

August 6, 2019

U.S. Imposes Partial Embargo on Venezuela

On August 5, 2019, President Donald Trump issued an “Executive Order on Blocking Property of the Government of Venezuela” (the “Order”). The Administration’s latest effort to ratchet up pressure on the Maduro regime represents a significant expansion of U.S. sanctions targeting Venezuela. However, the new Order does not impose a comprehensive embargo against Venezuela, and OFAC has issued (and re-issued) a wide range of general licenses authorizing certain transactions involving the Government of Venezuela (“GOV”). Parties with Venezuela touchpoints are well-advised to carefully consider the effects of these new (and complex) restrictions.

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Unpacking the Order

What does the Order do?

The August 5 Order imposes four key requirements/prohibitions:

1. The Order “blocks” all property and interests in property of the GOV that come within the United States or the possession or control of any U.S. person.
2. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions against any person who provides goods, services, or financial, material, or technological support to any person blocked pursuant to the Order (including, notably, the GOV).
3. The Order suspends entry into the United States for persons blocked pursuant to the Order.
4. The Order prohibits any transaction that evades, or causes an independent violation of, the Order’s prohibitions.

What is the significance of the blocking requirement?

The Order blocks all property interests of the GOV in the possession of U.S. persons. U.S. persons who come into possession or control of blocked property must (1) transfer the property to a segregated account; and (2) file a report with OFAC within ten business days.

For purposes of the Order, the GOV includes the “state and Government of Venezuela,” as well as “any political subdivision, agency, or instrumentality” of the GOV and any person owned or controlled by (or acting on behalf of) the GOV. Practically speaking, the prohibitions extend to all facets of the Venezuelan government, as well as state-owned or –controlled companies.

Importantly, the OFAC sanctions regulations define the terms “property” and “property interest” extremely broadly, to include (without limitation) money, bank deposits, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, goods, merchandise, goods on ships, leaseholds, real estate and any other interest therein, options, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent. *See* 31 C.F.R. § 591.309. As such, U.S. persons should construe the scope of their blocking obligation in the broadest possible terms, and should consult with qualified sanctions counsel to resolve any potential ambiguities.

Who must comply with the new prohibitions?

The new prohibitions are relevant to both U.S. and non-U.S. parties. Although the blocking obligation (described above) applies only to U.S. persons (*i.e.*, U.S. citizens, U.S.-organized entities, and persons physically present in the United States), other aspects of the August 5 order may implicate the activities of non-U.S. parties.

Notably, the Order authorizes the Department of the Treasury to impose sanctions upon any person, regardless of nationality, who provides—or receives—funds, goods, or services to or from any party blocked pursuant to the Order. As a result, non-U.S. parties that engage in transactions involving the GOV—or individuals or entities subsequently blocked pursuant to the Order—will be at risk of being targeted by U.S. sanctions (and effectively cut off from the U.S. marketplace).

Along similar lines, the Order prohibits any person, regardless of nationality, from causing a violation of the Order's prohibitions. This may occur, *inter alia*, where a non-U.S. party causes a party subject to U.S. jurisdiction (*e.g.*, U.S. financial institution, U.S. vendor) to unwittingly provide services in relation to a transaction that the party subject to U.S. jurisdiction could not engage in directly. By way of example, in the context of the Iran sanctions, OFAC has brought enforcement actions against non-U.S. parties that transacted Iran-related business in U.S. dollars, thereby causing financial institutions subject to U.S. jurisdiction to unknowingly export financial services to Iran. It is conceivable that OFAC could take a similar approach with respect to non-U.S. parties that transact GOV-related business in U.S. dollars.

Is Venezuela now off limits?

While the August 5 action represents a significant expansion of the Venezuela sanctions program, the United States has not imposed a comprehensive embargo against Venezuela, such as those currently in place with respect to Cuba and Iran. While the Order prohibits virtually any dealings with GOV-affiliated entities, unless those dealings are licensed, it does not prohibit dealings with private Venezuelan counterparties, or with Venezuelan nationals ordinarily resident in Venezuela. Further, while certain aspects of the Order may implicate non-U.S. parties' activities, the Order generally does not apply to non-U.S. entities owned or controlled by U.S. persons (as do the Cuba and Iran sanctions).

Going forward, parties engaged in transactions with Venezuelan counterparties—as well as parties contemplating investments in targets that conduct business with Venezuela—should conduct thorough due diligence to assess whether the underlying transactions may involve, directly or indirectly, the GOV. In addition, as U.S. sanctions targeting Venezuela have continued to escalate in recent months, parties engaged in Venezuela-related transactions should continue to monitor for additional developments.

What general licenses, if any, remain in effect?

In connection with prior Venezuela-related actions, OFAC has issued a range of general licenses, including general licenses authorizing certain transactions involving CITGO Holdings Limited (“CITGO”) and bonds issued by the GOV or Petróleos de Venezuela, S.A. (“PdVSA”). The Order clarified, however, that its prohibitions “apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, **and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.**” As such, the Order supersedes all previously issued general licenses and authorizations.

To mitigate the Order's unintended effects, OFAC has reissued preexisting general licenses pursuant to this new authority, as well as a wide range of new general licenses. The general licenses, as set forth below, extend the most heavily relied upon general licenses that were in effect prior to the Order, and authorize a range of additional—and, in some cases, nuanced—exceptions to the otherwise expansive prohibition on dealings with the GOV.

Preexisting General Licenses

- General License 2A, Authorizing Certain New Debt, New Equity, and Securities Involving PDV Holding, Inc. and CITGO Holding, Inc., supersedes General License 2, and continues to authorize certain transactions and activities where the only GOV entities involved are PDV Holding, Inc., CITGO Holding, Inc., or any of their subsidiaries (including CITGO).
- General License 3F, Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds, supersedes General License 3E, and continues to authorize transactions related to the divestment or transfer of certain GOV-issued bonds.
- General License 4C, Authorizing Certain 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, supersedes General License 4B, and continues to authorize certain transactions ordinarily incident and necessary to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, and software updates for medical devices.
- General License 5, Authorizing Certain Transactions Related to the Petroleos de Venezuela SA 2020 8.5 Percent Bond, continues to authorize transactions related to the referenced bond.
- General License 6, Authorizing Certain Activities Necessary to the Maintenance or Wind Down of Operations or Existing Contracts with Globovision Tele C.A. or Globovision Tele CA, Corp., continues to authorize wind down transactions related to the foregoing entities (through January 8, 2020).
- General License 7C, Authorizing Certain Activities Involving PDV Holding, Inc. and CITGO Holding, Inc., supersedes General License 7B, and continues to authorize certain transactions and activities where the only GOV entities involved are PDV Holding, Inc., CITGO Holding, Inc., or any of their subsidiaries (including CITGO).
- General License 8C, Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA) Necessary for Maintenance of Operations for Certain Entities in Venezuela, supersedes General License 8B, and continues to authorize certain specified U.S. energy companies (*e.g.*, Halliburton, Baker Hughes, Schlumberger Limited, Weatherford International, etc.) to engage in transactions involving PdVSA, through October 25, 2019.
- General License 9E, Authorizing Transactions Related to Dealings in Certain Securities, supersedes General License 9D, and continues to authorize transactions related to the divestment or transfer of certain PdVSA-issued bonds.
- General License 10A, Authorizing the Purchase in Venezuela of Refined Petroleum Products from Petróleos de Venezuela, S.A. (PdVSA), supersedes General License 10, and continues to authorize the purchase in Venezuela of refined petroleum products for personal, commercial, or humanitarian uses from PdVSA or PdVSA-affiliated entities.
- General License 12, Authorizing Certain Activities Necessary to Wind Down of Operations or Existing Contracts with Petróleos de Venezuela, S.A. (PdVSA), remains formally in effect (though the wind down period has expired).

- General License 13C, Authorizing Certain Activities Involving Nynas AB, supersedes General License 13B, and continues to authorize certain transactions and activities where the only GOV entities involved are Nynas AB or its subsidiaries, through October 25, 2019.
- General License 14, Official Business of the United States Government, continues to authorize GOV-related transactions conducted by the U.S. government, as well as its employees, grantees, or contractors.
- General License 15B, Authorizing Transactions Involving Certain Banks for Certain Entities, supersedes General License 15A, and continues to authorize certain U.S. financial institutions and companies (*e.g.*, MasterCard Incorporated, Visa Inc., American Express Company, Western Union Company, MoneyGram International) to engage in certain transactions with specified Venezuelan financial institutions.
- General License 16B, Authorizing Maintenance of U.S. Person Accounts and Noncommercial, Personal Remittances Involving Certain Banks, supersedes General License 16A, and continues to authorize transactions ordinarily incident and necessary to maintaining, operating, or closing accounts of U.S. persons in specified Venezuelan financial institutions, through March 22, 2020.
- General License 17, Authorizing Certain Activities Necessary to Wind Down of Operations or Existing Contracts with Certain Banks, remains formally in effect (though the wind down period has expired).
- General License 18A, Authorizing Certain Transactions Involving Integración Administradora de Fondos de Ahorro Previsional, S.A., supersedes General License 18, and continues to authorize transactions ordinarily incident and necessary to maintain or operate Integración Administradora de Fondos de Ahorro Previsional, S.A.
- General License 20A, Authorizing Official Activities of Certain International Organizations Involving the Government of Venezuela, supersedes General License 20, and continues to authorize transactions involving the GOV that are for the official business of certain international organizations, such as the United Nations (and its Programmes and Funds), the Inter-American Development Bank, and the Red Cross.

New General Licenses

- General License 21, Entries in Certain Accounts for Normal Service Charges and Payments and Transfers to Blocked Accounts in U.S. Financial Institutions Authorized, permits U.S. financial institutions to debit any account blocked pursuant to the Order held at that financial institution in payment or reimbursement for normal service charges owed to the financial institution by the owner of the blocked account.
- General License 22, Venezuela's Mission to the United Nations, authorizes the provision of goods or services in the United States to Venezuela's mission to the United Nations (and to staff members of Venezuela's mission to the United Nations), provided that the goods or services are for the conduct of official business of the mission and/or for personal use of mission staff members. However, General License 22 clarifies that U.S. financial institutions are required to obtain specific licenses to operate accounts for, or to extend credit to, the mission of the GOV to the United Nations.
- General License 23, Third-country Diplomatic and Consular Fund Transfers Authorized, 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 GOV that are necessary for the operating expenses or other official business of third-country diplomatic or consular missions in Venezuela.

- General License 24, Certain Transactions Involving the Government of Venezuela Related to Telecommunications and Mail Authorized, authorizes transactions involving the GOV incident to the receipt and transmission of telecommunications or mail and packages between the United States and Venezuela.
- General License 25, Exportation of Certain Services, Software, Hardware, and Technology Incident to the Exchange of Communications over the Internet Authorized, authorizes the exportation or reexportation, including involving the GOV, of services, software, hardware, and technology incident to the exchange of communications over the Internet. However, General License 25 clarifies that it does not relieve exporters from their separate obligations under other related laws, such as the Export Administration Regulations (“EAR”) administered by the U.S. Department of Commerce’s Bureau of Industry and Security.
- General License 26, Emergency and Certain Other Medical Services Authorized, authorizes the provision and receipt of nonscheduled emergency medical services and the provision of medical services involving the GOV.
- General License 27, Certain Transactions Related to Patents, Trademarks, and Copyrights Authorized, authorizes certain transactions in connection with patent, trademark, copyright, or other intellectual property (“IP”) protection in the United States or Venezuela that would otherwise be prohibited, including (1) the filing and prosecution of any application to obtain such IP protection; (2) the receipt of such IP protection; (3) the renewal or maintenance of such IP protection; (4) the filing and prosecution of any opposition or infringement proceeding with respect to such IP protection; and (5) payment of fees to the United States Government or the GOV in connection with the foregoing.
- General License 28, Authorizing Certain Transactions Necessary to the Wind Down of Operations or Existing Contracts Involving the Government of Venezuela, authorizes all transactions and activities that are ordinarily incident and necessary to the wind down of such operations or contracts that were in effect prior to August 5, 2019. Notably, however, General License 28 is set to expire on September 4, 2019.
- General License 29, Certain Transactions Involving the Government of Venezuela in Support of Certain Nongovernmental Organizations’ Activities Authorized, authorizes transactions involving the GOV that are ordinarily incident and necessary to certain activities of nongovernmental organizations—including activities to support humanitarian projects, democracy building, education, non-commercial development projects directly benefiting the Venezuelan people, and environmental protection—including the processing and transfer of funds, and payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the GOV.
- General License 30, Authorizing Certain Transactions Involving the Government of Venezuela to Port and Airport Operations, authorizes all transactions involving the GOV that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela. General License 30 does not authorize, however, the export or reexport of diluents to Venezuela (directly or indirectly), and does not relieve exporters from their separate obligations under the EAR and any other related laws.
- General License 31, Certain Transactions Involving the Venezuelan National Assembly, the Interim President of Venezuela, and Certain Other Persons Authorized, authorizes transactions involving the Venezuelan National Assembly (including its members, staff, and designees) or Interim President of Venezuela Juan Gerardo Guaidó Marquez (and any officials, designees, or representatives appointed by or acting on behalf of Guaidó).
- General License 32, Authorizing Certain Transactions Related to Personal Maintenance of Individuals Who Are U.S. Persons Residing in Venezuela, authorizes transactions that are ordinarily incident and necessary to the personal maintenance of U.S. citizens residing in Venezuela, including payment of housing expenses, acquisition

of goods or services for personal use, payment of taxes or fees, and the purchase or receipt of permits, licenses, or public utility services.

- General License 33, Authorizing Overflight Payments, Emergency Landings, and Air Ambulance Services, authorizes the receipt of, and payment of charges for, services rendered involving the GOV 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. General License 33 also authorizes transactions involving the GOV necessary to provide air ambulance and related medical services, including medical evacuation from Venezuela.

Conclusion

The Venezuela sanctions do not constitute a comprehensive embargo, and many of the key transactions that were previously authorized—including dealings with CITGO and dealings in GOV- or PdVSA-issued bonds—remain authorized. However, the additional restrictions imposed by OFAC pursuant to the Order still mark a significant escalation of U.S. sanctions targeting Venezuela, complicating Venezuela-related dealings for U.S. and non-U.S. parties alike. Parties engaged in dealings with Venezuela, or considering investments in companies with Venezuela-related dealings, are advised to take note of the new restrictions and ensure that all transactions remain compliant with the rapidly evolving Venezuela sanctions program.