

CLIENT ALERT: OFAC ISSUES GENERAL LICENSE 40

July 13, 2021

On July 12, 2021, the Office of Foreign Assets Control (OFAC) issued General License 40 authorizing certain transactions involving the exportation or reexportation of liquified petroleum gas to Venezuela.

General License 40

General License 40 takes effect on July 12, 2021, and contains the following relevant provisions:

Paragraph (a) authorizes until 12:01 a.m. eastern standard time on July 8, 2020, “all transactions and activities related to the exportation or reexportation, directly or indirectly, of liquefied petroleum gas to Venezuela, involving the Government of Venezuela, Petróleos de Venezuela, S.A. (PdVSA), or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by E.O. 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR).” Importantly, the scope of GL40 is limited to the exportation or reexportation of liquified petroleum gas **to** Venezuela, and GL40 does not make a similar authorization for the exportation or reexportation of liquified petroleum gas from Venezuela.

Paragraph (b) limits the scope of paragraph (a) and provides that General License 40 does not authorize “(1) Any payment-in-kind of petroleum or petroleum products; or (2) Any transactions or activities otherwise prohibited by the VSR, prohibited by any other part of 31 CFR chapter V, or involving any blocked persons other than PdVSA, any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, or any Government of Venezuela person that is blocked solely pursuant to E.O. 13884.”

Sub-part (1) of paragraph (b) makes clear that “swap” transactions wherein the Government of Venezuela or PdVSA receive LPG in exchange for petroleum or petroleum products are not authorized by General License 40.

Likewise, sub-part (2) of paragraph (b) makes clear that General License 40 does not authorize activities or transactions with Government of Venezuela entities other than PdVSA that have been designated to the SDN list pursuant to E.O. 13850 or any other applicable executive order. As noted in our prior Client Alert dated August 7, 2019, E.O. 13884 “blocked” the Government of Venezuela and any entity owned or controlled 50% or more by the Government of Venezuela. However, the blocking of a Government of Venezuela entity pursuant to E.O. 13884 does not mean that the entity is also designated to the SDN list. That said, a number of Government of Venezuela entities (such as PdVSA) have also been designated to

the SDN list in addition to being blocked pursuant to E.O. 13884. Sub-part (2) of paragraph (b) specifies that GL 40 does not authorize transactions or activities with any such Government of Venezuela entities other than PdVSA.

A full copy of General License 40 can be found [here](#).

FAQs 914 and 915

In conjunction with the issuance of GL 40, OFAC also issued Venezuela FAQs 914 and 915. FAQ 914 states as follows:

Q: Do non-U.S. persons risk exposure to U.S. sanctions for engaging in transactions and activities that would be authorized for U.S. persons pursuant to Venezuela General License (GL) 40?

A: No. Non-U.S. persons would not risk exposure under U.S. sanctions for engaging in activities or facilitating transactions or payments for such activities that would be authorized for U.S. persons pursuant to Venezuela GL 40.

FAQ 914 is important for purposes of non-U.S. shipowners as it makes clear that non-U.S. persons are able to engage in activities or transactions that are authorized with respect to U.S. persons under GL 40. This is consistent with OFAC's general approach to the application of general licenses to non-U.S. persons in that OFAC frequently takes the position that conduct authorized by a general license for U.S. persons would not be sanctionable if performed by non-U.S. persons even though they are not technically covered by the general license.

Similarly, FAQ 915 provides a definition of "liquefied petroleum gas" as used in General License 40 as follows:

Q: For purposes of Venezuela General License (GL) 40, what is liquefied petroleum gas?

A: For purposes of Venezuela GL 40, the term liquefied petroleum gas refers to the definition provided by the U.S. Energy Information Administration – a group of hydrocarbon gases, primarily propane, normal butane, and isobutane, derived from crude oil refining or natural gas processing. These gases may be marketed individually or mixed. They can be liquefied through pressurization (without requiring cryogenic refrigeration) for convenience of transportation or storage. The definition excludes ethane and olefins.

Non-U.S. shipowners (and other non-U.S. parties) looking to perform voyages involving the export of liquefied petroleum gas to Venezuela pursuant to GL 40 should ensure that the cargo being carried falls within the definition of "liquefied petroleum gas" as set forth in FAQ 915.

Conclusion

In our view, the issuance of General License 40 may indicate a slight softening of the Biden Administration's stance towards Venezuela and also towards PdVSA. That said, we continue to believe

that all transactions involving Venezuela carry risk, and the sanctions landscape with respect to this area remains very fluid.

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, please feel free to contact the authors, Bill Pallas at pallas@freehill.com, or Michael Dehart at dehart@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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