United States in the context of sectoral sanctions on Russia and first introduced in 2014. The most recent action makes clear that the U.S. government continues to be concerned about the political situation in Venezuela, and further sanctions remain a possibility.

President Donald Trump imposed the new sanctions on Venezuela via Executive Order (E.O.) 13808, which broadly prohibits transactions related to new medium- and long-term debt and new equity of the government of Venezuela and certain pre-existing bonds it issued. The executive order targets dividend payments or other distributions of profits from any entity owned or controlled, directly or indirectly, by the government of Venezuela to the government of Venezuela. It also prohibits the purchase, directly or indirectly, of any securities from the government of Venezuela other than certain specified debt securities. The prohibitions in the executive order apply to U.S. persons or transactions that are otherwise subject to U.S. enforcement jurisdiction.

Simultaneously with the imposition of the new sanctions, the Office of Foreign Assets Control (OFAC) issued four general licenses authorizing certain transactions that would otherwise now be prohibited. Administration officials, including the secretary of the Treasury, have suggested in press briefings that the general licenses are intended to limit the impact of the restrictions in the executive order on U.S. persons, the global petroleum market, the secondary bond market and the Venezuelan people, while applying financial pressure to the regime of President Nicolás Maduro.

## Restrictions on Debt and Equity

Generally speaking, the new measures create different restrictions on three categories of Venezuelan government debt: (1) new PdVSA debt; (2) other new debt of the government of Venezuela other than new debt of PdVSA; and (3) existing bonds issued by the government of Venezuela. In addition, the new measures impose restrictions on equity of the government of Venezuela, including PdVSA and other state-owned or controlled entities.

### New PdVSA Debt

The executive order prohibits all transactions related to, provisions of financing for and other dealings in new PdVSA debt with a maturity of greater than 90 days. New PdVSA debt with a maturity of 90 days or less is not prohibited, and administration officials indicated in a background briefing that the new sanctions are not intended to be an oil embargo. Indeed, the U.S. government appears to have distinguished between new PdVSA debt and other new Venezuelan government debt to make it commercially feasible for PdVSA to continue to participate in the global trade of petroleum.

[1] *See* Skadden's *2016 Insights*, "US Economic Sanctions: New List-Based Programs."

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### New Debt Other Than PdVSA Debt

The executive order prohibits all transactions related to, provisions of financing for and other dealings in new debt of the government of Venezuela with a maturity of greater than 30 days (other than PdVSA debt). General License 4 authorizes new debt transactions related to the exportation or re-exportation of agricultural commodities, medicine, medical devices or replacement parts and components to Venezuela, or to persons in third countries purchasing specifically for resale to Venezuela, provided that the exportation or re-exportation is licensed or otherwise authorized by the U.S. Department of Commerce under the provisions of the Export Administration Act.

### Government Equity

The executive order prohibits all transactions related to, provisions of financing for and other dealings in new equity of the government of Venezuela, including PdVSA and other state-owned or controlled entities. General License 2, however, authorizes new equity transactions otherwise prohibited by the order if the only government of Venezuela entities involved are CITGO or any of its subsidiaries.

### Existing Government Bonds

Unlike the Russia sectoral sanctions, which do not target debt in existence at the time of the imposition of sanctions, the new Venezuela-related sanctions treat existing bonds differently from other categories of existing debt. The executive order does not generally restrict dealings in existing nonbond debt of PdVSA or the government of Venezuela. It does, however, restrict dealings in bonds previously issued by the government of Venezuela. Specifically, the order prohibits all transactions related to, provisions of financing for and other dealings in bonds issued by the government of Venezuela prior to August 25, 2017. Bonds issued on or after that date would be subject to the restrictions on new debt.

General License 3 authorizes dealings in specified bonds — listed in an annex — previously issued by the government of Venezuela, including certain bonds issued by PdVSA as well as all bonds issued by U.S. entities owned or controlled by the Venezuelan government, including CITGO. Administration officials indicated in a background briefing that the new action is not a restriction on secondary market trading of bonds previously issued by the Venezuelan government. Administration officials also indicated that in practice, all bonds previously issued by the government of Venezuela are authorized under General License 3, except for two series of bonds that are entirely held in Venezuela state enterprises.

### Restrictions on Dividend Payments or Other Distribution of Profits

The executive order prohibits 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 restriction appears intended to prevent the government from extracting the proceeds though dividend payments or other distributions from companies it owns or controls, including CITGO.

### Restrictions on Purchases of Securities

The executive order prohibits the purchase, directly or indirectly, of any debt or equity securities from the government of Venezuela, other than securities qualifying as new debt with a maturity of less than or equal to 90 days in the case of new PdVSA debt or 30 days in the case of other new government debt. This restriction also limits the purchase of existing securities issued by a third party — such as by a nonsanctioned company not owned or controlled by the Venezuelan government — but held by the Venezuelan government.

### Wind-Down Period for Certain Existing Contracts

Under General License 1, provided the transaction does not involve a person on OFAC's List of Specially Designated Nationals and Blocked Persons, OFAC has allowed for a 30-day wind-down period with respect to some activities, which it did not allow in the context of the Ukraine/Russia-related program's debt and equity restrictions. Specifically, General License 1 authorizes through September 24, 2017, all activities necessary to wind down existing contracts otherwise prohibited by E.O. 13808 and relating to new PdVSA and government of Venezuela debt and equity, pre-existing bonds issued by the government of Venezuela, and the purchase of securities from the government of Venezuela. General License 1 does not, however, authorize the wind down of existing contracts relating to dividend payments or other profit distributions to the government of Venezuela.

### CITGO and US Subsidiaries Owned or Controlled by Venezuelan Government

General License 2 exempts CITGO, a U.S. subsidiary of PdVSA, from E.O. 13808's restrictions on new debt and new equity. It also authorizes the purchase of debt and equity securities from the government of Venezuela when the only government of Venezuela entities involved are CITGO and any of its subsidiaries, to the extent otherwise prohibited by the executive order. Additionally, General License 3 authorizes dealings in pre-existing bonds issued by U.S. persons, including CITGO. Neither general license authorizes the distribution of profits from CITGO or other U.S.-owned or controlled entities to PdVSA or the Venezuelan government.

## Comparison to Ukraine/Russia-Related Sanctions Program

The restrictions on new PdVSA and Venezuelan government debt are conceptually similar to the restrictions under Directives 1 through 3 of the Ukraine/Russia-related sanctions program, and OFAC has issued guidance in the form of FAQ similar to that issued under the Ukraine/Russia sanctions program. For example, similar to the Ukraine/Russia program, if a U.S. person entered into a long-term credit facility or loan agreement prior to the sanctions' effective date, drawdowns and disbursements with repayment terms of 90 days or less for PdVSA or 30 days or less for the rest of the government of Venezuela are permitted. Drawdowns and disbursements whose repayment terms exceed the applicable authorized tenor are not prohibited if the terms (including the length of the repayment period, the interest rate applied to the drawdown and the maximum drawdown amount) were contractually agreed to prior to the sanctions' effective date and are not modified after that date. The prohibitions also extend to the rollover of existing debt, if such rollover results in the creation of new debt with a maturity of longer than 90 days or less for PdVSA or 30 days or less for the rest of the government of Venezuela. While OFAC has not restated all FAQ related to debt and equity restrictions in the Venezuela context, we would expect that much of the guidance issued in the context of Russia debt and equity restrictions is instructive.

Unlike with the Russia-related sectoral sanctions, the U.S. government has decided to more directly target the Venezuelan government and all state-owned or controlled enterprises rather than distinguish among sectors of the Venezuelan economy. Additionally, as discussed above, OFAC has allowed for a 30-day wind-down period with respect to some activities, which it did not allow in the context of the Russia-related debt and equity restrictions. Finally, unlike with the Russia-related sectoral sanctions, OFAC has not issued a general license authorizing derivative products whose value is linked to an underlying asset that constitutes new debt of PdVSA of longer than 90 days maturity, or new debt with a maturity of 30 days or new equity for the rest of the Venezuelan government.

## Conclusion

The new measures constitute a considerable escalation in U.S. sanctions against Venezuela. Companies with any business dealings with the Venezuelan government, including any Venezuelan state-owned or controlled enterprises, should exercise caution. In addition, in following the Russia sectoral sanctions model, the U.S. government has answered a question that many financial institutions, companies and legal practitioners asked after the imposition of those sanctions in 2014: Will the restrictions on access to U.S. capital markets become a staple tool in the U.S. government's sanctions toolbox? In light of the new Venezuela sanctions, the answer appears to be a clear yes.

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