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CLIENT ALERT

United States Ramps Up Sanctions Pressure on Russia and Venezuela

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Over the course of the last week, the United States has escalated its sanctions programs targeting Russia and Venezuela. It began by implementing the long-delayed second round of sanctions on Russia mandated by the Chemical and Biological Weapons Act of 1991 (CBW Act) on Saturday, August 3, 2019. While the CBW sanctions will have a limited impact on most companies, the same cannot be said of the issuance of Executive Order 13884 ("E.O. 13884") on Monday, August 5, 2019, which designated the Government of Venezuela and all entities that it owns or controls as "blocked." Full details on each action are below.

Russia: Implementation of CBW Sanctions

The United States CBW-related sanctions have been almost a year in the making. The CBW Act requires the United States to impose certain prescribed sanctions when it concludes that a foreign government has used chemical weapons in violation of international law or in lethal form against its own nationals. As a result, after concluding on August 8, 2018 that the Russian Federation had sponsored the use of chemical weapons as part of the attempted assassination of its former spy in Salisbury, U.K., the United States issued a first round of CBW-related sanctions. These measures became effective on August 27, 2018, but had limited commercial impact as the Administration either waived their implication (with respect to sanctions cutting off foreign assistance), established limits for certain activity that was largely not occurring (*e.g.*, foreign military financing to Russia or U.S. government financial assistance to Russia), or imposed restrictions that largely duplicated existing requirements (*e.g.*, export licensing requirements on items controlled for national security purposes).

The CBW Act required the imposition of a second round of sanctions unless the Administration could certify within 90 days that the identified country has ceased its use of chemical weapons. On November 9, 2018, the State Department publicly confirmed that it could not make that certification, requiring the imposition of sanctions.

Those sanctions were finally implemented on August 3, 2019. Specifically, the United States imposed three related measures:

- **Non-Ruble Denominated Sovereign Loans**: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a new "CBW Act Directive" that prohibits a "U.S. Bank" from: (1) participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign; or (2) lending non-ruble denominated funds to the Russian sovereign. "U.S. Bank" is defined broadly, including not only banks, but also securities brokers and dealers, commodity futures and options brokers, and U.S. affiliates of any of the foregoing. "Russian sovereign" is defined to mean any ministry, agency, or fund of the Russian Federation, including the Central Bank of Russia and the Ministry of Finance, but not state-owned enterprises.
- **Export Restrictions**: The United States announced new export licensing restrictions on Department of Commerce-controlled goods and technology. However, to date, the specific restrictions have not yet been identified.

- **Multilateral Financial Institutions**: Finally, the United States announced its intention to oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions, such as the World Bank or International Monetary Fund.

These requirements will only take effect upon publication in the Federal Register, expected on or after August 26, 2019. Simultaneously, OFAC issued a series of Frequently Asked Questions to provide guidance on the new requirements.

Venezuela: Blocking of the Entire Government of Venezuela

On August 5, 2019 the U.S. Administration re-escalated its Venezuela sanctions program issuing an Executive Order, Blocking Property of the Government of Venezuela (E.O. 13884) that designates the entire Government of Venezuela, including everything it owns or controls (collectively the GoV), for blocking sanctions.

This action represents a continued escalation of the U.S. Venezuela sanctions program. While that program has been in place since March 2015, it has strengthened in intensity since the United States recognition of Juan Guaidó as the "Interim Leader" of Venezuela on January 26, 2019. Since then, the United States has designated a series of key GoV entities, including: Petróleos de Venezuela, S.A. (PdVSA) (January 28, 2019); CVG Compañía General de Minería de Venezuela CA (Minerven) (March 19, 2019); Banco de Desarrollo Económico y Social de Venezuela (BANDES) and four of its subsidiaries (March 22, 2019); and the Central Bank of Venezuela (April 17, 2019).

The GoV as a whole had been subject to a limited set of debt, equity, and securities related restrictions since August 2017. E.O. 13884 now imposes comprehensive blocking sanctions on the GoV and its many owned and controlled entities. As a result, U.S. Persons are now prohibited from engaging in virtually all transactions with the GoV and these entities unless a general license (GL) applies.

OFAC has issued 13 new GLs and made amendments to 12 existing GLs to mitigate the impact of E.O. 13884. Below is a selection of a few of the key amendments and new GLs specific to the new action:

- **Wind-Down Authorization** (GL28): OFAC issued a comprehensive 30-day wind-down authorization for all activities pursuant to operations, contracts, or other agreements, that were in place as of August 5, 2019, with the newly-designated elements of the GoV through September 3, 2019.
- **Transactions with the Interim President and Designees** (GL31): OFAC authorized U.S. Persons to engage in transactions involving the Government of the Interim President of Venezuela (Juan Guaidó), including transactions with (a) the Venezuelan National Assembly, (b) any official, designee, or representative appointed or designated by Juan Guaidó to act on behalf of the Government of Venezuela and their staff, (c) any ambassador or other representative to the United States or to a third country appointed by Juan Guaidó, and their staff, and (d) any person appointed by Juan Guaidó to the board of directors (including any ad hoc board of directors) of a Government of Venezuela entity.
- **Continued Authorization for Several PdVSA Subsidiaries**: The existing authorizations for (a) PDV Holding, Inc., (b) CITGO Holding, Inc., and (c) Nynas, A.B. were preserved through updated GLs 2A, 7C, 9E, and 13C. The authorizations related to the former two entities are effectively permanent until rescinded, while the Nynas GL currently expires on October 25, 2019.

- **Conforming Changes**: OFAC updated a series of GLs to extend them to apply to the prohibitions in E.O. 13884, including the authorization related to: (a) agricultural commodities, medicine, and medical devices (GL 4C); (b) bonds issued prior to August 25, 2017 by GoV entities (GL 3F); (c) Chevron, Halliburton, Schlumberger, Baker Hughes, and Weatherford activities in Venezuela (GL 8C); and (d) purchases of refined petroleum in Venezuela (GL 10A).

In addition, while E.O. 13884 does not constitute an embargo—insofar as OFAC has not categorically prohibited the export of goods or services to, or the import of goods or services from, Venezuela—several of the 13 new GLs largely parallel the types of GLs that OFAC typically includes in its country-based embargo programs, including GLs for:

- Venezuela's Mission to the United States (GL 22).
- Third-country Diplomatic and Consular Funds Transfers (GL 23).
- Certain Transactions Involving the Government of Venezuela Related to Telecommunications and Mail (GL 24).
- Exportation of Certain Services, Software, Hardware, and Technology Incident to the Exchange of Communications over the Internet (GL 25).
- Certain Transactions Related to Patents, Trademarks, and Copyrights (GL 27).
- Certain Transactions Related to Personal Maintenance of Individuals who are U.S. Persons Residing in Venezuela (GL 32).
- Certain Overflight Payments, Emergency Landings, and Air Ambulance Services over, and in, Venezuela (GL 33).

Simultaneously, OFAC issued a series of new Frequently Asked Questions and a new document titled "Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People." The latter document reaffirms the U.S. commitment to supporting humanitarian assistance, and notes various general licenses that may assist humanitarian activities (including, e.g., for agricultural commodities, medicine, and medical devices in GL 4C and for certain international organizations such as the United Nations and the International Federation of the Red Cross and Red Crescent societies), along with a new statement of favorable licensing policy for activities that promote humanitarian assistance. At the same time, it reiterates that any such activities must meet the terms of the applicable general licenses. This is a relevant caveat given that at least one recent OFAC designation has targeted a corrupt network that was seeking to abuse the Venezuelan food subsidy program, Los Comités Locales de Abastecimiento y Producción (CLAP).

Practical Considerations

The U.S. Congress is debating several pieces of legislation that would increase pressure on both Russia and Venezuela. Companies doing business in, or exposed to commercial risk, in either country therefore may wish not only to evaluate the impact of the changes described above, but also (1) actively monitor for additional potential change over the next few weeks or months; and (2) ensure that new contracts with exposure to these countries provide for the possibility of new restrictions.

Associate Nimrah Najeeb also contributed to this alert.

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