

FINCEN WARNS U.S. FINANCIAL INSTITUTIONS TO BE ALERT TO VENEZUELAN PUBLIC CORRUPTION AND MONEY LAUNDERING

On September 20, 2017, the Treasury Department's Financial Crimes Enforcement Network ("**FinCEN**") issued an advisory to U.S. financial institutions to be especially alert to suspicious activities involving Venezuelan public officials, employees of state-owned enterprises ("**SOEs**"), and their families, which may involve the proceeds of public corruption. This expansive advisory includes a list of payment structures and transaction types that are examples of financial "red flags" of possible vehicles to illicitly embezzle funds to receive bribes. While the advisory is careful to admonish financial institutions not to indiscriminately de-risk, FinCEN clearly is putting the financial services industry on notice regarding their direct and indirect business with a wide swath of Venezuela-related business.

WHAT BUSINESS IS COVERED BY THE ADVISORY

FinCEN's advisory broadly warns of the "high risk of corruption" in transactions involving Venezuela senior political figures at all levels and branches of government, and employees of SOEs at all levels, **as well as their** immediate family members. In addition, FinCEN warns of risks involving transactions associated directly or indirectly with Venezuelan government contracts, including transactions involving third parties that may be related to such contracts or purported contracts. These include payments that may have originated from outside Venezuela. Other areas of risk flagged by FinCEN include transactions for trading companies, such as in Florida, that do business with Venezuela, and real estate transactions, such as in Texas and Florida, involving Venezuelan government officials, their family members or "associates." FinCEN further warns of apparently complex transactions by such individuals through private wealth accounts.

Specifically, the advisory sets forth the following red flags:

- Transactions involving Venezuelan government contracts that are directed to personal accounts;
- Transactions involving Venezuelan government contracts that are directed to companies that operate in an unrelated line of business (e.g., payments for construction projects directed to textile merchants);
- Transactions involving Venezuelan government contracts that originate with, or are directed to, entities that are shell corporations, general "trading companies," or companies that lack a general business purpose;
- Invoices involving Venezuelan government contracts that include charges at substantially higher prices than market rates or that include overly simple documentation or lack traditional details (e.g., valuations for goods and services).
- Payments involving Venezuelan government contracts that originate from non-official Venezuelan accounts, particularly accounts located in jurisdictions outside Venezuela (e.g., Panama or the Caribbean);

- Payments involving Venezuelan government contracts that originate from third parties that are not official Venezuelan government entities (e.g., shell companies); and
- Cash deposits instead of wire transfers in the accounts of companies with Venezuelan government contracts.

WHAT FINANCIAL INSTITUTIONS NEED TO DO IN RESPONSE TO THE ADVISORY

This is a comprehensive and clear warning designed to ensure that firms' transaction monitoring and client due diligence activities are enhanced to address the specific risks arising from the events in Venezuela. OFAC already has acted to sanction a number of Venezuelan officials and companies and the President through executive order has placed significant restrictions on certain debt, equity and disbursement activities of the Government of Venezuela and Petroleos de Venezuela, S.A., known as PDVSA, with more designation activity possible.ⁱⁱ FinCEN is careful to advise against a wholesale de-risking of Venezuela as there continue to be legitimate transactions involving that

jurisdiction. Nevertheless, given FinCEN's warnings that those involved in the criminal activities will be using front companies and a variety of deceptive mechanisms to evade compliance regimes to access the US financial system, financial institutions will need to exercise considerable caution in transactions involving those jurisdictions to mitigate compliance and reputational risk.

CONCLUSION

Due to significant risk of corruption among Venezuelan government agencies and bodies, FinCEN recommends the use of reasonable risk-based measures to prevent the channelling of bribes and other corrupt funds through the U.S. financial institutions are on notice to apply particular scrutiny on transactions involving Venezuelan government entities and SOEs, and to watch out for specific payment structures and transaction types related to government contracts that may be indicative of money laundering efforts. Financial institutions should take steps to update their compliance controls and to train employees to recognize these red-flags in order to minimize the risk of becoming entangled in these illicit financial schemes.

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ⁱ The Advisory defines senior political figure as "a current or former senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not); a senior official of a major foreign political party; or a senior executive of a foreign government-owned commercial enterprise; a corporation, business, or other entity that has been formed by, or for the benefit of, any such individual; an immediate family members of any such individual; and a person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual. For the purposes of this definition, 'senior official or executive' means an individual with substantial authority over policy, operations, or the use of government-owned resources and 'immediate family member' means spouses, parents, siblings, children and a spouse's parents and siblings." 31 CFR § 1010.605(p).

ⁱⁱ See Clifford Chance Briefing, U.S. IMPOSES NEW FINANCIAL SANCTIONS ON THE GOVERNMENT OF VENEZUELA AND PDVSA (Aug. 27, 2017) (available at https://www.cliffordchance.com/briefings/2017/08/us_imposes_new_financialsanctionsonth.html).