

United States Sanctions the Venezuelan Government Controlled by the Maduro Regime

August 8, 2019

On August 5, 2019, the U.S. President issued Executive Order 13884 (the “Order”) blocking the property of the Government of Venezuela. The following day, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued several new and amended general licenses as well as new guidance in the form of Frequently Asked Questions (“FAQ”).



WHAT RESTRICTIONS ARE IMPOSED BY THE ORDER?

The Order imposes blocking sanctions on the Government of Venezuela. Blocking sanctions are the most severe U.S. sanctions and require U.S. persons to block (*i.e.*, freeze) any property or property interests of the Venezuelan Government in their possession or control as well as refrain from engaging in, facilitating or otherwise participating in any dealing in which the Venezuelan Government has an interest.

WHO MUST COMPLY WITH THE ORDER?

Like other blocking sanctions, the primary compliance obligations fall on U.S. persons, which include:

- U.S. citizens and permanent residents, wherever located;
- Legal entities established under U.S. law, wherever doing business; and
- Any person physically present in the United States, regardless of nationality.

Additionally, property of the Government of Venezuela located in the United States must be blocked, even if it is not in the possession of a U.S. person.

WHAT IS THE “GOVERNMENT OF VENEZUELA”?

The Order defines the “Government of Venezuela” as the government and its political subdivisions, agencies and instrumentalities, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (“PdVSA”). Some but not all of these instrumentalities were already blocked under previous executive orders.

Also covered are any persons owned or controlled by the Government of Venezuela, as described, and any person who *has* acted or purported to act on behalf of the Government of Venezuela, including “as a member of the Maduro Regime.” This latter category of covered persons appears to include former officials of the Government of Venezuela even if such persons are no longer associated with the Maduro-run government.

In accordance with the United States’ recognition of Mr. Juan Gerardo Guaido Marquez (“Guaido”) as the Interim President of Venezuela, OFAC issued new General License (“GL”) 31, authorizing all transactions otherwise prohibited by the Order with or involving:

- The Venezuelan National Assembly, including its member and staff;
- The Interim President and his staff, ambassadors and appointments to international organizations; and
- Any person appointed by the Interim President to the board of directors or as an executive officer of a Government of Venezuela entity, including entities such as PdVSA that are subject to sanctions under E.O. 13850.

The Order excludes all U.S. persons from the definition of the “Government of Venezuela.”

DO THE NEW SANCTIONS TAKE EFFECT IMMEDIATELY?

Yes, the Order took effect on August 5, 2019.

However, OFAC has issued GL 28, authorizing a “wind-down” period for dealings now prohibited under the Order. Pursuant to the license, U.S. persons may engage in all transactions ordinarily incident and necessary to wind down operations and contracts now prohibited under the Order, through 12:01 a.m. EDT on September 4, 2019. GLs 3F

and 9E provide a longer wind-down period, through 12:01 a.m. EDT on September 30, 2019, for certain dealings relating to securities of the Venezuelan Government.

GL 28 has several limitations. First, U.S. financial institutions may not rely on the license to debit any account of the Government of Venezuela on its books (although new GL 21 provides separate authorization for debits for “normal service charges”). Second, any transactions also or otherwise prohibited under separate executive orders are not authorized. New FAQ 681 makes clear that this limitation applies to Venezuelan persons previously designated under different executive orders, including PdVSA and the Central Bank of Venezuela, each of which was designated under E.O. 13850.

ARE THERE EXCEPTIONS TO THE NEW SANCTIONS?

Transactions for the provision of food, clothing and medicine to alleviate human suffering are exempted by the terms of the Order, as are transactions for official government business by the U.S. Federal Government and its employees, grantees and contractors.

In addition to these exemptions and the wind-down authorizations discussed above, OFAC has issued several new and amended general licenses permitting a limited number of activities that otherwise would be prohibited by the Order. These licenses authorize, among other activities and subject to important limitations specified in the licenses:

- certain transactions involving U.S. subsidiaries of PdVSA such as CITGO (GLs 2A, 7C and 9E);
- dealings with PdVSA necessary for operations by specified U.S. entities in Venezuela (GL 8C) or to purchase fuel for use within Venezuela (GL 10A);
- limited dealings with PdVSA’s subsidiary Nynas AB (GL 9E and 13C) and specified Venezuelan financial institutions (GL 15B, 16B and 18A);
- transactions involving the Venezuelan mission to the United Nations, certain international organizations and diplomatic activities of third countries (GLs 20A, 21 and 22);
- telecommunications and mail (GL 24);

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- exports of services, software, hardware and technology incident to Internet communication (GL 25);
 - emergency medical services (GLs 26 and 33);
 - registering, contesting and defending patents, trademarks and copyrights in Venezuela (GL 27);
 - support of certain projects of nongovernmental organizations in Venezuela (GL 29);
 - overflight and emergency landing of aircraft and operation of airports and ports (GLs 30 and 33); and
 - living expenses of individual U.S. persons residing in Venezuela (GL 32).

DO NON-U.S. PERSONS FACE RISKS RELATED TO THE ORDER?

As noted, only U.S. persons generally have an obligation to comply with the blocking requirements imposed by the Order. However, non-U.S. persons face obligations in regard to transactions with connections to the United States or to U.S. persons, including obligations not to cause a U.S. person to violate its own obligations (for example, by withholding from a U.S. financial institution or other counterparty the information that a transaction involves an interest of a blocked person), not to assist U.S.-sanctioned persons in obtaining goods or services from the United States or U.S. persons and not to assist U.S.-sanctioned persons in transferring property located in the United States or held by a U.S. person.

In addition, the Order authorizes the U.S. Secretary of the Treasury to impose blocking sanctions against non-U.S. persons determined by U.S. authorities “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” any person placed on OFAC’s list of Specially Designated Nationals under the Order. There is little guidance on how broadly the U.S. government intends to exercise this authority, but press reports cite the U.S. national security adviser, John Bolton, as suggesting that sanctions may be imposed on any party conducting business with the Venezuelan Government.¹

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¹ See, e.g., Mitra Taj & Roberta Rampton, *New U.S. Action Forces Choice Between Doing Business with Caracas or Washington: Bolton*, Reuters, Aug. 6, 2019.

Please do not hesitate to contact us with any questions.

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