

ACAMS International Sanctions Compliance Task Force – Humanitarian Workstream

Sanctions Rapid Response Briefing Paper Afghanistan and Risk Managing Permissible Payments: Key Aspects Requiring Clarification and Future Public-Private Dialogue

Background

Through our **Global Sanctions Program**, ACAMS convenes international experts to enhance thought leadership, producing Masterclasses, Monthly Updates, bespoke training, certifications available in a number of languages, and holding issue-specific roundtables. In early 2020 we established the **International Sanctions Compliance Task Force** with the aim of facilitating dialogue by bringing together sanctions specialists from a wide array of sectors.

As a high-level inter-industry forum, one of the key priorities of the Task Force is to enable and support cross-industry dialogue on global sanctions compliance topics. This briefing paper has been prepared in collaboration with our **International Sanctions Compliance Task Force Humanitarian workstream**.

This workstream aims to enhance global knowledge of risk managing permissible humanitarian payments into high-risk sanctions jurisdictions. Through this group, we have facilitated dialogue on the unfolding situation within Afghanistan. For the purposes of this briefing, we have additionally drawn upon wider expert-level dialogue, Afghanistan rapid response webinars, and specialist experience of payment corridors into highly sanctioned environments.

The content of this paper focuses on the sanctions-humanitarian context within Afghanistan. Its purpose is to assist international deliberations and sanctioning authority responses on the key areas where further dialogue and clarification is required. Our observations specifically focus on the following key areas:

- Whether the Government of Afghanistan should be treated as a sanctioned entity and, therefore, government assets are blocked and transactions with it prohibited.
- Additionally, if it is deemed sanctioned:
 - the types of licensing permissions that will be required to ensure necessary engagement with government entities by humanitarian actors and others;
 - the required scope of permissible humanitarian activity and allowable transactions to avoid negatively impacting United Nations (UN) and international donor programs within Afghanistan;
 - the main humanitarian exemptions that will require incorporation within the Afghanistan sanctions framework.

The Sanctions Framework Targeting the Taliban and How it Applies to the Government of Afghanistan Structures

The Taliban's move into government leadership raises critical questions as to how current, and potentially future, sanctions will apply. Central to industry and humanitarian deliberations is the extent to which existing sanctions now target the breadth of Afghanistan's Government institutions. Sanctions targeting the Taliban have been in place for two decades and combine a mixture of UN and unilateral measures. At the UN level, two United Nations Security Council (UNSC) sanctions regimes are relevant:

- **1988 Regime**, targeting individual members of the Taliban (in force unless UNSC decides, via a resolution, to end the regime). The future application of this regime is unclear given it was originally designed to facilitate a negotiated peace agreement, not a Taliban military takeover. 135 individuals plus five entities (Haqqani network and four hawaladars) are listed under the 1988 sanctions regime. It should also be noted that the Haqqanis are now in charge of security in Kabul as well as certain government bodies.
- **1267/2253 Regime**, targeting Al-Qaida and ISIL. Within this regime, Afghanistan features prominently on the 1267/2253 list with the inclusion of 12 individuals and 20 entities. A range of Al-Qaida affiliated groups operate within Afghanistan.

The functionality of both UN sanctions regimes necessitates three measures:

- Total and global asset freeze
- Total and global travel ban
- Total and global arms embargo

In addition, some jurisdictions have taken additional steps to implement UN sanctions in a more expansive manner. For instance, the United States (U.S.) has implemented the UN sanctions on the Taliban by sanctioning both (1) leaders of the group as individuals; and (2) the Taliban as an entity. Importantly, the U.S. sanctions framework does precisely define what (or who) makes up "the Taliban". The U.S. sanctions have two primary impacts:

1. all property and interests in property of the sanctioned party within U.S. jurisdiction or under the possession or control of a U.S. person are "blocked" (frozen);
2. all "dealings", including the provision of any services, are forbidden for U.S. persons/within U.S. jurisdiction.

Moreover, given the Taliban's designation under the global terrorism sanctions, the U.S. may also apply "secondary sanctions" on non-U.S. entities or individuals transacting with the Taliban regime, such as correspondent banks transacting outside the U.S. While UN sanctions are significant, in practice it is U.S. sanctions which impose the greater obligations for the private sector and NGOs. Essentially U.S. sanctions require the freezing of any and all assets associated with the Taliban that come under U.S. jurisdiction, while also criminalizing almost any transaction with a U.S. nexus involving the Taliban.

The central question under U.S. sanctions (and indeed other unilateral sanction regimes) is whether the Taliban – by virtue of their control of the Government of Afghanistan and its agencies/entities – are deemed to have an “interest” in the Afghanistan Government. If so, then Afghanistan Government assets or transactions subject to U.S. jurisdiction must be frozen and no transactions with a U.S. nexus may take place with the Government of Afghanistan. Importantly, this does not prevent transactions involving the territory of, or individuals or entities within Afghanistan, that do not involve the Government of Afghanistan or Afghanistan state-owned banks/entities.

If deemed sanctioned, ensuring a buffer from Afghan state institutions will be both complex and challenging to achieve. By virtue of operating in Afghanistan, humanitarian programs (and other non-humanitarian activity) will necessitate both a degree of government-linked transactions and exposure. For instance, the payment of local staff taxes, airport fees, import fees for goods necessary for humanitarian programs (i.e. computers, vehicles, office equipment), import/export duties of goods for use by the civilian population, utility payments for local humanitarian offices, local registration fees, purchasing of fuel from state owned enterprises, local levies, ticket purchase for travel on state owned Ariana Afghan Airlines and so forth.

Consequently, humanitarian programs, those processing humanitarian transactions, and other stakeholders involved with the civilian population require urgent clarification on:

- **whether the Taliban are deemed to have an interest in the Government of Afghanistan and, accordingly, whether the Afghanistan Government’s assets are blocked and transactions with it are prohibited;**
- **what non-enforcement posture, by OFAC and other U.S. enforcement agencies, will be adopted with respect to activities and transactions that support humanitarian and other activities that benefit the civilian population with a U.S. nexus involving the Government of Afghanistan;**
- **the enforcement approach in the application of secondary sanctions for non-U.S. persons who undertake activity which may result in a government nexus; and**
- **what approach will be adopted by non-U.S. sanctions authorities, i.e. the E.U., U.K. Canada, Australia, Switzerland etc. to transactions and activities involving the Government of Afghanistan.**

The Definition of “Humanitarian” and Allowable Activity Within the Context of Afghanistan

Even prior to the Taliban’s move into government, the humanitarian situation across Afghanistan was extreme. Conflict continued to drive significant harm and forcibly displaced hundreds of thousands of people every year. As reported by the UN in July 2021, some 18 million Afghans, or half the population, require assistance. A third of the country was reported to be malnourished, while half of all children under five are experiencing acute malnutrition.¹ In short, the combined effect of conflict, deteriorating food insecurity, forced displacement, low access to health services, and poor access to water and sanitation have all greatly impacted the overall civilian population, including children.²

¹ UN news (2021), [Afghanistan: Funding shortfall amid deepening humanitarian crisis](https://news.un.org/en/story/2021/07/1058423) (news.un.org)

² For a more a detailed overview of the humanitarian needs overview (prior to the Taliban takeover) see: reliefweb.int/report/afghanistan/afghanistan-humanitarian-needs-overview-2021-december-2020

In response, the UN and international agencies have been working in Afghanistan for many decades. The international community have allocated billions of dollars to response efforts. Internationally funded projects have typically been broad ranging and extremely diverse in scope, and have ranged from climate change and resilience, gender, education, governance, health, livelihoods, poverty reduction, rule of law, and financial sector reform. Delivery agencies operating, including the UN development network, have typically, and to varying degrees, worked through the Afghan government and regional structures to drive delivery priorities.

Notwithstanding the immense political, safety, and security considerations, a concerted program of humanitarian assistance is expected to prevail across the whole of Afghanistan. Whilst donors are likely to attach strict conditions on future funding, it is anticipated that response efforts will span a range of humanitarian, stabilization, and development needs. Importantly, the activities of many donor programs are likely to expand beyond sanctions compliance definitions of “humanitarian”, and may extend into “humanitarian plus” and stabilization activities (for instance, livelihood projects, infrastructure repair, education and so forth).

Consequently, of paramount importance will be the need to ensure licensing frameworks are both broad enough and provide sufficient clarifications (and probable expansion) of the type of activity permitted; i.e. what programs would fall within the terms of “humanitarian” and/or “permitted activity”. The fear is that a narrow definition of what constitutes “humanitarian” and/or “permitted activity” could significantly impact the ability to support a continuation of existing/planned UN and internationally funded projects operating in Afghanistan and/or projects and activities that benefit the civilian population.

Humanitarian Exemptions within the Afghanistan Sanction Framework – What the International Community Needs to Address and How to Streamline

The policy intent of UN, U.S., E.U. and U.K. sanctions is not to seek to interrupt humanitarian activity, for example the export of medicines or foodstuffs, to countries against which financial sanctions may be in effect. To ensure this, the U.S., E.U., U.K., and other frameworks generally provide certain exceptions under their respective financial sanctions and export control legislation, for example the export of listed items, humanitarian goods, medicines etc., or engagement with certain designated actors.

Those imposing sanctions rarely intend to prevent legitimate humanitarian activity. However, managing the policy intent for more complex sanction regimes, which now includes Afghanistan, is often difficult to apply. Firstly, the overlapping nature of prohibitions, licensing framework, export control requirements, and associated risk management expectations are often highly complex to understand. Typically, what is and isn’t permitted without requiring a license, and/or prior authorization, varies considerably across those countries imposing sanctions and across the different sanctions regimes.

For Afghanistan, those involved in delivering or processing humanitarian payments may need to undertake costly legal analysis to ensure a certain activity is permitted. In parallel, sanctioned jurisdictions often present a wider array of risks that can compound the situation. The nature of these risks within Afghanistan is highly fluid and will vary from region to region, but may include:

- Complex terrorist dimensions
- Ongoing conflict
- Lack of humanitarian access and divergence of humanitarian goods
- Concerns around governance, transparency, and human rights

In short, navigating the rules of sanctions compliance will not be the only risk consideration when dealing with Afghanistan.

Therefore, how to structure emergency responses, humanitarian activity, goods movement, and the processing of related funds into Afghanistan, without violating sanctions or associated due diligence regulations, will present a very real dilemma for international banks, remittances agencies, exporters, transporters, and those delivering humanitarian aid.

Even in cases where “no” license is required, the fear that goods or payments could be diverted to benefit the Taliban or other designated individuals or entities is likely to create a “chilling effect”. The worry is that somehow a technical sanctions violation could occur. For this reason, humanitarian actors, financial institutions, and exporters will go into great detail to determine the risks posed by a particular activity.

Drawing on the experience, challenges, and limitations of how humanitarian permissions (including licenses) are generally applied, there are stand out areas which will need to be urgently addressed. These are summarized below.

The sanctions frameworks of the U.S., E.U., U.K. and other countries should align to ensure the full range of necessary permissions is applied consistently across different sanctions programs.

For instance, for some sanctioned jurisdictions there are long lists of items used for “basic human needs”, or within humanitarian programs, that can be exported without license, but the same items will require a license from a parallel competent body/ country. Equally, certain activity or exports may be permitted by the U.S. but not by the E.U., or vice versa. The multiplicity of non-aligned and too narrowly defined legal frameworks is a significant barrier for the operations of the UN, international NGOs, financial institutions, exports, and others.

Recommendation: the U.S., E.U., and U.K., plus other sanction-imposing governments should collaborate with the aim of ensuring a broad based and streamlined list of approved medical items, foods, exports, and associated activities that are essential to the humanitarian response within Afghanistan.

Making economic resources available, directly or indirectly, to or for the benefit of the Taliban or another designated person.

For humanitarian programs operating in Afghanistan, the concept of making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person is likely to be one of the most challenging aspects to manage. Given the operating environment the ability to undertake large scale humanitarian activity without

a nexus to a sanctioned entity or individual will be highly challenging.

Recommendation: we recommend the need for public-private sector dialogue to map out the scenarios most relevant for Afghanistan, and which of these should be covered by way of a general license or other permission.

Availability of transparent and permissible payment routings into and within Afghanistan.

In examining available banking and payment corridors into Afghanistan, our dialogue has identified the most immediate challenge as related to cash access within Afghanistan. The freezing of Afghan Central Bank funds and limited liquidity has resulted in significant constraints on banking withdrawals and the provision of money to their transferees. Whilst the situation is changing daily, many branches of Afghan banks are either not operating and/or are operating with limited hours due to cash availability, the uncertain security situation, and a reduction in staff availability due to displacement.

Long queues outside of the banks are now common as civilians try to access cash. Additionally, there are thresholds for individual cash withdrawals, and international NGOs are reporting challenges in paying local staff and accessing bank accounts. For international remittances into Afghanistan, the ability to settle with local agents is significantly impacted by limited liquidity. This is critical given the majority of the population does not hold a bank account.

Recommendation: continuation of public-private dialogue as a priority, that maps out:

- the impact of remaining cash liquidity for the civilian population, humanitarian programs, and ability for international remittance operator settlement with local agents;
- anticipated challenges over correspondent banking as international banks reduce their exposure;
- required humanitarian program permissions for engagement with state owned banks;
- the impact for foreign exchange activities within Afghanistan;
- whether the flows of international humanitarian funds should, in the short term, utilize an approved payment corridor of dependable financial institutions and informal networks, that would serve as a custodian for humanitarian-related inflows of capital.

Scope of humanitarian program engagement with the Government of Afghanistan.

Many humanitarian projects will require regular contact with Afghan ministries. This may involve making specific payments to ministries, or engaging in certain joint activities i.e. infrastructure repair for water and sanitization projects.

Recommendation: we recommend guidance is offered as to the extent to which humanitarian operators are permitted to work through – or in consultation with – the Government of Afghanistan to provide humanitarian assistance to the civilian population in Afghanistan.

Scope of upfront export control permissions.

In a number of countries, export control units have removed Afghanistan as a permitted destination for open general export licenses i.e. those which were in place and covered export or repair of dual use items. For example, items that could be necessary for the conduct of official humanitarian business, but may not be subject to upfront permissions, can include computers, business software, communications devices,

passenger vehicles and trucks, basic office equipment and supplies, materials and equipment for construction, and emergency/rescue operation supplies.

Recommendation: competent authorities will need to consider how their export control regulations are sufficiently structured to quickly grant humanitarian actors the full range of required permissions beyond those in place for food and medicines.

U.S. extraterritorial effect to non-U.S. humanitarian operations and payments.

There are important features of U.S. sanctions and export control regimes which will be particularly pertinent to the humanitarian activities and payments involving Afghanistan. Unlike UN and EU sanctions, U.S. sanctions are often characterized as “extraterritorial” because, in addition to activities of U.S. persons, they regulate the conduct of non-U.S. parties transacting amongst themselves, where the transaction has a U.S. connection (e.g. a U.S. origin item, or a transaction in U.S. commerce). Additionally, due to the Taliban’s designation under U.S. global terrorism sanctions, the threat of “secondary sanctions” may also be applicable.

Recommendation: non-U.S. humanitarian actors and the private sector will require clarification from the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) as to their enforcement approach towards non-U.S. entities, especially in respect to the potential application of secondary sanctions.

Forward Looking Public-Private Sector Dialogue to Support Humanitarian Operations within Afghanistan

Building the necessary conditions for ensuring an effective humanitarian response within Afghanistan will undoubtedly require a more defined position on certain implementation matters. The issues set out in this paper are not exhaustive, instead they illustrate the level of complexity and areas of clarification that will be required in order to manage sanctions compliance across the breadth of humanitarian operations within Afghanistan.

Striking the correct balance between the delivery of critical humanitarian responses and the application of UN, and unilateral sanctions will necessitate some realignment. Compliance, legal, and regulatory frameworks will undoubtedly have a role to play in supporting the civilian population.

It is also evident that the response for Afghanistan may require steps beyond what has typically been viewed as pure “humanitarian” activity. Governments and sanctioning authorities will need to consider their approach to wider aspects, such as livelihoods for the civilian population, education, critical infrastructure development, approaches to imports, and access to liquidity.

In conclusion, our International Sanctions Compliance Task Force Humanitarian Workstream will continue to support public-private dialogue on risk management responses to the unfolding situation within Afghanistan. The importance of messaging and appropriate legal frameworks will be paramount in order to support the movement of goods, funds and other required responses which benefit the civilian Afghanistan population.

Wider Activities – Afghanistan Response Initiatives

To support continuing public-private sector dialogue, ACAMS will continue to make resources available to the global sanctions community, including the following:

Upcoming Webinars

- Global roundtable discussion on access to finance needs for Afghan refugees – September 17
- Sanctions Masterclass focused on the Afghanistan risk environment, the shape of the new Taliban government, regional implications, and impact for the global community – September 21
- Webinar specifically examining onboarding refugee accounts and wider financial access factors – October 13

Previous Rapid Response Webinar

- [Afghanistan Sanctions and Humanitarian Risk Considerations](#) (held August 31, available on-demand)

Podcast

- [Hans-Jakob Schindler on the Taliban, sanctions, and implications for Afghanistan](#)

You can keep up to date on these initiatives via the [ACAMS Sanctions Space](#).

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Also available to sanctions teams and professionals is the ACAMS Sanctions Space, led by Dr Justine Walker and our International Sanctions Compliance Task Force. The Sanctions Space is a comprehensive and dynamic resource center, encompassing Masterclasses, Global Monthly Update briefings, authoritative white papers and a podcast series telling the stories behind the sanctions.

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