CLIENT ALERT

Lifting of Helms-Burton Title III Waiver and Sanctions on Cuba, Venezuela, Iran, and Nicaragua

APRIL 24, 2019

The Administration's focus on sanctions as a spear in the foreign policy toolbox has been in the spotlight of late. The last week has seen new sanctions targeting corruption in Nicaragua and human rights abuse and corruption in Venezuela; potential new restrictions on travel to Cuba and remittances to Cuba; potential litigation targeting businesses operating in Cuba; and the suspension of exemptions for Iranian oil imports. Any transactions relating to these jurisdictions – even if entirely outside of U.S. jurisdiction – should be treated with enhanced due diligence. Focus should be on source of funds, beneficial ownership of counterparties, assurances that the underlying transactions are legitimate and not designed to evade or avoid U.S. sanctions, and assurances that proceeds are not inappropriately funneled to or from state-owned enterprises.

We have addressed each action and its implications for U.S. and non-U.S. business below.

Cuba

On March 6, we reported that the U.S. Department of State had announced a limited exception to the suspension of Title III of the Cuban Liberty and Democratic Solidarity Act (also known as the Libertad Act or the Helms-Burton Act). Title III of the Libertad Act allows certain U.S. nationals to bring a lawsuit in federal court against any person who knowingly "traffics" in property confiscated by the Cuban government. This power has been suspended by every presidential administration since the Libertad Act was enacted in 1996. On April 17, Secretary Pompeo announced that the suspension of this power will be lifted on May 2, 2019. Once the suspension is removed, U.S. claimants will be able to sue both non-U.S. and U.S.-headquartered companies that "traffic" in property confiscated by the Cuban government on or after January 1, 1959. Pompeo announced the change in response to what the Administration deemed as a failed approach under prior administrations. In particular, Pompeo called out the Cuban regime for continuing to "deprive its own people of the fundamental freedoms of speech, press, assembly, and association." Pompeo also called out Cuba's role in undermining the security and stability in the Western Hemisphere.

In preparation for potential litigation, entities engaged in business (including licensed transactions) with Cuba should determine whether their activities constitute "trafficking" in confiscated property. This is described further in our prior briefing. Businesses should also analyze whether they should notify investors of this risk.

During a speech in Miami, National Security Advisor Bolton also announced that the Department of the Treasury would be restricting remittances to Cuba to $1,000 every three months; would be restricting licensed travel to Cuba; and would be eliminating the "u-turn" exception which allows U.S. financial institutions to process certain U.S. dollar-denominated transactions that originate and terminate outside of the United States but are cleared through the U.S. financial system. As of the date of this alert, the Office of Foreign Assets Control (OFAC) has not updated the Cuban Assets Control Regulations.

Iran

On April 22, 2019, the Secretary of State announced that the United States will no longer issue waivers for Iranian oil exports to jurisdictions that had benefited from such exemptions over the last year. Over the last year, eight jurisdictions had benefited and of those, five continue to be major importers of Iranian oil: China, India, Japan, South Korea, and Turkey. During the press briefing and follow-up questions, it was implied that a wind-down period may be permitted but we would anticipate financial institutions (including banks and insurers) and the maritime industry will respond by distancing themselves even further from any transactions relating to Iranian oil exports. The potential for secondary sanctions on foreign- to-foreign transactions is looming and businesses likely are scrambling to exit Iranian oil-related contracts.

Venezuela

April 17 brought Treasury action targeting the Central Bank of Venezuela and former Venezuelan government official Iliana Josefa Ruzza Terán. Ruzza Terán, a director of the Central Bank, is on the Board of Directors of the Venezuelan Department of Foreign Commerce (CORPOVEX). She is also Vice President of Finance of Petróleos de Venezuela, S.A. (PdVSA).

Treasury announced the designations as a means through which to prevent the Maduro regime from plundering the Central Bank "to enrich corrupt insiders." Clients are reminded of the need for integrated compliance programs designed to examine transactions for corruption, money laundering, and sanctions exposure.

To assist the private sector in implementing these new designations, OFAC issued two new General Licenses (GLs), amended five GLs, and issued a Frequently Asked Question (FAQ).

OFAC issued General License 19 (GL19) – "*Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts Involving Banco Central de Venezuela*" – and General License 20 (GL20) – "*Authorizing Official Activities of Certain International Organizations Involving Banco Central de Venezuela.*" GL19 authorizes transactions and activities that are necessary for the wind-down of operations relating to the Central Bank of Venezuela. GL19 does not authorize any debit account to the Central Bank of Venezuela on the books of a U.S. financial institution. GL20 authorizes specific international organizations (including the Organization of American States (OAS) and the World Bank) to conduct certain official business.

The following GLs were amended to include the Central Bank of Venezuela:

- General License 3D(GL3D) - "Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds";
- General License 4A(GL4A) - "Authorizing New Debt Transactions and Transactions involving Certain Banks Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices or Replacement Parts and Components";
- General License 9C(GL9C) - "Authorizing Transactions Related to Dealings in Certain Securities";
- General License 15(GL15) - "Authorizing Transactions Involving Certain Banks Prohibited by Executive Order 13850 for Certain Entities"; and

- General License 16(GL16) - "Authorizing Maintenance of U.S. Person Accounts and Noncommercial, Personal Remittances involving Certain Banks."

The FAQ clarifies that humanitarian aid and remittances to Venezuela are still permitted. The FAQ also addresses the changes made to the General Licenses.

To learn more on previous Venezuela-related sanctions, see our previous briefings: Navigating Venezuela Sanctions: Designation of BANDES; Navigating Venezuela Sanctions: Addition of PdVSA to the SDN List and New General Licenses.

Nicaragua

On April 17, the U.S. Departments of State and Treasury sanctioned the son of Nicaraguan President Daniel Ortega and Vice President Rosario Murillo along with the Nicaraguan Banco Corporativo SA (BanCorp). The sanctions were imposed pursuant to Executive Order 13851, which targets financial operations and Ortega's support networks. Treasury's press release emphasized Ortega's regime and its focus, since April 2018, on suppressing political opposition and resulting in the death of 325 persons, the injury of more than 2,000, the imprisonment of hundreds of political and civil society actors, and over 42,000 Nicaraguans seeking refuge in Costa Rica.

E.O. 13851 - "*Blocking Property of Certain Persons Contributing to the Situation in Nicaragua*," establishes criteria for blocking property of persons determined by OFAC to be responsible for or complicit in–inter alia–serious human rights abuse or corruption in Nicaragua, as well as actions or policies that undermine democratic processes or institutions or that threaten the peace, security, or stability of Nicaragua.

The recently designated entities build on U.S. sanctions targeting ALBANISA, a subsidiary of PdVSA. As with the sanctions targeting Venezuela the recent designations also highlight the need for an integrated compliance program addressing not only sanctions regulations but also anti-corruption/anti-bribery and anti-money laundering, as BanCorp and Laureano have been linked to money laundering and corruption in recent press articles, including the April 17 Treasury press release. In particular, BanCorp was ostensibly used to evade U.S. sanctions on PdVSA, and Laureano was allowing pay-to-play access for investment opportunities in Nicaragua.

These designations are the second set of designations pursuant to E.O. 13851. The sanctions issued were sparked by the Nicaraguan Government crackdown on the peaceful protests that began on April 19 and the political unrest that followed.

U.S. and non-U.S. businesses, when faced with exposure to entities subject to the jurisdiction of Nicaragua, should treat transactions as subject to enhanced due diligence, focusing on source of funds, beneficial ownership structures of counterparties, and whether the underlying business is in fact legitimate.
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