



**CLIENT ALERT: U.S. INCREASES PRESSURE ON
VENEZUELA WITH ISSUANCE OF EXECUTIVE
ORDER 13884**

August 7, 2019

Introduction

On August 5, 2019, President Trump issued Executive Order 13884 which blocked the assets of the Government of Venezuela in the United States or in the possession and control of any United States person. In addition, United States persons are essentially prohibited from engaging in any transactions with the Government of Venezuela, its agencies, or any entity that government owns or controls. Finally, non-U.S. persons may have their assets in the United States blocked if they are determined to have materially assisted or supplied goods or services in support of the Government of Venezuela. (To view the Executive Order, click [Here](#).)

On August 6, 2019, in connection with Executive Order 13884, the Department of Treasury's Office of Foreign Assets Control ("OFAC") amended twelve existing General Licenses to confirm their applicability to Executive Order 13884 and issued thirteen new General Licenses to provide certain exemptions to the Executive Order's prohibitions. OFAC also issued new frequently asked questions ("FAQs") on August 6, 2019.

Executive Order 13884 – Impact on U.S. Persons

The August 5, 2019, Executive Order does not establish a full embargo against Venezuela or its private sector. It does however have a serious impact on the Government of Venezuela and on the ability of U.S. persons to engage in transactions with that government (and the entities it owns and controls). Firstly, § 1(a) provides that all property and interest in property of the Government of Venezuela that are in the United States, hereinafter come within the United States, or are or hereinafter come within the possession or control of any United States person are blocked. This provision essentially freezes all assets of the Government of Venezuela in the U.S. and blocks the Government of Venezuela from any use of the U.S. financial system.

The Executive Order defines the Government of Venezuela to include:

The state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A.

(PdVSA), any person owned or controlled, directly or indirectly, by the foregoing, and any person who is 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.

Therefore, Executive Order 13884 applies to the Government of Venezuela, any agencies of that government, and any entities owned or controlled by the government. FAQ 680, issued on August 6, states that without specific authorization from OFAC U.S. persons are generally prohibited from engaging in transactions with the Government of Venezuela or entities in which the Government of Venezuela owns, directly or indirectly, a 50% or greater interest. The FAQ points out that U.S. persons are prohibited from engaging in transactions with entities 50% or more owned by the Venezuelan Government even if those entities are not specifically named on the U.S. Specially Designated Nationals and Blocked Persons List (“SDN List”).

It should be noted that FAQ 680 specifically states:

U.S. persons are not prohibited from engaging in transactions involving the country or people of Venezuela, provided blocked persons or any conduct prohibited by any other Executive Order imposing sanctions measures related to the situation of Venezuela, are not involved.

The Executive Order thus largely spares Venezuela’s private sector.

General License 28 provides for a grace period until September 4, 2019, for all transactions and activities which 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. Other General Licenses confirm the exemptions from sanctions that are in place for specified periods of time for certain transactions involving Citgo, Chevron and Nynas. In addition, shipments of food, medicine and clothing continue to be exempted from the U.S. sanctions.

Executive Order 13884 – Impact on Non-U.S. Persons

Section 1(b)(i) of the Executive Order 13884 provides for the blocking of property and interest in property of any person (not just a U.S. person) who is determined by the Secretary of Treasury, in consultation with the Secretary of State,

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 the Office of Foreign Assets Control whose property and interest in property are blocked pursuant to this order.

Since the property and interest in property of the Government of Venezuela, its agencies, and any entities in which it holds a 50% or greater interest have been blocked pursuant to the August 5th Executive Order, this provision means that any non-U.S. person who provides material assistance to, or goods or services in support of, the Government of Venezuela, its agencies and any entity in which it

holds a 50% or greater interest could itself be sanctioned and have its property in the United States blocked. The question which immediately arises is whether the provision of ocean transportation could be considered either material assistance or service in support of an entity whose property is blocked under the Executive Order. It would certainly seem conceivable that OFAC could make this determination and comments by US. National Security Advisor John Bolton, discussed below, suggests that Executive Order 13884 may be broadly construed.

Implementation of Executive Order 13884

The obvious question for non-U.S. persons in the maritime community is just how aggressively the Executive Order 13884 will be implemented and enforced. Executive Order 13850, which was issued in November 2018 and under which the Venezuelan state oil company PdVSA was designated to the SDN List in January 2019, also contains a provision providing for the imposition of sanctions against any person who provides material assistance to or goods or services in support of PdVSA or other blocked entity. However, as yet, no non-U.S. persons have been sanctioned on that basis. OFAC has instead relied on other provisions of Executive Order 13850 to impose sanctions on non-U.S. persons. In particular, in 2019, seven non-U.S. shipowners were named to the SDN List for having “operated in the oil sector the Venezuelan economy” by engaging in the petroleum trade between PdVSA and Cuba.

OFAC may implement Executive Order 13884 differently from how Executive Order 13850 has been implemented to date. A statement issued on August 6th by the White House stated that the August 5th Executive Order “...authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on persons who provide support to Nicholas Maduro and his illegitimate regime.” National Security Advisor John Bolton, speaking at a conference in Peru on August 6th, stated with respect to the Executive Order:

We are sending a signal to third parties that want to do business with the Maduro regime: Proceed with extreme caution. There is no need to risk your business interests with the United States for the purposes of profiting from a corrupt and dying regime.

It should be noted that a similar warning from Mr. Bolton preceded the designation of foreign shipowners to the U.S. SDN List for operating in the PdVSA/Cuba trade. The comments surrounding the issuance of Executive Order 13884 on August 5th suggest the possibility of a more aggressive implementation of the Executive Order with respect to non-U.S. persons who engage in transactions with the Government of Venezuela. As pointed out above, the definition of the Government of Venezuela includes PdVSA.

Summary

Executive Order 13884 issued on August 5, 2019, blocks all of the assets in the United States, or in the possession and control of United States persons, of the Government of Venezuela, its agencies or any entities in which it holds a 50% or greater interest. U.S. persons are generally prohibited from engaging in any transactions with the Government of Venezuela. Non-U.S. persons can be subjected to sanctions if they provide material assistance to or goods or services in support of the Government of Venezuela.

Disclaimer: This Client Alert provides only a general summary of the August 5, 2019 Executive Order on Venezuela and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Advisory. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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