

US Government expands sanctions against Venezuelan Government

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Executive summary

On 5 August 2019, United States (US) President Donald Trump issued an Executive Order blocking all property of the Government of Venezuela (Venezuelan Government), escalating US sanctions against the regime of Nicolas Maduro.

Detailed discussion

Executive Order 13884¹ blocks the transfer, payment, export, or withdrawal of all property or property interests of the Venezuelan Government that come within the jurisdiction of the United States or within the possession or control of any US person, unless specifically authorized by the US Treasury Department's Office of Foreign Assets Control (OFAC). Without authorization from OFAC, US persons are prohibited from engaging in transactions with the Venezuelan Government, or entities in which the Venezuelan Government owns, directly or indirectly, a 50% or greater interest.² This does not actually mean that the Venezuelan Government itself is blocked, rather, the prohibitions "apply to transactions or dealings only with individuals and entities whose property and interests in property are blocked."³ "Government of Venezuela" is widely defined under Sec. 6(d) of the Executive Order and includes: (i) any political

subdivision, agency or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA); (ii) any person owned or controlled, directly or indirectly, by the foregoing; and (iii) 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 the Maduro regime.⁴

The Executive Order contains expansive authority to block any other individual or entity determined to have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any persons” blocked by the Executive Order. Accordingly, even non-US companies and persons could conceivably risk violating the order.

OFAC published 13 new General Licenses applicable to the Venezuelan sanctions, as well as amended 12 other General Licenses.⁵ The General Licenses authorize certain transactions involving the Venezuelan Government and related entities under specific conditions. Of the new licenses, particularly noteworthy are General License 28 and General License 31. General License 28 authorizes certain activities necessary to the wind down of operations or existing contracts involving the Venezuelan Government until 4 September 2019.⁶ General License 31 authorizes transactions involving Interim President of Venezuela Juan Gerardo Marquez (Guaidó), the National Assembly, and any official representative appointed or designated by Guaidó to act on behalf of the Venezuelan Government, which includes any government officials and their staff as well as executive officers of and persons appointed to the board of directors of Venezuelan entities.⁷

Implications and considerations for US companies

The new sanctions notably exempt Venezuela's private sector that is not affiliated with the Government and thus, the sanctions do not function as a full embargo. The Executive Order does not preclude US persons from exporting or reexporting items to Venezuela as long as the activities are not prohibited by OFAC or the Bureau of Industry and Security and the parties involved are not sanctioned individuals or entities. In particular, US persons should ensure that the entity or individual with whom they intend to business is not a Specially Designated National (SDN).

The latest Executive Order is a continuation of US enforcement actions against Venezuela dating back to 2015, but more recently including Executive Order 13850 authorizing sanctions against the gold sector of the Venezuelan economy.⁸ Additionally, in January 2019, the PdVSA, Venezuela's state-owned petroleum company, was added to the SDN list effectively freezing all assets in the US, as well as blocking any entity at least 50% owned by PdVSA.⁹

The Executive Order prohibits financial or commercial dealings by US individuals or companies, directly or indirectly, with the Venezuelan Government. Accordingly, businesses should thoroughly vet their Venezuelan counterpart to ensure compliance with the new sanctions, as well as review the conditions of the General Licenses. As the Venezuelan Government controls large stakes of the economy, a huge portion of the transactions between the US and Venezuela, whether government related or not, are likely going to be impacted.

Endnotes

1. <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13884.pdf>.
2. https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#679.
3. https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#venezuela.
4. <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13884.pdf>.
5. <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190806.aspx>.
6. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_gl28.pdf.
7. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_gl31.pdf.
8. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_eo_13850.pdf.
9. <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190128.aspx>.

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