

# KIRKLAND ALERT

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## Understanding the Rising Corruption, Sanctions and Money Laundering Risks of Doing Business with Venezuela

Recent actions by the U.S. and other governments targeting the government of Venezuela significantly raise the legal and reputational risks of doing business, directly or indirectly, with Venezuelan counterparties, and warrant close attention by financial institutions, companies and investors, especially those operating in or with the energy industry. With careful planning, however, this complex set of Venezuela-related international risks can be effectively identified, assessed and managed.

### *The View from Washington*

While developments in Venezuela have received less media attention than the crisis in North Korea, they continue to alarm U.S. policymakers. Specifically, U.S. policymakers are increasingly concerned about the domestic and regional implications of Venezuela's instability: a deepening humanitarian catastrophe, a steady degradation of Venezuela's democratic institutions, a regional refugee crisis and the security risks of a failed state in the Western Hemisphere, among other things. Because the Trump administration assesses that many Venezuelan government officials are involved and benefit from international criminal activity (e.g., narco-trafficking), including by the use of state resources, it has pursued a policy to increase pressure on President Nicolás Maduro and his inner circle while seeking to avert a Venezuelan collapse.

### *Venezuela-Related Developments*

To implement this policy, and as a complement to U.S. and regional diplomatic efforts, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an [advisory](#) on September 20, 2017, identifying elevated corruption and money laundering risks associated with Venezuela.<sup>1</sup> This followed the U.S. Department of the Treasury's Office of Foreign Assets Control's (OFAC) recent imposition of economic [sanctions](#) predominantly targeting transactions with the Venezuelan government and entities it owns or controls,<sup>2</sup> the Canadian government's enactment of new measures targeting the Venezuelan government and threatened EU sanctions.

### **Corruption and Money Laundering**

The FinCEN advisory determined that, based on information gathered from financial institutions, *all* Venezuelan government agencies and state-owned entities (SOEs)

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are potentially vulnerable to corruption and money laundering risks. FinCEN recommended that financial institutions, which are directly subject to FinCEN regulations, pay close attention to transactions that, directly or indirectly, involve the Venezuelan government or SOEs. U.S. investments and business in Venezuela also intersect with the Venezuelan government and affiliated entities, making this advice relevant also to the broader U.S. business community.

The advisory highlighted several illustrative red flags that financial institutions should be aware of when conducting transactions in Venezuela:

- government contracts where money is directed to personal accounts or companies unrelated to the contract;
- government contracts originating from shell corporations or accounts located outside of Venezuela;
- suspect payments, such as cash deposits or invoices with higher than market rate prices; and
- transactions involving real estate purchases in Florida or Texas.

Based on these risks, financial institutions and, more broadly, companies doing business related to the Venezuelan government and its affiliated entities, will want to take extra precautions that account for these identified risks.

### **Economic Sanctions**

OFAC's new sanctions on Venezuela likewise target the Venezuelan government and SOEs, making it more difficult for them to access U.S. credit and capital. The sanctions generally prohibit transactions involving new "debt" (a term which OFAC interprets to encompass the extension of credit through payment terms) of the government of Venezuela with a maturity of greater than 30 days. For these purposes, the government of Venezuela includes any entity owned or controlled, or acting on behalf of, the government of Venezuela. With respect to Venezuelan government-owned oil company Petroleos De Venezuela (PdVSA), the maturity may not be longer than 90 days.

Otherwise, the expanded economic sanctions prohibit transactions and dealings related to the following:

- new equity of the government of Venezuela;
- purchase of securities from the government of Venezuela, other than new debt;
- bonds issued by the government of Venezuela; and
- dividend payments or other distribution of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela.

**The FinCEN advisory determined that, based on information gathered from financial institutions, all Venezuelan government agencies and state-owned entities (SOEs) are potentially vulnerable to corruption and money laundering risks.**

Simultaneously, OFAC has issued four general licenses to authorize certain activities notwithstanding the new sanctions:

- activities necessary to wind down existing contracts for 30 days after issuance of the new sanctions;
- transactions where the only Venezuelan government entity involved is CITGO Holding, Inc., PdVSA's U.S. subsidiary;
- dealings with a select list of bonds; and
- engagement in new debt associated with agricultural commodities, medicine and medical devices, or replacement parts.

### Key Takeaways

- As U.S. policy aimed at deterring trade and investment makes it increasingly more difficult to do business with Venezuela, it will be all the more important for companies and financial institutions to understand the associated corruption, sanctions and money laundering risks. These risks are especially significant for financial institutions and those doing business in the energy industry.
- Parties who wish to conduct business with Venezuelan counterparties — particularly with the government of Venezuela or SOEs — will want to conduct enhanced diligence and take steps to safeguard as necessary against funds inadvertently being provided or accepted that further corruption or money laundering. What diligence is due will vary depending upon the particular facts and circumstances.
- Parties conducting business in Venezuela should carefully review both the identity of contractual counterparties and the terms of contracts and agreements to ensure compliance with the new sanctions, including with respect to payment terms which may be construed as the issuance of “debt.”
- By virtue of the changing circumstances, financial institutions, companies and investors conducting business in or with Venezuela should ensure appropriate procedures are in place, and actively implemented, to comply with anti-corruption, sanctions and anti-money laundering requirements.

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- <sup>1</sup> *Advisory on Widespread Public Corruption in Venezuela*, Financial Crimes Enforcement Network (Sep. 20, 2017), available at <https://www.fincen.gov/sites/default/files/advisory/2017-09-20/FinCEN%20Advisory%20FIN-2017-A006-508%20Compliant.pdf>.
- <sup>2</sup> Exec. Order No. 13808, *Imposing Additional Sanctions with Respect to the Situation in Venezuela*, 82 Fed. Reg. 4155 (Aug. 29, 2017).

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