

Trade Compliance Flash: OFAC Sanctions Venezuela's Development Bank, BANDES; Issues Five Related General Licenses

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On March 22, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) [designated](#) Banco de Desarrollo Economico y Social de Venezuela (BANDES), as well as four financial institutions that BANDES owns or controls, pursuant to Executive Order 13850 for operating in the financial sector of the Venezuelan economy. BANDES is Venezuela's national development bank and a critical lifeline to foreign capital markets. OFAC simultaneously issued five general licenses authorizing certain activities with respect to sanctioned BANDES subsidiaries —specifically, Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela) and Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo)—but largely prohibiting any transactions or dealings with BANDES or Banco Bandes Uruguay S.A. (Bandes Uruguay).

This action comes less than two months after OFAC [imposed sanctions](#) on Petróleos de Venezuela, S.A. (PdVSA), one of the largest energy companies in the world and a key source of revenue for the Government of Venezuela. The impact of the PdVSA sanctions is still being felt acutely around the world, particularly in the energy and financial sectors. Like the action against PdVSA, Treasury Secretary Steven Mnuchin indicated that these designations were aimed squarely at Nicolas Maduro and his regime who "have transformed BANDES and its subsidiaries into vehicles to move funds abroad" in an attempt to prop up the regime and hold on to power. These latest designations signal that the U.S. government intends to continue to keep up the pressure on the Maduro regime through aggressive sanctions unless it acknowledges interim President Juan Guaidó and relinquishes full control of the Venezuelan government.

For U.S. and non-U.S. companies—specifically, financial institutions—the new sanctions against BANDES and its affiliates present additional compliance challenges in an already complex Venezuela sanctions compliance environment. Below we summarize the immediate impact of the designations, the conduct authorized by the five general licenses, and some key takeaways to assist U.S. and non-U.S. companies manage sanctions risk in this rapidly evolving area.

BANDES Sanctions: Primary Prohibitions

As of March 22, 2019, BANDES was added to OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) pursuant to Executive Order 13850 of November 1, 2018, Blocking Property of Additional Persons Contributing to the Situation in Venezuela (E.O. 13850). Four other entities owned or controlled by BANDES were also added to the SDN List: Banco Bandes Uruguay S.A. (Bandes Uruguay), Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), and Banco Prodem S.A. As a result, U.S. persons are now prohibited from most dealings with BANDES and these subsidiaries, or any of the entities in which they own, directly or indirectly, a 50 percent or greater interest (together, the "BANDES entities"). [OFAC FAQ 663](#) clarifies that not all persons operating in the financial sector of the Venezuelan economy are to be treated as blocked persons; only those included on the SDN List, like the BANDES entities, and their majority-owned subsidiaries.

Unless authorized by one of the general licenses discussed below or a specific license granted by OFAC, the following prohibitions apply:

- U.S. persons must freeze or "block" any funds that are in their possession or come within their possession and in which any BANDES entities have a property interest. For example, U.S. financial institutions must block all accounts held by BANDES entities by placing such funds in an interest-bearing account from which only OFAC-authorized debits may be made. Additional regulatory requirements apply to U.S. financial institutions holding blocked accounts or funds.
- U.S. persons may not transfer, pay, export, withdraw, or otherwise deal in any "property or interests in property" of any BANDES entity. This broad prohibition covers, for example, receipt of payment from a BANDES entity or the provision of funds, goods, or services to a BANDES entity.

Even non-U.S. persons are subject to the prohibitions set forth above to the extent that a transaction in which they are involved has a U.S. nexus—such as a U.S. person counterparty's involvement in the transaction, financing from a U.S. person, or payments denominated in U.S. dollars. Like most U.S. sanctions authorities, E.O. 13850 prohibits "any transaction that evades or avoids ... causes a violation of ... or attempts to violate any of the prohibitions set forth in this order." Based on this provision, OFAC may view a non-U.S. person's involvement in any BANDES-related transaction or activities that also involves a U.S. person as "causing" that U.S. persons to violate sanctions, potentially creating sanctions liability for both the non-U.S. person and the U.S. person. For example, in past enforcement actions, OFAC has imposed civil penalties on non-U.S. entities operating entirely outside the United States for making payments to SDNs in U.S. dollars. OFAC justified such penalties by arguing that the non-U.S. person's obtaining of dollars through a correspondent or payable-through banking relationship with a U.S. financial institution "caused" the financial institution to provide services in support of an SDN, violating U.S. sanctions.

OFAC General License Nos. 4A, 15, 16, 17, 18

In connection with the BANDES sanctions, OFAC has issued five general licenses, four new and one amended, that authorize certain conduct that would otherwise be prohibited by E.O. 13850, without the need to seek authorization by filing a specific license application. Overall, the general licenses provide very little relief for transactions with BANDES and Banded Uruguay but do permit certain activities with respect to the other sanctioned entities.

- **General License No. 4A** amends previously issued General License No. 4 and authorizes transactions involving Banco de Venezuela or Banco Bicentenario del Pueblo provided that they are ordinarily incident and necessary to the exportation or reexportation, whether from the U.S. or a third country, of agricultural commodities, medicine, medical devices, or replacement parts and components for medical devices to Venezuela or for resale to Venezuela, as long as the transaction is licensed or otherwise authorized by the Department of Commerce or, for items not subject to U.S. export control laws, the items are not listed under any multilateral export control regime. This general license does not authorize any transactions or dealings with BANDES or Banded Uruguay.
- **General License No. 15** authorizes transactions and activities ordinarily incident and necessary to the activities of the following entities—MasterCard Incorporated, Visa Inc., American Express Company, Western Union Company, and MoneyGram International—which involve Banco de Venezuela or Banco Bicentenario del Pueblo through March 22, 2020. This general license does not authorize any transactions or dealings with BANDES or Banded Uruguay.
- **General License No. 16**, Paragraph (a)(1) authorizes transactions and activities ordinarily incident and necessary to maintaining, operating, or closing accounts of U.S. persons in Banco de Venezuela or Banco Bicentenario del Pueblo. Paragraph (a)(2) authorizes all transactions and activities involving Banco de Venezuela or Banco Bicentenario del Pueblo ordinarily incident and necessary to processing noncommercial personal remittances, which do not include charitable donations of funds to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business. U.S. financial institutions processing transactions under Paragraph (a)(2) may rely on the originator of the funds transfer regarding compliance with this authorization, provided the transferring institution does not know or have reason to know about non-compliance. These transactions and activities are authorized through March 22, 2020. This general license does not authorize any transactions or dealings with BANDES or Banded Uruguay.

- **General License No. 17** authorizes transactions and activities that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving Banco de Venezuela, Banco Bicentenario del Pueblo, or Banco Prodem S.A. that were in effect prior to March 22, 2019. These transactions and activities are authorized through May 21, 2019. This general license does not authorize any transactions or dealings with BANDES or Bandes Uruguay.
- **General License No. 18**, Paragraph (a) authorizes transactions and activities that are ordinarily incident and necessary to maintain or operate Integración Administradora de Fondos de Ahorro Previsional, S.A., whose fund administrator is owned 50 percent or more by Bandes Uruguay. For purposes of this general license, the authorized transactions and activities include the purchase from or sale to the Integración Administradora de Fondos de Ahorro Previsional, S.A. of securities or serving as custodian for securities held by the Integración Administradora de Fondos de Ahorro Previsional, S.A. This general license does not authorize any transactions or dealings with BANDES or Bandes Uruguay other than as authorized by Paragraph (a).

[OFAC FAQ 664](#) clarifies that U.S. financial institutions and U.S.-registered money transmitters are authorized to process transactions involving Banco de Venezuela or Banco Bicentenario del Pueblo for purposes of General License Nos. 4A, 15, 16, and 17, Banco Prodem S.A. for purposes of General License No. 17, and Integración Administradora de Fondos de Ahorro Previsional, S.A. for purpose of General License No. 18, so long as the underlying transaction or activity is authorized under the relevant general license. Likewise, U.S. financial institutions that maintain correspondent accounts for any of the aforementioned entities may debit or credit such accounts for transactions consistent with the activity authorized in the relevant general license.

Key Takeaways from the BANDES Sanctions

Although the general licenses described above will ease the sanctions compliance burdens on some parties in the short term, there are some broader takeaways that should be kept in focus as you and your institution assess any new risks that may arise from the designation of the BANDES entities.

1. Be prepared for over-compliance, especially with transactions and activities permitted by the newly issued general licenses.

Although the general licenses detailed above authorize U.S. persons and non-U.S. persons alike to engage in numerous types of transactions, especially with Banco de Venezuela and Banco Bicentenario del Pueblo, experience with other sanctions programs suggests that financial institutions, particularly U.S. financial institutions, and other counter-parties are likely, as a matter of low risk tolerance, to shy away from **any** transactions with these designated entities or their subsidiaries, despite the existence of the general licenses. Thus, it is entirely possible, if not likely, that some institutions with exposure to the BANDES entities that might wish to conduct transactions falling squarely within the purview of one of the general licenses may still encounter resistance from its financial institution partners or other counter-parties. If such trouble potentially awaits, you may want to consider a proactive communication strategy to assess the nature of such concerns and possible ways to address them as soon as possible.

2. Despite the focus on U.S. financial institutions, non-U.S. financial institutions are at risk, as well.

As always, when OFAC adds foreign financial institutions to the SDN List, the burden falls heaviest on U.S. financial institutions who occupy the front line and must make rapid adjustments to ensure compliance with all aspects of the new sanctions. Non-U.S. financial institutions should be attuned to the potential that they, too, may be subject to significant risk if they do not adequately address their exposure to the newly sanctioned BANDES entities. As mentioned above, OFAC has proven that it will aggressively pursue non-U.S. persons who "cause" primary sanctions violations by U.S. persons, most often by transacting in U.S. dollars. However, there is also a risk that non-U.S. financial institutions could themselves be subject to designation under E.O. 13850 if continued unauthorized business involving the BANDES entities means they have "materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of ... any person whose property and interests in property are blocked pursuant to this order." In theory, any dealings with the BANDES entities after March 22, 2019, could provide grounds for OFAC to designate such non-U.S. persons pursuant to the E.O. Non-U.S. financial institutions, specifically,

should carefully review their connections to the BANDES entities and assess whether any compliance measures are necessary to mitigate this risk.

3. These likely won't be the last Venezuela designations. Be prepared for what comes next.

The pace of sanctions aimed at Venezuela, and what the U.S. government hopes will be the last vestiges of the Maduro regime, has increased steadily over the past several months. With each successive action, U.S. and non-U.S. institutions with any exposure to the Venezuelan economy are faced with new challenges in terms of sanctions compliance. The broad impact of the PdVSA designation in January brought this issue into stark relief, and now the designation of the BANDES entities further complicates matters. For any entity, U.S. or non-U.S., with any exposure to the Venezuelan economy, now is an optimal time to evaluate the scope of your exposure and implement sanctions compliance measures, as appropriate. As the U.S. continues to press its diplomatic and policy agenda in Venezuela via sanctions, it seems almost certain that it is only a matter of time before there will be a new wave of designations aimed at another pillar of Venezuela's economy.

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