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How New Executive Order Strengthens Venezuela Sanctions

By **Grant Leach and Cortney Morgan** (August 7, 2019, 6:00 PM EDT)


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Effective Aug. 5, 2019, U.S. President Donald Trump made major enhancements to U.S. sanctions against Venezuela by issuing Executive Order 13884 and: (1) imposing a complete U.S. trade embargo against the government of Venezuela, (2) freezing all government of Venezuela assets held in the U.S. and (3) threatening additional sanctions on non-U.S. persons who engage in transactions with certain sanctioned Venezuelan individuals and entities.

EO 13884's opening recitals state that its new sanctions are intended to address "the continued usurpation of power by Nicolas Maduro" and ongoing actions taken by the Maduro regime to undermine Interim President Juan Guaido, whom the U.S. recognizes as the rightful president of Venezuela.

The U.S. Department of State published a fact sheet to accompany EO 13884 which states that "[t]he former regime of Nicolás Maduro has consistently violated and abused the human rights and dignity of [Venezuela's] citizens, plundered its natural resources, and driven a once-prosperous nation into economic ruin with Maduro's authoritarian rule and ruinous economic policies."

These new sanctions are not technically a complete embargo against Venezuela because they will allow U.S. persons to continue transacting with the Venezuelan private sector — as discussed below. However, because the government of Venezuela owns or controls such a large share of Venezuela's economy, the practical application of these sanctions will be very similar in scope to the complete sanctions embargoes that the U.S. maintains against entire countries such as Cuba, Iran, Syria and North Korea and the entire Crimea region of Ukraine.

U.S. Sanctions Against Venezuela Prior to EO 13884

The U.S. Department of the Treasury's Office of Foreign Assets Control, or OFAC, is the federal agency with primary responsibility for administering and enforcing U.S. sanctions. Prior to EO 13884, U.S. sanctions against Venezuela applied primarily to U.S. persons and consisted of: (1) targeted blocking sanctions which prohibited U.S. persons from engaging in transactions with Venezuelan officials and entities listed on OFAC's Specially Designated Nationals and Blocked Persons List and designated as Specially Designated Nationals, or SDNs, (2) separate sectoral sanctions which prohibited U.S. persons from dealing in certain debt and equity issued by the government of Venezuela and agencies and entities under its ownership or control and (3) additional sanctions which prohibited U.S. persons from participating in financing transactions by the government of Venezuela involving digital currency or the divestment or pledging of state-owned assets and receivables.

OFAC listed Venezuelan state-owned enterprises such as petroleum giant Petroleos de Venezuela, S.A. ("PDVSA"), gold mining company CVG Compania General de Mineria de Venezuela CA ("Minerven") and many government-owned banks as SDNs, which triggered blocking sanctions that froze their assets in the U.S. and cut off their access to goods and services from U.S. persons. However, if government of Venezuela entities were not specifically designated as SDNs, then U.S. persons could generally transact with them — subject to their compliance with the separate sectoral debt- and equity-related sanctions.

OFAC also issued various general licenses which authorized U.S. persons to continue or wind down transactions with SDNs and the government of Venezuela subject to certain terms and conditions.

For example, although CITGO is a U.S. company, it is majority-owned by PDVSA and would ordinarily be subject to blocking sanctions. However, OFAC issued General License No. 7 which authorized U.S. persons to continue conducting domestic transactions with CITGO and later amended General License No. 7 to authorize these domestic transactions for an 18-month term which automatically renews on a monthly rolling basis.

These previous sanctions also gave OFAC the authority to impose "secondary sanctions" on non-U.S. persons and add those non-U.S. persons to the SDN List in limited instances when they "materially assist" activities or transactions involving: (1) deceptive practices or corruption and the government of Venezuela or (2) SDNs in specified sectors of Venezuela's economy.

This is a severe penalty because the resulting SDN designation will freeze any of the non-U.S. person's assets in the U.S. and also prohibit U.S. persons from transacting with them. However, before EO 13884, U.S. sanctions against Venezuela only threatened non-U.S. persons with these secondary sanctions in fairly limited instances.

New Venezuela Sanctions Under EO 13884

EO 13884 now imposes primary blocking sanctions against the entire government of Venezuela. EO 13884 broadly defines the "government of Venezuela" to include:

> [T]he state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including 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 the Maduro regime.

As a result, unless authorized under an applicable general license, U.S. persons are obligated to freeze any government of Venezuela assets that come within their possession or control and are also prohibited from exporting any goods or services to or for the benefit of the government of Venezuela.

While the previous Venezuelan blocking sanctions only applied to persons and entities who were designated as SDNs, EO 13844's new blocking sanctions apply to all government of Venezuela entities regardless of whether or not those entities are listed on the SDN List.

Therefore, it is critical that U.S. persons perform appropriate diligence to determine whether their Venezuelan counterparties are government of Venezuela entities or otherwise owned or controlled by the government of Venezuela. Given the government of Venezuela's significant involvement in the Venezuelan economy, these blocking sanctions will prohibit a significant volume of transactions between the U.S. and Venezuela.

EO 13884 also significantly expands the Venezuelan secondary sanctions by authorizing OFAC to add non-U.S. persons to the SDN List if they "materially assist" any Venezuelan SDN. This could represent a major expansion from the previous Venezuelan sanctions, which limited OFAC's secondary sanctions authority to the limited transactions described above.

It is currently unclear how OFAC will enforce these new secondary sanctions, but at a minimum, OFAC's guidance issued under preexisting executive orders indicates that OFAC will seek to sanction non-U.S. persons who export or reexport diluents to Venezuelan SDNs.

Despite this change, EO 13884's secondary sanctions are narrower in application than its primary blocking sanctions because its secondary sanctions only apply to transactions between non-U.S. persons and specified SDNs whereas its primary blocking sanctions apply to transactions between U.S. persons and the entire government of Venezuela.

OFAC has issued a total of 25 general licenses in connection with EO 13884. Thirteen of these general licenses are completely new and the remaining 12 amend and supersede earlier general licenses issued under the previous sanctions. These general licenses include (but are not limited to):

- Multiple general licenses authorizing humanitarian support to Venezuela;

- Amended General License No. 7C which continues to authorize U.S. persons to transact with PDVSA subsidiary CITGO and its subsidiaries for a rolling 18-month authorization period, provided the transactions do not involve any other government of Venezuela entities. Notably, this condition is significantly more limiting as the previous version of this license only prohibited involvement from other PDVSA entities;

- Amended General License No. 8C which, through Oct. 25, 2019, continues to authorize Chevron Corporation, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International to continue their transactions in Venezuela with PDVSA and its subsidiaries that were in effect prior to July 26, 2019. Notably, OFAC did not expand this general license to authorize transactions in Venezuela between these five companies and other additional government of Venezuela entities that have now become subject to blocking sanctions under EO 13884;

- New General License No. 21 which authorizes U.S. financial institutions to debit blocked accounts belonging to government of Venezuela entities for certain service charges;

- New General License No. 27 which authorizes certain transactions with the government of Venezuela related to filings, registrations and renewals for patent, trademark, copyright or other forms of intellectual property protection;

- New General License No. 28 which authorizes the continued performance of transactions and activities through Sept. 4, 2019, that are ordinarily incident and necessary to wind down — but not maintain — operations, contracts or other agreements involving the government of

Venezuela that were in existence prior to Aug. 5, 2019. However, this general license would not be available for winding down transactions with government of Venezuela entities that were designated as SDNs prior to Aug. 5, 2019; and

- New General License No. 31 which authorizes U.S. persons to engage in transactions with the Interim President Guaido Administration and any ad hoc board of director and executive officer appointees for government of Venezuela entities.

Considerations Going Forward for U.S. and Non-U.S. Persons

The current U.S. sanctions against Venezuela are incredibly complicated. Anyone seeking to transact with Venezuela should carefully review EO 13884, the sanctions which preceded it, OFAC's various general licenses and the terms and conditions to those general licenses before proceeding.

In particular, anyone contemplating transactions with Venezuela should consider the following:

- Any U.S. person who blocks property belonging to a government of Venezuela counterparty as required under EO 13844 must file an appropriate notice report to OFAC within 10 business days;

- The primary blocking sanctions concerning U.S. persons and the government of Venezuela also extend to: (1) entities in which the government of Venezuela directly or indirectly holds an ownership interest of 50% or more and (2) entities that are not majority-owned by the government of Venezuela but are otherwise "controlled" by the government of Venezuela. Likewise, any sanctions applicable to a Venezuelan SDN extend to any business entity in which that SDN directly or indirectly holds an ownership interest of 50% or more. Many of these sanctioned subsidiaries are located outside of Venezuela;

- As updated pursuant to EO 13884, the Venezuelan sanctions can be particularly challenging for non-U.S. companies. It is currently unclear what type of "material assistance" could expose non-U.S. companies to secondary sanctions liability for their transactions with Venezuelan SDNs. Additionally, some of OFAC's Venezuela general licenses are only available for U.S. persons and it is currently unclear whether OFAC intended to deliberately exclude non-U.S. persons from those authorizations;

- The U.S. sanctions against Venezuela do not apply to Venezuela's private sector. Venezuelan persons and entities are not subject to Venezuelan sanctions if: (1) they are not affiliated with, owned by or otherwise controlled by the government of Venezuela and (2) they are not otherwise designated as SDNs. U.S. sanctions against Venezuela do not prohibit transactions with such nonsanctioned Venezuelan private-sector persons and entities; and

- The U.S. Export Administration Regulations, or EAR, impose additional restrictions on U.S. and non-U.S. persons exporting or reexporting items "subject to the EAR" to Venezuela. Anyone engaging in transactions with Venezuela that involve items "subject to the EAR" should be aware of these additional restrictions, which could prohibit certain export or reexport transactions to Venezuela or require that the exporter or reexporter first obtain an appropriate export license from the U.S. Department of Commerce's Bureau of Industry and Security.

The Trump administration has stated that it is willing to lift U.S. sanctions against Venezuela upon a peaceful transition of power from the Maduro regime to the Guaido regime. However, considering Venezuela’s current political climate, it is difficult to anticipate the potential likelihood or timing of such a transfer. Therefore, in the meantime, companies doing business in Venezuela should perform proper due diligence and would be well advised to comply carefully with these sanctions, especially considering the government of Venezuela’s extensive ownership of and involvement in key enterprises within the Venezuelan economy.

Correction: A previous version of this article did not include the author Cortney Morgan. The error has been corrected.

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