



IRAN SANCTIONS: AEROSPACE FOCUS

Stakeholders within the aviation sector will be impacted by the reimposition of US sanctions against Iran. Further to HFW's earlier update on President Trump's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) and reinstate the Iran sanctions¹, this briefing considers the likely impact on the aviation sector.

1. <http://www.hfw.com/Sanctions-Update-US-sanctions-on-Iran-8-May-2018>



Overview

The reinstatement of the US sanctions against Iran has wide-reaching implications for the aviation industry and will affect not only US companies and their foreign subsidiaries but may also affect certain activities of non-US companies. Non-US businesses with activities in Iran have wind down periods of 90 days or 180 days (depending on the specific activities) to conclude their activities in Iran, failing which they risk US enforcement, with significant impact on their US activities.

Manufacturers

International trade sanctions have undoubtedly made it more difficult for Iran to maintain and upgrade its fleet of commercial passenger aircraft. As a result, it has an old fleet (the average age of the Iranian fleet is more than 25 years old, making it one of the oldest fleets in the world) and one of the key benefits of the sanctions relief pursuant to the JCPOA was the adoption by the US of a favourable licensing policy, which was intended to make it less difficult for Iran to purchase commercial passenger aircraft and parts, even where that transaction had a US nexus.

That led Airbus and Boeing to conclude agreements with Iran worth an estimated US\$49 billion.

The largest reported deal was an agreement between Airbus and IranAir for the purchase of 100 aircraft. While Airbus is a European entity, more than 10% of parts and labour used to build its planes come from the US (meaning that Airbus required a US licence). Aseman Airlines (which in February 2018 suffered a serious accident involving a 24 year old ATR72 which killed 65 passengers and crew) also had signed a purchase agreement for up to 60 Boeing aircraft.

The Treasury Department has now expressly stated that the licences granted to both Airbus and Boeing to export to Iran will be revoked and no new licences will be granted. The Office of Foreign Asset Control (OFAC) will still consider (on a case-by-case basis) licence applications which are made for the exportation or re-exportation of goods, services, and technology to ensure the safety of civil aviation and safe operation of US-origin commercial passenger aircraft.

It is still unclear whether it will be possible for the likes of Boeing and/or Airbus to seek special licenses from the US authorities. According to reports, certain companies are already planning to appeal to the US government to exempt or extend certain licenses for specific contracts. Boeing are, for example, expected to seek relief directly from

the US government and Airbus are reportedly lobbying the French government to approach the White House on the matter.

These changes will of course have a significant impact on the likes of Airbus and Boeing but they will also have significant ramifications for all component and subcomponent manufacturers who have entered into agreements with Iran or Iranian based companies, or who have contracted to supply components for aircraft which are no longer required.

Lessors/financiers

Many international lessors have taken only tentative steps to develop relationships with Iranian carriers. For those lessors with aircraft on lease to Iranian carriers, they should review the lease carefully to determine whether the imposition or reinstatement of sanctions will automatically result in an event of default under the lease and the resulting return or repossession of the aircraft.

Similarly, any direct financings to Iranian carriers or financings to lessors with aircraft on lease to Iranian carriers will usually have similar events of default requiring loan repayment for affected aircraft. In the current environment, where a number of financial institutions have incurred significant financial liability for sanctions breaches, any events of

default are likely to be taken seriously and dealt with quickly.

In terms of future financing requirements for Iranian carriers, the options may be limited. US Dollars are the established currency of the international aviation markets and, as such, it has remained difficult for Iranian carriers to fund aircraft acquisition as the US financial system is involved in clearing all US Dollar payments. Some industry commentators have speculated that, with the increasing prevalence of cryptocurrencies and challenges from other currencies to the US Dollar's reserve status, it may be possible to conduct transactions without using US Dollars. It remains to be seen whether this will be possible in practice.

Flights to/from Iran

A number of international airlines, including BA, Lufthansa and Air France have operated direct routes to Iran and visitor numbers to the country have gradually increased.

Despite the revocation of other licences, it does not currently appear that OFAC intends to revoke General License J-1, which allows non-US airlines to make international flights to Iran operating aircraft subject to US export jurisdiction.

While non-US carriers may be legally permitted to continue operations to Tehran, these routes will encounter a number of challenges, due to the involvement of US persons, US Dollars, or reluctance of European banks to make and receive payments. In circumstances where most aviation insurance policies (covered on a subscription basis) include US based insurers or reinsurers, airlines will struggle to continue operations to Iran as insurers with a US nexus may refuse to cover claims arising out of flights to Iran.

General License J-1 also allows non-US airlines to engage in certain code-sharing arrangements with Iranian airlines. However, even if

General License J-1 is not revoked, it is expected that the US will re-list Iran Air, and other Iranian government-owned airlines on the US Specially Designated Nationals and Blocked Persons List from 5 November 2018. This will have the effect of prohibiting code-sharing and similar arrangements with those Iranian carriers.

Action Points

As a result of the above, all companies should:

- Identify any transactions which have any connection with Iran.
- Review the transactions to determine whether a particular agreement can be performed, potentially with input from external lawyers and regulators.
- Analyse the contract to see what contractual protections are included to deal with a sanctions snapback (as well as any contractual ramifications in terms of cancellation).
- Notify the business of any changes to the policy with respect to trade with Iran.

What next?

The situation is evolving very quickly with new announcements coming from the US administration on an almost daily basis. Any client that believes their business could be affected by the reinstatement of sanctions against Iran should seek legal advice as soon as possible given the 90 and 180 day wind down periods.

HFW is helping businesses to determine the likely impact on their activities of the latest US sanctions developments, as well as evaluating such businesses' options under existing contracts and agreements.

For further information on how the reinstatement of the Iran sanctions may affect you, please contact your usual contact at HFW or the authors of this briefing:



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