

OFAC Issues Covid-Related General Licenses for Iran, Syria, and Venezuela

Authorizations enable broad range of exports and related transactions to counter the global pandemic

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) yesterday issued general licenses for Iran, Syria, and Venezuela, broadening the scope of goods and services related to COVID-19 treatments United States persons are authorized to export to those countries. Given the expansive definition of "United States persons" in the applicable OFAC regulations, this development has a broad jurisdictional scope.

- OFAC issued General License N for Iran, General License 21 for Syria, and General License 39 for Venezuela

- General licenses are self-executing, meaning that the transactions they authorize can proceed without obtaining authorization from the agency provided all the conditions are met

- Authorizations expire on June 17, 2022

- OFAC also issued five "frequently asked questions" ("FAQs") clarifying certain aspects of these general licenses

- OFAC has also clarified that third country entities involved in the transfer of similar goods or services to these three countries will not risk exposure to U.S. sanctions

Background

The authorizations OFAC issued yesterday are significant not only in the scope of goods and services they authorize for export to the three countries, but also due to the broad authorizations they afford on logistical aspects of such exports, such as payments and shipments. As each of these countries are subject to different sanctions regimes and frameworks for humanitarian exports, the text and scope of the general licenses vary.

OFAC's issuance of the general licenses is also noteworthy as it signals a gradual albeit significant shift in U.S. policies on COVID-19 related treatment and supplies since April 2020, when the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) issued a Temporary Final Rule (TFT)

barring the export from the United States of medical equipment including industrial N-95 respirators, personal protective equipment (PPE) surgical masks, and certain syringes in response to the coronavirus pandemic. While FEMA lifted these restrictions this past May, U.S. persons were still barred from exporting many COVID-19 related goods and services to countries subject to broad sanctions, such as Syria, Venezuela, and Iran as such exports were not covered under general humanitarian exemptions for these nations.

Iran

Transactions barred by the comprehensive Iranian Transactions and Sanctions Regulations, 31 CFR Part 560 (ITSR) are now permitted under General License N if they involve the:

- (1) exportation of goods, services and technology for addressing COVID-19 such as vaccines, ingredients for vaccines, and containers for storing them, as well as testing kits, and field hospitals and mobile units; or
- (2) importation of goods from Iran to the United States related to addressing COVID-19 originally exported to Iran that are broken, defective, non-operational, or otherwise pose a safety hazard.

Exports by U.S. persons of items formerly requiring specific licenses, such as High Efficiency Particulate Air (HEPA) Filtration Systems and HEPA filters no longer require specific licenses, provided certain conditions apply. Other items not covered by existing humanitarian exemptions for Iran are also included, such as sanitizers. Certain COVID-19 testing or vaccine manufacturing equipment, for example, is now permitted for exportation to Iran that would not have previously been allowed under humanitarian exemptions.

As detailed further below, ancillary services are permitted under General License N. Additionally, transactions with the Central Bank of Iran (CBI) and the National Iranian Oil Company (NIOC) are now permitted if they relate to items either of the above range of activities. This is a key development of these state-run entities' traditional involvement in facilitating Iran's procurement of humanitarian items. Furthermore, certain financial institutions traditionally barred from involvement in U.S. humanitarian exports are now exempt for such exports as the limitations for such exports prescribed in the ITSR do not apply to this general license.

General License N notes that even under these exemptions, goods exported under this General License must be designated as EAR99 (i.e., not subject to U.S. dual-use restrictions) under the Export Administration Regulations (the "EAR") and cannot be listed on any multilateral export control regime, nor can they be exported to the CBI, the NIOC, Iran's military or law enforcement apparatus, or producers of chemical or biological weapons or weapons of mass destruction.

Syria

In issuing General License 21 to the Syrian Sanctions Regulations, 31 CFR Part 542 (the "SySR"), OFAC has now permitted activities formerly barred under the SySR if they relate to the exportation, reexportation, sale or supply of services to Syria related to the treatment, diagnosis, and prevention of COVID-19. While jurisdiction to export medical items to Syria traditionally falls under the Bureau of Industry and Security (BIS) and not OFAC, OFAC has issued a general license permitting these transactions. Licenses are not required for EAR99 exports to Syria of food, medicine and medical supplies, provided the end users and related parties are not sanctioned.

Transactions with blocked entities such as the Government of Syria, Polymedics LLC (a wholesaler of machinery and equipment in Syria), and Letia Company (a manufacturer of medical and dental instruments and supplies owned by a sanctioned Syrian official and his wife) or companies owned by these entities are also permitted under General License 21 if they relate to addressing COVID-19 and do not involve exporting goods to the military, intelligence organizations or law enforcement purchasers in Syria or unblock blocked Syrian property. Ancillary services such as providing logistics and operations assistance to companies in Syria are also now allowed, including to the above-named blocked entities.

Venezuela

Although Venezuela is not subject to a country-wide embargo like Iran and Syria, sanctions and limitations on certain key parties may have, until today's General License, hindered such exports. General License 39 permits U.S. transactions with the Government of Venezuela related to addressing COVID-19. U.S. persons were previously prohibited from engaging in transactions with the Venezuelan government under Executive Order (E.O.) 13808 (Aug. 27, 2017), E.O. 13857 (Jan. 25, 2019), and E.O. 13884 (Aug. 5, 2019).

Three banks formerly sanctioned pursuant to E.O. 13850 (Nov. 1, 2018) are now permitted to engage in transactions with U.S. persons if the transactions relate to addressing COVID-19. These banks are Banco Central de Venezuela (BCV), Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), or any entity in which BCV, Banco de Venezuela, or Banco Bicentenario del Pueblo owns 50 percent or greater interest. In other words, dealings with such entities involving authorized COVID-19 related exports are permitted subject to certain requirements.

The exceptions to General License 39 resemble those for General License 21. Transactions are still prohibited with the Venezuelan government or the aforementioned banks if they export goods to the military or law enforcement in Venezuela, involve transactions with *Petróleos de Venezuela, S.A. (PdVSA)*, *Banco de Desarrollo Económico y Social de Venezuela (BANDES)*, or *Banco Bandes Uruguay S.A. (Bandes Uruguay)* or entities in which these companies own a 50 percent or greater interest.

Ancillary services are also permitted as they relate to addressing COVID-19, including processing and transfer of funds, taxes, fees, and import duties, purchase or receipt of permits, licenses, or public utility services, obtaining of insurance and arrangement of financing and payment. These permissions to engage in payment and other financial transactions differ drastically from what OFAC typically allows in transactions with Venezuela.

Key Takeaways

The general licenses issued yesterday are independent from already-existing humanitarian-related authorizations for exports of agricultural commodities, food, medicine and medical devices. Those humanitarian exemptions and their respective requirements remain in place. OFAC FAQs 907-909 provide an illustrative list of the items and services permitted for export by these General Licenses, and include items previously banned despite humanitarian exemptions.

FAQ 910 specifies that U.S. financial institutions are authorized to process these transactions and may rely on the originator of the funds (in other words, the Syrian, Venezuelan, or Iranian financial institution) to provide proof of compliance with the General Licenses for due diligence purposes.

A sound compliance approach will consider the interplay between the BIS and OFAC on some of these exports. For example, some vaccines are not EAR99 and are considered dual use. Medical exporters, as well as humanitarian groups such as non-governmental organizations and charities, should take particular care to understand the scope, nuances, and limitations of these general licenses. As these authorizations are limited in time and scope, exporters and related parties should take care that all transactions fully comply with all applicable requirements.

Special thanks to Summer Associate Dominique Rouge for her assistance in preparing this Client Alert.



Farhad R. Alavi
Partner
falavi@akrivelaw.com
+1.202.686.4859

This Client Alert is intended solely for informational purposes and should in no way be construed as legal advice. If you have any questions or are unclear on any of the subject matters addressed or discussed on this Client Alert, please consult a licensed legal professional.