

Aviation Advisory

April 14, 2016

OFAC General License Facilitates Negotiations With Iran for Commercial Passenger Aircraft

Since we last spoke of “Implementation Day” established on January 16 under the Joint Comprehensive Plan of Action (see [“Implementation Day” Brings Openings for Commercial Aircraft Sales With Iran advisory](#) from January 22), the state of US sanctions programs targeting Iran in the commercial passenger aircraft industry has continued to evolve. One recent action, US Treasury Department’s Office of Foreign Assets Control’s (OFAC) General License I issued on March 24, should allow US persons to more easily enter into contingent contracts, negotiations and transactions incident to the entry into contracts for the sale of aircraft or related parts to Iran.

For those watching developments in the commercial aviation market, this should give some cause for optimism. Transactions involving the sale or lease of commercial aircraft are often complex and multi-layered. For example, most aircraft sale and lease transactions begin with a letter of intent. The purpose of the letter of intent is to memorialize the parties’ intent to enter into a transaction, but it is generally made subject to the execution of definitive documents.

While Implementation Day established a “favorable licensing policy” for the sales of passenger aircraft and related parts and services to Iran, US entities contemplating such transactions must still seek specific authorization from OFAC. Up until March 24, US entities also would have needed to obtain specific licenses for the negotiations and contingent contracts that led up to the actual sales transaction. Needless to say, this obligation raised hurdles that many viewed as unnecessarily putting US companies looking to do business with Iran at a competitive disadvantage.¹ By establishing General License I, it seems that OFAC hopes to remove at least some of those hurdles for US entities, and it should be able to more efficiently process license applications for the actual sales transactions without the burdens of also handling applications for the precursor negotiations and contingent agreements.

The General License defines “contingent contracts” as including executory contracts, executory pro forma invoices, agreements in principle, executory offers capable of acceptance such as bids and proposals in response to public tenders, binding memoranda of understanding, and similar agreements. The agreements described above must be made expressly contingent on the issuance of a specific license by OFAC authorizing the activities to be performed.

OFAC also updated its FAQ relating to Iran sanctions, in which it further explained what kinds of activities are covered under the general license (the FAQ and general license

Should you have any questions concerning how the Iran sanctions may impact your business or provide for potential business opportunities, please contact the Katten Muchin Rosenman LLP and Rock Trade Law LLC attorneys listed below.

Timothy J. Lynes
Katten Muchin Rosenman LLP
+1.202.625.3686
timothy.lynes@kattenlaw.com

Stewart B. Herman
Katten Muchin Rosenman LLP
+1.212.940.8527
stewart.herman@kattenlaw.com

Thomas E. Healey
Katten Muchin Rosenman LLP
+1.202.625.3631
thomas.healey@kattenlaw.com

Eric R. Rock
Rock Trade Law LLC
+1.312.646.2596
erock@rocktradelaw.com

Benjamin H. Shanbaum
Rock Trade Law LLC
+1.312.646.2596
bshanbaum@rocktradelaw.com

¹ The effects of these hurdles were demonstrated earlier this year, when Boeing Co. had to delay its negotiations with Iranian airline carriers for fleet overhauls pending an OFAC specific license, possibly contributing to its losing out on a \$27 billion order to European rival Airbus Group SE. See [here](#).

are available [here](#) and [here](#), respectively). For example, General License I covers the negotiation and entry into Non-Disclosure Agreements (NDAs) connected to a contingent contract with an Iranian entity is authorized under the general license. However, the enforcement of NDA breaches does not fall within scope of the general license, and may require a separate specific license.

The license, furthermore, does not authorize transactions or dealings with any person whose property or interests in property are blocked under OFACs sanctions programs other than the Iranian Transactions and Sanctions Regulations (ITSR). This is important to those contemplating doing business with Iranian customers, as some of them may be blocked under different sanctions programs. Mahan Air, for example, is blocked under several OFAC sanctions programs other than ITSR, and any US person is still prohibited from doing business with this entity.

Finally, even as some hurdles fall, others are maintained or raised. OFAC continues to identify newly blocked entities and individuals under the Specially Designated Nationals list for being involved with Iran's ballistic missile program. Those interested in seeking to throw their hat into the Iranian market must continue to remember that the relationship between the United States and Iran is tenuous, and that this gradual thawing of a frozen trade relationship leaves open many opportunities for US business to unwittingly fall afoul of US sanctions and export laws.

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