

# CORONAVIRUS INFORMATION & UPDATES

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## Three new General Licenses expand scope of COVID-19-related activity with Iran, Syria and Venezuela under U.S. Sanctions

Despite general authorizations for humanitarian activity, U.S. sanctions have remained a challenge in response to global humanitarian crises, including the current COVID-19 pandemic. For example, Venezuelan officials recently announced they could not complete a payment to the global COVAX vaccine program due to the U.S. “blockade” stopping bank transfers for a portion of the funds.<sup>1</sup> To alleviate these challenges, on June 17, 2021, the Office of Foreign Assets Control (“OFAC”) issued three general licenses (“GLs”), which expire on June 17, 2022, “Authorizing Certain Activities to Respond to the Coronavirus Disease 2019 (“COVID-19”) Pandemic”: Iran GL N, Syria GL 21, and Venezuela GL 39 (the “COVID-19-related GLs”). These GLs and their related FAQs expand the scope of permitted activity in these countries for the “prevention, diagnosis, [and] treatment of COVID-19.” All three COVID-19-related GLs broadly authorize transactions involving previously prohibited entities (*e.g.*, the governments of those countries, and certain state-owned entities and/or banks). The COVID-19-related GLs and accompanying FAQs also clarify the broader scope of medical devices and services that may be exported in connection with COVID-19.

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### Background

On April 16, 2020, OFAC issued a Fact Sheet on providing COVID-19-related humanitarian assistance to Iran, Venezuela, North Korea, Syria, Cuba, and Crimea (the “April 2020 Factsheet”).<sup>2</sup> Unlike the recently issued COVID-19-related GLs, the April 2020 Factsheet summarized “the most relevant” existing licenses and exemptions, but did not expand the scope of permitted activity. **With the new COVID-19-related GLs, OFAC has authorized parties subject to U.S. jurisdiction to engage in certain additional activity, as summarized below. Accompanying FAQ 910 also states that U.S. financial institutions may rely on the originator’s representation as to compliance with the COVID-19-related licenses, and, as per FAQ 911, non-U.S. persons will not be targeted for secondary sanctions for engaging in activity permitted under the new GLs.**

### Iran

Prior to the issuance of GL N, the primary humanitarian GLs for Iran permit U.S. persons to engage in the export of agricultural commodities, food, medicine and medical devices, and the donation of food and medicine. However, such exports are prohibited under these GLs if the contemplated transactions do not comply with certain requirements, including if they involve certain specially designated nationals (“SDNs”), which include the Islamic Revolutionary Guard Corps (“IRGC”) and the Central Bank of Iran (“CBI”), as OFAC has said it remains concerned that the Iranian regime used “so-called humanitarian trade to evade sanctions and fund its malign activity.”<sup>3</sup>

The April 2020 Factsheet emphasized that the existing authorizations and exceptions already permitted U.S. persons to provide humanitarian goods—including medicines and medical devices—to Iran. But there remained certain categories of items useful for the COVID-19 response that remained prohibited without specific license authorization, such as Powered Air Purifying Respirators and decontamination equipment. It also remained prohibited for transactions to flow through the CBI. Moreover, under the GL for the export of medicine and medical devices to Iran, transactions must meet certain financing and payment conditions.<sup>4</sup>

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GL 8, which was issued on February 27, 2020, alleviated one limitation as it authorized exports of medicine and medical devices even where the CBI was involved.<sup>5</sup> The newly issued GL N lifts another restriction by explicitly permitting COVID-19-related exports and services without meeting payment and financing terms<sup>6</sup> and also explicitly authorizes such exports where they involve the CBI or National Iranian Oil Company (“NIOC”) (but not where exports are to those entities). Under GL N, U.S. Persons may also export services<sup>7</sup> related to COVID-19, and import goods where necessary for safety or maintenance. However, GL N keeps in place certain restrictions: transactions still may not involve certain SDNs designated in connection with Iran’s support for international terrorism or proliferation of weapons of mass destruction, including the IRGC.

Another challenge to the COVID-19 response in Iran was that, while existing GLs authorize the export to Iran of personal protective equipment and many basic medicines and medicinal devices, including medical gowns, medical eyeshields and goggles, face shields, and N95 masks, other items were not authorized (such as full face mask respirators, and certain diagnostic medical imaging equipment and decontamination equipment).<sup>8</sup> Certain of these items were included on OFAC’s List of Medical Devices Requiring Specific Authorization. FAQ 907 clarifies that GL N covers a number of items that previously would have required a specific license, including items included on the List of Medical Devices Requiring Specific Authorization.<sup>9</sup> However, to qualify for export, the items must still either be designated EAR99 under the Export Administration Regulations (“EAR”) or, if not subject to the EAR, must not be listed on any “multilateral export control regime” (arms and dual-use goods and technologies).

Therefore, while this license will certainly cover a broader range of goods and technology, exporters must still ensure that the items meet the terms of GL N.

## Syria

The Syrian Sanctions Regulations (“SSR”) generally prohibit the exportation, reexportation, sale, or supply of services to Syria by U.S. Persons.<sup>10</sup> Dealings are also generally prohibited with the Syrian Government, the Central Bank of Syria (“CBoS”), and several companies owned or controlled by senior officials of the Syrian Government.<sup>11</sup> Humanitarian GLs under the SSR authorize certain services in support of non-governmental organizations and permit exportation of services to “support humanitarian projects to meet basic human needs in Syria.”<sup>12</sup> The SSR also permits the exportation and donation of food and most medicines to Syria, and OFAC has clarified that non-U.S. persons would not face potential secondary sanctions pursuant to the Caesar Syrian Civilian Protection Act of 2019 if they provide food or medicine to Syria (including to the Government of Syria or the CBoS).<sup>13</sup>

The April 2020 Factsheet clarified that the SSR does not limit the ability of Syrian civilians to receive humanitarian support, including by receiving testing kits, respiratory devices, and personal protective equipment. It reiterated that the SSR authorizes U.S. persons to export food, medicine, and medical devices to Syria. However, medical devices must be designated EAR99. Moreover, no transactions may involve individuals or entities designated as proliferators of weapons of mass destruction and their supporters, including the CBoS (which is also blocked as part of the Government of Syria).

Under the new GL 21, all transactions and activities related to the exportation, reexportation, sale, or supply of services to Syria that are related to the prevention, diagnosis, or treatment of COVID-19 are permitted. FAQ 908 (which also applies to the Iran GL N) sets out a broad range of examples of permitted services, such as treatment of patients, clinical studies, public education and training, as well as transactions and activities in support of services such as the processing of funds, financing, insurance and shipping.<sup>14</sup> In addition, GL 21 broadly authorizes COVID-19-related transactions or

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activities involving the Syrian Government (and government-connected companies Polymedics LLC and Letia Company), if related to COVID-19. However, GL 21 leaves certain restrictions in place. For example, it remains prohibited to export to the Syrian military, intelligence, or law enforcement.

## Venezuela

U.S. Sanctions on Venezuela prohibit transactions involving the government of Venezuela, state-owned entities and related to identified Venezuelan financial institutions.<sup>15</sup> GL 4C, issued August 5, 2019, authorized certain transactions ordinarily incident and necessary to the export of medicine, medical devices, and components for medical devices to Venezuela. GL 26, issued August 5, 2019, authorized the provision and receipt of nonscheduled emergency medical services and the provision of other medical services involving the Government of Venezuela.

OFAC's April 2020 Factsheet reiterated that, while U.S. persons are prohibited from engaging in transactions involving the Government of Venezuela and other blocked persons, they are not prohibited from engaging in transactions involving the country of Venezuela or its people. The April 2020 Factsheet reminded the public that the U.S. maintains broad exemptions and authorizations to allow for the commercial sale and export of medicine and medical devices to Venezuela. However, prior to the new GL 39, the export or import of goods and services, and transactions and activities related thereto, were prohibited if they involved the Government of Venezuela or certain blocked financial institutions.

GL 39 authorizes transactions and activities and the export or import of services related to the prevention, diagnosis, or treatment of COVID-19, even when the Government of Venezuela is involved. FAQ 909 sets out examples of the type of transactions, goods, and services that would be considered permissible under GL 39. Moreover, such transactions are authorized even if they involve Banco Central de Venezuela, Banco de Venezuela, S.A., Banco Universal, Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, or Banco Universal C.A. However, any export of goods, technology, or services to military, intelligence, or law enforcement remains prohibited. Additionally, any transactions or activities involving Petróleos de Venezuela, S.A., Banco de Desarrollo Economico y Social de Venezuela, or Banco Bandes Uruguay S.A., or any entity in which these financial institutions own a 50 percent or greater interest, are still prohibited.

## Takeaways

OFAC's recent general licenses for Iran, Syria, and Venezuela authorize a number of activities that were previously prohibited under the relevant U.S. sanctions. However, while additional COVID-related transactions are now authorized, each of the three new general licenses contains significant nuance, and U.S. Persons should review the specific compliance requirements carefully.

In addition to authorizing U.S. Persons to engage in these transactions, OFAC in FAQ 910 assures U.S. financial institutions that they may rely on the originator of the funds transfer regarding the originator's compliance with the COVID-19-related GLs, provided that the financial institution does not know or have reason to know that the funds transfer is not in compliance with such GLs. Significantly, the new general licenses and FAQ 911 in particular should also help give non-U.S. persons and financial institutions comfort that they will not be targeted for secondary sanctions or primary sanctions breach for causing a U.S. financial institution to violate sanctions, if the underlying transaction is related to an authorized response to the COVID-19 pandemic.

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Ropes & Gray will continue to monitor developments in this space. For any questions, please contact your usual Ropes & Gray advisor.

1. See Daphne Psaledakis & Matt Spetalnick, “U.S. Issues New Guidance to Ease COVID-19 Assistance to Countries Hit by Sanctions,” U.S. News World Report (June 17, 2021), <https://www.usnews.com/news/world/articles/2021-06-17/us-issues-new-sanctions-guidance-related-to-covid-19>.
2. *Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19*, OFAC (Apr. 16, 2020), [https://home.treasury.gov/system/files/126/covid19\\_factsheet\\_20200416.pdf](https://home.treasury.gov/system/files/126/covid19_factsheet_20200416.pdf).
3. *Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations*, OFAC (Oct. 25, 2019), [https://home.treasury.gov/system/files/126/iran\\_humanitarian\\_20191025.pdf](https://home.treasury.gov/system/files/126/iran_humanitarian_20191025.pdf).
4. Iranian Transactions and Sanctions Regulations, 31 C.F.R. §§ 560.530, 532.
5. GL 8A, issued October 26, 2020, replaced GL 8 and also allowed exports of agricultural commodities, medicine, and medical devices involving the NIOC. It’s not apparent why NIOC has been included in GL8A, but this may be to ensure it’s understood that oil revenues can be used to finance the sale of humanitarian goods. Guidance from July 2013 states that “Iranian oil revenues held in CBI or non-designated Iranian bank accounts at foreign banks may be used to finance exports of food, agricultural commodities, medicine or medical devices to Iran.”
6. OFAC FAQ 906 (June 17, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/906>.
7. OFAC FAQ 908 (June 17, 2021) sets out services related to the prevention, diagnosis, or treatment of COVID-19, <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/908>, see fn 14.
8. *Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19*, OFAC (Apr. 16, 2020), [https://home.treasury.gov/system/files/126/covid19\\_factsheet\\_20200416.pdf](https://home.treasury.gov/system/files/126/covid19_factsheet_20200416.pdf).
9. “COVID-19-related goods or technology include, for example: medical gowns; medical eye shields and goggles; surgical gloves; face shields; respirators and masks such as N95, N99, and N100 masks; personal hygiene products such as soap and hand sanitizer and other water, sanitation, and hygiene supplies such as: water purification supplies and hygiene promotion materials; vaccines and vaccine ingredients or components required for the production of vaccines; equipment, supplies, and containers for transporting, storing, and administering vaccines; COVID-19 testing kits and equipment, and software and technology for processing such kits; equipment, software, and technology for diagnostic imaging tests; ventilators or components thereof; oxygen tanks and supplies to deliver oxygen; supplies, medicines, or other therapies to treat COVID-19; and field hospitals or mobile medical units.” OFAC FAQ 907 (June 17, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/907>.
10. See Syrian Sanctions Regulations, 31 C.F.R. § 542 *et seq.*
11. These restrictions were expanded via several Executive Orders issued in 2011. See 76 Fed. Reg. 24787, E.O. 13572, “Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria” (Apr. 29, 2011); 76 Fed. Reg. 29143, E.O. 13573, “Blocking Property of Senior Officials of the Government of Syria” (May 18, 2011).
12. 31 C.F.R. § 542.516.
13. The [Caesar Syria Civilian Protection Act of 2019](#) threatens secondary sanctions against non-U.S. persons who knowingly provide significant support to, or knowingly engage in a significant transaction with certain sanctioned persons, including the

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Government of Syria and the CBoS. However, as the export of food or medicine (other than medicine on the CCL) is permitted to the Government of Syria, non U.S.-Persons would not be subject to secondary sanctions for supporting this activity.

14. For the purposes of Iran GL N and Syria GL 21, services related to the prevention, diagnosis, or treatment of COVID-19 include, for example, treatment of patients with suspected or confirmed COVID-19; training necessary for the safe and effective use, repair, or maintenance of goods for use in connection with the prevention, diagnosis, or treatment of COVID-19; water, sanitation, and hygiene promotion materials and supplies, and shelter activities to prevent or treat COVID-19, including Risk Communication and Community Engagement efforts related to COVID-19, and other goods and services, directly related to prevention or treatment of COVID-19; conduct of research into COVID-19; services necessary for the operation, maintenance, or repair of goods for use in connection with the prevention, diagnosis, or treatment of COVID-19; collaboration on the development or enhancement of information related to COVID-19 to the extent not authorized or exempt; development of medical devices or medicines to counteract COVID-19; conduct of clinical studies in connection with COVID-19; provision of public education in connection with COVID-19; and disposal of medical waste in connection with COVID-19, provided all conditions and limitations of Iran GL N or Syria GL 21 are satisfied.
15. *See* Venezuela Sanctions Regulations, 31 C.F.R. § 591 *et seq.*; 82 Fed. Reg. 41155, E.O. 13808, “Imposing Additional Sanctions With respect to the Situation in Venezuela” (Aug. 24, 2017); 84 Fed. Reg. 509, E.O. 13857, “Taking Additional Steps to Address the National Emergency With Respect to Venezuela” (Jan. 25, 2019); 84 Fed. Reg. 38843, E.O. 13884, “Blocking Property of the Government of Venezuela” (Aug. 5, 2019).