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US Sanctions: Russia and Iran

The U.S. authorities have taken new actions this week in relation to the sanctions targeting global corruption and also Iran which measures have potential impacts to both U.S. and non-U.S. persons operating in the shipping industry. Freehill Hogan & Mahar have produced a very helpful client alert which we reproduce below, and which summarises the new actions.

RUSSIA SANCTIONS

On Monday, December 9, 2019, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) announced the designation of several individuals and entities to the Specially Designated Nationals (SDN) list. The designations are made under Executive Order 13818 ("E.O. 13818") which builds upon and implements the Global Magnitsky Human Rights Accountability Act and targets perpetrators of serious human rights abuse and corruption.

In particular, OFAC designated alleged "Latvian oligarch Aivars Lembergs (Lembergs)" who has served as Mayor of Ventspils, Latvia, since 1988. In addition to designating Lembergs, OFAC designated four Latvia-based entities that are owned or controlled by him: Ventspils Freeport Authority, Ventspils Attistibas Agentura (also known as Ventspils Development Agency), Biznesa Attistibas Asociacija (also known as Business Development Association), and Latvijas Tranzita Biznesa Asociacija (also known as Latvian Transit Business Association). OFAC simultaneously issued Global Magnitsky General License No. 1 (GL1), which authorizes certain transactions and activities that are ordinarily incident and necessary to the wind down of transactions involving the four Lembergs entities or any entity in which one or more of them owns, directly or indirectly, a 50 percent or greater interest, for a 30-day period (i.e., until 12:01 a.m. Eastern Standard Time on January 8, 2020). Technically, GL1 applies only to U.S. persons, but it is generally understood that by implication the same conditions and wind-down period apply to non-U.S. persons.

As a result of the designations under E.O. 13818, all property and interests in property that are in the United States or possession of U.S. persons of the designated persons/entities and any entities owned 50% or more, directly or indirectly, by them are blocked. Further, absent authorization or an exemption, U.S. persons are generally prohibited from engaging in any transaction that involves persons blocked or designated under this E.O. Further, under section 1(a)(iii)(A) of E.O. 13818, sanctions are authorized against any person (not just a U.S. person) who is determined to have materially assisted or provided financial, material or technological support for, or goods or services in support of, among others, any person whose property and interests in property are blocked under the E.O.

This new sanction has potential impacts on those operating in the shipping industry because, among others, Ventspils Freeport Authority is now blocked under the E.O. Therefore, U.S. persons will be prohibited as of January 8 from engaging in any transactions with Ventspils Freeport Authority absent authorization or exemption. Further, any person providing "material" assistance to, or goods or services in support of Ventspils Freeport Authority beyond the wind-down period risks the imposition of sanctions. "Material" is not defined, and it is not yet clear whether OFAC will consider routine port calls to Ventspils beyond the expiration of the wind-down period to be "material" assistance or goods or services to Ventspils within the meaning of the E.O. Without further clarity from the authorities, we cannot say that trade to Ventspils Freeport is without risk.

We are continually monitoring the situation and will report again if guidance is forthcoming from OFAC. We also note that yesterday, Lemsberg reportedly resigned from the Board of Ventspils Freeport, presumably to set the stage for an attempt at having that entity delisted. See <https://bnnnews.com/aivars-lebergs-leaves-ventspils-freeport-board-208293>

IRANIAN SANCTIONS

Yesterday the U.S. State Department announced that it is taking action against, among others, “key Iranian shipping and aviation entities” linked to the proliferation of weapons of mass destruction (WMD). The State Department accordingly designated the Islamic Republic of Iran Shipping Lines (IRISL), its China-based subsidiary, E-Sail Shipping Company Ltd, and the Iranian airline Mahan Air under Executive Order 13382, which targets proliferators of WMD and their delivery systems, as well as their supporters. IRISL and E-Sail are already listed on the SDN list, but their additional designation under E.O. 13382 will have other impacts in regards to the shipment of humanitarian goods to Iran. Accordingly, the State Department press release states that “to allow exporters of humanitarian goods to Iran sufficient time to find alternate shipping methods, the designations for IRISL and E-Sail Shipping Company Ltd will have a brief wind-down period.”

In connection with the new designation, OFAC issued two new Iran-related frequently asked questions (“FAQs”). The FAQs clarify that the wind-down period referenced by the State Department ends on June 8, 2020. The FAQs further state as follows:

810. On December 11, 2019, the State Department announced that it would designate the Islamic Republic of Iran Shipping Lines (IRISL) and E-Sail Shipping Limited (“E-Sail”) under Executive Order (E.O.) 13382, effective June 8, 2020. IRISL and E-Sail are already listed on the SDN List. What will be the impact of the State Department’s designation of these entities under E.O. 13382?

On November 5, 2018, OFAC identified IRISL and E-Sail on the SDN List with the [IRAN] tag to indicate that they are entities meeting the definition of the Government of Iran whose property and interests in property are blocked pursuant to E.O. 13599.

Following their designation by the State Department under E.O. 13382 on June 8, 2020, OFAC will add the [NPWMD] and [IFSR] tags to the entries for IRISL and E-Sail on the SDN List. As a result, transactions by U.S. persons or within (or transiting) the United States involving IRISL and E-Sail will be subject to the prohibitions in the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544 (WMDPSR), in addition to the prohibitions in E.O. 13599 implemented through the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR). Non-U.S. persons that knowingly engage in certain transactions with IRISL or E-Sail risk exposure to sanctions under additional authorities. [12-11-2019]

811. Can I ship agricultural commodities, food, medicine, and medical devices to Iran via IRISL or E-Sail on or after June 8, 2020?

The United States maintains broad authorizations and exceptions under U.S. sanctions that allow for the sale of agricultural commodities, food, medicine, and medical devices to Iran by U.S. and non-U.S. persons (see, e.g., FAQ 637). However, these authorizations and exceptions generally do not apply to transactions with persons designated pursuant to E.O. 13382.

Following the designations of IRISL and E-Sail under E.O. 13382 on June 8, 2020, transactions by U.S. persons involving IRISL or E-Sail will be subject to the prohibitions in the WMDPSR, in addition to the prohibitions in the ITSR. This means that, effective June 8, 2020, unless authorized under the WMDPSR or exempt, U.S. persons will be prohibited from engaging in transactions involving IRISL or E-Sail, including transactions for the sale of agricultural commodities, food, medicine, or medical devices by U.S. persons or from the United States that are authorized under the general licenses set forth in, or specifically licensed pursuant to, sections 560.530, 560.532, or 560.533 of the ITSR.

In addition, non-U.S. persons that knowingly engage in certain transactions with IRISL or E-Sail, even for the sale to Iran of agricultural commodities, food, medicine, or medical devices, risk exposure to sanctions under additional authorities.

To avoid sanctions risks, U.S. and non-U.S. persons should ensure that transactions for the sale of agricultural commodities, food, medicine, or medical devices involving IRISL or E-Sail are concluded no later than June 8, 2020, when the designations of IRISL and ESail pursuant to E.O. 13382 come into effect. [12-11-2019].

The “additional authorities” referenced in the FAQ include E.O. 13382 under which the new Iranian designations were made. Under that E.O., any person (including non-U.S. persons) are subject to sanctions if they are determined “to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of any action or transaction described in [the E.O.] or any person whose property and interests in property are blocked pursuant to this order.” Notably, the sanctionable support is not qualified by a “material” adjective as is the case in other sanction programs. As such, potentially any provision of support or goods or services to IRISL, E-Sail or any entity designated under this E.O. is sanctionable regardless of whether such is “material.”

As IRISL and E-Sail have been on the SDN list for some time under different Executive Orders, transactions involving these entities are likely already significantly circumscribed. Nevertheless, to the extent a person has any ongoing dealings with IRISL or E-Sail or is contemplating same, caution should be exercised even in regard to humanitarian and agricultural cargoes. Further, as stated in the FAQs, U.S. and non-U.S. persons should ensure that transactions involving agricultural commodities, food, medicine or medical devices involving IRISL or E-Sail are concluded no later than June 8, 2020.

Freehill continues to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions, please feel free to contact the authors, Bill Juska at juska@freehill.com or Gina Venezia at venezia@freehill.com.