

E-ALERT | International Trade Controls

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U.S. TREASURY DEPARTMENT AMENDS AND EXPANDS GENERAL LICENSE FOR PERSONAL COMMUNICATIONS DEVICES, SOFTWARE, AND SERVICES TO IRAN

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") issued new [General License D-1](#) under the Iranian Transactions and Sanctions Regulations ("ITSR," 31 C.F.R. Part 560) on February 7, 2014, to expand the scope of a prior similar authorization for the export to Iran of a wide range of personal communication devices, software, and services. In conjunction with the amended General License, OFAC also released guidance in the form of [Frequently Asked Questions](#) ("FAQs").

General License D-1 replaces General License D, which was issued on May 30, 2013. Our June 13, 2013 [E-alert](#) concerning the prior General License D identified a number of apparently unintended gaps in the scope of that General License that limited its usefulness, and that potentially created compliance traps for the unwary. In response to feedback from industry, General License D-1 now fills those gaps in license authority that we identified in June, and provides clearer guidance to exporters on the scope of items that may be exported to Iran subject to necessary compliance measures.

As discussed below, General License D-1 expands the authorization to export personal communications devices, software and services to Iran, but also imposes certain restrictions. Exporters should be aware of the scope and limitations and conditions of General License D-1 to ensure compliance with OFAC regulations.

I. BACKGROUND ON THE NOW-SUPERSEDED GENERAL LICENSE D

As part of the Obama administration's policy to encourage and advance Internet freedom in Iran, OFAC issued General License D in May 2013 to authorize U.S. persons to export a range of devices, software, and services that support personal communication over the Internet. This included fee-based Internet communications services and related software and hardware for personal use by the Iranian people, building on an existing 2010 general license embodied in ITSR § 560.540 that authorized the export of no-cost personal communications services and software.

General License D authorized for export services such as instant messaging, chat and e-mail, social networking, photo and video sharing, web browsing, and blogging. To facilitate these services, General License D also authorized the export of consumer-grade Internet connectivity services, the provision or leasing of capacity on telecommunications transmission facilities incident to personal communications, and certain software incident to personal communications services.

Finally, and potentially most significantly, General License D authorized exports and reexports of a wide range of mobile devices, PCs and other consumer electronic hardware, as well as related software and services for those devices, as described in an Annex to the General License.

II. NEW EXPORT AUTHORIZATIONS UNDER GENERAL LICENSE D-1

Amended General License D-1 expands General License D in three significant respects.

- *Reexports by Non-U.S. Persons of Items “Subject to the EAR [Export Administration Regulations].”* The prior General License D authorized reexports by U.S. persons, or by entities owned or controlled by a U.S. person, of “items subject to the EAR,” but not reexports of such items by other non-U.S. persons. (Items subject to the EAR include items exported from the United States, U.S.- origin items, and non-U.S.-origin items including more than 10 percent controlled U.S. content by value.) That created a gap in authority: non-U.S. persons were not authorized to reexport to Iran any devices and related software subject to the EAR. General License D-1 eliminates this gap in authority and broadly authorizes both U.S. persons and non-U.S. persons to reexport any of the items specified in the General License that are subject to the EAR. OFAC’s FAQ guidance makes clear that this change was meant to allow for the transfer of items within Iran and for the reexport to Iran by non-U.S. persons located outside the United States of qualifying items subject to the EAR.
- *Exports by U.S. Persons of Items Not Subject to the EAR.* Under the now-superseded General License D, only software and hardware subject to the EAR were authorized for export to Iran. That created a second, reciprocal gap: U.S. persons were not authorized to export to Iran from outside the United States foreign-made items that contain 10 percent or less U.S. content by value, even if such items otherwise met all the requirements of General License D, because they lacked sufficient U.S.-content to be subject to the EAR.

General License D-1 fills this gap by explicitly authorizing exports by U.S. persons of software and hardware incident to personal communications that are not subject to the EAR, as long as the items would otherwise be described in the General License and/or its Annex, and would be designated EAR99 or classified within the authorized Export Control Classification Numbers (“ECCNs”) specified in General License D-1 and its Annex.

- *Publicly Available, No-Cost Services and Software to the Government of Iran.* Although the export of fee-based personal communications services and related items to the Government of Iran remains prohibited, General License D-1 includes a new authorization for the export of certain publicly available, no-cost personal communications items to the Government of Iran. This authorization only applies to services specified in ITSR § 560.540(a)(1) or in categories 6 and 11 of General License D-1’s Annex, and to software described in ITSR § 560.540(a)(2) or in categories 6 and 11 of the General License’s Annex. The FAQ guidance explains that this change is not intended to help the Government of Iran, but is instead aimed at eliminating any chilling effect on the willingness of companies to make no-cost personal communications services and software widely available to the Iranian public for fear that the items would be used by the Government of Iran.

III. CLARIFICATIONS REGARDING THE SCOPE OF AUTHORIZED ITEMS AND DUE DILIGENCE REQUIREMENTS

General License D-1 and the accompanying FAQ guidance seek to clarify a number of ambiguities in the now-superseded General License D.

- *Software, Hardware, and Related Services Described in the General License’s Annex Are Presumed to Be Incident to Personal Communications.* While General License D included an Annex listing eleven categories of software, hardware, and services incident to personal communications services that could be exported to Iran, it was unclear whether exporters had a duty to confirm the personal communications end use of such items or if such items enjoyed a

presumption of exportability. In the FAQ guidance, OFAC advises that exporters do not need to make a determination as to the end use of the items described in the Annex because OFAC has already determined them to be incident to personal communications by their nature. However, we would advise that exporters refrain from transferring items to Iran if they actually know or have reason to know that the end use of a specific export will be for a business or government use rather than for personal communications. Thus, for example, sales to a business organization may be presumptively outside the scope of the general license.

- *“Reasonable” Due Diligence Required to Prevent Unauthorized Diversion of Exports.* In the FAQ guidance, OFAC advises that exporters should “undertake reasonable, risk-based measures” designed to prevent the diversion of exports to the Government of Iran, to persons included on the List of Specially Designated Nationals and Blocked Persons, or to other persons whose property and interests in property are otherwise blocked under U.S. sanctions programs. OFAC’s guidance does not specify what diligence measures are “reasonable” for these purposes. Rather, the guidance indicates that such programs should be “tailored to the particular risks encountered by exporters,” suggesting that the nature of due diligence programs may differ from company to company based on individual circumstances. However, it is clear that exporters should implement due diligence measures that are effective to minimize the risk of diversion to unauthorized parties or uses, and that can be justified as reasonable under the particular circumstances.
- *Export of Accessories and Peripherals Used in Conjunction with Qualifying Hardware Is Authorized.* Slight amendments included in the General License’s Annex and the FAQ guidance make clear that accessories and peripherals meant for use in conjunction with certain qualifying hardware may be exported under the General License. These would include accessories for mobile phones and personal digital assistants described in category 1 of the Annex such as headsets, cases, holsters, chargers, docks, display protectors, cables, adapters, and batteries. They would also include accessories and peripherals for computing devices described in category 5 of the Annex such as keyboards, mice, consumer-grade disk drives, and other data storage devices.
- *Export of Parts or Components of Hardware Incident to Personal Communications Is Not Authorized.* Potentially hampering business models that depend on in-country repair operations, the FAQ guidance makes clear that the General License does not authorize export or reexport to Iran of parts and components for qualifying devices or hardware. As a result, completely assembled hardware specified in the General License and its Annex may be exported, but replacement parts for such hardware cannot be exported absent a specific license from OFAC.
- *Personal Hand Carriage of Personal Communications Items to and From Iran.* General License D-1 includes provisions clarifying that individuals traveling between the United States and Iran may import back into the United States the qualifying devices and software that they brought with them temporarily to Iran.

CONCLUSION

Exporters should carefully examine the amended General License D-1 and FAQ guidance in light of their specific business operations. We are well-positioned to assist clients in this analysis to ensure compliance with OFAC regulations. We are also able to advise on the broader Iran sanctions regimes implemented by the United States and the European Union. These regimes may evolve as the geopolitical situation regarding Iran develops.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls practice group:

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