



Unique Challenges for U.S. Companies After New Designation of the Government of Venezuela

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After the publication on August 5, 2019, of the new Executive Order (E.O.) 13884 – “Blocking Property of the Government of Venezuela,” which blocks all property and interests in property from the Government of Venezuela, U.S. and foreign companies have struggled to interpret its scope. That struggle has led many to submit specific license applications or requests for interpretative guidance from the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC).

In particular, the new sanctions prohibiting U.S. companies from dealing with the Government of Venezuela also contain a large number of general licenses –similar to those provided in other, more comprehensive embargo programs. The scope of the general licenses has been the subject of practitioners and industry debate as they try to determine the limits of such authorizations. For example, General License 28 (GL 28) “Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts Involving the Government of Venezuela” is narrowly written in comparison with other wind down licenses issued under the Ukraine-Russia related sanctions program, including, General License 5 authorizing the *divestiture or transfer* to a foreign person of the U.S. person’s share of ownership, and General Licenses 14-E, 15-F, and 16E, authorizing transactions ordinarily incident and necessary to the *maintenance of operations, contracts or other agreements*. GL 28 is, rather, limited to the transactions that relate to the wind-down of operations and does not specifically mention authorization to engage in transactions for the maintenance of such contracts.

In addition, U.S. companies have experienced challenges with accomplishing a total wind-down of Venezuela-related operations involving the Government within the time limit imposed by GL 28 (*i.e.* through 12:01 a.m. eastern daylight time, September 4, 2019.)

Another major challenge for U.S. companies is the lack of a broad general license authorizing all activities (otherwise prohibited) that are ordinarily incident and necessary to conduct the activities authorized by general licenses. The lack of this general license, normally available in other sanctions regimes, limits the usefulness of some of the newly issued and revised general licenses because many U.S. persons cannot conduct authorized transactions without dealing with the Government of Venezuela for transactions incident to the authorized activity (*e.g.*, dealing with the Government of Venezuela for the payment of taxes, request of permits, *etc.*). This is also the case for U.S. companies dealing exclusively with the private sector in Venezuela because the government presence is such that most of the transactions – even if purely private- involve certain dealings or interactions with the government.

Finally, U.S. persons – even if dealing exclusively with the private sector in Venezuela - are prohibited from making payments into government-owned banks, which account for the majority of the financial sector in Venezuela. These banks have not been specifically designated by OFAC, but operate as what is sometimes referred to as a ‘Shadow-Specially Designated Nationals (SDNs)’ per the application of the 50% ownership rule and based on the new E.O.’s definition of the Government of Venezuela. Consistent with prior OFAC guidance, newly issued OFAC Frequently Asked Questions ([FAQs](#)) regarding Venezuela sanctions reiterate that financial institutions should conduct its own customer due diligence – including identifying ownership structure – to ensure that none of the parties involved in a transaction are SDNs. U.S. companies and financial institutions will therefore have to block and report such payments.

U.S. companies facing these, and several other challenges as a result of the new sanctions, need to have answers and may need additional authorization or specific guidance from OFAC. Many must do so before the license expires to wind-down operations involving the Government of Venezuela on September 4th.

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