

August 7, 2019

## **NEW U.S. SANCTIONS TARGETING VENEZUELAN GOVERNMENT**

To Our Clients and Friends:

On August 5, 2019, the Trump administration imposed new sanctions on the Government of Venezuela by freezing the property and assets of the regime of Venezuelan President Nicolás Maduro as well as those who provide it with “material support.” Issued on the eve of a major international conference on the Venezuelan political crisis in Lima, Peru, the August 5 *Executive Order* was at first mistakenly characterized in some news reports as a complete “embargo” on Venezuela. In reality, this latest measure is more limited in scope, consisting of a set of sanctions against the *Government* of Venezuela—and not the country of Venezuela as a whole. Individuals and entities unaffiliated with the Government of Venezuela generally remain unsanctioned and transactions that have no nexus to the Venezuelan government generally remain unrestricted.

In terms of its direct impact, the Executive Order’s reach is also blunted somewhat by the fact that Venezuela’s most economically significant actor, the state-owned oil company *Petróleos de Venezuela, S.A.* (“PdVSA”), was already sanctioned earlier this year, as were Venezuela’s central bank and several of the country’s larger state-affiliated financial institutions. What this latest measure does is fill in the gaps to cover all remaining elements of the Government of Venezuela. As with the previously-imposed sanctions, however, exceptions abound. On August 6, 2019, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued 13 new general licenses and amended 12 previous general licenses to authorize U.S. persons to continue engaging in a range of narrowly defined transactions involving Venezuela’s government. These exceptions are designed to mitigate the impact of U.S. sanctions on the Venezuelan opposition, civil society and multinational companies.

In our assessment, the principal significance of the Government of Venezuela being designated lies in the fact that many companies, and financial institutions in particular, are now likely to become even more reluctant to engage in transactions with any nexus at all to the country. While U.S. sanctions against Caracas are still not nearly as broad as those targeting several other countries, we expect that—at least over the near term—many parties will apply to Venezuela-related transactions the same level of scrutiny and concern typically reserved for dealings with Cuba and other comprehensively sanctioned jurisdictions. In fact, the designation of the Government of Venezuela may turn out to be of limited practical significance since so many companies and financial institutions have already made the decision to withdraw from the country. Some companies that have previously received specific licenses from OFAC to undertake certain transactions involving Venezuela have decided not to request an extension when those specific licenses expired.

## Background

As we previously reported, OFAC formally designated Venezuela's state-owned oil company, PdVSA, to the Specially Designated Nationals and Blocked Persons ("SDN") List on January 28, 2019, sending shockwaves through global markets. On April 17, 2019, OFAC designated Venezuela's Central Bank, effectively cutting it off from the U.S. financial system. These designations represented a dramatic escalation of U.S. sanctions targeting Venezuela, which include restrictions on certain debt and equity of the Government of Venezuela; the country's gold, oil and financial sectors; and those who engage in corrupt conduct involving the Venezuelan government.

## Key Points

- **Not an Embargo.** Although some initial media reports (incorrectly) characterized the new sanctions as a total "embargo" or "blockade" on Venezuela, the action was in reality more circumspect—amounting to an extension of existing U.S. sanctions to the remainder of Venezuela's embattled government. OFAC quickly confirmed that U.S. persons may continue to transact with Venezuelan persons that are not affiliated with the Government of Venezuela and that are not otherwise subject to U.S. sanctions. *See* OFAC, Frequently Asked Question ("FAQ") No. 680 (Aug. 6, 2019). That said, as a practical matter, the designation of the Government of Venezuela will likely cause risk-averse financial institutions and other key counterparties to become even more reluctant to engage in otherwise lawful transactions involving Venezuela.
- **Sanctions for "Material Support."** The new Executive Order also explicitly provides for the possibility that non-U.S. persons may themselves be sanctioned if they are found to have "materially assisted, sponsored, or provided financial, material, or technological support for, or services to or in support of" the Government of Venezuela. Critically, Executive Order 13850—the authority pursuant to which PdVSA and its subsidiaries were sanctioned on January 28, 2019—already provided for the possibility that individuals and entities may be designated for providing material support to PdVSA and its subsidiaries, a reality which OFAC had underlined in a recent Frequently Asked Question. *See* Exec. Order 13850, 83 Fed. Reg. 55243 (Nov. 1, 2018); OFAC, FAQ No. 672 (June 6, 2019). In that sense, the new Executive Order simply extends the possibility of an individual or entity being designated for providing "material support" to transactions and activities involving all arms of the Venezuelan state. By suggesting that non-U.S. persons can be subject to sanctions, the United States is seeking to discourage companies from other countries—principally Russia and China—from propping up the Maduro regime. Indeed, the day after the Executive Order was issued, White House National Adviser John Bolton in a speech in Lima, Peru raised the possibility of sanctioning Russian and Chinese individuals and entities that help the Maduro regime maintain its grip on power.
- **Secondary Sanctions.** Also, despite what some of the media reported, this new Executive Order does not provide for "secondary sanctions" (of the type seen in Iran, North Korea and Russia). Rather, the Executive Order merely underlines that parties can be designated on a material support basis if they provide support to any person or entity on the SDN List. As noted, that was already the case. Moreover, even though the entire Government of Venezuela is now blocked

under the Executive Order, not all components of the Venezuelan government appear by name on the SDN List.

- **Wind-down Period Until September 4, 2019.** A new General License 28 provides a wind-down period before elements of these new sanctions take effect. The authorization provided in this license permits U.S. persons to continue engaging, until September 4, 2019, in activities that are “ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving the Government of Venezuela,” provided that those agreements were in effect before August 5, 2019. As in other recent instances in which OFAC has provided a wind-down period along with new designations, the precise scope of activities permitted by this license is uncertain. However, it likely does not authorize U.S. persons to increase their engagement with the Government of Venezuela. Instead, this general license effectively establishes a grace period within which U.S. persons may conclude, terminate or withdraw from current arrangements with the Venezuelan government before facing sanctions exposure.
- **Exemptions for Venezuelan Opposition.** A new General License 31 permits U.S. persons to transact with (i) the opposition-controlled Venezuelan National Assembly and its members, staff, and appointees or designees; (ii) Venezuela’s Interim President, Juan Guaidó, and his appointees, designees, ambassadors and staff; and (iii) persons that Guaidó has appointed to the board of directors or as executive officers of a Venezuelan government entity.
- **Standard Exemptions.** Most of the newly-issued general licenses permit U.S. persons to engage in the same type of activities that are commonly allowed even with respect to jurisdictions that are subject to comprehensive sanctions (e.g., Cuba, Iran, North Korea, Syria and the Crimea region). On August 6, 2019, OFAC issued numerous general licenses that make certain transactions a bit easier to undertake (or at least provide a greater degree of regulatory certainty with respect to those transactions). OFAC issued general licenses covering, among other things, transactions that involve the Venezuelan government and that are associated with telecommunications/mail; technology allowing internet communication; medical services; registration and defense of intellectual property; support for non-governmental organizations; transactions related to port and airport operations; overflight payments; and personal maintenance of U.S. persons inside Venezuela. Each of these licenses—although limited by their own terms—provides clear avenues to engage in specific transactions associated with that particular issue. For example, U.S. persons are permitted to continue engaging in activities ordinarily incident and necessary to the operation or use of ports or airports in Venezuela under new General License 30.

## General Licenses

The various OFAC general licenses implicating Venezuela that were in effect before the latest Executive Order was issued on August 5 generally still remain in effect today. *See* OFAC, FAQ No. 681 (Aug. 6, 2019). The amended licenses extend existing authorizations to cover transactions that would otherwise have been restricted by the new Executive Order. These amended authorizations include the following:

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- **General License 2A** authorizes transactions involving new debt or new equity issued by, or securities sold by, CITGO Holding, Inc. or its subsidiaries, provided that no other Government of Venezuela entity is involved in the transaction. The license was expanded to cover transactions involving PDV Holding, Inc., as well.
- **General License 3F** exempts certain bonds, listed in an annex, from the prohibition on transactions involving Venezuelan bonds or the new, broader restrictions on dealing with the Government of Venezuela.
- **General License 4C** authorizes certain transactions involving the export or reexport to Venezuela of agricultural commodities (including food), medicine or medical devices.
- **General License 7C** permits U.S. persons to engage in certain transactions with PDV Holding, Inc., CITGO Holding, Inc., or their subsidiaries.
- **General License 8C** authorizes certain named energy and oilfield services companies to engage in certain transactions with or involving the Government of Venezuela until October 25, 2019.
- **General License 9E** authorizes U.S. persons to continue engaging in any dealings in debt (including certain listed bonds, promissory notes and other receivables) in which PdVSA owns a 50 percent or greater interest, provided that the debt was issued prior to August 25, 2017 and that any divestment or transfer of any U.S. person holdings are to a non-U.S. person.
- **General License 10A** permits U.S. persons in Venezuela to purchase refined petroleum products for personal, commercial or humanitarian uses from PdVSA or from any entity in which PdVSA owns a 50 percent or greater interest and now to engage with the Government of Venezuela in transactions necessary for the purchase of such refined petroleum products.
- **General License 13C** continues to authorize U.S. persons to engage in transactions involving Nynas AB or its subsidiaries that would otherwise be prohibited (except payments to or for the benefit of a blocked person, which must be placed into a blocked account).
- **General License 15B** continues to authorize certain listed banks or payment service providers to engage in transactions involving listed Venezuelan banks until March 22, 2020.
- **General License 16B** continues to authorize transactions ordinarily incident and necessary to maintaining, operating or closing accounts of U.S. persons in certain Venezuelan banks.
- **General License 18A** continues to authorize certain transactions involving Integración Administradora de Fondos de Ahorro Previsional, S.A.
- **General License 20A** authorizes transactions and activities involving the Government of Venezuela that are for the official business of an expanded list of international organizations.

Taken together, these new and amended licenses provide several clear avenues for continued engagement in specific transactions with the Government of Venezuela, further contradicting early reports of the comprehensiveness of these new sanctions. However, relying on these authorizations requires careful consideration of their many limitations and conditions, some of which remain open to interpretation. As a result, these authorizations may ultimately do little to persuade companies that are already reluctant to engage in any business with Venezuela to take the risk of engaging even in these authorized transactions.



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