Insights: Alerts

Treasury and State Department's Response to COVID-19

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

U.S. Dep't of the Treasury's Office of Foreign Assets Control's Response to COVID-19

Compliance Challenges During the Pandemic

On April 20, 2020, in response to compliance challenges confronting companies as a result of COVID-19, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published guidance (OFAC Encourages Persons to Communicate OFAC Compliance Concerns Related to COVID-19) that, among other things:

- Addresses deadline extensions, such as for reporting blocked assets or rejected transactions, responding to administrative subpoenas, as long as those in need of additional time reach out to OFAC as early as possible in order to arrange for possible extension;
- Provides an OFAC email inbox for submitting self-disclosures, and blocked property or rejected transactions; and
- Acknowledges that compliance programs might not perform as well during the pandemic, and therefore, OFAC will view, "on a case-by-case basis," COVID-19 challenges "as a factor in determining the appropriate administrative response to an apparent violation that occurs during" pandemic for those companies that, as part of a risk-based approach to sanctions compliance, need to "temporarily reallocat[e] sanctions compliance resources."

Though not referenced in the guidance, companies that decide to re-allocate resources as a result of COVID-19 (e.g., exporting scarce materials to sanctioned countries as humanitarian assistance) should carefully document its assessment for the necessity of such a shift and address how the resulting re-allocation continues to provide a risk-based approach to sanctions compliance.

Maintaining Global Flow of Humanitarian Assistance

Understanding the necessity of maintaining a global flow of humanitarian assistance in the face of COVID-19, OFAC issued a Fact Sheet on April 16, 2020, "highlighting the most relevant exemptions, exceptions, and authorizations for humanitarian assistance and trade under OFAC-administered Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russian-related sanctions programs." Given the complex web of OFAC general licenses, specific licenses, exemptions, advisories, and FAQs, OFAC's Fact Sheet is a valuable compilation of the most relevant humanitarian sanctions exceptions, and addresses humanitarian exports of products such as personal protective equipment ("PPE"), including the provision of financial assistance. The Fact Sheet notes that persons interested in exporting PPE from the U.S. need to pay attention to relevant guidance and rules, including a temporary rule issued by the Federal Emergency Management Agency ("FEMA") on April 10, 2020, which prohibits, through August 10, 2020, the export of five types of PPE without FEMA's approval.

Relatedly, on February 27, 2020, OFAC issued General License No. 8 (“GL 8”), and related FAQ 821, which authorizes payments and related transactions involving the Central Bank of Iran (which was designated on the Specially Designated Nationals and Blocked Persons list, "SDN list", in September 2019) for exports of food, medicine, and medical devices. GL 8 builds on existing authorizations, which OFAC summarized in FAQ 828, and broadly permits donations and other humanitarian assistance to Iran, as long as it involves only the Central Bank of Iran and not the Government of Iran, other Specially Designated Nationals, or otherwise prohibited parties.

U.S. Dep't of State's Response to COVID-19 Related to Certain ITAR Requirements

On May 1, 2020, in an effort to mitigate the impact of COVID-19, the U.S. Department of State's Directorate of Defense Trade Controls ("DDTC") announced the temporary suspensions, modifications and exceptions of certain International Traffic in Arms Regulations ("ITAR") requirements. The full text of the COVID-19 measures can be found on the Department of State's website. In summary, however, the temporary changes, which are effective March 13, 2020, include:

1. Temporary suspension of the requirement to renew certain ITAR registrations: ITAR registrations expiring on February 29, March 31, April 30, May 31, and June 30, 2020 are extended for two months from the original date of expiration.
2. Temporary extension of certain ITAR licenses: Existing ITAR license that expire between March 13, 2020 and May 31, 2020 are automatically extended for six months "so long as no change to the scope or value of the authorization and no name/address changes are required."
3. Temporary modification of work location of contract employee. Contract employees are permitted to work remotely and qualify as a "regular employee" under ITAR for purposes of licensing and authorizations, as long as the contract employee is not located in Russia or a country listed in ITAR § 126.1. This modification terminates on July 31, 2020, unless otherwise extended in writing.
4. Temporary exception allowing regular employees working with data transferred under and ITAR agreement to work remotely: Regular employees of licensed entities who are working remotely in a country not authorized by a technical assistance agreement ("TLA"), manufacturing licensing agreement ("MLA"), or exemption to send, receive, or access any technical data authorized for export, re-export, or retransfer to their employer via TAA, MLA or exemption are permitted to work remotely as long as the employee is not located in Russia or a country listed in ITAR § 126.1. This authorization terminates on July 31, 2020, unless otherwise extended in writing.

Additionally, on March 19, 2020, DDTC issued a notice indicating that "industry is advised of the likelihood of longer than normal processing times due to a reduction in the availability of staff in multiple organizations to renew applications." Many deadlines and obligations under the ITAR remain in full force and ITAR registrants and other parties should remain cognizant of relevant deadlines and other obligations under the ITAR.

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