

Fund Finance Friday



Updated LSTA Regulatory Guidance – U.S. Sanctions Issues in Lending Transactions

September 8, 2023



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The LSTA has regularly prepared and updated the LSTA Regulatory Guidance: U.S. Sanctions Issues in Lending Transactions (the “LSTA Guidance”). The LSTA Guidance contains a comprehensive review of sanctions, including background on sanctions principles generally and a discussion of risks to lenders, an update on recent developments and rundown of current sanctions targets and suggestions on ways to mitigate sanctions risk, which includes example credit agreement provisions. The LSTA Guidance is an excellent reference material for an overview of the sanctions landscape for both lawyers and business team members in the lending space.

On August 23, 2023, the LSTA updated the LSTA Guidance published March 2, 2023, primarily to reflect changes in the Russia sanctions that occurred after its publication. The changes are reflected in the discussion portion of the LSTA Guidance. However, the recent updates have not resulted in any changes to the LSTA’s example credit agreement provisions that were offered in the guidance.

The updates to the descriptions of current sanctions rules are summarized below:

- **List-Based Sanctions:** Per the update, Liberia was removed from OFAC’s List of Specially Designated Nationals and Blocked Persons.
- **Syria:** Sanctions have been imposed under U.S. sanctions laws, including the Caesar Syria Civilian Protection Act of 2019 and Executive Order 13894, which prohibit the facilitation of the Syrian government’s purchase of goods, services, and technologies that further its military activities, or its aviation and oil and gas production industries. Likewise, they impose sanctions on foreign persons profiting from the Syrian conflict through reconstruction activities. The LSTA updated the LSTA Guidance to reflect the May 2022 OFAC general license allowing certain of these activities in areas of Northeast and Northwest Syria.
- **Blocking Sanctions:** In February of 2022 numerous Russian banks and wealth management entities were designated as Specially Designated Nationals (“SDNs”) and therefore subject to sanctions. The LSTA Guidance was revised to reflect that since the time of publication the list of SDNs was expanded to include thousands of Russia-related entities or persons.
- **Further Sanctions on Russian State-Owned Entities:** On February 28, 2022, OFAC issued an order (Directive 4 under Executive Order 14024) which prohibited transacting with the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (the “Russian State Owned Entities”). The LSTA Guidance was revised to reflect that Directive 4 was updated on May 19, 2023, requiring U.S. persons to file annual reports with OFAC disclosing any interest held by any Russian State Owned Entities in property owned or controlled by such person.
- **Certain Russian Economy Sectors Determinations:** Sanctions have been authorized by the Secretary of the Treasury against persons who operate in the Russian financial services, aerospace, electronics, marine, account, trust and corporate formation services, management consulting, quantum computing, metals, mining technology, defense and related materiel sectors. Since publication, the Secretary of the Treasury expanded this list to include the architecture, engineering, construction, manufacturing and transportation sectors.

- **Ban on New Investment; Prohibition of Certain Services:** U.S. sanctions generally ban all new investments in Russia by U.S. persons and authorize the Secretary of the Treasury to prohibit the provision of services to any person located in Russia by a U.S. person or from the United States. Investments include lending funds or committing capital or other assets in order to generate returns. The LSTA Guidance was revised to clarify that U.S. persons may, subject to certain conditions, maintain existing investments or sell or divest debt or equity securities issued to a non-U.S. person by an entity in the Russian Federation. In addition, the Secretary of the Treasury had prohibited U.S. persons from providing accounting, trust and corporate formation, management consulting and quantum computing services to any person in Russia. After publication of the LSTA Guidance, the Treasury Department added architecture and engineering services to that list as prohibited services.
- **U.S. Ports Ban:** The LSTA Guidance was revised to reflect that since publication, with limited exceptions, Russia-affiliated vessels have been prohibited from entering U.S. ports.
- **Export Controls on Russia:** The LSTA Guidance was revised to note that since publication, the U.S. export controls, which impose licensing requirements for exports to Russia, have been expanded to include Crimea and Belarus. In addition, the list of non-controlled items that require a license to export to Russia has been expanded.