

Recent OFAC Enforcement Actions: Lessons for Aviation Industry

May 12, 2020

The aviation industry has recently proved to be an important target of the Office of Foreign Assets Control (“OFAC”) enforcement actions. In particular, OFAC recently entered into settlement agreements with two industry players — Société Internationale de Télécommunications Aéronautiques SCRL (“SITA”) and Apollo Aviation Group, LLC¹ (“Apollo”). We discuss here lessons that the aviation industry can learn from these OFAC enforcement actions.

SITA Settlement. SITA provides commercial telecommunications network and information technology services to civil aviation, including reservation-related, networking and connectivity services; flight planning, dispatch and border management services; and messaging services and ancillary services to travel (such as baggage claim, cargo movement software, etc.). OFAC’s recent investigation of SITA’s business revealed nearly 10,000 apparent violations of the Global Terrorism Sanctions Regulations (“GTSR”) between April 2013 and February 2018. According to OFAC, in apparent violation of GTSR, SITA provided commercial services and software to Mahan Air, Syrian Arab Airlines, Caspian Air, Meraj Air and Al-Naser Airlines entities designated by OFAC on the list of Specially Designated Nationals and Blocked Persons (the “SDN List”) as Specially Designated Global Terrorists (“SDGT”) pursuant to Executive Order 13224.

In particular, SITA’s prohibited commercial services and software included:

- **Type B messaging (“TBM”) Services:** a messaging service that enables users to communicate with others in the industry (e.g., order aircraft maintenance, arrange and change routes, refuel planes, etc.). TBM messages for or from SDGTs were routed through Atlanta, Georgia.
- **Maestro DCS Local (“Maestro”):** U.S.-origin software for processes such as check-in and baggage management.

¹ Currently operating as Carlyle Aviation Partners Ltd.

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- **WorldTracer:** a global lost baggage tracing and matching system hosted on servers in the United States and maintained by SITA's subsidiary located in the United States.

Although SITA is a Swiss entity, OFAC took the position that these services and software were subject to the United States jurisdiction and OFAC's enforcement action because they were "provided from, or transited through, the United States or involved the provision of U.S.-origin software with knowledge that customers designated as SDGTs would benefit from the use of that software."

In fact, SITA had attempted to comply with GTSR when its customers had been designated as SDGTs. SITA stopped providing certain services to them but kept providing TBM, Maestro and WorldTracer services. OFAC considered that SITA should have identified the U.S. nexus and determined as an aggravating factor that SITA knowingly provided services and software to SDGTs.

SITA has confirmed to OFAC that it has terminated the challenged conduct and undertaken compliance commitments to prevent violations in the future. As a result, on February 26, 2020, SITA agreed to pay \$7,829,640 to settle its potential civil liability for apparent violations of the GTSR.

Apollo Settlement. Apollo, a U.S.-based company, was an aviation investment manager engaged in acquiring, refurbishing, marketing and leasing commercial jet aircraft, engines and related assets. During its investigation, OFAC identified 12 apparent violations of Sudanese Sanctions Regulations in 2013–2015. In fact, Apollo was leasing three aircraft engines to an entity incorporated in the United Arab Emirates (the "UAE Lessee"). The UAE Lessee subleased the engines to a Ukrainian airline, which then installed the engines on an aircraft wet-leased to Sudan Airways. At the time of the transactions, Sudan Airways was designated by OFAC on the SDN List as meeting the definition of "Government of Sudan." Under the sanctions which were in effect at the relevant time, U.S. persons were not permitted to provide goods or services directly or indirectly to the Government of Sudan.

The agreement with the UAE Lessee contained a provision prohibiting the lessee from transferring the leased engines to any countries subject to United States or United Nations sanctions. OFAC did not consider this provision to be sufficient to comply with sanctions law. To the contrary, OFAC noted as an aggravating factor that Apollo "failed to monitor or otherwise verify" that aircraft engines were utilized in compliance with the U.S. sanctions and learned that engines were being used by Sudan Airways aircraft only at the end of the lease term.

Apollo has agreed to implement OFAC's compliance commitments, confirmed that it has terminated the offending conduct and taken steps to minimize future risks. As a

result, on November 7, 2019, Apollo agreed to make a \$210,600 payment to settle potential civil liability for apparent violations of the Sudanese Sanctions Regulations.

Lessons for the Aviation Industry from the SITA and Apollo OFAC Enforcement Actions. These enforcement actions draw important lessons for the aviation industry:

- OFAC treats aviation as a “high-risk” industry and strongly advises implementing “effective, thorough, and on-going risk-based compliance measures” for any aviation deals. We discussed OFAC’s comprehensive guidance to risk-based sanctions compliance programs in [“OFAC Guidance and Recent Enforcement Actions: A Road Map for Compliance with U.S. Sanctions.”](#)
- OFAC recommends in both the SITA and Apollo cases that companies operating in the aviation industry follow its Iran-Related Civil Aviation Industry Advisory of July 23, 2019, even for transactions with jurisdictions other than Iran, which may involve similar deceptive practices by sanctioned parties. See [“Aviation Industry and Iran-Related Sanctions: Be Mindful of Deceptive Practices.”](#)
- Non-U.S. industry participants should be aware of any potential U.S. nexus with their business, from U.S. subsidiaries or personnel to U.S.-origin goods or software. OFAC will have high expectations as to sanctions compliance where non-U.S. industry participants are knowingly working with sanctioned jurisdictions.
- Contractual prohibitions on the use of leased equipment alone are not sufficient to constitute compliance with OFAC requirements. Industry participants must have in place an effective monitoring program to ensure that their counterparties do not breach OFAC rules throughout the whole contractual relationship.

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