

-Positioning clients optimally in a globalized environment.

Published October 20, 2018

Global Magnitsky Sanctions FAQs

With the promulgation of the Global Magnitsky Sanctions in December 2017, the United States added a powerful weapon to its already formidable international legal arsenal.

Recent events, such as the case of United States-based journalist [Jamal Khashoggi](#) and the Trump Administration’s imposition in August of sanctions against [two high-ranking Turkish officials](#) in connection with the Andrew Brunson case, have put the Global Magnitsky Sanctions in the public discourse.

This FAQs is provided by MassPoint Legal and Strategy Advisory PLLC for a general audience, to contribute to the public’s understanding of the Global Magnitsky Sanctions.

For detailed analyses of the Global Magnitsky Sanctions and for updates (with citations), visit [MassPoint](#) and view the firm’s Global Magnitsky Sanctions [publications](#).

CONTENTS

What are the Global Magnitsky Sanctions?	2
What is the Legal Authority for the Sanctions?	2
Who Has the Authority to Impose Sanctions, the President or Congress?	3
What Happens if Congress Initiates a Sanctions Determination Process, as Congress Did in the Case of Jamal Khashoggi?	3
Are the GMS Related to the 2016 Presidential Election and the “Trump Tower Meeting”?	4
What Conduct Can Be Sanctioned Under the GMS?	5
Who Can Be Sanctioned Under the GMS?	5
What Penalties Apply Under the GMS?	6
Are Sanctions Permanent? Can Sanctions Be Lifted?	6
If the GMS Are Unilateral U.S. Sanctions, Do They Have Teeth? What Is the Impact of GMS Penalties?	6
Who Has Been Sanctioned to Date?	7
Who Might Be Sanctioned in the Future?	7
Who Can Be Sanctioned in Connection With the Jamal Khashoggi Case?	7
Connect	8
Learn More	8

This publication is provided for informational purposes only. This publication is not intended, and should not be construed or relied upon, as legal or other professional advice. This publication may be Attorney Advertising under applicable rules of professional conduct.

Copyright © 2018 MassPoint Legal and Strategy Advisory PLLC. All rights reserved.

What are the Global Magnitsky Sanctions?

- The Global Magnitsky Sanctions (the “**Sanctions**” or “**GMS**”) are unilateral United States sanctions that target certain corruption and human rights abuses worldwide. “Unilateral” here means that the **GMS** were not, for example, issued in concert with other nations or pursuant to a United Nations mandate or obligation. In promulgating and enforcing the **Sanctions**, the United States is acting alone.
- Under the **GMS**, foreign government officials, foreign private parties (companies, banks, individuals, non-profit organizations, and others) can be sanctioned if the President of the United States determines that such persons are responsible for, complicit in, or facilitated sanctionable acts of corruption or human rights abuse anywhere in the world.
- The **GMS** carry two kinds of sanctions: (1) financial and (2) immigration.
 - **Financial sanctions** prohibit U.S. persons anywhere in the world (companies, banks, individuals) from transacting business transactions with sanctioned persons and require U.S. persons to “block” or freeze sanctioned persons’ property and property interests in the United States or in the possession or control of U.S. persons.
 - **Immigration sanctions**, which apply to non-U.S. persons, prohibit sanctioned persons from entering the United States. There are limited exceptions to immigration sanctions—for example, a sanctioned foreign person may be admitted to the United States if, for example, such admission is in the interest of U.S. law enforcement or required by U.S. obligations to the United Nations.

What is the Legal Authority for the Sanctions?

- The **GMS** are based on multiple legal authorities, particularly U.S. statutes, one presidential executive order, and the U.S. Constitution. Some of these are more important than others in terms of their immediate substantive and practical import. The key legal authorities are outlined here.
 - **Executive Order 13818 of December 20, 2017, “Blocking the Property of Persons Involved in Serious Human Rights Abuse and Corruption,”** promulgated the **GMS**. The Order declares a “national emergency” with respect to “serious human rights” abuses and a broad range of corrupt acts that threaten “the stability of international political and economic systems” and “constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”
 - EO 13818 in substantial part implements the **Global Magnitsky Human Rights Accountability Act (“Global Magnitsky Act”)**, a 2016 law that authorizes the President to freeze certain property and restrict the entry into the United States

of “foreign persons” that the President determines, “based on credible evidence,” are responsible for certain corrupt acts and human rights abuses committed wholly or substantially outside of the United States.

- EO 13818 also relies on the **International Emergency Economic Powers Act (IEEPA)**, a 1977 law that underpins a number of U.S. sanctions programs. The President’s invocation of the IEEPA is significant because it in large part allowed him to expand the GMS beyond the provisions of the Global Magnitsky Act.
- The relative expansiveness of EO 13818 indicates that the Trump Administration, in drafting the Order, was seeking wide sanctions authority and enforcement latitude, beyond what the Global Magnitsky Act authorizes.
- Of lesser legal significance to the GMS, EO 13818 also relies on the President’s constitutional authority, the National Emergencies Act, the Immigration and Nationality act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code (authorizing the President to delegate authority to certain heads of Executive Branch departments or agencies).
- On June 28, 2018, the Treasury Department’s Office of Foreign Assets Control (OFAC) published the **Global Magnitsky Sanctions Regulations (“GMS Regulations”)**. The GMS Regulations [entered into force on June 29, 2018](#) and track, clarify, and elaborate some provisions of EO 13818.

Who Has the Authority to Impose Sanctions, the President or Congress?

- The President has authority to impose sanctions.
- Because the President, in EO 13818, delegated sanctions authority to the Secretary of the Treasury, the Department of the Treasury—most notably OFAC—issued the Global Magnitsky Sanctions Regulations, administers the GMS, and announces sanctions actions for the general public, usually via the Treasury Department’s [main website](#) and [OFAC’s website](#)).

What Happens if Congress Initiates a Sanctions Determination Process, as Congress Did in the Case of Jamal Khashoggi?

- Under the Global Magnitsky Act, the President is **required**, upon his receipt of a letter from relevant Congressional committees, to initiate a sanctions determination process.
- The Global Magnitsky Act carves out a role for Congress in the sanctions determination process. Under Section 1263 of the Act, the President must, in determining whether to impose sanctions, consider “(1) information provided jointly by the chairperson and ranking member” of four Congressional committees:

The Senate Banking, Housing, and Urban Affairs and Foreign Affairs committees and the House Financial Services and Foreign Affairs committees.

- On October 10, 2018, the Senators Bob Corker and Bob Menendez, respectively the Chairman and Ranking Member of the Senate Foreign Relations Committee, [wrote a letter to the President](#) initiating a sanctions determination process in response to the case of Jamal Khashoggi. On October 12, 2018, the Chairman and Ranking Member of the House Foreign Affairs Committee [formalized their support](#) for their Senate counterparts' action.
- The Senators' October 10 letter (which was signed by all but one member of the Senate Foreign Relations Committee), triggers the President's obligation to undertake a sanctions determination in the Jamal Khashoggi case.
- **The Senators' initiation of the sanctions determination process does not require the President to impose sanctions.** Rather, the Senators' request requires the President to do the following:
 - Within 120 days of the Senators' request, determine if “a foreign person has engaged” in sanctionable conduct, particularly a “serious human rights abuse” or “gross violation of internationally recognized human rights,” **and**
 - Submit a classified or unclassified (*i.e.*, public) report to the chairperson and ranking member of the relevant or requesting Congressional committee(s) indicating whether the President (1) imposed or intends to impose sanctions with respect to one or more persons and (2) describe the sanctions imposed or to be imposed.

Are the GMS Related to the 2016 Presidential Election and the “Trump Tower Meeting”?

- The “Magnitsky Act” was, according to [news accounts](#), was discussed at the reportedly 2016 election-related “Trump Tower” meeting. This “Magnitsky Act” is not the GMS, but a separate 2012 law called the **Sergei Magnitsky Rule of Law Accountability Act of 2012** (the “**Sergei Magnitsky Act**”), which applies only to Russia and certain events in Russia related to the detention and death in custody in 2009 of Sergei Magnitsky, a Russian national who, prior to his detention, publicly accused Russian government entities and officials of corruption and other wrongs.
- The Global Magnitsky Act is related to the Sergei Magnitsky Act [because it was inspired by and expanded it](#), substantively and geographically. Specifically, the Global Magnitsky Act expanded and exported globally the Sergei Magnitsky Act's human rights and anti-corruption provisions. Nevertheless, the laws are different and each law has its own sanctions program (sanctions pursuant to the Sergei Magnitsky Act are the “**Magnitsky Sanctions**” and apply and relate to Russia and sanctions pursuant to EO 13818 and the Global Magnitsky Act are the “**Global Magnitsky Sanctions**” and apply globally).

What Conduct Can Be Sanctioned Under the GMS?

- Persons who engage in, facilitate, or are otherwise responsible for “**serious human rights abuse**” anywhere in the world can be sanctioned under the GMS.
- EO 13818 does not define “serious human rights abuse” and is therefore expansive. In contrast, the Global Magnitsky Act limits (but does not define conclusively) sanctionable human rights abuses, [particularly to those that constitute “gross violations of internationally recognized human rights,”](#) such as torture and extrajudicial killings.
- Certain acts of **corruption** committed anywhere in the world [are sanctionable under the GMS](#). These corrupt acts include, but are not limited to:
 - corruption, including 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, and
 - the transfer or the facilitation of the transfer of the proceeds of corruption.

Who Can Be Sanctioned Under the GMS?

- The GMS primarily target foreign persons (or non-U.S. persons), meaning individual nationals of foreign countries and foreign entities like companies, banks, and others.
- U.S. persons—meaning U.S. citizens and lawful permanent residents, foreign persons while present in the United States, U.S. companies, foreign companies with U.S. subsidiaries or affiliates, etc.—may also be penalized for evading, avoiding, or violating the GMS, or conspiring to do the same.
- Notably, certain U.S. persons—namely dual citizens and multinational enterprises—face full sanctions exposure under the GMS. In other words, they are treated like “foreign persons.” This is because the Global Magnitsky Act and the Global Magnitsky Sanctions Regulations [define dual citizens and multinational enterprises/companies](#) as “foreign persons.”
- Current officials of foreign governments can be sanctioned for corruption (and serious human rights abuse) under the GMS. This is legally significant as the direct sanctioning of *current* foreign officials for corruption [departs from prevailing U.S. legal and international frameworks](#).

What Penalties Apply Under the GMS?

- Again, as stated above, the GMS carry two kinds of sanctions: (1) financial sanctions and (2) immigration sanctions.
 - **Financial sanctions** prohibit U.S. persons anywhere in the world (companies, banks, individuals) from transacting business transactions with sanctioned persons and require U.S. persons to “block” or freeze sanctioned persons’ property and property interests in the United States or in the possession or control of U.S. persons.
 - **Immigration sanctions**, which apply to non-U.S. persons, prohibit sanctioned persons from entering the United States. There are limited exceptions to immigration sanctions—for example, a sanctioned foreign person may be admitted to the United States if, for example, such admission is in the interest of U.S. law enforcement or required by U.S. obligations to the United Nations.

Are Sanctions Permanent? Can Sanctions Be Lifted?

- Sanctions imposed under the GMS are not necessarily permanent and can be lifted by the President.
- The President may terminate sanctions only if he or she, no later than 15 days before the termination of sanctions, reports to the relevant Congressional committees that: (1) a person was wrongly sanctioned; (2) the sanctioned person has been “prosecuted appropriately for the activity for which sanctions were imposed”; (3) the sanctioned “person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in” sanctionable human rights abuses and/or corrupt acts in the future; or, (4) the “termination of the sanctions is in the national security interests of the United States.” (Quoted language is in the Global Magnitsky Act).

If the GMS Are Unilateral U.S. Sanctions, Do They Have Teeth? What Is the Impact of GMS Penalties?

- The GMS (and U.S. unilateral sanctions generally) are powerful because the United States’ financial system and currency (the dollar) are central to the global financial system. Persons subject to U.S. financial sanctions are cut off from the U.S. financial system and, effectively or substantially, from the global financial system.
- As stated in an earlier [MassPoint Global Magnitsky publication](#), “the United States’ Global Magnitsky Act and Sanctions are singular in their force. Other countries have adopted versions of a Magnitsky Act (including Canada, which has imposed sanctions under its law), but none of these other Magnitsky frameworks rival the potential sweep and impact of the United States’ Magnitsky framework.”

Who Has Been Sanctioned to Date?

- As of October 20, 2018, 84 individuals and entities have been sanctioned under the GMS for corruption and/or human rights abuses. They represent, among other nations, the Gambia, South Sudan, the Democratic Republic of Congo, Myanmar (Burma), Israel, Serbia, Nicaragua, the Dominican Republic, Russia, Pakistan, Cyprus, British Virgin Islands., and Turkey.

Who Might Be Sanctioned in the Future?

Given the substantive and geographic sweep of the GMS, the list of sanctioned parties could easily expand. Even a cursory review of news headlines (at any given time) suggests that any number of foreign government officials and private parties around the world could have potential sanctions exposure for “serious human rights abuse” or corruption as broadly defined by the GMS.

Who Can Be Sanctioned in Connection With the Jamal Khashoggi Case?

- Current and former government officials of any foreign government, individuals or nationals of any foreign country, U.S. dual nationals and multinational enterprises, and foreign persons who carry or carried out sanctionable conduct while in the United States can be sanctioned in connection with the Jamal Khashoggi case or related acts and events.
- Persons and entities can be sanctioned for directly engaging in, ordering or directing, or otherwise facilitating (financially or otherwise), one or more “serious human rights abuses” committed against Jamal Khashoggi, as well as for any related acts of sanctionable corruption.
- GMS may be imposed against high ranking or lower level foreign government officials.
- The GMS are not a country sanctions program. Therefore, GMS financial and immigration sanctions, if imposed, will be imposed against individual persons or entities (*e.g.*, government ministries or agencies, corporate entities), and not against a country (other sanctions measures or penalties are available under U.S. law or may be adopted by legislation and/or executive action).

* * *

Connect



info@masspointpllc.com



[@GlobalMagnitsky](https://twitter.com/GlobalMagnitsky)



[Global Magnitsky](#)



[Magnitsky Law and Sanctions Blog](#)

Learn More

Select MassPoint Global Magnitsky Sanctions Publications:

- [Global Magnitsky: The Swiss Army Knife Of Sanctions](#), Hdeel Abdelhady in Law360, August 7, 2018.
- [New Global Magnitsky Regulations Confirm U.S. Multinationals and Dual Citizens Have Heightened Sanctions Exposure](#), MassPoint PLLC, June 29, 2018.
- [U.S. Lawmakers Raise Possibility of Magnitsky Sanctions on Chinese Officials](#), Magnitsky Laws and Sanctions Update, April 21, 2018.
- [Congress Members Urge Trump Administration to Apply Global Magnitsky Sanctions to Sudan](#), Magnitsky Laws and Sanctions Update, April 14, 2018.
- [Some U.S. Individuals and Entities Have Direct Sanctions Exposure Under Global Magnitsky Sanctions](#), No. 5, April 10, 2018.
- [Departing from Prevailing Legal Standards, United States Directly Sanctions Foreign Government Officials for Corruption, MassPoint Magnitsky Series](#), No. 4, April 6, 2018.
- [How the Trump Administration Supercharged Global Magnitsky Corruption and Human Rights Sanctions](#), MassPoint Magnitsky Series, No. 3, April 3, 2018.
- [From Sergei Magnitsky to Global Magnitsky: United States Asserts Universal Jurisdiction Over Corruption and Human Rights Abuses](#), MassPoint Magnitsky Series No. 2, March 27, 2018.
- [New U.S. Sanctions Are a Powerful Weapon Against Corruption and Human Rights Abuse Worldwide](#), MassPoint Magnitsky Series NO. 1, March 5, 2018.
- [U.S. National Security Strategy Targets China's Dominance, Corruption in Africa](#), MassPoint Occasional Note, February 25, 2018.