

Americans Conducting Business in Venezuela Adversely Affected by U.S. Sanctions

by Jorge Alberto Abreu

According to the World Bank's 2016 Doing Business Report, Venezuela is the second worst country in the world within which to start a business. The World Bank's report found that the Central African Republic (an African country with widespread civil war) is the only place worse than Venezuela to start a business. On March 9, 2015, President Obama issued Executive Order 13692 in response to the Venezuelan government's erosion of human rights guarantees, including but not limited to: persecution of political opponents, curtailment of press freedoms, use of violence in response to protests and the presence of significant public corruption. The Executive Order, entitled "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela", explicitly affords the U.S. Department of the Treasury ("U.S. Treasury") and the Office of Foreign Assets Control ("OFAC"), the right to name specific individuals or entities deemed to be engaging in human rights violations contrary to the will of the Venezuelan people. These individuals or entities are placed on a Specially Designated Nationals and Blocked Persons List ("SDN List"). U.S. persons cannot engage in transactions with any listed parties on the SDN List.

On July 31, 2017 and pursuant to President Obama's 2015 Executive Order, the U.S. Treasury and OFAC, with the support of the current Trump Administration, announced the addition of Venezuelan President Nicolas Maduro to the SDN List. The U.S. Treasury has



designated many other high-ranking Venezuelan government officials to the SDN List in the past as well. All U.S. persons, defined as U.S. citizens and permanent resident aliens regardless of where they are located and all U.S. incorporated entities and their foreign branches, must comply with OFAC regulations. Foreign subsidiaries owned or controlled by U.S. companies must also comply. Any entities owned, 50 percent or more, either directly or indirectly, by persons or entities on the SDN List, are also barred from engaging in transactions with U.S. persons. Further, U.S. persons cannot engage in transactions involving third parties that are acting on behalf of persons on the SDN List or engage in transactions that are otherwise designed to evade or avoid the sanctions restrictions. Further, the U.S. Government retains authority to freeze the assets of any person on the SDN List.

However, U.S. persons may engage in business with a person that is on the SDN List if that person works for or controls the entity without an ownership interest. Furthermore, the SDN List designation does not extend to family members of designated individuals, unless they act on behalf of the SDN

List designated individual. There is also no general ban or embargo on imports from Venezuela at this time. U.S. persons may still enter into contracts involving Venezuelan businesses that are not on the SDN List.

The fines for violations of the U.S. Treasury and OFAC regulations can be substantial. In many cases, civil and criminal penalties can exceed several million dollars. Civil penalties vary by sanctions program, and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalty Inflation Adjustment Act Improvements Act of 2015, requires OFAC to adjust civil monetary penalty amounts annually.

Consequently, even though one may start or conduct a business in Venezuela, U.S. persons considering the country as a viable option should thoroughly review the aforementioned SDN List and make sure they are not conducting business with persons or entities in violation of President Obama's Executive order, U.S. Treasury regulations or OFAC regulations. ■



Jorge A. Abreu is an attorney at Gastesi & Associates, P.A. located in Miami Lakes where he practices in the areas of Commercial Litigation and Transactions. Born and raised in Miami, Jorge is a graduate of Florida International University and Nova Southeastern University's Shepard Broad Law Center. Jorge can be reached at JAbreu@Gastesi.com or by calling 305-818-9993.