

United States Designates the Government of Venezuela for Blocking Sanctions

August 7, 2019

On August 5, 2019, the U.S. Administration imposed blocking sanctions on the Government of Venezuela (“GOV”) under a new executive order (“EO 13884”). Although named individual officials,¹ the Central Bank of Venezuela,² and Petróleos de Venezuela, S.A. (“PdVSA”)³ were already blocked entities under U.S. sanctions, now all Venezuelan government entities and state-owned enterprises are blocked entities.

Unless a license applies:

- all property and interests in property (broadly defined) of the GOV within U.S. jurisdiction are blocked; and
- all transactions within U.S. jurisdiction in which the GOV has an interest are prohibited.

GOV entities are now effectively barred from the U.S. economy and from U.S. dollar transactions.

However, the impact of this expanded designation has been significantly mitigated by general licenses issued by the Office of Foreign Assets Control (“OFAC”) of the U.S. Treasury. OFAC has amended [12 previously issued](#) Venezuela-related general licenses and issued [13 new](#) general licenses, along with issuing [new and revised guidance](#), to implement EO 13884. Importantly, treatment of pre-sanctions Venezuelan bonds and dealings with PdVSA remain essentially unchanged, and most activities previously authorized by OFAC general license remain authorized.

The imposition of blocking sanctions on the entire GOV marks a meaningful expansion of U.S. sanctions against Venezuela. While the practical impact of the designation may be limited by the general licenses and the fact that PdVSA and the Central Bank of Venezuela were already subject to blocking sanctions, the complexity of one of the most complex U.S. sanctions regimes has increased.

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¹ See, e.g., U.S. Dep’t of the Treasury, [Treasury Sanctions the President of Venezuela](#) (July 31, 2019).

² See U.S. Dep’t of the Treasury, [Treasury Sanctions Central Bank of Venezuela and Director of the Central Bank of Venezuela](#) (April 17, 2019).

³ See U.S. Dep’t of the Treasury, [U.S. Sanctions Venezuelan Oil Industry](#) (Jan. 29, 2019).



Parties involved in any dealings involving Venezuela face increased diligence requirements to ensure their activities remain authorized.

A summary of the new actions follows.

KEY TAKEAWAYS

At a high level, as a result of the designation of the GOV, amendments to existing general licenses, and issuance of new general licenses and guidance:

- As stressed by OFAC in [accompanying guidance](#), U.S. sanctions do not generally prohibit dealings with persons or entities located in Venezuela as long as no blocked persons or prohibited conduct is involved. EO 13884 only prohibits dealings with the GOV and state-owned enterprises.
- The Guaidó government is effectively excluded from the definition of “Government of Venezuela.” New [GL 31](#) authorizes U.S. persons to deal with the Guaidó government, its staff and appointees, and any directors of GOV entities appointed by Guaidó.
- As noted, dealings in the listed pre-sanctions GOV bonds that were previously exempted from restrictions on dealing in GOV debt remain permitted on the same terms under General License 3F (“[GL 3F](#)”). Previously permitted dealings in pre-sanctions debt and equity of PdVSA and its subsidiaries also continue under General License 9E (“[GL 9E](#)”). Any dealings in other GOV debt (such as loans and promissory notes)—including payments on that debt—are now prohibited within U.S. jurisdiction absent a license. OFAC did not otherwise amend or revise the terms of the existing GOV and PdVSA licenses relating to debt.
- We are aware of reports stating that as a result of the designation of the GOV, execution by creditors on the collateral underlying the PdVSA 2020 8.5 percent bonds (“[2020 Bonds](#)”) in case of default is no longer authorized. However, in the absence of further regulatory change or guidance from OFAC, we do not see a basis for this conclusion in the existing guidance. We analyze this further below.
- PDV Holdings, Inc. (“PDVH”) is now permitted to issue new debt and new equity under amended General License 2 (“[GL 2A](#)”). (Previously, the authorization was limited to CITGO Holdings, Inc. [“CITGO Holdings”] and its subsidiaries, so CITGO Holdings’ parent has now been added.) However, the prohibition under [EO 13835](#) on pledging equity of entities owned or control by the GOV as collateral for such debt remains in place.
- Generally, OFAC carried forward but did not expand previous authorizations under the other existing general licenses, including the general licenses permitting dealings with PdVSA and its subsidiaries in effect prior to the designation of the GOV.
- The remainder of the new general licenses generally track the exemptions and authorizations built into most broad OFAC sanctions programs, such as support for diplomatic missions, mail and telecommunications, emergency medical services, port and airport operations, transactions related to humanitarian activities of non-governmental organizations, and so on.

IMPACT OF GOV DESIGNATION

Effective August 5, 2019, the entire GOV is now designated for blocking sanctions under EO 13884. As a result, all of the GOV's assets within U.S. jurisdiction are frozen and all transactions within U.S. jurisdiction involving the GOV are prohibited, unless otherwise licensed or authorized. Section 6(d) of EO 13884 defines "Government of Venezuela" broadly to include the government, its political subdivisions, agencies, and instrumentalities, all SOEs, and those directly or indirectly controlled by, 50% or more owned by, or acting on behalf of the GOV. Transactions that seek to evade or avoid these prohibitions are also prohibited. These restrictions—including asset freezes—apply to all such entities even if not specifically designated for blocking sanctions or included on the Specially Designated Nationals and Blocked Persons List (the "SDN List").

As we have [explained before](#), OFAC takes a very broad view of the scope of these prohibitions. An act is within U.S. jurisdiction if it involves, directly or indirectly: (i) the participation of a U.S. citizen, green card holder, or company, (ii) activity taking place in whole or in part within the United States, or (iii) obtaining goods from or services performed in the United States for purposes of the transaction (including U.S. dollar interbank transfers or foreign exchange transactions, which generally clear through the U.S. financial system).

EO 13884 also authorizes designating additional persons for sanctions in the future as a result of connections with the Maduro regime. 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" the GOV or to have "acted or purported to act for or on behalf of, directly or indirectly" the GOV may also be subject to blocking sanctions under Section 1(b)(i)-(ii) of EO 13884 (and similar provisions exist with respect to other blocked Venezuelan persons and entities under the previous executive orders). While imposition of such sanctions is a discretionary political judgment by the U.S. Administration and is far from automatic, we note that designation authority under previous Venezuelan executive orders has been used to impose sanctions on foreign entities assisting the Maduro regime.⁴

PDVSA 2020 BONDS

Based on OFAC's existing guidance, it appears to us that the holders of the 2020 Bonds are still authorized to execute on their collateral. When PdVSA was [designated](#) as a blocked entity under [EO 13850](#) in January, OFAC issued a "Frequently Asked Question," [FAQ 595](#), which stated that execution on the 2020 Bond collateral was still authorized. FAQ 595 cited General License 5 ("[GL 5](#)"), which exempts the 2020 Bonds from the restrictions on pledging or transfer of equity collateral by the GOV contained in [EO 13835](#), and General License 9 ("[GL 9](#)"), which exempted all transactions "ordinarily incident and necessary to dealings" to dealings in pre-sanctions PdVSA debt (including the 2020 Bonds) from the blocking order against PdVSA under EO 13850. Since then, the only change has been that PdVSA and its subsidiaries are now also blocked under EO 13884 as part of the GOV. However, GL 9 has also been updated, and GL 9E exempts the same dealings in pre-sanctions PdVSA debt from EO 13884. It therefore appears that there is no change in position, and OFAC's previous guidance should remain valid. Moreover, when OFAC updated its FAQs in connection with EO 13884, it did not make any change to FAQ 595. Pending any further changes to the General Licenses or OFAC's guidance, therefore, we believe that execution on the collateral securing the 2020 Bonds in accordance with their terms remains authorized.

⁴ See U.S. Dep't of the Treasury, [Treasury Sanctions Russia-based Bank Attempting to Circumvent U.S. Sanctions on Venezuela](#) (Mar. 11, 2019).

AMENDED GENERAL LICENSES

OFAC amended unexpired Venezuela-related general licenses authorizing activity that would otherwise be prohibited by EO 13884 to provide the same authorizations, with one notable exception relating to PDVH. Specifically:

- [Amended GL 2A](#): OFAC expanded GL 2 to authorize PDVH and its subsidiaries to issue new debt with no maturity limit, notwithstanding the limitations of EO 13808, authority previously limited to CITGO Holding and its subsidiaries, so long as no other GOV entity is involved.
 - We note that this license does not permit PDVH or CITGO Holding to engage in activities prohibited under other relevant executive orders, such as selling, transferring, assigning, or pledging as collateral any equity interest in any entity in which the GOV has a 50 percent or greater ownership interest (which is prohibited under [EO 13835](#)).
- [Amended GL 3F](#): OFAC carried forward the authorized activities related to pre-sanctions bonds listed in GL 3F to include authorization under EO 13884. The list of bonds did not change.
- [Amended GL 4C](#): OFAC exempted specific categories of agricultural and medical goods to Venezuela from EO 13884, complementing the previous general license exempting financial transactions relating to such exports from previous executive orders.
- [Amended GL 7C](#): OFAC carried forward the exemption from blocking under EO 13850 for PDVH and CITGO Holding, as well as their direct subsidiaries, to include exemption under EO 13884. This license remains evergreen (renewing every 18 months). The previous authorization for these entities to purchase petroleum products from PdVSA has expired. This license does not authorize dealings with any other GOV entities, nor does it exempt PDVH or CITGO Holding from restrictions under other executive orders (such as the restriction on payment of dividends under EO 13808).
- [Amended GL 8C](#): OFAC carried forward authorization for certain entities to continue activities ordinarily incident and necessary to maintenance of contracts or other agreements with PdVSA that were in place prior to July 26, 2019, until October 25, 2019, to include authorization under EO 13884.
- [Amended GL 9E](#): OFAC carried forward the authorized activities related to pre-sanctions PdVSA debt and equity to include authorization under EO 13884. The scope did not change.
- [Amended GL 10A](#): Purchases of refined petroleum from PdVSA by U.S. persons in Venezuela remain authorized for personal, commercial, or humanitarian reasons; OFAC clarified that all related necessary transactions with the GOV are authorized (such as paying taxes and import duties).
- [Amended GL 13C](#): OFAC carried forward authorization for all dealings with Nynas AB through October 25, 2019.
- [Amended GL 15B](#): OFAC carried forward authorization for dealings with certain Venezuelan banks that are ordinarily incident and necessary to the activities of certain financial institutions through March 22, 2020. This license was expanded to authorize dealings with Banco del Tesoro, C.A. Banco Universal.
- [Amended GL 18A](#): OFAC carried forward authorization for transactions and activities ordinarily incident and necessary to maintain or operate Integracion Administradora de Fondos de Ahorro Previsional, S.A. (which is 50% or more owned by BNDES).

- [Amended GL 20A](#): OFAC carried forward authorization for dealings with Banco Central de Venezuela and the GOV for the official business of certain international organizations.

NEW GENERAL LICENSES

OFAC also provided new licenses addressing transitional issues, as well as a range of new general licenses generally paralleling exemptions found in other sanctions programs.

Transitional licenses

- [New GL 28](#): OFAC authorized, through September 4, 2019, all transactions and activities prohibited solely under EO 13884 that are 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. This license does not authorize any “debit to an account of the [GOV] on the books of a U.S. financial institution” or transactions otherwise prohibited under previous Venezuela-related executive orders.
- [New GL 31](#): OFAC has authorized U.S. persons to engage in all transactions prohibited solely by EO 13884 involving the Venezuelan National Assembly, the Interim President of Venezuela Juan Guaidó, those they have appointed or designated to act on behalf of the GOV, and/or any staff of the foregoing individuals. U.S. persons are also authorized to engage in all transactions involving any person appointed by Guaidó to the board of directors or as an executive officer of a GOV entity despite the prohibitions under EO 13884 and EO 13850, as amended. This license does not authorize dealings with the Venezuelan National Constituent Assembly convened by Nicolas Maduro.

Licenses implementing general policies

- [New GL 21](#): OFAC has authorized U.S. financial institutions to debit accounts blocked under EO 13884 or EO 13850 for normal service charges (as defined in GL 21). OFAC also will allow for U.S. financial institutions to internally move funds between blocked accounts provided that no transfer is made from an account within the United States to an account outside of the United States, and that such movements are solely among blocked accounts held in the same name.
- [New GL 22](#): OFAC has authorized the provisions of goods or services in the United States (and payment for such goods and services) to Venezuela’s mission to the U.N. provided that the goods or services are for the conduct of official business of the mission, their families, or persons forming part of their household, and are not for resale. The provision of goods and services in the United States for the personal use of the mission staff members is also authorized. GL 22 does not authorize dealing in real property or U.S. financial institutions to operate accounts for or extend credit to the mission.
- [New GL 23](#): OFAC has authorized U.S. depository institutions, U.S.-registered broker-dealers, 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.
- [New GL 24](#): OFAC has authorized all transactions involving persons solely blocked by EO 13884 (i) incident to the receipt and transmission of telecommunications and (ii) of common carriers incident to the receipt or transmission of mail and packages between the United States and Venezuela (although compliance with U.S. export control rules and other regulations is still required).

- [New GL 25](#): OFAC has authorized the exportation or re-exportation, directly or indirectly, from the United States or by U.S. persons to or involving the GOV of services, software, hardware, and technology incident to the exchange of communications over the internet (e.g, instant messaging, social networking). Only transactions with persons blocked solely pursuant to EO 13884 are authorized.
- [New GL 26](#): OFAC has broadly authorized the provision and receipt of nonscheduled emergency medical services under the Venezuela sanctions. Other medical services involving the GOV are authorized to the extent they are solely prohibited by EO 13884.
- [New GL 27](#): OFAC has authorized certain transactions in connection with a patent, trademark, copyright or other form of intellectual property protection in the United States or Venezuela otherwise prohibited by EO 13884 or blocking sanctions imposed under EOs 13692 or 13850. Notably, the prohibitions against transactions related to the Petro or any other digital currency of the GOV under EO [13827](#) remain in place; to the extent that the GOV requires payment for such transactions in Petro, they are still prohibited.
- [New GL 29](#): OFAC has authorized transactions involving the GOV prohibited by EO 13884 or EO 13808 that are ordinarily incident and necessary to certain humanitarian activities of nongovernmental organizations, including activities to meet basic human needs, democracy building, education, and environmental protection (among others).
- [New GL 30](#): OFAC has authorized all transactions and activities solely prohibited under EO 13884 that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela. OFAC clarified that GL 30 does not authorize transactions or dealings related to the exportation or re-exportation of diluents to Venezuela.
- [New GL 32](#): OFAC has authorized individuals who are U.S. persons residing in Venezuela to engage in transactions involving the GOV that are solely prohibited by EO 13884 that are ordinarily incident and necessary to their personal maintenance within Venezuela, including paying taxes and for utility services.
- [New GL 33](#): OFAC has authorized transactions involving the GOV and solely prohibited by EO 13884 necessary to provide air ambulance and related medical services. OFAC has also authorized 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, in each case that are prohibited solely by EO 13884.

UPDATED AND NEWLY ISSUED FAQs

The revised and new OFAC FAQs provide additional guidance on the impact of EO 13884 and concurrent revisions to and issuance of related general licenses. Many are technical amendments to reflect the existence of new blocking sanctions, and OFAC notes that the prohibitions of the various Venezuela-related executive orders must be read in conjunction (and we would note that it is important to examine closely which general licenses apply to which executive order prohibitions). Of the more substantive changes:

- [FAQ 519](#) was substantially revised to highlight that the Venezuelan people are not subject to comprehensive sanctions and thus U.S. sanctions do not prevent U.S. persons from exporting or re-exporting goods to Venezuela, so long as no sanctioned persons or prohibited activities are involved.

- Revised [FAQ 665](#) highlights that the designation of the GOV does not restrict the ability of U.S. persons to provide humanitarian assistance to Venezuelans, including through personal remittances.
- New [FAQ 679](#) explains that new general license 31 (“[GL 31](#)”) broadly authorizes dealings with the Government of the Interim President of Venezuela that would otherwise be prohibited by EO 13884, including all transactions involving Guaidó, his staff, officials or representatives appointed by Guaidó to act on behalf of the GOV, persons appointed by Guaidó to the board of directors of a GOV entity, and designees of the foregoing.
- New [FAQ 680](#) stresses that EO 13884 also prohibits dealings with persons directly or indirectly owned 50% or more by (or otherwise controlled by) the GOV, regardless of whether those persons separately appear on the SDN List. This guidance states that OFAC “expects financial institutions to conduct due diligence on their own direct customers” and related “ownership structures” to confirm such persons are not blocked under U.S. sanctions, but will consider the overall circumstances to determine if any regulatory response is appropriate where a financial institution acting solely as an intermediary fails to block a transaction involving a sanctions target.
- New [FAQ 681](#) clarifies that the wind-down period for activities with blocked GOV entities provided under new general license 28 (“[GL 28](#)”) does not authorize activities with entities blocked under previous executive orders, nor does it extend previously provided wind-down periods for activities involving those entities under general licensees that have expired.

The full set of Venezuela-related FAQs can be found [here](#).

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