



Soundings

US expands Venezuelan sanctions

The US has demonstrated an intention to continue strengthening sanctions against Venezuela with the issuance of a new Executive Order which covers any trade with the Venezuelan government and also impacts non-US entities. Caution is highly recommended in relation to any transactions with Venezuela.

Background

On 28th January, 2019, Executive Order 13857 was issued, adding Petroleos de Venezuela SA (“PdVSA”) to the list of Specially Designated Nationals (“SDNs”) issued by the Department of Treasury’s Office of Foreign Assets Control (“OFAC”) subject to a brief wind-down period. Following the sanctioning of several non-US ships and owners during April, 2019 for having “operated in the oil sector the Venezuelan economy” by engaging in the petroleum trade between PdVSA and Cuba, it became clear that non-US persons were at risk of being sanctioned by the US authorities.

Executive Order 13884

On 5th August, 2019 President Trump issued a new Executive Order, number 13884 (“EO 13884”), the effect of which is to further tighten sanctions relating to Venezuela. The EO has three main provisions:

Firstly, the new EO blocks the assets of the government of Venezuela and related entities in the US, or in the possession and control of any US person. This essentially freezes all assets of the government of Venezuela in the US and prevents the government of Venezuela, which includes the

US National Security Advisor, Mr John Bolton: *“We are sending a signal to third parties that want to do business with the Maduro regime: Proceed with extreme caution.”*

Central Bank of Venezuela and PdVSA, from using the US financial system without specific authorisation from OFAC.

Secondly, under EO 13884, US persons are prohibited from engaging in any transactions with the government of Venezuela, its agencies, or any entity in which the government has more than 50% ownership or control, even if those entities are not explicitly named on the SDN list.

Thirdly, under EO 13884, non-US persons may have their assets in the US blocked if they are determined: *“to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person [on the SDN list] whose property and interests in property are blocked pursuant to this order.”*

It seems likely that the US authorities will implement the EO so as to freeze the assets of those persons or entities which continue to do business with the government of Venezuela, which is defined to include PdVSA and any other company owned or controlled by it. There is also a risk that the US could expand its list of SDNs to include such persons or entities which continue to deal with the Venezuelan government.

Licences and wind-down period

OFAC amended several existing general licenses, confirming their applicability to EO 13884, and issued thirteen new licenses providing certain limited exemptions to the prohibitions under EO 13884.

Some of these general licenses exempt from sanctions the provision of emergency medical services and activities to support humanitarian projects including the provision of food, clothing and medicine to be used to relieve human suffering. A licence also permits transactions and activities that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela. The latter licence does not authorise any transactions or dealings related to the export or re-exportation of diluents to Venezuela.

General license 28 provides that: *“all transactions and activities ... that are ordinarily incident and necessary to the*

wind down of operations, contracts, or other agreements involving the Government of Venezuela that were in effect prior to August 5, 2019 are authorized through 12:01 am eastern daylight time, September 4, 2019.”

Thus the US authorities are permitting existing contracts to be wound down but this licence does not permit parties to enter into new contracts after the date of EO 13884 and does not authorise any debit to an account held by the government of Venezuela at a US financial institution.

Comment

Although it seems that Venezuela's private sector has largely been spared, EO 13884 will undoubtedly have a serious impact on the government of Venezuela and on the ability of US persons to engage in transactions with that government and its related entities.

For non-US persons, it seems conceivable, though the position is unclear, that the provision of ocean transportation for or on behalf of the government of Venezuela or PdVSA could be considered as either material assistance or support of an entity whose property is blocked under the EO. A similar provision was contained in earlier executive orders but it is possible that the US authorities will now take an increasingly stringent approach to the implementation of its sanctions regulations relating to Venezuela.

US National Security Advisor Mr John Bolton, has stated with respect to the new EO:

“We are sending a signal to third parties that want to do business with the Maduro regime: Proceed with extreme caution. There is no need to risk your business interests with the United States for the purposes of profiting from a corrupt and dying regime.”

What is clear is that all Members, US and non-US alike, should exercise caution in relation to any trade with Venezuela. Specialist sanctions advice should be sought in relation to the winding down of any existing transactions and entering into any new business with any Venezuelan entity.

Members are welcome to contact the Managers directly for any further advice and guidance.

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