

International Trade Alert

August 2, 2016

Key Points

- New “General License J” (GL-J) authorizes many Boeing, Airbus and other aircraft operated by non-U.S. persons to fly temporarily to Iran, as well as related transactions involving the export of spare parts and components necessary for those aircraft. It does not authorize any sales, leases or transfers of operational control of aircraft to Iran.
- This is the latest in a series of steps taken after world powers reached a nuclear deal with Iran earlier this year, but it is the first such step to affect the longstanding U.S. embargo on exports of U.S.-controlled items to Iran.
- GL-J provides long-needed authorization for commercial passenger and cargo airline operator fly-in/fly-out routes from the operator’s home base outside of Iran. Operators should note that even seemingly minor complications to these otherwise straightforward transactions—such as codeshare arrangements, wet/dry/damp leases, and line station or line maintenance transactions—may run afoul of GL-J’s conditions.



Cleared for Takeoff: OFAC’s General License J Allows Boeing, Airbus and Other Aircraft to Land in Iran

On July 29, 2016, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) issued a new General License J (GL-J). GL-J authorizes the reexportation of certain civil aircraft on temporary sojourn to Iran, as well as related transactions involving the reexportation of spare parts, components and technology to Iran. GL-J therefore provides long-needed authorization for commercial passenger and cargo airline operators to fly into and out of Iran using aircraft subject to U.S. export controls. The authorizations contained in GL-J are subject to certain conditions, which are outlined below.

GL-J represents the latest in a series of steps, following the implementation of the Joint Comprehensive Plan of Action on January 16, 2016, to ease sanctions on Iran in exchange for Iran’s halting of its nuclear program. However, GL-J is the first such step to affect the longstanding U.S. embargo on the export or reexport to Iran of items subject to U.S. export controls.

Who is Eligible to Use the Authorization in GL-J?

The authorization in GL-J applies only to non-U.S. persons. This means that U.S. persons—including U.S. citizens and permanent residents, as well as any entities organized under U.S. law (including *branches* of such entities outside the United States)—are not eligible to use GL-J and require specific licensing from OFAC in order to reexport aircraft to Iran.

Non-U.S. persons should take care to ensure that no U.S. persons are involved in their Iran-related activities. This includes, for example, U.S. person pilots working for non-U.S. person airlines, U.S. person technical engineers working for aerospace maintenance, repair and overhaul (MRO) companies, and U.S. person parent companies of non-U.S. subsidiaries.

What Aircraft Are Eligible for the Authorization in GL-J?

In order for an aircraft subject to be eligible for the reexport authorization in GL-J (an “Eligible Aircraft”), the aircraft must be (i) a fixed-wing civil aircraft (classified under U.S. export control classification number (ECCN) 9A991.b) and (ii) registered in a jurisdiction other than Iran, North Korea, Sudan, Syria and the United States. Such aircraft include U.S.-origin civil fixed-wing aircraft (e.g., civil Boeing aircraft or Airbus aircraft manufactured in the United States) as well as non-U.S. origin civil fixed-wing aircraft with U.S.-controlled content exceeding 10 percent or more of the total value of the aircraft (e.g., civil Airbus aircraft manufactured outside the United States and fitted with U.S. engines). Such aircraft are subject to U.S. export controls and require an OFAC license to be exported or reexported to Iran, whether by a U.S. or non-U.S. entity.

The following aircraft are not Eligible Aircraft and are not authorized for export to Iran under GL-J: helicopters or other rotary wing aircraft, unmanned or optionally piloted aircraft, or military aircraft, including demilitarized military aircraft.

What Does “Temporary Sojourn” Mean?

GL-J authorizes non-U.S. persons to reexport Eligible Aircraft to Iran on “temporary sojourn.” To qualify as a “temporary sojourn” under GL-J, the reexport transaction (i.e., the flight/voyage) must satisfy certain conditions, as follows:

Conditions on the Non-U.S. Person Operator. The non-U.S. person reexporter/operator of the Eligible Aircraft must retain the right to (i) hire and fire the cockpit crew; (ii) dispatch the Eligible Aircraft; (iii) determine the Eligible Aircraft’s routes; and (iv) perform or obtain the principal maintenance of the Eligible Aircraft. In addition, the non-U.S. person operator must ensure that there is no transfer of technology to an Iranian national ordinarily resident in Iran, except as provided below.

Conditions on the Eligible Aircraft. The Eligible Aircraft must (i) undergo principal maintenance outside of Iran, under the control of a party who is not an Iranian national ordinarily resident in Iran; (ii) remain registered outside Iran during the temporary sojourn (i.e., registration will not change while the Eligible Aircraft is in Iran); (iii) not bear the color, livery or logo of any Iranian air carrier; (iv) not

carry a flight number issued to any Iranian air carrier; (v) not be equipped with, or used to transport, items that are military in nature; and (vi) be in Iran for no more than 72 hours on each voyage.

While these conditions generally authorize third-country operators to serve routes to and from Iran from the operator's home base outside of Iran, they preclude entering into certain other transactions such as codeshare or leasing (e.g., wet, damp, dry) arrangements.

Authorization for Associated Repair and Maintenance Transactions

In addition to authorizing non-U.S. persons to reexport Eligible Aircraft to Iran on temporary sojourn, GL-J authorizes certain associated repair and maintenance transactions. These additional authorizations apply to spare parts, components and related technology that are subject to U.S. controls (e.g., due to U.S. origin or content).

To be eligible for reexport authorization under GL-J, the parts, components and technology must be classified under one of the following ECCNs: 9A991.c, 9A991.d, 9A991.e or 9E991. These ECCNs include the vast majority of commercial aircraft parts, components and technology, including most engines, but exclude, for example, hot section technology, most standard navigational and avionics equipment, and some standard aircraft communications-related equipment.

For eligible items, GL-J authorizes non-U.S. persons to:

- reexport “usual and reasonable” quantities of these parts and components to Iran, onboard the Eligible Aircraft, provided that the items are “ordinarily incident and necessary for the proper operation of the Eligible Aircraft”
- reexport technology for purposes of emergency maintenance on and/or repairs to an Eligible Aircraft, provided that the technology is “necessary to restore the aircraft to an airworthy condition.”

While these repair and maintenance authorizations may prove helpful in avoiding aircraft-on-ground (AOG) situations, they do not authorize the storing of any items in Iran, whether at a non-U.S. person's own line station or otherwise, nor do they authorize transactions related to non-emergency maintenance on Eligible Aircraft in Iran.

Key Limitations

In addition to the conditions described above, certain other key limitations apply to the use of GL-J, as follows:

- Cargo carriers must note that while GL-J may authorize their Eligible Aircraft to fly into Iran, it does not authorize the cargo that they carry to enter Iranian commerce. Such transactions require separate authorization if the cargo is subject to U.S. controls (and may require authorization from other competent government authorities). Failure to obtain such authorization creates liability not only for the shipper and consignee, but also for the freight forwarder, cargo carrier and any other party to the transaction—each of which may be held liable for an unauthorized transaction.

- GL-J does not authorize dealings with restricted parties, such as those listed on OFAC's list of Specially Designated Nationals, or any transaction involving restricted end-uses or end-users under U.S. export control laws (e.g., transactions involving weapons of mass destruction proliferation, foreign terrorist organizations or certain transactions involving parties listed on the U.S. Department of Commerce's Entity List or Unverified List). GL-J also does not authorize transactions with any party whose export privileges have been denied under U.S. export control laws.
- GL-J does not authorize non-U.S. persons to engage in any transactions with respect to aircraft—even Eligible Aircraft—or aircraft spare parts or components, if the non-U.S. person has knowledge or reason to know that an export violation has occurred with respect to those items.

In sum, GL-J authorizes straightforward transactions involving third-country commercial airlines wishing to serve Iran routes with Eligible Aircraft from the airline's home base outside of Iran. However, even seemingly minor complications to these otherwise straightforward transactions may run afoul of GL-J's conditions and preclude the airline's ability to rely on GL-J. Please do not hesitate to reach out to us if you have any questions regarding this development.

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