

United States Ramps Up Sanctions Pressure on Venezuela with Issuance of Executive Order 13884

For more than a decade, the United States has employed sanctions in responsive to activities of the Venezuelan government and Venezuelan individuals. The US measures against the government of Venezuela were significantly extended in January 2019 as US imposed sanctions on Venezuela's state-oil company Petroleos de Venezuela, S.A. (PdVSA). On 5 August 2019, a further significant development took place with the issuance of the Executive Order (EO) 13884. The EO, entitled 'Blocking Property of the Government of Venezuela', is designed to further increase pressure on the Nicolás Maduro regime by blocking all property and property interests of the Government of Venezuela under US jurisdiction, and by authorizing the Department of Treasury to sanction additional persons who have assisted or supported the Government of Venezuela, including through the provision of goods or services. The full text of the EO can be read at <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13884.pdf> On August 6, 2019, the Department of Treasury's Office of Foreign Assets Control (OFAC) amended several existing general licenses and issued numerous general licenses authorizing a number of activities. OFAC also issued new frequently asked questions, FAQs no.665-681.

IMPACT ON US PERSONS

EO 13884, although not a full embargo, broadly prohibits virtually all US Persons from dealings and transactions with the Government of Venezuela, including all Venezuelan state-owned enterprises. US Persons includes US companies, their branches, US banks, citizens and green-card holders, as well as any person when they are physically located in the United States. Any funds, property, contracts or other property interests that come into the possession or control of US Persons must be blocked and reported to OFAC.

The EO includes a broad definition of the Government of Venezuela which is, as follows:

'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.'

OFAC FAQ no. 680, issued on August 6, clarifies that the above definition of the government of Venezuela expressly excludes the Venezuelan private sector. The FAQ states that without specific authorization from OFAC, US 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 (which includes PdVSA), even if those entities are not specifically named on the US Specially Designated Nationals and Blocked Persons List (SDN List).

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IMPACT ON NON-US PERSONS

EO 13884 also provides that any non-US person determined to have 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.

Regarding 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 EO, legal firm Freehill Hogan & Mahar LLC suggested that it would certainly seem conceivable that OFAC could make this determination and comments by US National Security Advisor John Bolton suggest that Executive Order 13884 could be construed broadly. The client alert issued by FHM can be read at [https://www.freehill.com/wp-content/uploads/2019/08/NYDOCS1-509645-v1-Client_Alert_on_Venezuela - Executive Order 138841.pdf](https://www.freehill.com/wp-content/uploads/2019/08/NYDOCS1-509645-v1-Client_Alert_on_Venezuela_-_Executive_Order_138841.pdf)

OUR RECOMMENDATION

Due to the broad reach of US sanctions and the punitive consequences of breaching this EO, both US and non-US persons should proceed with extreme caution when considering whether to engage in any business which could be deemed providing material assistance or goods/services in support of the Government of Venezuela or entities in which the Government of Venezuela owns, directly or indirectly, a 50% or greater interest (which includes PdVSA).

We also recommend clients to evaluate their current dealings involving Venezuela and conduct thorough due diligence to ensure that they are not at risk of breaching sanctions. If you have any queries, please do not hesitate to contact us.

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