



**U.S. DEPARTMENT OF THE TREASURY  
OFFICE OF FOREIGN ASSETS CONTROL**



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**Fracht FWO Inc. Settles with OFAC for \$1,610,775 Related to Apparent Violations of Multiple Sanctions Programs**

Fracht FWO Inc. (“Fracht”), an international freight forwarder with its principal place of business in Houston, Texas, has agreed to pay \$1,610,775 to settle its potential civil liability for apparent violations of multiple OFAC sanctions programs, including those on Venezuela and Iran. In May 2022, Fracht, by failing to follow internal compliance procedures, contracted with a blocked Government of Venezuela airline to transport goods from Mexico to a customer in Argentina. To fulfill the contract, the blocked Venezuelan airline used an aircraft separately blocked by OFAC for being operated by Iran’s Mahan Air and crewed by Iranian nationals—conduct reflecting apparent violations of OFAC’s Iran, proliferation, and terrorism sanctions programs.

The settlement amount reflects OFAC’s finding that Fracht’s apparent violations were egregious and not voluntarily self-disclosed. It also reflects Fracht’s substantial cooperation with OFAC’s investigation and remedial efforts the company has already taken to ensure similar violations do not reoccur. More broadly, this enforcement action emphasizes the importance for international trade service providers, such as freight forwarders, to know their counterparties and recognize the risks of prioritizing urgent business demands at the expense of compliance. In a complex operating environment, it is critical for all persons subject to U.S. jurisdiction—including senior personnel responding to urgent commercial needs—to understand potential sources of sanctions risk and take appropriate steps to prevent potential violations.

**Description of the Apparent Violations**

In May 2022, a major manufacturer contacted Fracht’s Mexico affiliate to secure transport of a shipment of car parts from Mexico to Argentina on an urgent basis. Lacking the requisite expertise, capacity, and resources to fulfill the request, the Mexico affiliate sought Fracht’s assistance. Fracht sought to identify an available aircraft without success and ultimately contacted a freight forwarder logistics broker in Mexico (the “Broker”) for assistance; Fracht’s Vice President of Airfreight had recently been recommended this Broker by a mutual contact. In internal discussions, Fracht senior executives expressed concern over satisfying the customer’s manufacturing needs and retaining their business if Fracht did not imminently find a suitable aircraft.

*Contracting for Use of Blocked Airline and Subsequent Payments*

On May 28, 2022, Fracht entered into a charter contract with the Broker for a flight to pick up Fracht’s cargo in Mexico on June 2, 2022, and to deliver it to Argentina the following day. The contract named as the carrier Empresa de Transporte Aéreo cargo del Sur S.A. (“EMTRASUR”), a freight charterer and wholly owned subsidiary of the OFAC-designated Venezuelan state airline, Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos (“CONVIASA”), to ship the

parts, and identified EMTRASUR's address in Venezuela. The contract also specified that the tail number of the aircraft to be used was YV-3531—"YV" indicating a Venezuelan aircraft.

CONVIASA had been blocked since 2019 as a Government of Venezuela entity pursuant to Executive Order (E.O.) 13884 of August 5, 2019, and was specifically identified on February 7, 2020, on OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List"). The aircraft EMTRASUR used, moreover, had previously been identified on the SDN List as blocked property of designated Iranian airline Mahan Air.<sup>1</sup> Unbeknownst to Fracht when it contracted for the aircraft, EMTRASUR also staffed the aircraft with an Iranian crew.

In conjunction with the signing of the contract, the Broker sent the Vice President of Airfreight details about the flight, which included the tail number for the plane and the flight's itinerary, showing that the aircraft would be arriving in Mexico from Venezuela, and that the chartered flight itinerary included a layover in Venezuela before completing its journey to Argentina. Fracht's Vice President of Airfreight also shared this information with Fracht's Vice President of Strategic Development. Despite these red flags, Fracht's Vice President of Airfreight executed the contract without undertaking sanctions screening or internal legal review, contrary to Fracht's compliance policies and procedures. Shortly after executing the contract, Fracht paid the Broker \$885,000, most of which—\$825,000—went to EMTRASUR.

The EMTRASUR aircraft arrived in Mexico on June 4, 2022, two days after its original scheduled arrival date. While loading the plane, the ground crew notified Fracht's Vice President of Strategic Development that the aircraft was a converted passenger aircraft and could not hold the entire cargo as intended. Fracht was informed it could either authorize the ground crew to unload and reconfigure the cargo, which would delay the aircraft's arrival in Argentina by another two days, or procure a different aircraft.

On June 4, 2022, Fracht's Vice President of Airfreight, Chief Executive Officer (CEO), Vice President of Strategic Development, and the CEO of Fracht's Mexico affiliate exchanged messages on a group chat to discuss the resultant delay and ways to mitigate its impact on Fracht's reputation and business. The CEO of EMTRASUR also spoke with the Vice President of Strategic Development and explained that, as a result of the delay, Fracht would need to pay a \$110,000 late fee to EMTRASUR for additional loading time in Mexico.

In response to an inquiry from Fracht's CEO in the group chat regarding the identity of the aircraft, the Vice President of Strategic Development explained that Fracht had engaged EMTRASUR, adding that it was a "subcompany of ... CONVIASA." Fracht's CEO was unaware that either company was blocked or that sanctions screening had not been performed. Fracht's CEO deferred

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<sup>1</sup> OFAC designated Mahan Air on October 12, 2011, pursuant to E.O. 13224 of September 23, 2001. See "Designation of One Entity Pursuant to Executive Order 13224 of September 23, 2001, 'Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,'" Department of the Treasury, Office of Foreign Assets Control, 76 Fed. Reg. 64,427, October 18, 2011. 31 C.F.R. part 594 implements E.O. 13224. On September 12, 2012, OFAC added an aircraft bearing tail number EP-MND to the SDN List as blocked property in which Mahan Air has an interest, and included the aircraft's manufacturer serial number, 23413. On December 11, 2019, the U.S. Department of State designated Mahan Air pursuant to E.O. 13382 of June 28, 2005. See "Designation of Iranian Entity Pursuant to Executive Order 13382," Department of State, 85 Fed. Reg. 3468, January 21, 2020. 31 C.F.R. part 544 implements E.O. 13382.

to the senior executive group's decision to use the current plane and to pay EMTRASUR's late fee. EMTRASUR's agent issued an invoice for \$110,000 to Fracht on June 6, which Fracht paid the following day.

Fracht's receipt of air freight services from EMTRASUR to transport cargo using an aircraft operated by EMTRASUR, for which Fracht compensated EMTRASUR in two transactions worth \$995,000, constituted two apparent violations of § 591.201 of the Venezuela Sanctions Regulations, 31 C.F.R. part 591 (VSR).

### *Prohibited Dealings Involving Mahan Air and Iranian Services*

On September 12, 2012, less than a year after Mahan Air's designation, OFAC added an aircraft bearing tail number EP-MND—"EP" indicating an Iranian aircraft—to the SDN List as blocked property in which Mahan Air had an interest, and included the aircraft's manufacturer's serial number, 23413. In or around October 2021, Mahan Air transferred ownership, custody and control of the aircraft to CONVIASA, which, through EMTRASUR, changed the unique identifier tail number from EP-MND to YV-3531, reflecting its status as a Venezuelan aircraft. This transfer did not, however, unblock the aircraft, which remained on the SDN List under its former tail number and which could be traced through its manufacturer's serial number; this did not change upon transfer to EMTRASUR and was still listed as an identifier on the SDN List. Following the aircraft's transfer to EMTRASUR, Mahan Air continued to coordinate its use, providing operations training and maintenance services. Under EMTRASUR's operation, and outside of the Fracht engagement, the aircraft made various trips between Venezuela, Iran, and Russia.

While lacking actual knowledge, Fracht's indirect use of the aircraft through the Broker and EMTRASUR involved dealings in property in which Mahan Air had an interest, constituting apparent violations of § 544.201 of the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544 (WMDPSR), and § 594.204 of the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594 (GTSR). The services of the Iranian flight crew constituted apparent violations of § 560.206 of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR).

Soon after learning of the Iranian crew's involvement—although after discovery by another U.S. government agency—Fracht self-initiated a disclosure to OFAC and began taking numerous compliance steps to prevent future violations. As a result of the conduct above, Fracht engaged in apparent violations of the VSR, WMDPSR, GTSR, and ITSR (the "Apparent Violations").

### **Penalty Calculations and General Factors Analysis**

OFAC found that Fracht did not voluntarily self-disclose the Apparent Violations and that the Apparent Violations constitute an egregious case. Although Fracht self-initiated a submission to OFAC describing the relevant transactions, OFAC and other U.S. government agencies already knew of the Blocked Aircraft's chartering and detention in Argentina and the attendant sanctions risks to the parties involved. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), 31 C.F.R. part 501, app. A., the base civil monetary penalty applicable in this matter equals the statutory maximum, which is **\$2,147,700**.

The settlement amount of **\$1,610,775** reflects OFAC's consideration of the General Factors under the Enforcement Guidelines. OFAC's Settlement Agreement with Fracht can be found [here](#).

OFAC found the following to be **aggravating factors**:

- (1) While the Apparent Violations were not willful, Fracht, primarily through the conduct of two of its vice presidents, demonstrated reckless disregard for U.S. sanctions requirements by foregoing its internal compliance processes and executing a contract using a blocked aircraft from Venezuela without conducting due diligence and failing to respond appropriately to significant red flags.
- (2) Fracht's managers, including the two vice presidents and higher-ranking officials, had actual knowledge that Fracht executed a contract involving EMTRASUR (a blocked entity) and that Fracht either had made or would make payments to EMTRASUR for its provision of airfreight services to Fracht.
- (3) Fracht conferred a direct financial benefit of approximately \$935,000 to the blocked entity EMTRASUR, providing substantial revenue to the Maduro regime and specifically relating to use of an aircraft blocked for terrorism and proliferation.
- (4) Fracht is a large and sophisticated international organization operating in the field of freight forwarding and logistics globally.

OFAC found the following to be **mitigating factors**:

- (1) Fracht has not been the subject of a Finding of Violation or Penalty Notice by OFAC in the past five years.
- (2) Upon discovering the apparent violations, Fracht immediately took remedial measures by accelerating its broad and significant sanctions and compliance improvements that were already underway, and remain ongoing. These include:
  - Remedial measures with respect to employees involved in the incident, including terminating the employment of the person who contracted with EMTRASUR;
  - Mandating that all contracts from customers, airfreight, and ocean freight providers are subject to legal review and sanctions-focused due diligence prior to execution;
  - Modifying Fracht's air freight cargo contract templates to include confirmation of compliance with U.S. sanctions.
  - Updating the vendor approval and vetting process procedures to mandate that all vendors be subject to the compliance function's approval and sanctions-focused due diligence;

- Hiring of additional sanctions compliance personnel (nine full-time compliance employees are now on staff);
  - Committing significant financial resources to compliance (investing more than \$1.0 million annually);
  - Enhanced auditing procedures (including audits under its ISO Management System, renewals and revalidations of its U.S. Customs and Border Protection Customs-Trade Partnership Against Terrorism certification); and
  - Implementing quarterly reporting requirements and recurring compliance training for its employees.
- (3) Fracht substantially cooperated with OFAC's investigation, including by providing documents outlining its business operations and detailed contemporaneous records. Fracht also provided timely and fulsome responses to all OFAC requests.

### **Compliance Considerations**

This enforcement action highlights the numerous types of sanctions risks that intermediaries and service providers involved in international trade, such as members of the freight and logistics industry, may encounter. Such intermediaries operate at the center of trade transactions and may deal with multiple counterparties, including shippers, carriers, vendors, owners, operators, brokers, affiliates, and agents, which themselves may often represent the interests of third parties. Companies should be informed of the sanctions risks presented by dealing, directly or indirectly, with blocked counterparties and their assets—including aircraft, vessels, and other property. Such property may be blocked by virtue of their ownership by blocked persons, whether or not they are identified on OFAC's SDN List.

This enforcement action also highlights the importance of instituting strong internal controls and procedures and ensuring they are followed, including by affiliates, subsidiaries, employees, and agents. Compliance may at times come at the expense of convenience. A well-designed sanctions compliance program is only effective if it is adhered to, even in the face of urgent business demands. Here, key employees had several opportunities to follow critical compliance policies and procedures designed to prevent such occurrences. As this case demonstrates, decisions to prioritize expediency, even in the face of red flags, can result in apparent violations.

Finally, this enforcement action highlights the benefits of immediately remedying identified compliance deficiencies and cooperating with OFAC's investigation.

### **OFAC Enforcement and Compliance Resources**

On May 2, 2019, OFAC published [A Framework for OFAC Compliance Commitments](#) in order to provide organizations subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, or that use goods or services exported from the United States, with OFAC's perspective on the essential components of a sanctions compliance program.

The *Framework* also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The *Framework* includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process.

Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent civil penalties and enforcement information, can be found on OFAC's website at <https://ofac.treasury.gov/civil-penalties-and-enforcement-information>.

### **Whistleblower Program**

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) maintains a whistleblower incentive program for violations of OFAC-administered sanctions, in addition to violations of the Bank Secrecy Act. Individuals located in the United States or abroad who provide information may be eligible for awards, if the information they provide leads to a successful enforcement action that results in monetary penalties exceeding \$1,000,000. FinCEN is currently accepting whistleblower tips.

For more information regarding OFAC regulations, please go to: <https://ofac.treasury.gov/>.