

20 December 2019

US SANCTIONS

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.

VENTSPILS

As reported in [Client Alert](#) of December 12, 2019, the Ventspils Freeport Authority was added to the U.S. Specially Designated Nationals (SDN) list on Monday, December 9, 2019. On December 18, the U.S. authorities removed that entity from the SDN list. The removal was based on the takeover of the entity by the Latvian government and the removal of it from the control of Aivars Lembergs, the Mayor of Ventspils, Latvia. Mr. Lembergs reportedly owned/controlled the Ventspils Freeport Authority. In removing that entity from the list, Deputy Secretary of the U.S. Treasury Department Justin G. Muzinich said, "The U.S. applauds the Latvian government's swift response to Lembergs' designation. This delisting of the Ventspils Freeport Authority underscores our commitment to work closely with our partners to combat corruption."

The December 9 designation to the SDN list also had included three other entities in Ventspils which Mr. Lembergs purportedly owns or controls.¹ Those three entities remain on the SDN List.

As a result of yesterday's action, all property and interests in property that had been blocked solely as a result of the Ventspils Freeport Authority's designation to the SDN list are unblocked and all otherwise lawful transactions involving U.S. persons and the Ventspils Freeport Authority are no longer prohibited. By analogy, non-U.S. persons are also free to engage in otherwise lawful transactions with the Ventspils Freeport Authority. Due diligence should nevertheless continue to be exercised to insure that there is no involvement with any of the entities that remain on the SDN list. While non-U.S. persons are not strictly prohibited from dealing with those entities, a non-US person can be sanctioned for supplying material assistance to or support for any entity which is been named to the SDN list under Executive Order 13818, the authority under which the December 9, 2019, designations had been made.

GENERAL LICENSE K-1

As reported in our Client Alert of September 25, 2019, the U.S. authorities had named two COSCO entities to the SDN list pursuant to the authority of Executive Order 13846 which re-imposed sanctions on Iran. The U.S. authorities subsequently issued General License K authorizing the wind down or maintenance of transactions involving COSCO Shipping Tanker (Dalian) Co. Ltd. ("Cosco Shipping Dalian") through December 20, 2019.

On December 19, the Office of Foreign Assets Control (OFAC) issued an updated General License K-1 authorizing the maintenance or wind down of transactions involving Cosco Shipping Dalian through 12:01 a.m. eastern standard time February 4, 2020. The license expressly states that it does not authorize any transactions or activities with COSCO Shipping Tanker (Dalian) Seaman and Ship Management Co., Ltd., or any entity owned, directly or indirectly, 50% or more by that COSCO entity.

In conjunction with the issuance of General License K-1, OFAC amended three Iran-related FAQs concerning the impact of the designation of the COSCO entities, FAQ 804, FAQ 806, and FAQ 807. Those

¹ 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). ¹

amended FAQs, as well as FAQ 805, provide useful guidance, particularly for non-U.S. shipowners contemplating trade with the designated COSCO entities. Those FAQs provide as follows:

804. Do sanctions on COSCO Shipping Tanker (Dalian) Co. and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. apply to their corporate parent and affiliates?

COSCO Shipping Tanker (Dalian) Co. and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. were determined by the Secretary of State on September 25, 2019, to meet the criteria for the imposition of sanctions under Executive Order (E.O.) 13846, and the Secretary of State imposed certain sanctions, including blocking, on these entities. The blocking sanctions apply only to these listed entities and any entities in which they own, individually or in the aggregate, a 50 percent or greater interest. Sanctions do not apply to these entities' ultimate parent, COSCO Shipping Corporation Ltd. (COSCO). Similarly, sanctions do not apply to COSCO's other subsidiaries or affiliates (e.g., COSCO Shipping Holdings), provided that such entities are not owned 50 percent or more in the aggregate by one or more blocked persons. U.S. persons, therefore, are not prohibited from dealing with COSCO, its non-blocked subsidiaries, or non-blocked affiliates to the extent the proposed dealings do not involve any blocked person, or any other activities prohibited pursuant to any OFAC sanctions authorities.

In addition, on December 19, 2019, OFAC issued General License K-1 that authorizes through its expiration date all transactions and activities prohibited pursuant to section 5 of E.O. 13846 that are ordinarily incident and necessary to the maintenance or wind down of transactions involving COSCO Shipping Tanker (Dalian) Co., subject to certain conditions specified in the license and described in FAQ 806.

With respect to transactions involving non U.S. persons outside of U.S. jurisdiction, please see FAQ 805. [12-19-2019]

805. Are non-U.S. persons exposed to sanctions for providing goods or services to, or engaging in other transactions with, a non-Iranian person sanctioned under section 3 of E.O. 13846?

No, non-U.S. persons are generally not exposed to sanctions for providing goods or services to, or engaging in other transactions with, a non-Iranian person sanctioned under section 3 of E.O. 13846.

However, please note that non-U.S. persons should ensure that the provision of goods or services to, or other transactions with such non-Iranian persons do not involve: (1) prohibited transactions by U.S. persons (including U.S. financial institutions) or U.S.- owned or -controlled foreign entities, unless the transaction is exempt from regulation, or authorized by OFAC; (2) the knowing provision of significant support to an Iranian person on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List); or (3) the knowing facilitation of a significant transaction for a person on the SDN List that has been designated in connection with Iran's support for international terrorism or proliferation of weapons of mass destruction, including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps (IRGC), or other activity for which sanctions have been imposed with respect to Iran (e.g., knowingly engaging in a significant transaction for the purchase of petroleum from Iran).

For information about persons sanctioned by State Department pursuant to Section 3 of E.O. 13846, please see the relevant State press statement or Federal Register Notice. [11-27-2019]

806. What types of activities are considered "maintenance" as the term is used in General License K-1?

As a general matter, the authorization for "maintenance" in General License K -1 includes all transactions ordinarily incident to the continuity of operations by U.S. persons involving COSCO Shipping Tanker (Dalian) Co., Ltd. or any entity owned, directly or indirectly, 50 percent or more by COSCO Shipping Tanker (Dalian) Co., Ltd., other than COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. or any entity owned, directly or indirectly, 50 percent or more by COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. (hereinafter, "General License K-1 Covered Entities"). Additionally, for the purposes of General License K-1, the authorization for "maintenance" generally includes all transactions and activities

ordinarily incident to performing under a contract or agreement in effect prior to September 25, 2019, provided that the level of performance is consistent with the terms of the general license and consistent with past practices that existed between the party and the General License K-1 Covered Entities prior to September 25, 2019. Notwithstanding the absence of a contract or agreement in effect prior to September 25, 2019, the authorization for “maintenance” also generally includes all transactions and activities ordinarily incident to obtaining goods or services from, or providing goods or services to, General License K-1 Covered Entities in a manner consistent with the terms of the general license and consistent with past practices that existed between the party, or any intermediary party, and the General License K-1 Covered Entities prior to September 25, 2019. OFAC will consider the transaction history between the party, or any intermediary party, and the General License K-1 Covered Entities prior to September 25, 2019 in assessing whether activity is consistent with past practices. The authorization for “maintenance” also generally includes authorization to enter into contingent contracts for transactions and activities consistent with the above, extending beyond the current expiration of General License K-1 where any performance after the expiration of the general license is contingent on such performance either not being prohibited or being authorized by OFAC.

For example, transactions and activities authorized by General License K-1 could include issuing or accepting purchase orders (including for sales of fuel to General License K-1 Entities) and making or receiving shipments (including undertaking new charters or voyages) that were initiated after September 25, 2019 involving General License K-1 Entities, if such activity is ordinarily incident and necessary to contracts in effect prior to September 25, 2019 (provided the purchase and shipment amounts are consistent with past practices, as demonstrated by transaction history). Similarly, transactions and activities that are not within the framework of a preexisting agreement may be considered “maintenance” if such activity is consistent with the transaction history between the person and General License K-1 Entities prior to September 25, 2019. Conversely, General License K-1 would not authorize purchase orders and shipments involving the General License K-1 Entities where there was no preexisting relationship between a person and a blocked entity or where the contemplated activity exceeds past practices that existed between the party and the General License K-1 Entities prior to September 25, 2019 as demonstrated by transaction history. Stockpiling inventory, for example, would not be authorized unless transaction history indicates that the scope and extent of maintaining inventory is consistent with past practice. [12-19-2019]

807. Can U.S. financial institutions process transactions involving COSCO Shipping Tanker (Dalian) Co., Ltd. under Iran General License K-1 if the U.S. financial institution is the only U.S. person involved in the transaction?

Yes, provided the transaction is ordinarily incident and necessary to the maintenance or wind down of transactions involving, directly or indirectly, COSCO Shipping Tanker (Dalian) Co., Ltd., or any entity owned, directly or indirectly, 50 percent or more by COSCO Shipping Tanker (Dalian) Co., Ltd., including any transaction or dealing in property or interests in property of the foregoing, subject to the conditions and expiration dates noted in Iran General License K-1 . However, please note that Iran General License K-1 does not authorize any transactions involving COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co. or any entity owned, directly or indirectly, 50 percent or more by COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co.

Please note that absent knowledge or a reason to know that the transaction is not authorized by Iran General License K-1, OFAC would not expect the intermediary U.S. financial institution to conduct additional due diligence beyond the information collected in the ordinary course of processing such transactions, and accordingly, in the event of a potential violation, OFAC would consider the totality of the facts and circumstances in determining the appropriate administrative enforcement response, if any.

Please see FAQ 116 for additional guidance on due diligence for U.S. financial institutions serving as intermediaries within a transaction. [12-19-2019]

Today’s action provides further clarification to OFAC’s implementation of the sanctions directed at the designated COSCO entities and the activities that remain authorized both during the extended winddown period and beyond the wind-down period both for U.S. and non-U.S. persons. It remains imperative that those operating in the shipping industry exercise caution. Effective risk assessment should continue to be

exercised in dealings involving the designated COSCO entities to ensure such transactions do not run afoul of the sanctions regime in place at the time of the intended transaction.

Freehill continues to monitor developments in this area and are available to assist 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.

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