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New U.S. Sanctions Designations Target Airlines and Lessors in Europe and Asia

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By Nancy A. Fischer, Josh Romanow, and Aaron R. Hutman

The United States has added three airlines from Europe and Asia, as well as two individual airline executives and 13 aircraft, to the list of Specially Designated Nationals (SDNs) due to the airlines' support for Iran Air and Mahan Air of Tehran. The sanctions designations were based on U.S. Executive Orders with extraterritorial jurisdiction over parties who support certain sanctioned persons like Iran Air/Mahan Air – the newly sanctioned companies and executives were not U.S. nationals, no activity took place in the United States, and jurisdiction was not based on U.S. content in the aircraft. This highlights an additional risk area for aircraft operators, manufacturers and lessors of all nationalities.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) continues to advance the extraterritorial application of U.S. sanctions policies addressing Iran, terrorists, and weapons proliferators. This most recent action on May 31, 2013, extends a trend of U.S. Executive Orders and OFAC designations targeting non-U.S. aircraft, ships, and those responsible for them. It also highlights additional avenues through which the United States can assert jurisdiction over foreign airlines and aviation industry companies.

Mahan Air and Iran Air were sanctioned under U.S. Executive Orders 13224 and 13382, which direct sanctions designations for supporters of terrorism and weapons of mass destruction proliferation, respectively. Both Executive Orders also direct the imposition of sanctions on persons determined to have supported or provided goods or services in support of any entity or individual blocked under the Orders. OFAC may apply such sanctions to any individual or entity, not only to U.S. companies, persons operating in the United States or airlines using U.S. aircraft or aircraft with sufficient U.S. content.

Non-U.S. airlines and aviation companies may be more familiar with U.S. legal jurisdiction over aircraft and their components/parts in the context of U.S. export controls. U.S. aircraft, aircraft exported from the United States, and foreign aircraft containing more than 25 percent U.S. content by value (10 percent for export/reexport to Group E:1 countries Cuba, Iran, North Korea, Sudan or Syria) generally are subject to the U.S. Export Administration Regulations (EAR). It is common for aircraft to have engines or other major

systems or components of U.S. origin in non-U.S. planes. For export or reexport (including temporary sojourn) of an aircraft subject to the EAR to the embargoed countries listed above, generally either a license from the U.S. Commerce Department is required or a license exception such as AVS must apply. In addition, aircraft containing any components/parts controlled by the International Traffic in Arms Regulations (ITAR) would require approval from the U.S. State Department for most any export or reexport.

The U.S. Executive Orders listed above and U.S. sanctions on Iran can apply whether or not an aircraft is subject to the EAR or ITAR, whether or not the EAR/ITAR-controlled aircraft is exported/reexported to a country requiring a license, and whether or not there is other contact with the United States. Thus, the sanctions announced on May 31, 2013 represent another avenue for the United States to assert jurisdiction and potentially apply sanctions or other penalties.

Here, OFAC determined that Ukrainian-Mediterranean Airlines (UM Air), Bukovyna Airlines, and Kyrgyz Trans Avia (KTA) had served as intermediaries for the acquisition of aircraft by Mahan Air and Iran Air. UM Air and Bukovyna AE leased certain aircraft to the Iranian airlines and continue to be listed as the aircraft operators – the planes themselves, along with several other aircraft, have been added to the SDN list. UM Air also was cited for helping to train and certify Mahan Air pilots and engineers on the aircraft. Finally, UM Air's Chairman Rodrigue Elias Merhej and KTA's company director Lidia Kim were designated due to their company's activities. OFAC also added to the SDN list Sirjanco Trading LLC., a financial front company for Mahan Air, and Mahan Air's managing director Hamid Arabnejad.

OFAC indicated that some of the aircraft supplied by the companies were "used, interchangeably, to move suspected illicit cargo to the Syrian regime and provide civilian passenger flights to Europe and Asia." This highlights some of the risks facing non-U.S. (in addition to U.S.) companies in the airline, plane manufacturing and leasing, and aircraft operation industries.

It is important for companies in these industries to be aware of U.S. sanctions rules and their potential extraterritorial application. Doing business in countries subject to U.S. or United Nations sanctions, or in certain geographical regions, may heighten these legal risks. Customer vetting and due diligence will remain crucial to understanding where and by whom an aircraft may be used.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Nancy A. Fischer (bio)
Washington, DC
+1.202.663.8965
nancy.fischer@pillsburylaw.com

Josh Romanow (bio)
Washington, DC
+1.202.663.9264
romanow@pillsburylaw.com

Aaron R. Hutman (bio)
Washington, DC
+1.202.663.8341
aaron.hutman@pillsburylaw.com

Mark Lessard (bio)
New York, NY
+1.212.858.1564
mark.lessard@pillsburylaw.com

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