

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

MSI Aircraft Maintenance Services International GmbH & Co.
Pommernstrasse 8
65428 Ruesselsheim
Germany

and

Kobaltstrasse 2-4
Ruesselsheim
Germany

Respondent

ORDER RELATING TO
MSI AIRCRAFT MAINTENANCE SERVICES INTERNATIONAL

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified MSI Aircraft Maintenance Services International GmbH & Co., of Ruesselsheim, Germany (“MSI”), of its intention to initiate an administrative proceeding against MSI pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

through the issuance of a Proposed Charging Letter to MSI that alleges that MSI committed one violation of the Regulations.² Specifically:

Charge 1 15 C.F.R. § 764.2(d) – Conspiracy

1. Beginning in at least September 2011, and continuing until at least July 2012, MSI conspired and acted in concert with others, known and unknown, including an affiliated German Company (“German Company No. 1”) and Mahan Airways (“Mahan”), to bring about acts that constitute violations of the Regulations. The purpose of the conspiracy was to procure, for or on Mahan’s behalf, items that were subject to the EAR including U.S.-origin aircraft parts and components. Specifically, starting in at least September 2011, MSI, German Company No. 1 and Mahan sought to export or reexport, U.S.-origin reservoir and valve assemblies, items subject to the Regulations,³ and valued at approximately \$51,921, to Iran via transshipment through Germany.

2. The items also were/are subject to the Iranian Transactions Regulations (“ITR”), which are administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”).⁴ Pursuant to Section 746.7 of the Regulations, no person may export or reexport an EAR99 item that also is subject to the ITR without prior authorization from OFAC under the ITR for the transaction. *See* 15 C.F.R. § 746.7(e) (2011-2012). Without such prior authorization, Section 560.204 of the ITSR prohibits the exportation, reexportation, sale or supply, directly or indirectly, from the United States of any goods to Iran, including the exportation, reexportation, sale or supply of items from the United States to a third country undertaken with knowledge or reason to know that the items were intended for supply, transshipment, or reexportation, directly or indirectly, to Iran. *See* 31 C.F.R. § 560.204 (2011-2012). No authorization was sought or obtained for the export in this transaction.

3. In September 2011, MSI took steps to purchase or order the reservoir and valve assemblies at issue. When questioned by the seller about the end-user for the items, an MSI employee provided the names of a Thai and Afghan airlines. The reservoir and

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violation occurred in 2011-2012. The Regulations governing the violation at issue are found in the 2011-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

³ The items were designated as EAR99 under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 772.1 (2011-2012).

⁴ 31 C.F.R. § 560.204 (2011-2012). Administered by OFAC, the ITR were renamed the Iranian Transactions and Sanctions Regulations (“ITSR”) and reissued in their entirety by OFAC on October 22, 2012. *See* 77 Fed. Reg. 64,664 (Oct. 22, 2012). Section 560.204 remains unchanged in pertinent part.

valve assemblies were subsequently exported from the United States to MSI in Germany in three shipments on October 6, 2011, March 14, 2012, and April 10, 2012, respectively. Additionally, the Bills of Lading and other invoices further identified the items, which were listed by serial number, as U.S.-origin and/or having been shipped from the United States.

4. After the items at issue were exported from the United States, correspondence dated May 19, 2012, written by MSI's managing director and addressed to Mahan's managing director, indicated that MSI and German Company No. 1 were both suppliers for Mahan. Moreover, the letter, which was on joint MSI/German Company No. 1 letterhead, pointed out that both companies procured and/or repaired aircraft parts on Mahan's behalf.

5. On June 28, 2012, Mahan officials emailed German Company No. 1's managing director, a company which also receives a large number of aircraft parts from the United States, stating in part: "Mr. Uwe inform me that you ship lots of parts to us. Please send me copy of the shipping invoice and AWB [air waybill]." On Saturday, June 30, 2012, German Company No. 1's managing director informed Mahan that "[w]e are preparing a big shipment of parts (P/O's) and components (R/O's) for you. Details will follow early next week." Later, on July 3, 2012, German Company No. 1 sent Mahan copies of three delivery notices dated June 29, 2012, listing Mahan with an address in Tehran, Iran as the customer. The serial numbers matched the reservoir and valve assemblies exported from the United States to MSI discussed *supra*. Finally, an air waybill issued in Frankfurt, Germany listing Germany Company No. 1 as the shipper shows that on or about July 4, 2012, the items were transferred and/or shipped from Germany to Mahan for delivery in Tehran, Iran.

6. By engaging in this activity, MSI violated Section 764.2(d) of the Regulations.

WHEREAS, BIS and MSI have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, MSI shall be assessed a civil penalty in the amount of \$51,921, payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, MSI will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that for a period of three (3) years from the date of this Order, MSI, with last known addresses of Pommernstrasse 8, 65428 Ruesselsheim, Germany, and Kobaltstrasse 2-4, Ruesselsheim, Germany, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents, (hereinafter collectively referred to as “Denied Person”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For

purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

SIXTH, as authorized by Section 766.18(c) of the Regulations, the three-year denial period set forth above shall be suspended during a probationary period of three-years under this Order, and shall thereafter be waived, provided that MSI has made full and timely payment as set forth above and has not committed another violation of ECRA, the Regulations, or any order, license, or authorization issued under ECRA or the Regulations. If MSI does not make full and timely payment as set forth above or during the three-year probationary period under this Order commits another violation of ECRA, the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, the suspension may be modified or revoked by BIS and a denial order (including a three-year denial period) activated against MSI. If the suspension is modified or revoked, the activation order may also revoke any BIS licenses in which MSI has an interest at the time of the activation order.⁵

SEVENTH, during the period of the suspended denial order, MSI shall continue to cooperate fully with BIS and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including with regard to the production of documents, in any

⁵ Such a revocation would include licenses existing at the time of the activation order, whether the license had issued before or after ECRA's enactment on August 13, 2018. *See* note 1, *supra*.

and all matters concerning any act within the scope of or related to the conduct described in the Proposed Charging Letter or related to other potential violation of U.S. export control or economic sanctions laws through the period of the suspended denial order.

MSI agrees that its cooperation shall include, but is not limited to, the following:

- a. MSI shall truthfully disclose, upon request, all factual information not protected by a valid claim of attorney-client privilege with respect to its activities, those of its employees or agents, concerning all matters relating to the conduct described in the Proposed Charging Letter or relating to other potential violations of U.S. export control or economic sanctions laws about which MSI has any knowledge or about which BIS or OFAC may inquire, including by third parties or other persons related or unrelated to MSI. This obligation of truthful disclosures includes the obligation of MSI to provide to BIS and OFAC, upon request, any such non attorney-client privileged document, record, or other tangible evidence.
- b. MSI shall make itself available for interview, deposition, or other sworn testimony, as requested or required by BIS or OFAC concerning the conduct described in the Proposed Charging Letter or related to any potential violations of U.S. export control or economic sanctions laws through the period of the suspended denial order. This obligation includes, but is not limited to, providing sworn testimony in federal civil or administrative proceedings in addition to interviews with BIS or OFAC, including testimony or information relating to the authenticity or admissibility of any documents or other evidence. Cooperation under this paragraph shall include, at the request of BIS or OFAC, identification

of witnesses who, to MSI's knowledge, may have material information concerning the conduct described in the Proposed Charging Letter or related to any potential violations of U.S. export control or economic sanctions laws through the period of the suspended denial order.

c. MSI shall notify BIS and OFAC of credible evidence of any violations of U.S. export control or economic sanctions laws occurring during the suspended denial order period committed by MSI, its employees or agents or committed by third parties. MSI further agrees that it will provide the requisite notification to BIS and OFAC of potential violations of U.S. export control or economic sanctions laws promptly upon learning of the underlying credible evidence.

EIGHTH, MSI shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect MSI's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

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NINTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

**KEVIN
KURLAND**  Digitally signed by KEVIN
KURLAND
Date: 2021.03.05 11:08:17
-05'00'

Kevin J. Kurland
Performing the Non-exclusive Functions and
Duties of the Assistant Secretary for Export
Enforcement

Issued this 5th day of March, 2021.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

MSI Aircraft Maintenance Services International GmbH & Co.
Pommernstrasse 8,
65428 Ruesselsheim
Germany

and

Kobaltstrasse 2-4
Ruesselsheim
Germany

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between MSI Aircraft Maintenance Services International GmbH & Co., of Ruesselsheim, Germany (“MSI”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”).¹

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

WHEREAS, BIS has notified MSI of its intentions to initiate an administrative proceeding against MSI pursuant to the Regulations;²

WHEREAS, BIS has issued a Proposed Charging Letter to MSI that alleges that MSI committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(d) – Conspiracy

1. Beginning in at least September 2011, and continuing until at least July 2012, MSI conspired and acted in concert with others, known and unknown, including an affiliated German Company (“German Company No. 1”) and Mahan Airways (“Mahan”), to bring about acts that constitute violations of the Regulations. The purpose of the conspiracy was to procure, for or on Mahan’s behalf, items that were subject to the EAR including U.S.-origin aircraft parts and components. Specifically, starting in at least September 2011, MSI, German Company No. 1 and Mahan sought to export or reexport, U.S.-origin reservoir and valve assemblies, items subject to the Regulations,³ and valued at approximately \$51,921, to Iran via transshipment through Germany.

2. The items also were/are subject to the Iranian Transactions Regulations (“ITR”), which are administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”).⁴ Pursuant to Section 746.7 of the Regulations, no person may export or reexport an EAR99 item that also is subject to the ITR without prior authorization from OFAC under the ITR for the transaction. *See* 15 C.F.R. § 746.7(e) (2011-2012). Without such prior authorization, Section 560.204 of the ITSR prohibits the exportation, reexportation, sale or supply, directly or indirectly, from the United States of any goods to Iran, including the exportation, reexportation, sale or supply of items from the United States to a third country undertaken with knowledge or reason to know that the items were intended for supply, transshipment, or reexportation, directly or indirectly, to Iran. *See* 31 C.F.R. § 560.204 (2011-2012). No authorization was sought or obtained for the export in this transaction.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violation occurred in 2011-2012. The Regulations governing the violation at issue are found in the 2011-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

³ The items were designated as EAR99 under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 772.1 (2011-2012).

⁴ 31 C.F.R. § 560.204 (2011-2012). Administered by OFAC, the ITR were renamed the Iranian Transactions and Sanctions Regulations (“ITSR”) and reissued in their entirety by OFAC on October 22, 2012. *See* 77 Fed. Reg. 64,664 (Oct. 22, 2012). Section 560.204 remains unchanged in pertinent part.

3. In September 2011, MSI took steps to purchase or order the reservoir and valve assemblies at issue. When questioned by the seller about the end-user for the items, an MSI employee provided the names of a Thai and Afghan airlines. The reservoir and valve assemblies were subsequently exported from the United States to MSI in Germany in three shipments on October 6, 2011, March 14, 2012, and April 10, 2012, respectively. Additionally, the Bills of Lading and other invoices further identified the items, which were listed by serial number, as U.S.-origin and/or having been shipped from the United States.

4. After the items at issue were exported from the United States, correspondence dated May 19, 2012, written by MSI's managing director and addressed to Mahan's managing director, indicated that MSI and German Company No. 1 were both suppliers for Mahan. Moreover, the letter, which was on joint MSI/German Company No. 1 letterhead, pointed out that both companies procured and/or repaired aircraft parts on Mahan's behalf.

5. On June 28, 2012, Mahan officials emailed German Company No. 1's managing director, a company which also receives a large number of aircraft parts from the United States, stating in part: "Mr. Uwe inform me that you ship lots of parts to us. Please send me copy of the shipping invoice and AWB [air waybill]." On Saturday, June 30, 2012, German Company No. 1's managing director informed Mahan that "[w]e are preparing a big shipment of parts (P/O's) and components (R/O's) for you. Details will follow early next week." Later, on July 3, 2012, German Company No. 1 sent Mahan copies of three delivery notices dated June 29, 2012, listing Mahan with an address in Tehran, Iran as the customer. The serial numbers matched the reservoir and valve assemblies exported from the United States to MSI discussed *supra*. Finally, an air waybill issued in Frankfurt, Germany listing German Company No. 1 as the shipper shows that on or about July 4, 2012, the items were transferred and/or shipped from Germany to Mahan for delivery in Tehran, Iran.

6. By engaging in this activity, MSI violated Section 764.2(d) of the Regulations.

WHEREAS, MSI has reviewed the Proposed Charging Letter and is aware of the allegations made against MSI and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, MSI fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, will issue if he approves this Agreement as the final resolution of this matter;



WHEREAS, MSI enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, if the Assistant Secretary or his designee approves the agreement and issues a corresponding order, BIS's Office of Export Enforcement ("OEE") will not object to a request made by MSI to be removed from the Entity List, pursuant to 15 C.F.R. 744.16, on the basis of any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter.⁵ Following the submission of such a request by MSI, OEE also will bring the extent of MSI's cooperation with OEE to the attention of the End User Review Committee.

WHEREAS, MSI states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, MSI neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, MSI agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over MSI, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against MSI:
 - a. MSI shall be assessed a civil penalty in the amount of \$51,921, the payment of which shall be made to the U.S. Department of Commerce within 30

⁵ Supplement No. 4 to 15 C.F.R. Part 744. *See also* 15 C.F.R. §§ 744.11 and 744.16.

days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. The full and timely payment of the civil penalty agreed to in Paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MSI.

c. For a period of three (3) years from the date of the Order, MSI, with last known addresses of Pommernstrasse 8, 65428 Ruesselsheim, Germany and Kobaltstrasse 2-4, Ruesselsheim, Germany, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents (hereinafter collectively referred to as "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

i. Applying for, obtaining, or using any license, license exception, or export control document;

ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or



iii. Benefitting in any way from any transaction

involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

d. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the three-year denial period set forth in Paragraph 2.c shall be suspended during a probationary period of three years under the Order, and shall thereafter be waived, provided that MSI has made full and timely payment in accordance with Paragraph 2.a above and has not committed another violation of ECRA, the Regulations, or any order, license or authorization issued under ECRA or the Regulations. If MSI does not make full and timely payment in accordance with Paragraph 2.a above or during the three-year probationary period of the Order commits another violation of ECRA, the Regulations, or any order, license or authorization issued under ECRA or the Regulations, the suspension may be modified or revoked by BIS and a denial order (including a three-year denial period) activated against MSI. If the suspension is modified or revoked, the activation order may also revoke any BIS licenses in which MSI has an interest at the time of the activation order.⁶

3. During the period of the suspended denial order, MSI, including any successors, shall continue to cooperate fully with BIS and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including with regard to the production of documents, in and all matters concerning any act within the scope of or

⁶ Such a revocation would include licenses existing at the time of the activation order, whether the license had issued before or after ECRA's enactment on August 13, 2018. See Note 1, *supra*.



related to the conduct described in the proposed charging letter or related to other potential violations of U.S. export control or economic sanctions laws occurring through the period of the suspended denial order. MSI agrees that its cooperation shall include, but is not limited to, the following:

a. MSI shall truthfully disclose, upon request, all factual information not protected by a valid claim of attorney-client privilege with respect to its activities concerning all matters relating to the conduct described in the Proposed Charging Letter or relating to other potential violations of U.S. export control or economic sanctions laws about which MSI has any knowledge or about which BIS or OFAC may inquire, including by third parties or other persons related or unrelated to MSI. This obligation of truthful disclosure includes the obligation of MSI to provide to BIS or OFAC, upon request, any such non attorney-client privileged document, record, or other tangible evidence.

b. MSI shall make itself available for interview, deposition, or other sworn testimony, as requested or required by BIS or OFAC concerning the conduct described in the Proposed Charging Letter or related to any potential violation of U.S. export control or economic sanctions laws occurring through the period of the suspended denial order. This obligation includes, but is not limited to, providing sworn testimony in federal civil or administrative proceedings in addition to interviews with BIS or OFAC, including testimony or information relating to the authenticity or admissibility of any documents or other evidence. Cooperation under this paragraph shall include, at the request of BIS, identification of witnesses who, to MSI's knowledge, may have material

information concerning the conduct described in the Proposed Charging Letter or related to any U.S. export control or economic sanctions laws occurring through the period of the suspended denial order.

c. MSI shall notify BIS and OFAC of credible evidence of any violations of U.S. export control or economic sanctions laws occurring during the period of the suspended denial order period committed by it or its employees or agents or committed by third parties. MSI further agrees that it will provide the requisite notification to BIS and OFAC of potential violations of U.S. export control and economic sanctions laws promptly upon learning the underlying credible evidence.

4. Subject to the approval of this Agreement pursuant to Paragraph 9 hereof below, MSI hereby waives all rights to further procedural steps in this matter (except the procedural steps set forth in Sections 766.17(c) and 766.18(c) of the Regulations with respect to the possible activation of suspended sanctions due to a violation of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. MSI also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and

the Order, if issued, from the date of the Order until MSI pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

5. MSI shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or the Order or take any position contrary thereto in any public statement. The foregoing does not affect MSI's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

6. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, BIS will not initiate any further administrative proceeding against MSI in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

7. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

8. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or



department of the U.S. Government with respect to the facts and circumstances addressed herein.

9. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

10. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

11. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

12. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

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BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

MSI AIRCRAFT MAINTENANCE SERVICES
INTERNATIONAL GMBH & CO.



John Sonderman
Director of Export Enforcement



Marga Blivier
Chief Executive Officer

Date: 3/3/2021

Date: 02/24/2021

Reviewed and approved by:
David Townsend, Esq.
Lawrence Ward, Esq.
Dorsey & Whitney LLP
Counsel for MSI

Date: 02/24/2021 *DT*

PROPOSED CHARGING LETTER

U.S. REGISTERED MAIL- RETURN RECEIPT REQUESTED

MSI Aircraft Maintenance Services International GmbH & Co.
Pommernstrasse 8
65428 Ruesselsheim
Germany

and

Kobaltstrasse 2-4
Ruesselsheim
Germany

*Attention: Ms. Marga Blivier
Chief Executive Officer*

Dear Ms. Blivier,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that MSI Aircraft Maintenance Services International GmbH & Co., of Ruesselsheim, Germany (“MSI”), has committed one violation of the Export Administration Regulations (the “Regulations”).¹ Specifically, BIS alleges that MSI committed the following violation:²

¹ The Regulations originally issued under the Export Administration Act of 1979, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President, through, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), has continued the Regulations in full force and effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violations alleged occurred in 2011-2012. The Regulations governing the violation at issue are found in the 2011-2012 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2011-2012). The 2020 Regulations govern the procedural aspects of this case.

Charge 1 15 C.F.R. § 764.2(d) – Conspiracy

1. Beginning in at least September 2011, and continuing until at least July 2012, MSI conspired and acted in concert with others, known and unknown, including an affiliated German Company (“German Company No. 1”) and Mahan Airways (“Mahan”), to bring about acts that constitute violations of the Regulations. The purpose of the conspiracy was to procure, for or on Mahan’s behalf, items that were subject to the EAR including U.S.-origin aircraft parts and components. Specifically, starting in at least September 2011, MSI, German Company No. 1 and Mahan sought to export or reexport, U.S.-origin reservoir and valve assemblies, items subject to the Regulations,³ and valued at approximately \$51,921, to Iran via transshipment through Germany.

2. The items also were/are subject to the Iranian Transactions Regulations (“ITR”), which are administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”).⁴ Pursuant to Section 746.7 of the Regulations, no person may export or reexport an EAR99 item that also is subject to the ITR without prior authorization from OFAC under the ITR for the transaction. *See* 15 C.F.R. § 746.7(e) (2011-2012). Without such prior authorization, Section 560.204 of the ITR prohibits the exportation, reexportation, sale or supply, directly or indirectly, from the United States of any goods to Iran, including the exportation, reexportation, sale or supply of items from the United States to a third country undertaken with knowledge or reason to know that the items were intended for supply, transshipment, or reexportation, directly or indirectly, to Iran. *See* 31 C.F.R. § 560.204 (2011-2012). No authorization was sought or obtained for the export in this transaction.

3. In September 2011, MSI took steps to purchase or order the reservoir and valve assemblies at issue. When questioned by the seller about the end-user for the items, an MSI employee provided the names of a Thai and Afghan airlines. The reservoir and valve assemblies were subsequently exported from the United States to MSI in Germany in three shipments on October 6, 2011, March 14, 2012, and April 10, 2012, respectively. Additionally, the Bills of Lading and other invoices further identified the items, which were listed by serial number, as U.S.-origin and/or having been shipped from the United States.

4. After the items at issue were exported from the United States, correspondence dated May 19, 2012, written by MSI’s managing director and addressed to Mahan’s managing

³ The items were designated as EAR99 under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 772.1 (2011-2012).

⁴ 31 C.F.R. § 560.204 (2011-2012). Administered by OFAC, the ITR were renamed the Iranian Transactions and Sanctions Regulations (“ITSR”) and reissued in their entirety by OFAC on October 22, 2012. *See* 77 Fed. Reg. 64.664 (Oct. 22, 2012). Section 560.204 remains unchanged in pertinent part.

director, indicated that MSI and German Company No. 1 were both suppliers for Mahan. Moreover, the letter, which was on joint MSI/German Company No. 1 letterhead, pointed out that both companies procured and/or repaired aircraft parts on Mahan's behalf.

5. On June 28, 2012, Mahan officials emailed German Company No. 1's managing director, a company which also receives a large number of aircraft parts from the United States, stating in part: "Mr. Uwe inform me that you ship lots of parts to us. Please send me copy of the shipping invoice and AWB [air waybill]." On Saturday, June 30, 2012, German Company No. 1's managing director informed Mahan that "[w]e are preparing a big shipment of parts (P/O's) and components (R/O's) for you. Details will follow early next week." Later, on July 3, 2012, German Company No. 1 sent Mahan copies of three delivery notices dated June 29, 2012, listing Mahan with an address in Tehran, Iran as the customer. The serial numbers matched the reservoir and valve assemblies exported from the United States to MSI discussed *supra*. Finally, an air waybill issued in Frankfurt, Germany listing Germany Company No. 1 as the shipper shows that on or about July 4, 2012, the items were transferred and/or shipped from Germany to Mahan for delivery in Tehran, Iran.

6. By engaging in this activity, MSI violated Section 764.2(d) of the Regulations.

* * * * *

Accordingly, MSI is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions⁵, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$307,922 per violation,⁶ or twice the value of the transaction that is the basis of the violation;⁷
- Denial of export privileges;

⁵ The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. Consequently, the potential sanctions are provided for in IEEPA. In situations involving alleged violations that occurred on or after August 13, 2018, the potential sanctions are specified in Section 1750(c) of ECRA.

⁶ See 15 C.F.R. §§ 6.3(b)(4), 6.3(b)(6), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. See 85 Fed. Reg. 207, 208 (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$302,584 to \$307,922).

⁷ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If MSI fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If MSI defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to MSI. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

MSI is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. MSI is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should MSI have a proposal to settle this case, MSI should transmit it to the attorney representing BIS named below.

MSI is further notified that under the Small Business Regulatory Enforcement Flexibility Act, MSI may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, MSI's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of MSI's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Gregory Michelsen
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

MSI Aircraft Maintenance Services International GmbH & Co.

Proposed Charging Letter

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Gregory Michelsen is the attorney representing BIS in this case; any communications that MSI may wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman

Director

Office of Export Enforcement