

International Trade Alert

April 1, 2016

OFAC Authorizes Certain Commercial Passenger Aircraft Transactions with Iran

On March 24, 2016, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) issued [General License I](#) authorizing U.S. persons to undertake certain transactions ordinarily incident to the negotiation of, and entry into, contingent contracts for licensable activities under OFAC's [Statement of Licensing Policy](#) for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services (SLP). OFAC also updated its [FAQs](#) on sanctions relief under the Joint Comprehensive Plan of Action (JCPOA or "Iran Nuclear Deal") to address inquiries related to General License I and provide additional guidance on license applications pursuant to the SLP. These actions reflect ongoing OFAC efforts to implement sanctions relief under the Iran Nuclear Deal (see our [January 19, 2016](#), and [January 21, 2016](#), alerts for further details) and to account for business realities that companies encounter in securing sales of commercial passenger aircraft and related parts and services in the Iranian market.

Background

OFAC's January 16, 2016, SLP set forth a policy of favorable treatment for license applications involving Iran-related transactions for the (i) export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft exclusively for civil aviation end use; (ii) export, reexport, sale, lease or transfer to Iran of spare parts and components for commercial passenger aircraft; and (iii) provision of associated services, including warranty, maintenance and repair services and safety-related inspections for all the foregoing, so long as licensed items and services are used exclusively for commercial passenger aviation.

The SLP generated significant industry interest, which, in turn, contributed to a backlog of commercial passenger aircraft-related license applications and inquiries. In particular, questions arose on whether U.S. persons may engage in transactions that are related to negotiating and entering into contracts for activities covered by the SLP under the Iranian Transactions and Sanctions Regulations (ITSR) and, if so, whether such transactions require separate OFAC authorizations.

Analysis

Contingent Contracts

General License I now authorizes U.S. persons to engage in all ordinarily incidental transactions eligible for authorization under the SLP, provided that performance is made expressly contingent upon the issuance of a specific OFAC license authorizing the activities to be performed. Accordingly, General License I **applies to only** "contingent contracts," which includes "executory contracts, executory pro forma invoices, agreements in principle, executory offers capable of acceptance" (i.e., bids or proposals

responding to public tenders), binding memorandums of understanding and “any other similar agreement.”

For example, General License I would authorize the negotiation of, and entry into, a non-disclosure agreement (NDA) in connection with the negotiation of a contingent contract for activities eligible for authorization under the SLP. However, it would not authorize the enforcement of any NDA breach against an Iranian party. OFAC states in its updated FAQs that such activity “may require” separate authorization.

Ordinarily Incident

Neither General License I nor the updated FAQs define what transactions are “ordinarily incident” to the negotiation of, and entry into, a contingent contract. FAQ J.9 implies that the importation of services from, or the exportation of services to, an Iranian party would constitute such “ordinarily incident” transactions. As a consequence, participants in the civil aviation trade are left to make determinations as to whether a particular activity is “ordinarily incident” to the negotiation of, and entry into, a contingent contract.

Other Limitations

General License I **does not** authorize:

- dealings with persons whose property and interests in property are blocked under other (non-ITSR) OFAC regulations (i.e., individuals and entities on the Specially Designated Nationals List) or
- the export or reexport of any aircraft or related parts or services to Iran (these require the submission of a specific license application).

License Applications

OFAC also updated its guidance regarding what should be included in license applications under the SLP. The FAQs now state that all such requests must include:

- the types and number of aircraft being exported or leased
- the Export Control Classification Number(s) for the aircraft, related parts, and/or technology being exported or leased
- the Iranian airline receiving the aircraft
- the proposed end use of the aircraft.

OFAC further states that applicants must also provide “any other information that may be relevant” and should generally include as much detail as possible about the transaction.

Conclusion

OFAC and regulated parties in the commercial passenger aircraft sector will likely benefit from more efficient processing of license applications as a result of General License I. In particular, General License I will allow companies to enter into negotiations with, and sign, contingent contracts with greater comfort than before this new General License was issued. Nevertheless, prohibitions related to such activities remain in place and companies must comply with the General License and sanctions regulations when

undertaking such activities. For example: (1) all activities related to the negotiation of, and entry into, contracts must be “ordinarily incident” to such a negotiation; (2) the contract must be “contingent” upon the approval of OFAC; (3) companies must ensure they comply with other requirements (e.g., not dealing with an SDN) and limitations (e.g., General License I does not explicitly authorize the enforcement of an NDA breach against an Iranian party).

Companies engaged in the aviation trade should structure their approach to this new General License I with these uncertainties and limitations in mind. Companies seeking to use General License I should establish compliance procedures to avoid running afoul of the requirements. Where appropriate, they should seek guidance, including advice from OFAC, to confirm that their activities are consistent with the General License. OFAC has stated that it will continue to enforce the remaining sanctions, which would include activities falling outside any General License.

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