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## New U.S. Sanctions Are a Powerful Weapon Against Corruption and Human Rights Abuse Worldwide

Global Magnitsky Sanctions Require No Jurisdictional Nexus with the United States, Define Corruption Broadly, Expose Foreign Government Officials, Foreign Private Parties and U.S. Persons to Sanctions, and Impose Strict Liability on “Leaders” of Foreign Entities for the Corrupt Acts of Their Entities

With the adoption of a new U.S. sanctions regime that targets corruption and human rights abusers globally, the United States added a powerful weapon to its already formidable legal arsenal.

### U.S. National Emergency with Respect to Human Rights Abuses and Corruption

On December 20, 2017, the U.S. President issued Executive Order 13818 “Blocking the Property of Persons Involved in Serious Human Rights Abuse and Corruption.”<sup>1</sup> 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.”<sup>2</sup>

### Global Magnitsky Human Rights and Accountability Act

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 (the “**Global Magnitsky Sanctions**”).<sup>3</sup>

*“Remarkably encompassing, EO 13818 is fit to advance the national objectives it proclaims, that ‘t]he United States seeks to impose tangible and significant consequences on those who commit serious human rights abuse or engage in corruption, as well as protect the financial system of the United States from abuse by these same persons’”*

### “Tangible and Significant Consequences” for Corrupt Actors and Human Rights Abusers

Beyond the parameters of the Global Magnitsky Act, and particularly in connection with corruption, EO 13818 considerably expands the range of sanctionable conduct and persons. In support of its many provisions that exceed the sanctions authorized by the Global Magnitsky Act, EO 13818 invokes sanctions authority under International Emergency Economic Powers Act.<sup>4</sup> More important than the underlying legal mechanics of this aspect of EO 13818 is what it suggests about the current Administration’s sanctions philosophy and potential enforcement posture. Remarkably encompassing in scope and potential effect, EO 13818 is fit to advance the national objectives it

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proclaims, that “[t]he United States seeks to impose tangible and significant consequences on those who commit serious human rights abuse or engage in corruption, as well as protect the financial system of the United States from abuse by these same persons.”<sup>5</sup>

### Extraordinary Sanctions for Foreign Government Officials and Private Parties

EO 13818 directly targets foreign government officials and private parties who commit or enable human rights abuses and certain corrupt acts.<sup>6</sup> The Order also employs extraordinary theories of liability. For example, EO 13818 holds current and former “leaders” of foreign entities (government and private) strictly and vicariously liable—and thus sanctionable—for the corrupt acts, during a leader’s tenure, of their entities.<sup>7</sup> The Order also imputes the sanctioned status of a blocked private or government entity to its current or former “leaders,” if the entity was blocked “as a result of activities related to the leader’s or official’s tenure.”<sup>8</sup> Additionally, EO 13818 treats as a corrupt act the transfer or facilitation of the transfer of corrupt proceeds by current or former foreign government officials and “persons acting for or on their behalf.”<sup>9</sup> These three bases for liability, among others, are unique to EO 13818—they are not provided for by the Global Magnitsky Act.

### U.S. and Foreign Persons’ Sanctions Exposure (*Global Magnitsky Series*)

U.S. persons also have sanctions exposure under the Global Magnitsky Sanctions. Some U.S. persons (natural and legal) are, under the Global Magnitsky Act, “foreign persons” and presumably could be sanctioned for human rights abuses and corrupt acts.<sup>10</sup> All persons, including all U.S. persons, are sanctionable under EO 13818 for providing, *inter alia*, material assistance or support or goods and services to or in support of, among others, blocked parties or conduct that is “serious human rights abuse” or corruption if such acts were “conducted by a foreign person.”<sup>11</sup> In addition, under the Global Magnitsky Act, all persons are subject to civil and criminal penalties for committing or causing sanctions violations and for attempts or conspiracies to violate sanctions.<sup>12</sup>

The foregoing and additional provisions of the Global Magnitsky Sanctions, as well as key differences between EO 13818 and the Global Magnitsky Act, are discussed in forthcoming installments of a MassPoint series on the Global Magnitsky Sanctions, of which this is the first part.

*“By and through the Global Magnitsky Sanctions, the United States is asserting, as a default position and without regard to the availability of adequate legal recourse overseas, universal jurisdiction over covered corrupt acts and human rights abuses.”*

### U.S. Universal Jurisdiction Over Certain Corruption and Human Rights Abuses

As the name indicates, the Global Magnitsky Sanctions reach worldwide. They require no jurisdictional nexus between the United States and the conduct or persons they target. By and through the Global Magnitsky Sanctions, the United States is asserting, as a default position and without regard to the availability of adequate legal recourse overseas, universal jurisdiction over covered corrupt acts and human rights abuses. As discussed in a later part of this series, the assertion of universal jurisdiction over corruption is a departure from national laws and international frameworks that expressly or impliedly defer to national governments to punish their officials who solicit or receive bribes or engage in other corruption.

## Parties Sanctioned to Date Reflect Global Reach of Sanctions

To date, 52 individuals and entities have been sanctioned under the Global Magnitsky Sanctions.<sup>13</sup> 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, and the British Virgin Islands.<sup>14</sup>

*“Even a cursory review of news headlines suggests that any number of foreign government officials and related private parties around the world could have potential sanctions exposure, particularly for corruption as broadly defined by the Global Magnitsky Sanctions.”*

## Potential for Expansive Future Sanctions Enforcement

Given the substantive and geographic sweep of the Global Magnitsky Sanctions, the list of sanctioned parties could easily expand. Even a cursory review of news headlines suggests that any number of foreign government officials and related private parties around the world could have potential sanctions exposure, particularly for corruption as broadly defined by the Global Magnitsky Sanctions.

Of course, how and to what effect the Global Magnitsky Sanctions will be enforced remains to be seen, and decisions to impose sanctions on specific persons or in connection with certain countries will undoubtedly involve legal, policy and political considerations, and probably some controversy.

## Practical Steps for Foreign and U.S. Parties

Foreign and U.S. parties having international business, other activities or connections that may relate to conduct, persons or locales potentially within the scope of the Global Magnitsky Sanctions should assess their risk and related obligations. Banks, businesses and other parties that engage in transactions with or on behalf of, among others, current or former foreign government officials or wholly or partially state-owned enterprises should take similar steps and make appropriate modifications to their due diligence protocols and other aspects of their business conduct and/or compliance programs. These and other practical implications of and responses to the new legal framework are discussed in forthcoming installments of this MassPoint Global Magnitsky Sanctions series. ■

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## Notes

<sup>1</sup> Exec. Order No. 13,818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption, 82 Fed. Reg. 60,839 (Dec. 20, 2017) [“**EO 13818**” or the “**Order**”]. The Order took effect on December 21, 2017.

<sup>2</sup> EO 13818, preamble.

<sup>3</sup> Global Magnitsky Human Rights Accountability Act, Subtitle F of the National Defense Authorization Act for Fiscal Year 2017, Pub. Law No. 114-328, §§1262-65 at § 1263, codified at 22 U.S.C. 2656 note (Dec. 23, 2016) [the “**Global Magnitsky Act**”].

<sup>4</sup> EO 13818, preamble.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at § 1(a)(ii).

<sup>7</sup> *Id.* at §1(a)(C)(1).

<sup>8</sup> *Id.* § 1(a)(ii)(C)(2).

<sup>9</sup> *Id.* §1(a)(B)(2).

<sup>10</sup> Global Magnitsky Act, Pub. Law No. 114-328, § 1262(1) (importing the definition of “foreign person” from the Terrorism Sanctions Regulations at 31 C.F.R. 595.304). 31 C.F.R. 595.304 defines a “foreign person” as “any citizen or national of a foreign state (*including any such individual who is also a citizen or national of the United States*), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.” (emphasis added).

<sup>11</sup> EO 13818 at § 1(iii)(A)(1).

<sup>11</sup> *Id.* at § 1(iii)(A).

<sup>12</sup> Global Magnitsky Act, Pub. Law No. 114-328, § 1263(f). IEEPA, 50 U.S.C. § 1705.

<sup>13</sup> On December 21, 2017, pursuant to EO 13818, the Treasury Department’s Office of Foreign Assets Control (**OFAC**) added 15 individuals and 37 related entities to the list of “Specially Designated Nationals” (**SDNs**). OFAC, [Issuance of Global Magnitsky Executive Order; Global Magnitsky Designations](#), December 21, 2017. Concurrently, OFAC released [Global Magnitsky Sanctions FAQs](#). Thirteen individuals and entities listed in an Annex to EO 13818 were sanctioned on December 20, 2017. The rest were designated by the Treasury Department on December 21. EO 13818, Annex.

<sup>14</sup> A search of the [sanctions lists](#) maintained by OFAC indicates that as of February 25, 2018, 52 individuals and entities have been listed as Specially Designated Nationals (SDNs) pursuant to the Global Magnitsky Sanctions. For background on parties sanctioned on December 21, 2017, see Treasury Department, [United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe](#), December 21, 2017.