



OFAC AMENDS AND EXPANDS GENERAL LICENSE AUTHORIZING EXPORTS TO IRAN FOR PERSONAL COMMUNICATIONS

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On February 7, 2014, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued General License D-1 under the Iranian Transactions and Sanctions Regulations ("ITSR"), superseding General License D issued by OFAC in May 2013 and expanding the scope of authorized activities. General License D-1 extends beyond the original General License D—which had authorized the exportation to Iran of fee-based services incident to the exchange of personal communications over the Internet and certain fee-based software necessary to enable such services—to authorize the exportation, reexportation, and provision of covered goods and services to Iran by non-U.S. persons located outside the United States—persons who were nevertheless restricted under the old general license. General License D-1 also permits the exportation, reexportation, and provision by U.S. persons (wherever located) to Iran of certain hardware and software not covered by the Export Administration Regulations ("EAR"), so long as it is similar to the types of hardware and software previously authorized. Importantly, General License D-1 also authorizes the exportation and reexportation of free, publicly available Internet communications-related software and services to the Government of Iran in order to avoid chilling companies' willingness to provide such software and services to ordinary Iranians.

1. Background on the Original General License D

The original General License D permitted exports from the United States and by U.S. persons of fee-based services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, photo and video sharing, web browsing, and blogging. General License D also permitted exports from the United States and by U.S. persons of certain fee-based software—classified as EAR99 by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") under the EAR—necessary to enable such services, as well as exports of certain specified categories of software, hardware, and related services incident to personal communications. Finally, General License D allowed exports of consumer-grade Internet connectivity services and capacity, and transfers of funds from Iran to further underlying transactions authorized by General License D.

2. Key Changes Made by the New General License D-1

The new General License D-1, which replaces and supersedes General License D in its entirety, differs from General License D in several important respects:

- ***Permits the exportation, reexportation, or provision to Iran of certain personal communications software, hardware, and related services.*** The revised authorization in General License D-1 permits not only the exportation and reexportation, but also the *provision*, to Iran of fee-based software designated EAR-99 or classified on the

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Commerce Control List under Export Control Classification Number 5D992.c, as well as certain other specific categories of hardware and software and related services. (For a complete list of the specific categories, see the Annex to this Advisory.) In its guidance, OFAC points out that “provision” could include an in-country transfer of covered software or hardware. General License D-1 is not limited to exportation, reexportation, or provision from the United States or by U.S. persons, but now also authorizes a non-U.S. person located outside the United States to export, reexport, or provide covered hardware and software to Iran. For example a manufacturer of smartphones subject to the EAR because they contain more than a *de minimis* amount of U.S. content may now export authorized smartphones from a third-country manufacturing facility to Iran.

Note that while OFAC has determined that fee-based desktop publishing software and productivity suites fall within the scope of “fee-based software necessary to enable services incident to the exchange of personal communications over the Internet,” enterprise management software does not. OFAC’s guidance related to General License D-1 also clarifies that General License D-1 authorizes the exportation of fee-based cloud computing services to Iran, as well as the software necessary to enable such services.

- ***Authorizes U.S. persons, wherever located, to export, reexport, or provide to Iran certain software and hardware not subject to the EAR.*** OFAC limited the scope of the previous General License D to fee-based software—incident to personal communications over the Internet—subject to the EAR and classified either as EAR99 or under certain Commerce Control List Export Control Classification Numbers (“ECCNs”) set forth in the Annex to this Advisory. New General Licensed D-1 now also covers foreign-origin software, hardware, and related services *not* subject to the EAR because they are located outside the United States, provided that the software, hardware, and related services would be designated EAR99 or meet the classification criteria for the relevant ECCNs if they were subject to the EAR.
- ***Clarifies that individuals leaving the United States for Iran may export authorized items, and provides new authorization for individuals returning to the United States from Iran to import authorized items previously exported.*** A new note clarifies that the authorization to export, reexport, or provide certain software and hardware to Iran includes such exportation, reexportation, or provision by individuals leaving the United States for Iran. General License D-1 also provides new authorization for individuals returning to the United States from Iran to import into the United States hardware and software that was previously exported to Iran. As OFAC notes in its guidance, this would permit an individual travelling to and from Iran to carry a covered smart phone for the duration of the journey.
- ***Authorizes the exportation and reexportation of publicly available, no-cost services to the Government of Iran in order to ensure that the ITSR do not have a chilling effect on companies’ willingness to make such services available to Iranian persons.*** Building on the authorization in 31 C.F.R. § 560.540(a)(1) to export to persons in Iran publicly available, no-cost services incident to the exchange of personal communications

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over the Internet, the new General License D-1 also authorizes the exportation or reexportation from the United States or by U.S. persons of such services to the Government of Iran. With this additional authorization, OFAC hopes to ease any unintended chilling effect that the prohibition on exports to the Government of Iran might have had on the willingness of U.S. companies to provide publicly available, no-cost personal communications tools to Iranian persons.

- ***Clarifies that accessories and peripherals for use in conjunction with certain categories of authorized hardware may also be exported, reexported, or provided to Iran.*** The original General License D specified products covered by certain ECCNs that were authorized for exportation or reexportation to Iran, including mobile phones and computers. The new General License D-1 clarifies that certain accessories and peripherals may also be exported. With respect to mobile phones, the authorized accessories include headsets, cases, holsters, mounts, chargers docks, display protectors, cables, adapters, and batteries. Authorized accessories for computers include keyboards and mice, while authorized peripherals for computers include consumer disk drives and other data storage devices. OFAC's guidance on General License D-1 clarifies that while certain accessories and peripherals related to mobile phones and computers may be exported to Iran, parts and components for authorized hardware—microprocessors and replacement parts, for example—may not be exported absent a specific license.

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For more information regarding Iran sanctions or W&G's sanctions and export controls practice, please contact **Kent Bressie** by telephone at +1 202 730 1337 or by e-mail at kbressie@wiltshiregrannis.com, or contact the W&G lawyer with whom you regularly work.

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**Annex – Services, Software, and Hardware Incident to Personal Communications
Authorized for Exportation, Reexportation, or Provision to Iran by Paragraph (a)(3) of
ITSR General License D-1**

CATEGORY NUMBER	CATEGORY DESCRIPTION
1	Mobile phones (including but not limited to smartphones), Personal Digital Assistants (PDAs), Subscriber Identity Module (SIM) cards, and accessories for such devices designated EAR99 or classified on the CCL under ECCN 5A992.c; drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
2	Satellite phones and Broadband Global Area Network (BGAN) hardware designated EAR99 or classified under ECCN 5A992.c; demand drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
3	Consumer* modems, network interface cards, radio equipment (including antennae), routers, switches, and WiFi access points, designed for 50 or fewer concurrent users, designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
4	Residential consumer* satellite terminals, transceiver equipment (including but not limited to antennae, receivers, set-top boxes and video decoders) designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2 or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
5	Laptops, tablets, and personal computing devices, and peripherals for such devices (including but not limited to consumer* disk drives and other data storage devices) and accessories for such devices (including but not limited to keyboards and mice) designated EAR99 or classified on the CCL under ECCNs 5A992.c, 5A991.b.2, 5A991.b.4 or 4A994.b; computer operating systems and software required for effective consumer use of such hardware, including software updates and patches, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
6	Anti-virus and anti-malware software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
7	Anti-tracking software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
8	Mobile operating systems, online application for mobile operating systems (app) stores, and related software, including apps designed to run on mobile operating systems, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

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9	Anti-censorship tools and related software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
10	Virtual Private Network (VPN) client software, proxy tools, and fee-based client personal communications tools including voice, text, video, voice-over-IP telephony, video chat, and successor technologies, and communications and connectivity software required for effective consumer use designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
11	Provisioning and verification software for Secure Sockets Layers (SSL) certificates designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

* For purposes of this Annex, the term “consumer” refers to items that are: (1) generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following: (a) over-the-counter transactions; (b) mail order transactions; (c) electronic transactions; or (d) telephone call transactions; and (2) designed for installation by the user without further substantial support by the supplier.