

Sanctions 21 Nov, 2019

Updated - Impact of the designation of COSCO Shipping Tanker (Dalian) Co.



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Corporate Director

A number of Members have sought clarification from the Managers about the impact of the recent designation of COSCO Shipping Tanker (Dalian) Co. ("COSCO Dalian").

It will be recalled that this entity (plus others) was designated on 25 September 2019 under Executive Order 13846. Simultaneous with notice of the designation, OFAC also published a FAQ which sought to emphasise that the impact of the designation was not intended to have a wider effect and that parties could continue to deal with other COSCO entities. Nevertheless there would appear to be some uncertainty over the precise impact of the designations and the FAQ.

The position has been further impacted by OFAC issuing General Licence K on 24 October 2019 which entitles U.S. persons to wind-down their activities with COSCO Shipping Tanker (Dalian) Co. Ltd. and any subsidiary in which they own 50% or more for a limited period.

Following consultation between the Club's attorneys Freehill Hogan & Mahar and the U.S. authorities the following clarification is now offered, noting that the Executive Order has primary and secondary sanctions effects impacting on U.S. persons and non-U.S. persons respectively.

The general position:

U.S. persons:

- May not directly or indirectly engage in any transactions with COSCO Dalian and any entity which they own or have a 50% or greater interest in.
- May continue to engage in transactions with any other COSCO entity, including COSCO Shipping Corporation Ltd. and COSCO Shipping Holdings, so long as COSCO Dalian do not own or have a greater than 50% interest in them.

Non-U.S. persons:

- May continue to engage in transactions with COSCO Dalian as long as it does not involve sanctionable activity and there is no U.S. nexus (meaning for example that no payments can be made in U.S. Dollars). For the avoidance of doubt this means that non-U.S. persons can fix vessels to and from COSCO Dalian.
- May continue to engage in transactions with any other COSCO entity, including COSCO Shipping Corporation Ltd. and COSCO Shipping Holdings.

The impact of General Licence K:

U.S. persons:

The effect of General Licence K is to temporarily amend the prohibitions described to allow activity by U.S. persons which is "...ordinarily incident and necessary to the maintenance or wind down of transactions" with COSCO Shipping Tanker (Dalian) Co. or any entity more than 50% owned by them to take place until 20 December 2019.

So far as COSCO Dalian's commercial activities are concerned, U.S. persons may engage in activities that are "...ordinarily incident and necessary" for:

- Maintaining the continuity of operations, which includes the following transactions specifically enumerated in the General Licence Application:
 - o Insurance and reinsurance services (including P&I and hull cover)
 - o Marine fuels (i.e., bunkers and lighter distillate fuels), chemicals and lubricants
 - o Crew wages, medical, travel, employee benefits, health and safety, and other crew costs
 - o Local vessel agency and husbanding (i.e., provision of necessary local goods and services)
 - o Technical management services
 - o Flag state registration and certification services
 - o Vessel safety and compliance inspections (classification society services, surveyors, etc.)
 - o Legal, regulatory and compliance assistance
 - o Port and marine terminal-related fees (including tugs, line handling, surveyors, agency, stevedoring, regulatory charges, wharfage, and any other fees necessary and incident to berthing and discharging a tank vessel)
 - o Telecommunications
 - o Vessel maintenance, repair, spare parts and supplies
 - o Any emergency services or incident response capabilities
 - o Any other goods or services ordinarily incident and necessary for the safety and maintenance of the vessel or crew
 - o Any banking or financial services necessary to procure the foregoing goods or services.
- Performing under a contract or agreement in effect prior to September 25, 2019, provided that the activities are consistent with past practices that existed between the counterparty and COSCO Dalian; and
- Entering into new contracts or agreements, provided that the activities to be engaged in under the new contract are consistent with the past business practices existing between the counterparty and COSCO Dalian prior to sanctions.

On chartering specifically, we are advised that General License K means U.S. persons who had a prior business relationship with COSCO Dalian can enter into new contracts after 25 September 2019, so long as:

- The continued performance of those contracts after General License K expires on 20 December 2019 only takes place if the activity is not prohibited (by the extension of General License K or the removal of COSCO Dalian from the SDN List) or has been specifically authorized by OFAC.
- Any new contracts are consistent with past practices between the contracting party and COSCO Dalian, as shown by the history of their transactions.

Non-U.S. persons:

General Licence K permits non-U.S. persons to conduct transactions which have a U.S. nexus (but obviously must not involve sanctionable activity) until 20 December 2019. After the expiration of General Licence K the situation will revert to the general position set out above.

More information on the impacts of General Licence K can be found in a Client Alert issued by Freehill Hogan & Mahar which was published in the Club's News Item of 25 October 2019.

The U.S. authorities will hopefully issue further guidance that helps clarify the situation in view of the substantial 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.

Updated 20 December

OFAC have issued an update to licence K-1 authorising the maintenance or wind down of transactions involving Cosco Shipping Dalian, extending the period to 1201 Eastern time 4 February 2020.

This licence is for Cosco Shipping Dalian only and not for Cosco Shipping Tanker (Dalian) Seaman and Ship Management Co., Ltd

Freehill Hogan and Mahar have issued a client alert [Ventspils and General Licence Client Alert].