

CLIENT ALERT

Restructuring Venezuela Amidst U.S. Sanctions

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After much anticipation, the stage is finally set for Venezuela and its state-owned oil company, Petróleos Venezuela, S.A. (“**PdVSA**”), to restructure their unsustainable debt obligations. The restructuring process promises to be long and arduous given that there are countless questions and few answers at this early stage. One of the threshold issues that creditors and potential investors must address is how to approach restructuring negotiations without running afoul of the sanctions recently imposed on the Venezuelan government by the United States. This client alert describes the impact of those sanctions on the restructuring negotiations.

For a broader overview of the sanctions imposed on the Government of Venezuela by the United States in August 2017, please see Willkie Farr & Gallagher LLP’s previous client alert, available [here](#).

The U.S. Sanctions

Since 2014, the United States has taken both diplomatic and legal steps to address the deteriorating political climate in Venezuela. Most recently, on August 24, 2017, President Trump issued an Executive Order (“**E.O.**”) imposing new economic sanctions on the Government of Venezuela, including PdVSA. In key part, the E.O. prohibits all transactions related to financing provisions and other dealings by a “U.S. person”¹ or within the U.S. in the following:

¹ “U.S. persons” is defined as: (1) entities organized under U.S. law and their foreign branches; (2) U.S. nationals and U.S. permanent residents, wherever located; and (3) any person physically present in the United States.

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1. New debt² issued after August 25, 2017 (i.e., the E.O. effective date) by PdVSA with a maturity of more than 90 days;
2. New debt issued by the Government of Venezuela³ (other than debt of PdVSA) with a maturity of more than 30 days, or new equity of the Government of Venezuela; and
3. Bonds issued by the Government of Venezuela prior to August 25, 2017.

At the same time, the U.S. Department of Treasury, Office of Foreign Assets Control (“**OFAC**”) issued four general licenses authorizing certain activities by U.S. persons that would otherwise be prohibited by the E.O. One of these is General License 3, which authorizes “all transactions related to dealings, provision of financing for, and other dealings in” a specific list of bonds. Thus, General License 3 does allow U.S. creditors the flexibility to engage in restructuring negotiations with respect to the existing bond debt obligations of both Venezuela and PdVSA for those bonds listed by the license. However, any other restructured debt, or debt otherwise containing new terms from the Government of Venezuela, would constitute “new debt” and therefore, fall within the scope of the E.O.’s prohibitions.

In addition, creditors and potential investors must be mindful of the parties with whom they are negotiating because OFAC has designated a number of Venezuela and PdVSA officials as “Specially Designated Nationals” (“**SDNs**”). This designation prevents U.S. persons from engaging in any transaction in which the SDN has any property interest, including providing or receiving services from SDNs. OFAC recently issued written guidance that, pursuant to these prohibitions, U.S. persons may not enter into negotiations or sign a contract with an SDN.⁴ Venezuelan President Nicolás Maduro and Vice President Tareck El Aissami, who has been charged with leading the restructuring negotiations, are among the prominent SDNs. The government held initial discussions with creditors in Caracas on November 13, 2017.

Although Venezuela and PdVSA have reportedly continued to make debt payments, some of those payments have been late and the market appears convinced that a hard default is inevitable. Indeed, various debt rating agencies and the International Swaps and Derivatives Association have already declared Venezuela and PdVSA in default.

As the situation continues to evolve, creditors and potential investors must proceed with caution to ensure they remain in compliance with the various sanctions. Creditors should strongly consider engaging in direct dialogue with the United States government and, where necessary, should request further licenses from OFAC before proceeding with

² “New debt” includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, banker acceptances, discount notes or bills, or commercial paper and includes debt issued by, on behalf of, or for the benefit of PdVSA, its property, or its interests in property.

³ “Government of Venezuela” is broadly defined to encompass any political subdivision, agency or instrumentality thereof (including the Central Bank of Venezuela and PdVSA) and any person owned or controlled by, or acting on behalf of, the Government of Venezuela.

⁴ OFAC Frequently Asked Questions # 505, *available* [here](#).

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transactions otherwise prohibited by the sanctions. In fact, OFAC recently clarified that further license requests would be considered on a case-by-case basis and that the U.S. government would consider issuing licenses to allow U.S. persons to deal in new debt of the Government of Venezuela as long as such debt was approved by the democratically elected Venezuelan National Assembly.⁵

Willkie's experienced team of lawyers, well-versed in Latin America, debt finance, government regulation and international restructuring law, is actively monitoring the situation in Venezuela.

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⁵ OFAC Frequently Asked Questions # 547, *available* [here](#).