

CLIENT ALERT: VENEZUELAN SANCTIONS: WIND-DOWN PERIOD ENDED TODAY ON E.O. 13884

September 4, 2019

Introduction

Executive Order (“E.O.”) 13884 was issued by President Trump on August 5, 2019, imposing additional sanctions against the Government of Venezuela. (See Freehill Client Alert dated August 6, 2019.) With limited exceptions, E.O. 13884 essentially (i) blocked all property in the U.S. of the Government of Venezuela, (ii) prohibited U.S. persons from engaging in transactions involving the Government of Venezuela, and (iii) set forth circumstances under which any person (including non-U.S. persons) might face sanctions as a result of transactions with the Government of Venezuela.

The Government of Venezuela for purposes of this E.O. is broadly defined and includes all governmental agencies and entities owned or controlled, directly or indirectly, by the government. The definition includes Petroleos de Venezuela, S.A. (“PdVSA”) which is also the subject of sanctions under E.O. 13850 and listed on the Specially Designated Nationals (“SDN”) list under E.O. 13850. The Office of Foreign Assets Control (“OFAC”) has stated that entities owned, directly or indirectly, 50% or more by the Venezuelan government are blocked pursuant to E.O. 13884 regardless of whether the entity appears on the SDN list.

E.O. 13884 contained a 30-day wind-down period to allow U.S. persons to wind-down their operations, contracts or other agreements involving the Government of Venezuela (with the exception of PdVSA which was subject to an earlier wind-down period under E.O. 13850). The 30-day wind-down period under E.O. 13884 ended today, September 4, 2019.

There are a number of General Licenses that remain in effect which provide certain exemptions for U.S. persons from the restrictions imposed by E.O. 13884 (as well as other E.O.’s pertaining to Venezuela, including E.O. 13850). The General Licenses include, for example, GL 7C which continues to authorize transactions involving Citgo Holding, Inc. and PDV Holding, Inc. GL 30 exempts from sanctions activities ordinarily incident and necessary to the operation or use of Venezuelan ports and airports if the underlying trade is otherwise not sanctionable. GL 31 authorizes U.S. persons to engage in transactions with, among others, directors and executive officers appointed by Interim President Juan Guaidó, including of entities owned or controlled by the Government of Venezuela. Transactions involving exports of humanitarian items such as agricultural commodities, medicine and medical devices also remain authorized.

Impact on Non-U.S. Persons

The full impact on non-U.S. persons of E.O. 13884 and the expiration of the wind-down period is not yet clear. By its terms, E.O. 13884 authorizes OFAC to block the property of and add to the SDN list any person (not just a U.S. person) who is determined by the U.S. authorities (i) “to have materially assisted ... or provided ... goods or services to or in support of” any person included on the SDN list whose property and interest in property are blocked pursuant to this E.O. 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 E.O. 13884. Comments from President Trump’s administration suggest the possibility of aggressive enforcement of these provisions, but to date, designations to the SDN list pursuant to E.O. 13884 have not been made. How broadly or strictly these provisions will be applied by the U.S. authorities in regards to non-U.S. persons remains to be seen. Absent further clarity, caution should be exercised in any dealings involving the Government of Venezuela as defined in E.O. 13884.

Non-U.S. persons should also remain vigilant in regards to any transactions involving PdVSA or Venezuelan-origin petroleum. E.O. 13850 under which PdVSA was named to the SDN list remains in effect. In general, E.O. 13850 authorizes the imposition of sanctions against any person who is determined to operate in, among others, the oil sector of the Venezuelan economy. E.O. 13850 also authorizes sanctions against any person who material assists or provides, inter alia, goods or services to or in support of any activity sanctioned under E.O. 13850 or any person whose property is blocked under the E.O. This includes PdVSA.

OFAC has also made clear that it considers transactions sanctionable if they involve the exportation **to** Venezuela of diluents directly or indirectly. OFAC stated in FAQ 672 that “diluents (including, for example, crude oil and naphtha) play a key role in the transportation and exportation of Venezuelan petroleum, a primary source of revenue for the illegitimate and corrupt Maduro regime, which the United States seeks to restrict further.” OFAC reiterated this policy in GL 30 issued in August which authorizes certain port activities but expressly excludes from GL 30’s protection “any transaction or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela.”

Conclusion

While the U.S. sanctions against Venezuela are not a total embargo against the country, they are intended to be wide-spread and significant uncertainty remains in how aggressively the sanctions will be enforced to accomplish the end goal – the end of the Maduro regime. The sanctions remain in effect and present potential sanctions exposure for non-U.S. persons.

The General Licenses technically apply only to U.S. persons, but may by analogy approve the same transactions by non-U.S. persons. Additionally, some companies have obtained specific clearance from the U.S. authorities to engage in limited transactions involving Venezuela that might otherwise carry a risk of sanctions. Before relying on any general or specific clearance, it is imperative to examine a proposed transaction to ensure it clearly falls within the scope of the clearance.

Caution and effective risk assessment should continue to be exercised in dealings involving Venezuela.

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions against Venezuela, please feel free to contact the authors, Bill Juska at juska@freehill.com or Gina Venezia at venezia@freehill.com.

This Client Alert is only a general summary for informational purposes. It and its content are not intended to be and should not be used or construed as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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