

## Trump Administration Imposes Broad Sanctions on the Government of Venezuela

August 16, 2019

### Key Points

- In a further escalation of U.S. sanctions on Venezuela in support of its efforts to oust the regime of Nicolás Maduro, on August 5, 2019, the Trump administration imposed comprehensive sanctions on the Government of Venezuela, significantly expanding established U.S. sanctions measures.
- This latest action by President Trump also provides grounds for targeted imposition of secondary sanctions on any person (U.S. or non-U.S.) that materially assists, sponsors or provides financial, material or technological support for, or goods or services to or in support of the Government of Venezuela.
- Although not a full embargo, given the broad reach of U.S. sanctions and potential sanctions exposure for companies found to provide “material support” to the Maduro regime, this further escalation of U.S. sanctions on Venezuela should prompt both U.S. and non-U.S. companies to closely review their established business interests in Venezuela, and pending or proposed new transactions, to maintain effective compliance safeguards.

### Introduction

On August 5, 2019, the Trump administration issued Executive Order 13884, “Blocking Property of the Government of Venezuela” (EO 13884) imposing new economic sanctions that broadly prohibit U.S. persons from dealing with the Government of Venezuela or its property absent a license issued by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC). These sanctions, which went into effect at 9:00 am EST on August 5, 2019 (subject to a month-long wind-down general license described below), are a significant escalation of U.S. sanctions against Venezuela and form part of the administration’s strategy to utilize sanctions as a key instrument of U.S. foreign policy to pressure the government of Nicolás Maduro to relinquish power and step down—actions that are in response to the Maduro government’s illegitimate seizing of power, acts of corruption, and human rights abuses.<sup>1</sup>

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Along with the issuance of EO 13884, OFAC amended 12 of the 16 pre-existing general licenses and issued 13 new general licenses, including a wind-down general license, that allow U.S. persons to continue to engage in certain narrow categories of business with the Government of Venezuela for a limited period of time. In addition, OFAC issued new Frequently Asked Questions (FAQs) providing additional guidance and clarification regarding the new measures as well as guidance regarding provision of humanitarian assistance and support for the general population of Venezuela.

Contrary to initial media reports, this action does not impose a comprehensive “embargo” on Venezuela of the kind seen in connection with other territory- or country-based U.S. sanctions programs, such as U.S. sanctions affecting Crimea, Cuba, Iran, North Korea and Syria—a fact reaffirmed by the U.S. State Department on August 6, 2019.<sup>2</sup> Nevertheless, these measures are likely to have a disruptive effect on the interests and commercial activities of both U.S. and non-U.S. companies with business associated with Venezuela given the Venezuelan Government’s significant role and entanglement in the country’s economy, generating added compliance, political and business risks, as well as related management burdens for the continuation of established activities involving Venezuela.

## Sanctions Imposed by EO 13884

### Blocking Sanctions

EO 13884 imposes comprehensive blocking measures on the Government of Venezuela that block all property of the Government of Venezuela that is either in the United States or within the possession of any U.S. person worldwide. U.S. persons include any U.S. citizen, any person with U.S. permanent resident alien “Green Card” status (regardless of where they are located) any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches) or any person in the United States.<sup>3</sup> The new sanctions specifically prohibit U.S. persons from dealing in any property or interests in property of the Government of Venezuela absent a general or specific license issued by OFAC<sup>4</sup> and require U.S. persons to block and report to OFAC any such property that comes into their possession or control.<sup>5</sup> The executive order further prohibits U.S. persons from providing or receiving funds, goods or services from the Government of Venezuela absent a license.<sup>6</sup>

EO 13884 expressly exempts transactions for the conduct of the official business of the U.S. federal government, as well as transactions related to the provision of articles such as food, clothing, and medicine intended for use to relieve human suffering in Venezuela.<sup>7</sup>

### Definition of “Government of Venezuela”

The definition of the “Government of Venezuela” under EO 13884 is broadly worded and includes any of the following individuals or entities, **regardless of whether they appear on the Specially Designated Nationals and Blocked Persons list (“SDN List”)**:<sup>8</sup>

- The state and government of Venezuela.
- Any political subdivision, agency, or instrumentality of the government of Venezuela.

- The Central Bank of Venezuela (already designated on the SDN List by OFAC in April 2019).<sup>9</sup>
- PdVSA (already designated on the SDN List by OFAC in January 2019).<sup>10</sup>
- Any person owned or controlled, directly or indirectly, by the foregoing.
- 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.<sup>11</sup>

#### Authorization of Secondary Sanctions

EO 13884 also provides two new grounds for the U.S. government to impose secondary sanctions (in the form of blocking sanctions) on **any** person (U.S. or non-U.S.) that is determined by U.S. officials to have engaged in the following types of activities contrary to the executive order:

- Persons determined to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any person included on the SDN List pursuant to EO 13884.<sup>12</sup> Notably, this designation basis only applies to persons designated on the SDN List under EO 13884.
- Persons determined 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 EO 13884.<sup>13</sup> This basis for secondary sanctions applies to both: (1) persons designated on the SDN List pursuant to EO 13884 and (2) nondesignated persons or entities that form part of the Government of Venezuela under the broad definition of the “Government of Venezuela” provided in the executive order

Determinations on the imposition of secondary sanctions are made by the U.S. government on a discretionary and case-by-case basis.

#### General Licenses

OFAC amended 12 of the 16 pre-existing general licenses and issued 13 new general licenses that allow U.S. persons to engage in narrow categories of business with the Government of Venezuela after the effective date of the executive order. Any party relying on any of these licenses must determine and confirm which of the executive orders apply to a proposed transaction or activity and then determine whether it falls within the scope of activities that are authorized under the relevant general license with respect to each applicable executive order.<sup>14</sup> Further, even if the activities are authorized under an OFAC general license, it is important to further consider and ensure that the activities in question do not require separate licensing from other federal agencies, including potential export licensing by the Bureau of Industry and Security of the U.S. Department of Commerce.

#### Unchanged General Licenses

Prior to the issuance of EO 13884 and the new general licenses discussed below, OFAC had already issued 16 general licenses in connection with pre-existing U.S. sanctions on Venezuela. OFAC extended by amendment all of these general licenses *except*:

- General License No. 5, which relates to the Petroleos de Venezuela SA 2020 8.5 Percent Bond and remains in effect.

- General License No. 6, which relates to wind-down activities involving Globovision news network authorized through January 8, 2020.
- General License No. 14, which relates to official business of the U.S. Government, but is specifically exempted from EO 13884.

#### Amended General Licenses

For each of the 12 amended general licenses, OFAC added language so that the activity authorized by these general licenses prior to the new executive order continues to be authorized.<sup>15</sup>

This means that these amended general licenses, including the general licenses authorizing transactions related to certain Venezuela sovereign bonds, as well as transactions and activities ordinarily incident and necessary to dealings in any debt or equity in PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest (provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds or securities must be to a non-U.S. person), **remain in place**.<sup>16</sup>

For additional information on the scope of the general licenses previously issued, please refer to our prior alerts concerning PdVSA-related general licenses in [February](#) and [March](#) 2019.

#### New General Licenses

OFAC also issued 13 new general licenses that allow U.S. persons to continue to engage in business involving the Government of Venezuela after August 5, 2019. Three of these general licenses are unique to Venezuela and 10 provide authorizations similar to those found in U.S. sanctions programs targeting Crimea, Cuba, Iran, North Korea, and Syria.

New general licenses specific to Venezuela:

- **One Month Wind-Down Authorization:** [General License No. 28](#) authorizes, through September 4, 2019, all transactions and activities prohibited by the EO 13884 that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving the Government of Venezuela that were in effect prior to August 5, 2019 (the date of the executive order). However, OFAC clarified that this wind-down authorization **does not** authorize dealings with government entities that were blocked under previous executive orders (e.g., PdVSA and Banco Central de Venezuela designated under EO 13850) given that wind-down licenses involving those blocked persons have already expired.<sup>17</sup> In addition, this wind-down authorization **does not** permit debits to an account of the Government of Venezuela on the books of a U.S. financial institution.
- **Ports and Airports in Venezuela:** [General License No. 30](#) authorizes all transactions and activities involving the Government of Venezuela that are “ordinarily incident and necessary to operations or use of ports and airports in Venezuela,” provided the transactions and dealings do not relate to the exportation or re-exportation of diluents (**e.g.**, crude oil and naphtha) directly or indirectly to Venezuela or involve entities blocked under previous executive orders (**e.g.**, PdVSA and Banco Central de Venezuela designated under EO 13850). Although certain exports to Venezuela not related to the Government of Venezuela remain permitted, OFAC’s guidance

explains that U.S. persons are prohibited from exporting or re-exporting diluents, directly or indirectly, to Venezuela because “exports or re-exports of diluents to Venezuela likely include a direct or indirect interest of PdVSA.”<sup>18</sup>

- Transactions with National Assembly and Interim Presidency of Juan Guaidó: **General License No. 31** authorizes U.S. persons to engage in all transactions involving the Venezuelan National Assembly (including its members and staff, and persons appointed or designated by the National Assembly to act on behalf of the Government of Venezuela) and the Interim President of Venezuela, Juan Guaidó (including, among others, any official, designee, or representative (as well as their respective staff) appointed or designated by Juan Guaidó to act on behalf of the Government of Venezuela, as representatives to international organizations, or appointed on the board of directors or as executive officer of entities owned or controlled by the Government of Venezuela). This general license applies to entities designated under EO 13884, as well as specified prior executive orders, such as EO 13850.

New general licenses common to other sanctions programs:

- Normal Service Charges and Transfers to Blocked Accounts: **General License No. 21** authorizes U.S. financial institutions, who are now generally required to block the property of the Government of Venezuela, to debit any account blocked pursuant to EO 13884 or EO 13850, as amended by EO 13857, held at that financial institution in payment or reimbursement for select “normal service charges” owed to it by the owner of that blocked account and certain transfers between blocked accounts.
- Venezuela’s Mission to the UN: **General License No. 22** authorizes the provision of goods and services in the United States to Venezuela’s mission to the United Nations and payment for such goods or services (but not real property), provided they are for the official business of the mission or personal use of mission staff members, their families or persons forming part of their house and are not for resale (other than real estate).
- Third-Country Diplomatic or Consular Missions in Venezuela: **General License No. 23** authorizes U.S. depository institutions, U.S.-registered brokers or dealers in securities and U.S.-registered money transmitters to process funds transfers involving the Government of Venezuela that are necessary for the operating expenses or other official business of third-country diplomatic or consular missions in Venezuela to the extent such funds transfers involving Government of Venezuela persons were blocked solely pursuant to EO 13884. This GL is not applicable to the U.S. consular mission presumably because the U.S. **withdrew** all remaining personnel from its U.S. Embassy in Caracas in March 2019.
- Telecommunications and Mail: **General License No. 24** authorizes all transactions involving the Government of Venezuela “incident to the receipt and transmission of telecommunications” and all transactions of “common carriers involving the Government of Venezuela incident to the receipt or transmission of mail and packages between the United States and Venezuela,” to the extent transactions with Government of Venezuela persons were blocked solely pursuant to EO 13884.
- Internet Communications: **General License No. 25** authorizes the exportation or re-exportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to or involving the Government of Venezuela of services,

software, hardware and technology incident to the exchange of communications over the Internet otherwise prohibited by EO 13884.

- Emergency Medical Services: **General License No. 26** authorizes the provision and receipt of certain nonscheduled emergency medical services and other medical services.
- Intellectual Property Protections: **General License No. 27** authorizes certain transactions in connection with a patent, trademark, copyright or other form of intellectual property protection in the United States or Venezuela, including the payment of fees to the U.S. Government or the Government of Venezuela as well as attorneys and representatives in the U.S. and Venezuela in connection with permitted transactions.
- Support for Nongovernmental Organizations: **General License No. 29** authorizes all transactions involving the Government of Venezuela that are ordinarily incident to the following activities by nongovernmental organizations: (i) activities to support humanitarian projects to meet basic human needs in Venezuela; (ii) activities to support democracy building in Venezuela; (iii) activities to support education in Venezuela; (iv) activities to support noncommercial development projects directly benefiting the Venezuelan people; and (v) activities to support environmental protection in Venezuela.
- Personal Maintenance Within Venezuela: **General License No. 32** authorizes individuals who are U.S. persons residing in Venezuela to engage in transactions involving the Government of Venezuela that are ordinarily incident and necessary to their personal maintenance within Venezuela.
- Overflight Payments, Emergency Landings, and Air Ambulance Services: **General License No. 33** authorizes the receipt of, and payment of charges for, services rendered involving the Government of Venezuela in connection with overflights of Venezuela or emergency landings in Venezuela by aircraft registered in the United States or owned or controlled by, or chartered to, persons subject to U.S. jurisdiction. Persons subject to U.S. jurisdiction are also authorized to engage in all transactions involving the Government of Venezuela necessary to provide air ambulance and related medical services, including medical evacuation from Venezuela, for individuals in Venezuela.

#### Guidance on Humanitarian Transactions

In connection with the measures described above, OFAC also published new guidance elaborating on the Trump administration's policy position with respect to the provision of humanitarian assistance by U.S. persons in support of the general population of Venezuela. This guidance (available [here](#)) underscores that "humanitarian assistance and activities to promote democracy are not the target of U.S. sanctions, so long as such activity meets the requirements outlined in each authorization."<sup>19</sup> In this regard, the guidance highlights that the new executive order contains an exemption for transactions involving the provision of "food, clothing, and medicine intended to be used to relieve human suffering"<sup>20</sup> and identifies various general licenses (several of which are identified above) intended to support humanitarian trade with Venezuela. OFAC adds that "[t]hose involved in exports or re-exports related to these authorizations should also consult the Department of Commerce's Bureau of Industry and Security to ensure eligibility of exportation or re-exportation under its authorities."<sup>21</sup>

OFAC states that it “encourages U.S. persons to avail themselves of these authorizations”<sup>22</sup> and notes that it maintains a favorable specific licensing policy to support activities by U.S. persons in support of humanitarian assistance for Venezuela. To this end, OFAC will consider specific license requests on a case-by-case basis and will prioritize license applications, compliance questions and other requests related to humanitarian support for the Venezuelan people.

#### Potential Implications of the New Sanctions

As an initial matter, it is important to underscore that the measures authorized by EO 13884 do not amount to a comprehensive embargo on Venezuela, and as such, the implications for business in Venezuela are not as far-reaching as sanctions on Crimea, Cuba, Iran, North Korea or Syria. In particular, the focus of the prohibitions under EO 13884 principally target the current Government of Venezuela headed by Nicolás Maduro (transactions with the Interim President of Venezuela, Juan Guaidó, are permissible) and are not otherwise intended to restrict transactions involving the export or import of goods, services or technology to or from Venezuela. Consequently, and as supported by statements by the U.S. State Department, these sanctions are not intended to target the people of Venezuela or transactions with entities in Venezuela that operate exclusively in the private sector.

Given the substantial role that the Government of Venezuela has in that country’s economy, these sanctions are likely to significantly disrupt activities and interests of both U.S. and non-U.S. companies. These risks are compounded by the fact that the plain language of the executive order extends restrictions to the state and Government of Venezuela, any political subdivision, agency or instrumentality thereof, as well as “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,” regardless of whether they appear on the SDN List.

OFAC has explicitly stated in FAQ No. 680 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.”<sup>23</sup> In light of the broad reach of the sanctions, diligence and review of transactions involving Venezuela is strongly recommended for both U.S. and non-U.S. companies and persons.

The measures under EO 13884 may give rise to new and heightened reputational and political risks for companies that continue to engage in Venezuela-related business. Although these new sanctions do not constitute a comprehensive embargo, Venezuela is now being considered by financial institutions and others in the same risk and compliance context as other comprehensively sanctioned countries. This could be reflected in derisking practices and hesitation by financial institutions and other counterparties to engage in Venezuela-related business, either directly or indirectly, even if such business is legally permissible under available general licenses.

Furthermore, the measures on Venezuela are clearly intended to further the U.S. foreign policy goal of ousting the government of Nicolás Maduro and supporting Interim President Juan Guaidó. It is too early to tell whether these latest measures will ultimately have the intended effect. However, the White House has indicated that it

intends to use EO 1884 to block property of persons who provide material support to the Maduro regime.<sup>24</sup>

Lastly, although over 50 countries support the Guaidó regime and regime change, the U.S., along with Canada, are alone in imposing such strong sanctions. Seven U.S. senators recently wrote to EU High Representative for Foreign Affairs Federica Mogherini, “strongly urg[ing] the EU to align its restrictive measures against Venezuelan persons with those imposed by the United States and Canada,”<sup>25</sup> but statements by the EU to date do not indicate that the EU currently has the appetite to place additional sanctions on the Maduro regime at this time.

1 For additional context on the U.S. sanctions imposed on Venezuela, please see our prior client alerts, which cover the designation of Petroleós de Venezuela (PdVSA) ([here](#)), amendments to certain general licenses with respect to PdVSA ([here](#)), as well as the designation of certain Venezuelan financial institutions ([here](#)).

2 Press Statement, *The United States Imposes Maximum Pressure on Former Maduro Regime*, (Aug. 6, 2019), <https://www.state.gov/the-united-states-imposes-maximum-pressure-on-former-maduro-regime/>.

3 EO 13884 § 6(c).

4 *Id.* § 1(a).

5 *Id.* § 1(a). Blocked property reports must be filed pursuant to 31 C.F.R. § 501.603.

6 EO 13884 § 3(a)-(b).

7 *Id.* § 5.

8 See OFAC FAQ No. 680. These restrictions also apply to entities they own, directly or indirectly, 50 percent or more, individually or in combination, with other blocked persons. *Id.*

9 Press Release, *U.S. Dep’t of Treasury, Treasury Sanctions Central Bank of Venezuela and Director of the Central Bank of Venezuela*, (Apr. 17, 2019), <https://home.treasury.gov/news/press-releases/sm661>.

10 Press Release, *U.S. Dep’t of Treasury, Treasury Sanctions Venezuela’s State-Owned Oil Company Petroleós de Venezuela, S.A.*, <https://home.treasury.gov/news/press-releases/sm594>.

11 EO 13884 § 6(d).

12 *Id.* § 1(b)(i).

13 *Id.* § 1(b)(ii).

14 In particular, note that OFAC has updated FAQ No. 508 to clarify that EO 13884 should be read in conjunction with prior Venezuela-related executive orders, such as EO 13808 which impose sanctions on dealings in Government of Venezuelan debt and bonds, among other restrictions. See OFAC FAQ No. 508 (updated Aug. 6, 2019). In other words, U.S. persons relying on a general license permitting activities restricted by EO 13884 must also consider whether such activities are prohibited by prior executive orders and, if so, confirm that those activities are permitted under a general or specific license.

15 In addition to amending the general licenses to authorize activities otherwise prohibited under the new executive order, several general licenses (e.g., General Licenses 2A, 4C, 15B, 16B and 20A), were amended to incorporate **additional** changes and accordingly, careful review of the amended license is required prior to reliance thereon.

16 See OFAC [General License No. 3F](#); OFAC [General License No. 9E](#).

17 See OFAC FAQ No. 681.

18 See OFAC FAQ No. 672.

19 OFAC, *Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People* (August 6, 2019) (“OFAC Venezuela Humanitarian Guidance”).

20 EO 13884 § 5(b).



21 OFAC Venezuela Humanitarian Guidance.

22 *Id.*

23 OFAC FAQ No. 680.

24 The White House, *President Donald J. Trump is Cutting Off the Financial Resources of Maduro and His Cronies*, (Aug. 6, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-cutting-off-financial-resources-maduro-cronies/>.

25 Press Release, *U.S. Senate Committee on Foreign Relations, As Maduro Regime's Repression Worsens, Senators Urge Mogherini to Strengthen E.U. Sanctions to Match Those Imposed by the U.S. and Canada*, (Aug. 8, 2019), [https://www.foreign.senate.gov/press/chair/release/as-maduro-regimes-repression-worsens-senators-urge-mogherini-to-strengthen-eu-sanctions-to-match-those-imposed-by-the-us-and-canada\\_](https://www.foreign.senate.gov/press/chair/release/as-maduro-regimes-repression-worsens-senators-urge-mogherini-to-strengthen-eu-sanctions-to-match-those-imposed-by-the-us-and-canada_).

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