

Sanctions 12 Dec, 2019

## OFAC Designation Of Ventspils Port



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A number of Members have sought clarification from the Managers about the impact of the recent designation of Ventspils Ports.

OFAC have designated Latvian oligarch Aivars Lembergs and 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, which authorizes certain transactions and activities that are ordinarily incident and necessary to the wind down of transactions involving the four 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).

As a result of the designations under E.O. 13818, all property in the U.S. or possession of U.S. persons of Ventspils Freeport and the other designees (and any entities owned 50% or more by them) are blocked. Further, absent authorization or an exemption, U.S. persons are generally prohibited from engaging in any transaction that involves Ventspils Freeport or other designees. Therefore, U.S. persons will be prohibited as of January 8 (when the wind-down period expires) from engaging in any transactions with Ventspils Freeport absent authorization or exemption.

Insofar as non-U.S. persons are concerned, under section 1(a)(iii)(A) of E.O. 13818, sanctions are authorized against any 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. As such, 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.

Because of the lack of specific guidance, it is not yet clear whether OFAC considers routine port calls to Ventspils after January 8 to fall within the scope of the E.O. Conceivably, OFAC could take the position that the use of the Ventspils port amounts to material assistance to Ventspils. There is also the question of whether any fees paid to a Ventspil port could be construed as financial support.

OFAC FAQs (in relation to Iranian Port calls) indicate that routine port calls would not be considered a “significant” transaction with a “port operator.” This FAQ however was with respect to sanctions in relation to weapons of mass destruction rather than global corruption. At this stage, and pending further clarification from OFAC there is risk of sanctions if a non-US entity utilizes a Ventspils port after General License 1 expires on January 8.

As to the of booking cargoes or charters which would require the use of the Ventspils port after January 8, there would be a risk that the U.S. authorities could consider any use of the port as material assistance to or financial support for Ventspils. OFAC has not clarified how the wind-down period will be construed, but based on guidance provided in other sanctions programs with wind-downs, it is likely that a new charter entered into today which contemplates a port call to Ventspils before January 8 would fall within the wind-down period provided there is some history with the charterer. It is understood that Lembergs has resigned from Ventspils Freeport’s board which is likely in response to this week’s action and is likely intended to lay the ground work for Ventspils to file a de-listing application with OFAC.

With thanks to Freehill Hogan and Mahar for assistance with the above advices, and who have issued a Client Alert.

The U.S. authorities will hopefully issue further guidance that helps clarify the situation in view of the market impacts the designation has had but in the interim any Member with enquiries about this and any other sanctions matter should contact the Managers.

## Update: 19 December 2019

On 18 December OFAC removed Ventspils Freeport Authority from the SDN list (Treasury Notice) and whereby all lawful transactions involving the Ventspils Freeport Authority are permitted.

As regards the other entities named above, namely Ventspils Attistibas Agentura, Biznesa Attistibas Asociacija, and Latvijas Tranzita Biznesa Asociacija, they are subject of an amended Global Magnitsky Sanctions Regulations General License .