

U.S. Treasury Issues Iran Civil Aviation Industry Advisory



Advisory a reminder of sanctions framework against Iran aviation sector, need for vigilance in compliance, and strict US enforcement policy



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The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) on July 23 issued an Advisory on Iran’s Civil Aviation Industry, outlining many prohibitions under U.S. law restricting dealings with Iran’s civil aviation sector, while also detailing certain deceptive practices by Iranian players in that sector, and highlighting the need for vigilance in compliance. Although this publication does not reflect a change in U.S. or even OFAC policy, it does serve as a reminder of certain significant changes in the sanctions landscape in this field since the Trump Administration terminated U.S. participation in the Joint Comprehensive Plan of Action (JCPOA) (referred to as the “Iran Nuclear Deal”), clarifying the application of sanctions and highlighting endemic risks and red flags in the field.

This Advisory follows other Advisories recently issued by OFAC, such as one on Syrian shipping in March 2019 and North Korean vessels in February 2018.

Background

The United States has restricted dealings with Iran’s civil aviation industry for decades, both through sanctions and export control laws. The past decade has seen a number of Iran’s airlines, including flag carrier Iran Air, being named by OFAC to the list of Specially Designated Nationals and Blocked Persons (the “SDN List”). It was only during the brief period in which the United States participated in the JCPOA that Iran was able to lawfully procure a handful of civilian aircraft. Even during this period, airlines such as Mahan Airways remained on the SDN list as they were designated for reasons other than involvement with Iran’s nuclear energy program, such as providing material and financial support to the Islamic Revolutionary Guard Corps.

Civil aviation has traditionally been a key compliance concern given the comprehensive nature of U.S. sanctions, and has also been the subject of vigorous enforcement by OFAC, the U.S. Department of Commerce’s Bureau of Industry and

Security (BIS), and the U.S. Department of Justice (DOJ), which handles criminal investigations of such violations.

OFAC is tasked with administering U.S. sanctions, and the BIS is responsible for administering export controls U.S. origin goods and technologies, including many products made outside the United States. Given the United States' predominance in the commercial aviation sector, much of the output in this sector is subject to the jurisdiction of the Export Administration Regulations (EAR), which the BIS administers. Under the EAR, non-U.S. persons can face penalties for dealing in U.S.-controlled goods and technologies even outside the United States.

Legal Changes

Upon implementation of the JCPOA in January 2016, OFAC issued a Statement of Licensing Policy ("SLP") detailing the licensing of the sale of commercial aircraft, parts, and related services to Iranian carriers and/or for Iranian end-use, although the SLP was limited to airlines not on the SDN list. This was a pivotal moment as even non-U.S. built commercial aircraft largely rely on U.S.-origin technologies and parts that are subject to the EAR. Following the United States' withdrawal from the JCPOA, OFAC repealed its SLP and revoked licenses for the export of aircraft and related services to Iran. Such petitions are no longer considered under the SLP and are subject to denial.

Most notably, while the SLP has been repealed and while some Iranian carriers returned to the SDN list, General License J-1, which allows for temporary sojourn to Iran by non-U.S. carriers, remains intact. Furthermore, OFAC maintains in the Iranian Transactions and Sanctions Regulations (the "ITSR") a provision indicating it will still consider applications for the sale for use in Iran of goods and services needed for the safety of U.S. origin civilian aircraft in that country.

Deceptive Practices

In its most recent advisory, OFAC points to several common deceptive practices by Iran's civil aviation sector. Most notably, OFAC emphasizes that key Iranian players are active not only in Iran but also in other jurisdictions, such as Syria. Deceptive practices used to help Iran illicitly obtain civilian aircraft and related parts and services include the use of foreign, non-Iranian front companies, and even activities such as forged OFAC licenses and misleading delivery addresses. OFAC's list is of course not conclusive.

Violations and Penalties

Both U.S. and non-U.S. persons can be exposed to both civil and criminal liability under U.S. law for dealing with the Iranian civil aviation industry. Most notably, the exposure under U.S. law extends not only to parties selling actual aircraft and parts, but also to those providing ancillary services, such as ticketing and catering.

U.S. persons, including U.S. citizens, Permanent Residents, and individuals physically in the United States, along with U.S. companies and their foreign branches and subsidiaries are prohibited in dealing in most transactions involving goods, services, and technologies with Iran or for ultimate benefit received in Iran unless otherwise licensed by OFAC, and if needed the BIS. As indicated above, importantly, jurisdiction for the transfer of products such as aircraft fall not only under the jurisdiction of OFAC but also under that of the BIS.

Given the robust sanctions framework in place, U.S. persons can be subject to OFAC and BIS civil penalties (such as monetary penalties and export denial orders) and also to the U.S. Department of

Justice criminal investigations and prosecution. Cases involving conspiracies to sell aircraft and parts are fairly common and have been for many years.

Non-U.S. persons can also be exposed to civil penalties by OFAC, such as monetary penalties or even addition to the SDN list; the BIS, which could also entail monetary penalties, as well as additions to the BIS' own lists, such as the Denied Persons list); as well criminal investigation and prosecution by the DOJ. Persons and entities, both U.S. and non-U.S., that OFAC deems to have violated Iran sanctions could be subject to a monetary penalty of up to \$302,854 or twice the value of the transaction, whichever is greater. Criminal penalties applied by the DOJ can similarly be monetary in nature (although up to \$1,000,000 under the International Emergency Economic Powers Act) and can also include imprisonment.

Compliance Concerns

One key component of today's Advisory is the attention it draws to the global risk Iran's aviation sector carries, even for those who have no intention to deal with it. Given the international nature of Iran's procurement, its dealings with Syria and the ways under which it seeks to illicitly procure aircraft and parts, companies around the world must exercise extreme vigilance. The use of third country front companies including free zone entities, as well as so-called "sham transactions" in this sector are not unheard of.

Given these deceptive practices and their vast, international nature, a corporate policy limited to prohibiting dealings with Iran is generally inadequate. Although OFAC has outlined certain deceptive practices in today's Advisory, that list is not conclusive. Importantly, sanctions compliance risks are exceedingly dynamic and evolve over time, thereby elevating the risk for similarly dynamic compliance approaches. As OFAC itself indicates, players in this sector, be they U.S. or non-U.S., should be exceptionally careful and vigilant, conducting serious due diligence and be alert to any "red flags" which could indicate an illicit or otherwise Iranian nexus. Given the complexity of these threats, companies around the world in the civil aviation sector should strongly consider strengthened compliance programs and approaches, and periodically update their policies as needed.

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