

Transacting Insurance Business in Venezuela: Current Regulatory Challenges

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The increasingly unstable political situation in Venezuela, exacerbated by the exile of opposition candidate Edmundo González following disputed presidential election results, compels U.S. financial services companies, including insurers, to more closely monitor evolving legislation impacting cross-border operations and in-country activities in Venezuela. In this context, U.S. anti-corruption and sanctions laws, coupled with Venezuelan law regulating the sale of insurance in the context of cross-border/international life and health insurance, become particularly relevant. **U.S. Sanctions and Anti-Corruption Laws** U.S. economic sanctions laws impact doing business in Venezuela and complicate foreign transactions and investments there, including with respect to sale of insurance. The U.S. legal framework for sanctions is designed to further specific foreign policy or national security goals. The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") administers and enforces sanctions programs and maintains a list of sanctioned countries, individuals, and entities. Sanctions can be imposed to prohibit U.S. persons from engaging in transactions involving a specific country, as would be the case with North Korea, for example. Targeted sanctions also serve to block the property of sanctioned individuals within a certain country, as is the case with individual Russian oligarchs, and to freeze the assets of sanctioned individuals. Additionally, OFAC maintains a Specially Designated Nationals List ("SDN List") of individuals and companies of targeted countries whose assets are blocked and/or frozen in the U.S. Almost twenty years ago, the U.S. began imposing sanctions on Venezuelan individuals and entities that engaged in criminal, antidemocratic, or corrupt actions. Beginning in 2013, imposition of sanctions was expanded in response to President Nicolás Maduro's rise to power and his increasing human rights violations. Persons under U.S. jurisdiction—both U.S. citizens and U.S.-incorporated businesses—are subject to this sanctions regime. In addition, non-U.S. persons who engage in transactions involving U.S. dollars are subject to the same sanctions. In response to developments in Venezuela in the past several years, including this year's election, sanctions were imposed on certain Venezuelan individuals—including government officials—and entities (i.e., where a sanctioned party has 50 percent or greater ownership interest in the Venezuelan company.)¹ For example, OFAC designated the Venezuelan government-run oil company

Petróleos de Venezuela, S.A. (“PdVSA”) as a sanctioned entity on its SDN List, and entities in which PdVSA owns 50 percent or greater interest may also be sanctioned by OFAC. Most recently, in November 2024, the U.S. government officially recognized Venezuela’s opposition leader, Edmundo González, as the country’s legitimate president-elect after the July 2024 elections in which President Nicolás Maduro declared victory, further magnifying political uncertainty.² In light of these developments, OFAC designated additional Venezuelan officials as SDNs.³ Consequently, any transaction, including the sale of life insurance, or any attempt to do business with Venezuelan nationals or entities needs to be thoroughly vetted to ensure compliance with U.S. sanctions laws. As noted below, the attempted sale of a life insurance policy to a Venezuelan national who is listed on an SDN list at the time of sale, or who subsequently becomes listed, could contravene these sanctions laws. In addition to sanctions laws, U.S. companies transacting insurance business in Venezuela need to consider the implications of the Foreign Corrupt Practices Act (“FCPA”).⁴ The FCPA prohibits U.S. persons or businesses from offering, paying, or promising to pay money or anything of value to any foreign official for the purpose of obtaining or retaining business. This prohibition could be applicable to the payment of money to a Venezuelan official to secure a contract to sell insurance. Enforcement of the FCPA by the U.S. Department of Justice (“DOJ”) in recent years has resulted in prosecution of numerous Venezuelan nationals for engaging in schemes that involved bribing foreign officials and defrauding foreign financial institutions. The U.S. Securities and Exchange Commission (“SEC”) is tasked with the civil enforcement of the FCPA with respect to public companies and their officers, directors, employees, agents, or stockholders acting on behalf of the companies. A public company’s violation of the FCPA can be detected by the SEC when the company shields its accounting records or financial information, or otherwise maintains inaccurate bookkeeping, potentially concealing bribes—in which case, the SEC may bring a civil enforcement action against the company. Besides complying with the FCPA in the foreign bribery context, U.S. individuals and businesses seeking to engage in business in Venezuela or with Venezuelan nationals also need to comply with a recently adopted U.S. anti-corruption law, the Foreign Extortion Prevention Act (“FEPA”),⁵ which is enforced by the DOJ. FEPA focuses on foreign government officials who demand or accept bribes from any U.S. persons or companies. Although FEPA may prove more challenging for the DOJ to enforce, an investigation under the FCPA of a foreign official might also yield evidence of FEPA violations. In connection with transacting insurance business with Venezuelan nationals, U.S. companies need to take both the FCPA and FEPA into consideration, recognizing that these laws could be implicated in cross-border life insurance activities to the extent that the activity involves a Venezuelan state-run business seeking to insure its employees or affiliates. For example, a U.S. life insurance company potentially triggers application of the FCPA if it seeks to obtain or retain insurance business with a Venezuelan state-run company. Therefore, in a cross-border life insurance transaction where foreign officials may be involved, it is critical to conduct due diligence to accommodate FCPA and FEPA compliance. **Venezuela’s Amended Insurance Law** In addition to the foregoing regulatory compliance considerations, U.S. life and health insurers need to accommodate Venezuela’s recently amended insurance law regulating the sale of insurance. The new law, entitled Reform Law of the Decree with Rank, Value and Force of Law of the

Insurance Activity, or Ley de Reforma del Decreto con Rango, Valor y Fuerza de Ley de la Actividad Aseguradora⁶ (herein referred to as the “New Insurance Law”) took effect on March 29, 2024. As was the case with the previous law, the New Insurance Law provides that the Superintendent of Insurance Activity (Superintendencia de la Actividad Aseguradora, or “SUDEASEG”) must preapprove and authorize entities that seek to carry out insurance activity in Venezuela, including insurance and reinsurance companies, intermediaries, and representative offices or branches of foreign reinsurance companies. Thus, insurers are required to be authorized to engage in insurance business in Venezuela. As related to life and health insurance contracts in particular, Article 17 of the New Insurance Law (excerpted below with a courtesy translation), similar to the Venezuela insurance law it amended, could be interpreted as regulating the purchase by Venezuelan residents of life and health insurance in transactions undertaken and entered into outside Venezuela:

No serán válidos los contratos de seguros o de medicina prepagada celebrados con empresas extranjeras cuando el riesgo esté ubicado en el territorio nacional, ni las operaciones de reaseguro realizadas con empresas del exterior no inscritas en el registro correspondiente, salvo las previstas en los acuerdos internacionales válidamente suscritos y ratificados por la República. El Ministro o Ministra con competencia en materia de finanzas, previa opinión de la Superintendencia de la Actividad Aseguradora, por razones de oportunidad y de interés del Estado, fijará los casos y las condiciones en los cuales se podrá autorizar el aseguramiento en el exterior de riesgos ubicados en el territorio nacional, que no sea posible asegurar con empresas establecidas en el país, siempre que esa imposibilidad haya sido demostrada fehacientemente. *Insurance contracts or prepaid medical plans entered into with foreign entities shall not be valid in cases where the risk is located within the national territory, nor shall reinsurance activity with foreign companies that are not authorized in Venezuela be valid, with the exception of contracts sanctioned by international agreements signed and ratified by Venezuela. SUDEASEG will be responsible for determining the cases and conditions under which it will authorize the foreign insurance of risks in the national territory for which there is no similar insurance available in Venezuela, as long as it is sufficiently proven that there is no national alternative available.* New Insurance Law, Article 17 (courtesy translation)

Because Article 17 of the New Insurance Law treats as “invalid” insurance contracts entered into with foreign insurers (i.e., not authorized in Venezuela) when the risk (i.e., person insured) is located in Venezuela, the offer and sale of life insurance to persons resident in Venezuela by U.S. companies needs to be analyzed on a case-by-case basis. This conclusion is arguably reinforced under Article 17 of the New Insurance Law, given that foreign insurers not authorized to transact insurance business in Venezuela can nonetheless obtain permission from SUDEASEG to sell insurance in Venezuela if the type of insurance to be sold is not available from authorized insurers in Venezuela. **Conclusion** The political and business landscape in Venezuela is ever changing. Companies must be mindful of the applicable regulatory environment when engaging in the cross-border sale of insurance with

Venezuelan residents. This is especially true at present given the New Insurance Law's effect on the sale of life and health insurance on a cross-border basis, and also given the current impact of U.S. sanctions and anti-corruption laws on transaction of insurance business in Venezuela. ©2024.

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1. 31 C.F.R. § 591.406 (2024).
2. Regina Garcia & Jorge Rueda, [US Recognizes Venezuela's Opposition Candidate as President-Elect Months After the Disputed Election](#), Associated Press (Nov. 19, 2024).
3. [Notice of OFAC Sanctions Actions](#), 89 Fed. Reg. 76915 (Sep. 19, 2024).
4. 15 U.S.C. §§ 78dd-1, *et seq.*
5. 18 U.S.C. § 201.
6. Ley de Reforma del Decreto con Rango, Valor y Fuerza de Ley de la Actividad Aseguradora [Reform Law of the Decree with Rank, Value and Force of Law of the Insurance Activity], Gaceta Oficial No. 6,770, Nov. 29, 2023 (Venez.).

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