

NEW U.S. SANCTIONS ON THE GOVERNMENT OF VENEZUELA

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U.S. International Trade Alert

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President Trump signed a new Executive Order on August 5, 2019, Executive Order 13884 ("EO 13884"), which blocks (i.e., freezes) all property of the Venezuelan government and its political subdivisions, agencies, and instrumentalities, including the Central Bank of Venezuela and Petroleos de Venezuela ("PdVSA"). This action, which became effective at 9 a.m. on August 5, 2019, builds upon numerous other sanctions measures that the United States has imposed on the Venezuelan government and its leadership, including designation of PdVSA as a Specially Designated National ("SDN") under prior Executive Orders addressing the escalating crisis in Venezuela.

I. SCOPE OF THE EXECUTIVE ORDER

Contrary to some news reports, EO 13844 does not establish an "embargo" against Venezuela, which would imply a comprehensive set of prohibitions on U.S. persons engaging in transactions or activities involving Venezuela and persons in Venezuela (like the U.S. embargos against Cuba and Iran). Rather, EO 13844 is focused on the Government of Venezuela, blocking all of the government's property in the United States and prohibiting all U.S. persons from transactions, direct or indirect, with the Government of Venezuela, unless authorized by a general or specific license.

As with many U.S. sanctions programs, the definition of "U.S. persons" includes any U.S. citizen or U.S. lawful permanent resident ("green card" holder) wherever located, any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person physically located in the United States.

EO 13844 is significant for all U.S. persons with business dealings in Venezuela, even those that principally involve non-government actors, because many dealings in Venezuela require interaction with government authorities at various levels. Most such interactions are now prohibited and require authorization from the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Additionally, U.S. persons are required to block all property and interests of property of the Government of Venezuela that come into their ownership or possession. Any such blocking must also be reported to OFAC, the primary U.S. sanctions enforcement agency.

The impact of EO 13884 is expansive due to its broad definitions of "Government of Venezuela" and "U.S. person." The "Government of Venezuela" includes not only the state and Government of Venezuela, but any political subdivision, agency, or instrumentality thereof. This encompasses the Central Bank of Venezuela and PdVSA, any person owned or controlled, directly or indirectly, by the foregoing, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing, including as a member of President

Nicolás Maduro's regime. U.S. citizens are excluded from this definition (for the purposes of EO 13884), as are non-U.S. persons lawfully admitted to the United States with a visa or green card.

Right now there is no indication that the U.S. government will designate specific Government of Venezuela entities on the Specially Designated Nationals and Blocked Persons List ("SDN List"), which is the case with certain other sanctions programs covering foreign governments, such as Iran. This underscores the importance of thoroughly screening transactions that involve Venezuela to ensure that there is no connection to the Government of Venezuela or any blocked property or interests in property. For example, a business in Venezuela may appear to be private and therefore outside the scope of EO 13884, but if due diligence reveals that the private business is owned by a government official (or even a former member of the Maduro regime), that business is blocked and U.S. persons are prohibited from all dealings involving the business. As discussed below, there is also significant risk for non-U.S. persons dealing with parties blocked under the Executive Order.

II. FUTURE DESIGNATIONS UNDER THE EXECUTIVE ORDER

Like most sanctions-related Executive Orders, EO 13884 authorizes U.S. authorities to designate any person (including non-U.S. persons) determined (i) to have "materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of" any person designated on the SDN List whose property and interests in property are blocked pursuant to the Order, or (ii) to be "owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order." This provision allows for "collateral" designation of non-U.S. persons that otherwise do not come directly under the scope of the sanctions prohibitions.

Given that the Trump administration has been active this year in designating non-U.S. firms and their foreign-flagged vessels on the SDN List for shipping services in support of sales of crude oil by PdVSA (which as noted above is designated as an SDN), foreign entities should be mindful of the possibility of collateral designation for new or continued transactions that provide financial, material, or technological support to Venezuelan government entities.

III. GENERAL LICENSES

In conjunction with the Executive Order, OFAC has issued 13 new General Licenses that permit ongoing transactions in limited circumstances that would otherwise be prohibited. Perhaps the most important of these is General License 28, which authorizes U.S. persons, until 12:01 a.m. ET on September 4, 2019, to engage in certain transactions and activities necessary to wind down existing contracts and operations involving the Government of Venezuela. To mitigate the risk of being collaterally designated under EO 13884, non-U.S. persons should strongly consider winding down their affairs with the Government of Venezuela consistent with the terms of General License 28. (Note that OFAC has clarified in an FAQ that General License 28 does not authorize wind-down activities with respect to PdVSA and other Venezuelan entities that were previously designated as SDNs. As such, U.S. persons should already have exited dealings with those entities under earlier, now-expired general authorizations.)

The following is a brief summary of the new general licenses, each of which contain conditions, not summarized here, that require careful examination (copies of the general licenses can be found [here](#)).

- **General License 21:** Authorizes U.S. financial institutions to take payment for normal service charges from Government of Venezuela accounts.
- **General License 22:** Authorizes U.S. persons to provide goods or services to Venezuela's mission to the United Nations, including payment for goods and services.
- **General License 23:** Authorizes certain payment transfers for the official business of third-country diplomatic or consular missions in Venezuela.
- **General License 24:** Authorizes certain transactions related to the receipt and transmission of mail, telecommunications, and packages between the United States and Venezuela.
- **General License 25:** Authorizes the export and re-export of services, hardware, software, and technology necessary for Internet communications involving the Government of Venezuela.
- **General License 26:** Authorizes nonscheduled emergency medical services and certain other medical services involving the Government of Venezuela.
- **General License 27:** Authorizes certain transactions necessary for intellectual property protection.
- **General License 28:** Provides authority, until 12:01 a.m. ET on September 4, 2019, to engage in certain transactions and activities that are necessary and ordinarily incident to wind down existing contracts and operations with the Government of Venezuela.
- **General License 29:** Authorizes certain transactions and activities by nongovernmental organizations ("NGOs") in Venezuela. This General License is intended to facilitate humanitarian aid, improve education, promote democratic institutions, and protect the environment.
- **General License 30:** Authorizes transactions and activities necessary and ordinarily incident to the operation or use of Venezuelan ports and airports. This does not include an authorization for prohibited trade with Venezuela.
- **General License 31:** Authorizes transactions with the Interim President Juan Gerardo Guaidó Márquez, the Venezuelan National Assembly, as well as their staffs, designees, representatives, and any directors or executives of Venezuelan state-owned entities that were appointed by Interim President Guaidó.
- **General License 32:** Authorizes certain transactions by U.S. persons residing in Venezuela, such as transactions for housing, taxes, and acquiring daily goods and services.
- **General License 33:** Authorizes certain payments pertaining to overflights of Venezuela or emergency landings in Venezuela by aircraft registered in the United States or aircraft owned or chartered by persons subject to U.S. jurisdiction.

In addition to the 13 new General Licenses discussed above, OFAC amended 12 existing General Licenses on August 6, 2019, to clarify the extent to which those authorizations are affected by EO 13884. Some of the amendments broaden the general licenses to authorize additional transactions. For example, General License 2A expands the authorization transactions with CITGO in General License 2 to permit certain transactions with PDV Holding, Inc. In addition, General Licenses 15B and 16B amend General License 15A and 16A, respectively, to include Banco del Tesoro, C.A. Banco Universal (Banco del Tesoro) to the list of Venezuelan banks covered by the authorizations in those licenses.

IV. OFAC GUIDANCE

- **FAQ No. 679:** This FAQ discusses United States support for Interim President Guaidó and the scope of the authorization in General License 31 for transactions involving Interim President Guaidó and the Venezuelan National Assembly.
- **FAQ No. 680:** This FAQ explains that, under EO 13884, "U.S. persons are generally prohibited from engaging in transactions with the Government of Venezuela" or with entities owned 50 percent or more, directly or indirectly, by the Government of Venezuela. While EO 13884 does not prohibit U.S. persons from engaging in transactions involving Venezuela per se, U.S. persons must ensure that their activities in Venezuela do not involve any blocked persons and are not otherwise prohibited by preexisting sanctions (unless authorized by general or specific license). OFAC specifically states that it "expects financial institutions to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked." In instances where the financial institution is merely an intermediary but fails to block a transaction involving a target of U.S. sanctions, "OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction to determine what, if any, regulatory response is appropriate."
- **FAQ No. 681:** This FAQ makes clear that General License 28 does not relate back to, or otherwise extend, the now-expired wind-down periods OFAC issued for transactions with PdVSA, the Central Bank of Venezuela, and other blocked entities.

On August 6, 2019, OFAC also issued a document titled, "[Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People](#)." This document explains the extent to which U.S. persons may export humanitarian aid such as medicine, medical devices, food, and agricultural commodities to Venezuela. It also addresses NGOs, medical services, communications, and non-commercial remittances.

V. HOW CAN WE HELP

Although EO 13844 does not establish an embargo on Venezuela, the blocking of the Government of Venezuela constitutes a significant escalation of U.S. sanctions against Venezuela. Both U.S. and non-U.S. persons should closely evaluate their current dealings involving Venezuela and conduct thorough due diligence on any future dealings in the country. K&L Gates is well positioned to assist with the evaluation of risk, the development of appropriate compliance measures, and the wind down of commercial dealings in Venezuela, as necessary.

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