



## International Trade & Regulatory ADVISORY ■

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### Venezuela Executive Order Regulatory Update

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On August 6, 2019, President Trump issued an [Executive Order](#) (E.O.) expanding the economic sanctions imposed against Venezuela. The new E.O. requires the blocking of all property and interests in property of the Venezuelan government currently in the United States, that come within the United States in the future, or that are or that will come within the possession or control of any U.S. person.

It should be noted that the E.O. takes an expansive view of what constitutes the “Government of Venezuela,” to expressly include not only the state and government of Venezuela, but also any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), the country’s national oil and natural gas company, and any person owned, controlled, or acting on behalf of the Venezuelan government.

Importantly, the E.O. differentiates between the Maduro regime, the target of these restrictions, and the government of Interim President Juan Guaido, with whom dealings are authorized under a General License granted by the Office of Foreign Assets Control (OFAC). However, as a practical matter, it remains to be seen whether banks and other institutions will be willing to undertake the enhanced due diligence necessary to distinguish between the competing administrations or whether they will simply deem all Venezuelan business too risky to justify continued engagement. In addition, the E.O. threatens to impose secondary sanctions against non-U.S. persons who are found to act on behalf of the Venezuelan government, or to have provided material support to Specially Designated Nationals (SDNs) designated pursuant to the E.O.

#### Exceptions

The new E.O. provides for exceptions to its prohibitions to allow for the provision of food, agricultural commodities, medicine, medical devices, and humanitarian items to the people of Venezuela, as well as non-commercial personal remittances, so long as the remittances flow through specified banks. These exceptions are detailed in 13 new General Licenses published concurrently with the new E.O. In addition, 12 existing General Licenses were updated to conform with the provisions of the E.O.

#### Comparison to Comprehensive Sanctions Programs

While many in the media, as well as some Trump administration officials, have cast these new restrictions as creating a comprehensive sanctions regime like those currently imposed on Cuba, Iran, Syria, North Korea, and the Crimea region

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of Ukraine, the Venezuelan E.O. does not impose a blanket prohibition on conducting business with individuals and companies in Venezuela. However, as a practical matter, an assessment of the risk versus possible profits associated with doing business in Venezuela may very well lead many banks, exporters, and other businesses to conclude that it is preferable to treat Venezuela like one of the officially, comprehensively sanctioned countries/regions. For example, among the key issues to consider, it may be difficult to confirm the absence of a 50 percent or greater Venezuelan governmental interest in private Venezuelan enterprises. Also, certain types of business transactions, even with private counterparties, may require transactions with government agencies or regulators, and managing compliance with the terms of 25 published General Licenses may not be something some businesses are comfortable undertaking. Although OFAC has issued General License 30 authorizing “all transactions and activities” involving the government of Venezuela otherwise prohibited by the E.O. that are “ordinarily incident and necessary to operations or use of ports and airports in Venezuela” – presumably to cover the normal governmental interactions and charges associated with imports and exports – the limits of such authorizations have not yet been tested.

## **Ensuring Compliance**

The increasingly complex tapestry of sanctions imposed against Venezuela illustrates the growing importance of strong Know Your Customer (KYC) and Customer Due Diligence (CDD) policies and procedures, not just for banks, but for anyone engaged in business related to Venezuela. Companies must take appropriate steps to review their risk exposure to possible sanctions violations and decide what policies and controls to implement to keep any Venezuelan business within the boundaries of applicable risk appetites. Additionally, as with other U.S. sanctions programs, OFAC’s 50 Percent Rule applies to these Venezuelan sanctions, so screening against the SDN List alone is not sufficient to ensure proposed transactions do not implicate a sanctioned party. Thorough understanding of counterparties’ ownership and business practices is crucial to the effective execution of risk-based policy decisions.

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