

Client Alert

August 2019

The Trump Administration Issues Executive Order Blocking Property of the Government of Venezuela

What Happened: On August 5, 2019, President Donald J. Trump issued an executive order that requires the blocking of all property and interests in property of the government of Venezuela that are in the United States or that come within the possession or control of a US person, as well as such property belonging to any person determined by the Secretary of the Treasury to have materially assisted any person or entity whose property and interests in property are blocked by this order. In connection with this executive order, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued new general licenses and frequently asked questions (FAQs).

The Bottom Line: The Trump administration continues to broaden the scope of US sanctions toward Venezuela by blocking the property of the government of Venezuela at large in an embargo against the government, but not prohibiting transactions with the private sector generally. US persons must now refrain from transferring, paying or otherwise dealing in property or interests in property of the government of Venezuela in the United States. All individuals and entities with interests in Venezuela should continue monitoring the sanctions and authorizations granted by general and specific licenses.

The Full Story:

The Executive Order

On August 5, 2019, President Trump issued a new executive order titled "Blocking Property of the Government of Venezuela" (the Executive Order).

The Executive Order blocks, and prohibits the transfer, payment, exportation, withdrawal or other dealing in, all property and interests in property of the government of Venezuela that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of any US person, as well as that of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (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 included on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC whose property and interests in property are blocked pursuant to this 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.

The prohibitions prescribed by this Executive Order apply except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to this Executive Order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this Executive Order. Therefore, specific licenses previously issued by OFAC to engage in transactions with persons

sanctioned by this Executive Order are superseded by this Executive Order. Thus, any such transactions with persons sanctioned by this Executive Order should cease immediately, unless such activity is permitted by an existing general license or a specific license is later granted pursuant to this Executive Order.

Further, this Executive Order also suspends the unrestricted immigrant and nonimmigrant entry into the United States of persons determined to meet one or more of the criteria set forth in paragraph (i) and (ii) above, except when the Secretary of State determines that the person's entry would not be contrary to the interests of the United States.

Lastly, the Executive Order clarifies that the foregoing prohibitions include the making of any contribution or provision of funds, goods or services by, to or for the benefit of any person whose property and interests in property are blocked pursuant to this Executive Order and the receipt of any contribution or provision of funds, goods or services from any such person. As a result, the Executive Order not only blocks the property and interests in property of such persons, but also prohibits essentially all commercial transactions with such persons. The prohibitions prescribed by this Executive Order, however, do not apply to transactions relating to the official business of the US federal government and transactions relating to the provision of humanitarian aid.

General Licenses

Concurrently with the issuance of the Executive Order, OFAC amended 12 existing general licenses¹ and also issued the following 13 new general licenses, which provide certain exceptions to the general prohibitions set forth in the Executive Order:

General License 21 – Authorizes US financial institutions to debit blocked accounts for normal service charges, such as custody fees.

General License 22 – Authorizes the provision of goods and services for the conduct of the official business of Venezuela's mission to the UN, provided that the transaction does not involve the purchase, sale, financing or refinancing of real estate.

General License 23 – Authorizes US financial institutions 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.

General License 24 – Authorizes all transactions involving the government of Venezuela incident to the receipt and transmission of telecommunications and all transactions of common carriers incident to the receipt or transmission of mail and packages between the US and Venezuela.

¹ The 12 existing licenses amended in connection with the Executive Order are: General License 2A (Authorizing Certain New Debt, New Equity, and Securities Transactions Involving PDV Holding, Inc. and CITGO Holding, Inc.), General License 3F (Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds), General License 4C (Authorizing Certain New Debt Transactions and Other Transactions Involving Certain Blocked Persons Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates), General License 7C (Authorizing Certain Activities Involving PDV Holding, Inc. and CITGO Holding, Inc.), General License 8C (Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Necessary for Maintenance of Operations for Certain Entities in Venezuela), General License 9E (Authorizing Transactions Related to Dealings in Certain Securities), General License 10A (Authorizing the Purchase in Venezuela of Refined Petroleum Products from Petróleos de Venezuela, S.A. (PdVSA)), General License 13C (Authorizing Certain Activities Involving Nynas AB), General License 15B (Authorizing Transactions Involving Certain Banks for Certain Entities), General License 16B (Authorizing Maintenance of U.S. Person Accounts and Noncommercial, Personal Remittances involving Certain Banks), General License 18A (Authorizing Certain Transactions Involving Integración Administradora de Fondos de Ahorro Previsional, S.A.) and General License 20A (Authorizing Official Activities of Certain International Organizations Involving the Government of Venezuela). The amendments to these General Licenses make the licenses applicable following the Executive Order; however, care should be taken to consider whether other changes to these general licenses have been made.

General License 25 – Authorizes the exportation or reexportation, directly or indirectly, from the US or by US persons to or involving the government of Venezuela of services, software, hardware and technology incident to the exchange of communications over the internet, such as instant messaging, chat, email and social networking.

General License 26 – Authorizes the provision and receipt of nonscheduled emergency medical services and the provision of certain medical services involving the government of Venezuela.

General License 27 – Authorizes the filing, prosecution, renewal and maintenance of patents, trademarks, copyrights and other forms of intellectual property protection in the United States (by Venezuelan persons) and in Venezuela (by US persons).

General License 28 – Authorizes transactions prohibited by the Executive Order that are ordinarily incident and necessary to wind down operations, contracts or other agreements involving the government of Venezuela through 12:01 a.m. ET on September 4, 2019. Notably, this General License does not allow any debit to an account of the government of Venezuela on the books of a US financial institution or any transaction prohibited by a prior Executive Order regarding Venezuela.

General License 29 – Authorizes activities by nongovernmental organizations in support of humanitarian projects to meet basic human needs in Venezuela, democracy building in Venezuela, education in Venezuela, noncommercial development projects directly benefiting the Venezuelan people and environmental protection in Venezuela.

General License 30 – Authorizes certain transactions prohibited by the Executive Order that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela.

General License 31 – Authorizes certain transactions involving the Venezuelan National Assembly; the interim president of Venezuela, Juan Gerardo Guaidó Marquez (Guaidó); and any official, designee or representative appointed or designated by Guaidó to act on behalf of the government of Venezuela.

General License 32 – Authorizes certain transactions prohibited by the Executive Order that are ordinarily incident and necessary to the personal maintenance of US persons residing in Venezuela.

General License 33 – Authorizes the receipt of, and payment of charges for, services involving the government of Venezuela relating to overflights of Venezuela or the emergency landing in Venezuela of aircrafts registered in the United States or owned or controlled by persons subject to US jurisdiction.

In addition, OFAC also issued three new FAQs that clarify the objective and scope of the Executive Order and general licenses. In particular, FAQ 679 clarifies that OFAC is authorizing transactions involving the government of the interim president of Venezuela, including the Venezuela National Assembly, and any official, designee or representative appointed or designated by the interim president to act on behalf of the government of Venezuela, that are otherwise prohibited by the Executive Order. Through FAQs 680 and 681, however, OFAC further clarifies that persons meeting the definition of the government of Venezuela and entities that are owned, directly or indirectly, 50 percent or more by the government of Venezuela are blocked pursuant to the Executive Order and that General License 28 does not authorize wind-down periods for previously designated entities.

Given that the Executive Order blocks the property of the government of Venezuela, though transactions with the private sector remain permissible, persons with interests in Venezuela should continue monitoring the sanctions and conduct due diligence on their customers and business partners to confirm that those persons and entities are not blocked pursuant to this Executive Order.

The Latin America group practice and the International and Cross-Border Transactions practice at Hunton Andrews Kurth LLP will continue to closely monitor related developments in the US sanctions regime with

respect to Venezuela. Please contact us if you have any questions or would like further information regarding US sanctions toward Venezuela.

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