

United States Imposes Blocking Sanctions on the Government of Venezuela

August 7, 2019

Late on the evening of August 5, 2019, President Trump issued a new **Executive order** (the “**August 5 E.O.**”) imposing blocking sanctions on the Government of Venezuela (“**GoV**”).¹ The August 5 E.O. builds on prior limited sanctions imposed on the GoV,² as well as blocking sanctions imposed on certain GoV agencies and state-owned companies,³ and represents a substantial intensification of U.S. economic pressure on the Maduro regime. However, contrary to media reports, the order **does not** impose a complete embargo on the country of Venezuela.

In connection with the issuance of the August 5 E.O., on August 6, 2019, the Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) issued 12 **amended general licenses** (“**GLs**”) and 13 **new GLs**. The amendments to existing GLs largely serve to maintain in effect previously existing authorizations for transactions involving the GoV or certain GoV entities, including Petroleos de Venezuela, S.A. (“**PdVSA**”) in light of the new prohibitions imposed by the August 5 E.O. The new GLs mitigate the impact of the blocking of the entire GoV by authorizing certain types of transactions involving the GoV or GoV entities. OFAC also issued new and updated responses to **Frequently Asked Questions** (“**FAQs**”) regarding the Venezuela-related sanctions, as well as a **guidance document** concerning the provision of humanitarian assistance and support to the Venezuelan people.

Overview of the August 5 E.O.

Section 1(a) of the order blocks all property and interests in property of the GoV that are or come within the United States or the possession or control of a U.S. person. Consistent with other Venezuela-related Executive orders, the August 5 E.O. defines the GoV to include “the state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, any person owned or controlled, directly or indirectly, by the foregoing, and any person who has 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.”⁴

The order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate and block the property of any person determined:

- 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 (“**SDN List**”) maintained by OFAC whose property and interests in property are blocked pursuant to the order; or

¹ Executive Order, “Blocking Property of the Government of Venezuela” (August 5, 2019).

² See our prior blog posts “**Trump Administration Imposes Sanctions Targeting Controversial Venezuelan Digital Currency**” (March 18, 2018), and “**Issuance of Venezuela-related Executive Order and Associated General Licenses**” (August 25, 2017) for further details.

³ See our prior blog posts, “**U.S. Government Targets ‘Three Stooges of Socialism’ with New Measures Against Cuba, Venezuela, and Nicaragua**” (April 19, 2019), and “**OFAC Designates PdVSA**” (January 29, 2019) for further details.

⁴ August 5 E.O., § 6(d).

- 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 the order.⁵

Interestingly, the material support designation prong is narrower than is typical, referring to persons named on the SDN List rather than persons blocked pursuant to the order. This may signal an intent to use the prong as a form of secondary sanctions, to target non-U.S., non-Venezuelan entities providing support, goods, or services to listed persons. Consistent with this reading, the White House [fact sheet](#) regarding the August 5 E.O. notes that the order grants the Secretary of the Treasury the authority to “block all property of individuals who provide material support to the Maduro regime.” Also, it is important to note that persons owned or controlled by, or acting for or on behalf of, the GoV are blocked by operation of law under the definition of GoV, regardless of whether or not they are designated under the August 5 E.O. and listed on the SDN List.⁶

Section 2 of the August 5 E.O. also imposes U.S. visa restrictions on individuals designated pursuant to § 1(b), though for purposes of implementing those restrictions, excludes from the definition of GoV any United States citizen, any permanent resident alien of the United States, any alien lawfully admitted to the United States, or any alien holding a valid United States visa.⁷

The order exempts from its prohibitions transactions for the conduct of the official business of the U.S. Federal Government, as well as transactions related to the provision of articles such as food, clothing, and medicine intended to be used to relief human suffering.⁸ Statutory exemptions for travel-related transactions, transactions involving the importation or exportation of pre-existing information or informational materials, and personal communications also apply.⁹

General Licenses and Guidance

As noted above, OFAC issued 25 new and amended GLs in connection with the issuance of the August 5 E.O. While the GLs were not published until the morning of August 6, more than 24 hours after the purported effective date of the August 5 E.O., all were effective as of August 5, 2019.¹⁰ We provide below an overview of the new and amended GLs, highlighting those that are most significant.

New GLs

OFAC’s new GLs 21 through 33 authorize certain categories of transactions involving the GoV that are prohibited by the August 5 E.O. The GLs include a number of authorizations commonly issued in country sanctions programs, including authorizations for:

- Payment of services charges and transfers to blocked accounts ([GL 21](#));
- Provision of goods and services to Venezuela’s mission to the United Nations and its staff ([GL 22](#));
- Third-country diplomatic or consular funds transfers ([GL 23](#));

⁵ *Id.*, § 1(b).

⁶ See [FAQ #680](#).

⁷ August 5 E.O., § 6(d).

⁸ *Id.*, § 5.

⁹ 50 U.S.C. § 1702(b).

¹⁰ Although the August 5 E.O. was not made public until late in the evening of August 5, per § 10 of the order, it was effective at 9:00 a.m. eastern daylight time on August 5, 2019.

- Transactions related to telecommunications and mail ([GL 24](#));
- Exportation of services, software, hardware and technology incident to the exchange of communications over the Internet ([GL 25](#));
- Emergency and other medical services ([GL 26](#));
- Transactions related to intellectual property ([GL 27](#));
- Personal maintenance of individual U.S. persons in Venezuela ([GL 32](#)); and
- Overflight payments, emergency landings, and air ambulance services ([GL 33](#)).

In addition to these customary authorizations, OFAC issued new general licenses to authorize the following:

- **Wind-Down Transactions:** [GL 28](#) authorizes transactions and activities ordinarily incident and necessary to the wind-down of operations, contracts, or other agreements involving the GoV that were in effect prior to August 5, 2019. The authorization is valid through 12:01 a.m. eastern daylight time on **September 4, 2019**. GL 28 does not authorize debits to GoV accounts on the books of a U.S. financial institution, nor does it authorize transactions involving persons (including GoV entities like PdVSA or the Central Bank of Venezuela) blocked pursuant to other Venezuela-related executive orders. Prior GLs authorizing wind-down transactions with PdVSA and the Central Bank have expired, and were not extended or revived by this new GL.¹¹
- **Humanitarian Transactions by NGOs:** [GL 29](#) authorizes transactions involving the GoV prohibited by the August 5 E.O. or E.O. 13808 by non-governmental organizations relating to humanitarian projects to meet basic needs, democracy-building, education, non-commercial development projects directly benefiting the Venezuelan people, and environmental protection. Authorized transactions include processing and transfers of funds, and payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of Venezuela.
- **Port and Airport Operations:** [GL 30](#) authorizes transactions ordinarily incident and necessary to operations or use of ports and airports in Venezuela. The GL does not authorize transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela, and does not relieve exporters of the need to comply with requirements of other U.S. agencies, including the Department of Commerce's Bureau of Industry and Security.
- **Transactions with the Guaidó Government:** [GL 31](#) authorizes transactions involving the Venezuelan National Assembly and the Interim President of Venezuela, Juan Guaidó, which the United States has recognized as the legitimate government of Venezuela. The authorization extends to members and staff of the National Assembly, persons designated by the National Assembly to act on behalf of Venezuela, officials, designees, or representatives appointed by Guaidó to act for the Government of Venezuela, directors or officers of GoV entities appointed by Guaidó, staff of the foregoing, or any other person appointed or designated by the foregoing to act on behalf of Venezuela.

¹¹ See [FAQ 681](#).

Amended GLs

OFAC issued the following amended GLs: [2A](#), [3F](#), [4C](#), [7C](#), [8C](#), [9E](#), [10A](#), [13C](#), [15B](#), [16B](#), [18A](#), and [20A](#). Among other things, these GLs authorize certain transactions relating to GoV, PdVSA and CITGO debt or equity (GLs 2A, 3F, and 9E), transactions involving certain specific blocked entities, such as PDV Holding, CITGO, and Nynas A.B. (GLs 7C, 13C, and 18A), transactions by U.S. persons in Venezuela (GLs 8C, 10A, and 15C), and humanitarian transactions (GLs 4C, 16B, and 20A). In general, the amendments to these GLs are technical in nature, and serve to maintain in effect, without materially altering in scope, authorizations that previously existed in light of the additional prohibitions added by the August 5, E.O. OFAC did, however, make minor substantive changes to GL 2A (broadening it to include transactions involving PDV Holding as well as CITGO) and GL 4C (extending it to cover transactions related to software updates for medical devices).

All of the above new and amended GLs are subject to conditions and limitations, and persons relying on them should carefully review to ensure that their activities are consistent with all applicable requirements.

FAQs and Guidance

OFAC also issued a handful of new and updated FAQs in connection with the issuance of the August 5 E.O. and associated GLs. The FAQs are not especially illuminating. Perhaps most notably, [FAQ 680](#) emphasizes that U.S. persons are not prohibited from engaging in transactions involving the country or people of Venezuela, provided blocked persons (including the GoV) or any conduct prohibited by any other Executive order imposing sanctions measures related to the situation in Venezuela, are not involved. This FAQ also reiterates that the definition of GoV is self-executing, and that persons meeting the definition of Government of Venezuela and persons that are owned, directly or indirectly, 50 percent or more by the Government of Venezuela are blocked pursuant to the August 5 E.O., regardless of whether the person appears on the SDN List. Consistent with prior guidance regarding the application of OFAC's "50 percent rule," OFAC notes that, as a general matter, OFAC expects financial institutions to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked. With regard to other types of transactions where a financial institution is acting solely as an intermediary and fails to block transactions involving a sanctions target, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction to determine what, if any, regulatory response is appropriate.

In addition to these FAQs, as noted above, OFAC issued guidance on humanitarian transactions, which summarizes the various GLs and exemptions applicable to such transactions, and highlights the availability of specific licenses for humanitarian transactions that fall outside the scope of what is generally authorized.

Given the scope of the new sanctions and the role of the GoV in the Venezuelan economy, it is likely that the issuance of the August 5 E.O. will have at least some unexpected consequences, and that OFAC will need to issue updated guidance and GLs as implementation of the order proceeds. U.S. companies that choose to continue to do business in Venezuela should carefully evaluate the scope of their activities, and monitor sanctions-related developments, to ensure that they remain compliant. Similarly, non-U.S. companies should carefully consider their potential exposure to sanctions, particularly if they elect to continue to engage in transactions with persons named to the SDN List.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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