On December 20, 2017, US President Donald Trump signed Executive Order 13818, implementing sanctions under the 2016 Global Magnitsky Human Rights Accountability Act ("Global Magnitsky Act"). Expanding on the similarly-named "Magnitsky Sanctions," which target human rights violators and corruption in Russia, the Global Magnitsky Sanctions program targets non-US individuals and entities that the US believes have engaged in human rights abuses or "corruption" anywhere in the world.

As with other US sanctions programs, United States Persons (defined, as in other sanctions programs, as US citizens, permanent residents, entities organized in the US [including foreign branches] and any person in the US) may not engage in any transaction with individuals designated under the Global Magnitsky sanctions program unless licensed by the US Treasury Department's Office of Foreign Assets Control ("OFAC"). In addition, US Persons are also required to block (freeze) any property or interest in property of a designated person that comes within US jurisdiction.

These new sanctions not only provide the US government with a new instrument to take action in response to conduct that might also violate the US Foreign Corrupt Practices Act ("FCPA") or the US anti-money laundering ("AML") laws, but also expand the scope of US extraterritorial enforcement. For example, while the FCPA prohibits giving/offering bribes but does not reach bribe recipients, the Global Magnitsky Sanctions target government officials and persons acting on behalf of government officials who engage in corrupt conduct, described expansively to include actions beyond traditional bribery. Moreover, unlike the FCPA and AML laws, the Global Magnitsky Sanctions do not require any US jurisdictional nexus to impose restrictive measures on non-US Persons. Rather, the Global Magnitsky Sanctions provide US authorities with a self-executing anti-corruption enforcement mechanism that does not require a judicial determination to be effective and which can be imposed with no advance notice.

Global Magnitsky Sanctions target human rights abuses and "corruption"

The Global Magnitsky Sanctions authorize the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to block (freeze) all property and interests in property of (i) certain persons named in an annex to the executive order and (ii) any foreign (i.e., non-US) person who is:

- Responsible for, or complicit in, serious human rights abuses; or
- A current or former government official, or a person acting on behalf of such an official, who has engaged in corruption, or who has engaged in or facilitated the transfer of the proceeds of corruption

The executive order describes "corruption" broadly to include "the misappropriation of state assets, the expropriation..."
of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery." The executive order omits the statutory requirement that corruption on which designation is predicated be "significant."

The executive order also authorizes sanctions targeting a broader range of persons associated with human rights abuses, corruption or the transfer of the proceed of corruption. This includes:

- Leaders or officials of entities that engage or attempt to engage in these types of activities;
- Persons that materially assist, sponsor or provide financial, material, or technological support for these activities; and
- Persons who provide goods or services to or in support of these types of activities

Under existing OFAC guidance, any entity owned 50 percent or more, in the aggregate, by individuals designated under this program is subject to the same blocking and freezing mechanisms by operation of law, regardless of whether that entity is specifically designated by OFAC.

In a background briefing accompanying the issuance of the executive order, the Department of State confirmed that the US government had taken an "expansive view" of the implementation of the Global Magnitsky Act. At the time the executive order was issued, OFAC designated 15 individuals and 37 affiliated entities under the new authority. The designations cover a wide range of politicians; people in business, military and law enforcement; and persons with alleged ties to organized crime, as well as entities affiliated with such persons. The persons and entities designated are located in or associated with countries as diverse as Burma, Canada, China, Congo, The Gambia, Israel, Netherlands, Russia, South Sudan, Uzbekistan and the British Virgin Islands.

US Persons must comply with the Global Magnitsky Sanctions

All US Persons are required to comply with the Global Magnitsky Sanctions regardless of where they are located or whether they are acting for or on behalf of an entity that is a US Person.

In addition, both US and non-US persons may face liability for evading or avoiding, causing a violation of the Global Magnitsky Sanctions, or conspiring to violate them. Thus, as with other sanction programs, the Global Magnitsky Sanctions could restrict transactions wholly outside the United States if those transactions involve—directly or indirectly—a US Person or US-origin item. This could be the case where, for example, the financial flows of a non-US to non-US transaction involve US dollar clearing, or where a transaction involves US-origin goods or services.

Another regime to consider

For most companies—both US and non-US—the primary significance of the Global Magnitsky Sanctions is that it broadens the categories of individuals and entities that may be added to the Specially Designated Nationals And Blocked Persons (SDN) List. It also has the potential to diversify the geographic distribution of SDNs, as the initial round of designations show. Some current Global Magnitsky designations are not from, and future designations may not be from, countries typically considered to pose significant sanctions risk. Companies should assess whether their sanctions compliance programs should be modified in light of this new program.
From a policy perspective, how the Trump administration will exercise its broad discretion under the Global Magnitsky Sanctions merits close attention. The 52 designations already made cover a broad range of individuals, entities, countries and alleged activity. OFAC’s use of the new authority against an official in Burma may also indicate the beginning of a strategy to use this new designation tool as a "smart sanctions" approach to address emerging humanitarian crises or specific instances of alleged corruption. The individuals targeted on the basis of alleged corruption have in the past been the subject of government investigations or media reporting concerning their alleged activities. Though the designation authority as to "corruption" is not, on its face, limited to activity that is subject to criminal prosecution under the FCPA or AML laws, the statute does require that the targeted corruption be "significant"—even if the executive order omits that word. It will be interesting to see what corrupt activity the US government will seek to address through sanctions as opposed to—or perhaps in addition to—through the criminal enforcement process.


2. The Global Magnitsky Sanctions are a separate program from the similarly named sanctions imposed under the Sergei Magnitsky Rule of Law Accountability Act of 2012 ("Magnitsky Act").

3. The Executive Order also prohibits designated persons from receiving visas to travel to the United States.

4. Available at https://www.state.gov/r/pa/prs/ps/2017/12/276734.htm

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