

OCCASIONAL NOTE | NOVEMBER 18, 2018

Proposed Legislation Seeks Sanctions for Persons Responsible for the Death of Jamal Khashoggi, Including Saudi Government Officials and Royal Family Members

November 15 was an eventful day in the ongoing case of Jamal Khashoggi. The Saudi Arabian government [announced](#) results of its investigation into Mr. Khashoggi's murder on October 2. The U.S. Department of the Treasury [imposed Global Magnitsky sanctions](#) on 17 Saudi nationals who allegedly participated in or were present for the journalist's extrajudicial killing in the Saudi consulate in Istanbul. On Capitol Hill, a bipartisan group of senators [introduced](#), after the Treasury Department announced sanctions, legislation for sanctions against persons responsible for Mr. Khashoggi's murder, including, explicitly, members of the Saudi government and royal family.

The sequence of events is noteworthy. And the senate legislation is significant for what it says about lawmakers' appetite for a stronger response to the Khashoggi case and (continuing) lack of faith in the Trump Administration's willingness to enforce sanctions with fidelity to applicable law and preferred national policy (as viewed by members of Congress).

Treasury Sanctions on 17 Individuals

The occurrence on the same day of the U.S. announcement of sanctions and the Saudi government's public disclosures about its investigation suggests that crisis management, rather than legal objectives, may have informed timing, as the publicly disclosed results of the Saudi investigation do not appear to have yielded legally operative information for U.S. sanctions designations purposes.

The 17 Saudi nationals sanctioned on November 15 were previously revealed by Turkish authorities ("unofficially")—the group includes the 15 or so members of the team that traveled to Istanbul to meet Mr. Khashoggi, along with the former Saudi consul general in Istanbul.¹ Moreover, the Treasury Department had legal authority to impose Global Magnitsky Sanctions before November 15, as the Global Magnitsky Sanctions Regulations authorize the imposition of sanctions "pending investigation."²

In any case, the 17 individuals designated under the Global Magnitsky Sanctions are, as of November 15, "Specially Designated Nationals" (SDNs) subject to financial and immigration sanctions, namely: (1) their property and interests in property in the United States or in the possession or control of U.S. persons anywhere is or must be frozen;³ (2) U.S. persons are generally prohibited from doing business with them; and, (3) with limited exceptions they are prohibited from entry into the United States.

Saudi Arabia Accountability and Yemen Act of 2018

Shortly after the Treasury Department imposed sanctions, a bipartisan group of six senators introduced into the Senate on November 15 the Saudi Arabia Accountability and Yemen Act of

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2018 (the “Act” or the “Saudi Accountability Act”). Brought forth by freshly reelected Senator Bob Menendez (D-NJ)—the Ranking Member of the Senate Foreign Relations Committee—and Senator Todd Young (R-IN) on behalf of themselves and Senators Jack Reed (D-R.I.), Lindsey Graham (R-S.C.), Jeanne Shaheen (D-N.H.), and Susan Collins (R-Maine), the Saudi Accountability Act advances two primary aims:

1. The acceleration of the cessation of war in Yemen by restricting arms sales and refueling support to Saudi Arabia, financial and immigration sanctions for persons involved in “hindering humanitarian access” and supporting “support Houthi rebels,” and increased Congressional oversight of the Executive Branch;⁴ and,
2. mandating the President to impose, within 30 days of the Act’s adoption, financial and immigration sanctions on any foreign person, “including any official of the government of Saudi Arabia or member of the royal family of Saudi Arabia,”⁵ that the President determines, based on “credible evidence” was
 - a. “responsible for, or complicit in, ordering, controlling, or otherwise directing an act or acts contributing to or causing the death of Jamal Khashoggi,” or
 - b. “has materially assisted, sponsored, or provided financial, material, or technological support for, or goods in support of” the death of Jamal Khashoggi.⁶

The key takeaways from the introduction and language of the Saudi Accountability Act, which amends the Global Magnitsky Act,⁷ are both specific to the Khashoggi case and Saudi Arabia and more generally add a chapter to an unfolding story of increasing Congressional activism on sanctions.

Saudi Arabia and Khashoggi-Specific Key Points

- First, the senate sponsors of the Act, and those likely to support the legislation, do not believe that sanctions imposed on 17 Saudi nationals thus far are sufficient. Senator Shaheen [put it](#) this way: “Saudi Arabia’s barbaric murder of Jamal Khashoggi, continued detention of activists and indiscriminate bombing campaign in Yemen merit a strong, bipartisan response.” The senator’s statement is striking for its attribution—in conclusory fashion—of responsibility to the Saudi state, rather than to one or more particular officials.
- Second, the sponsoring Senators (and others through their public statements) have confirmed that they, in contrast to the President and Administration, want responsibility for Mr. Khashoggi’s killing placed not only on those who are believed to have participated in the commission of the crime in Istanbul, but also on those who “ordered” or were otherwise complicit in or responsible. Placing responsibility at higher levels of the Saudi government is the thrust of the Act.
- Third, the “material support” language of the Act widens the scope of persons who potentially could be sanctioned. For example, government agencies, officials, and/or private parties could be liable for providing financing or other support.
- Fourth, the Saudi Accountability Act, as a legal matter, is not necessary to achieve its sanctions objectives. Under the Global Magnitsky Sanctions, current and former

government officials—from bureaucrats to heads of state—can be sanctioned for a very broad range of corrupt acts and human rights abuses.⁸

Increasing Congressional Sanctions Activism on Sanctions

As the legislative branch, Congress of course plays a role in the promulgation of sanctions, primarily by authorizing the President to impose sanctions against countries, individuals, or in response to specific conduct. During the Trump Administration, Congress has been increasingly activist on sanctions, apparently driven by a lack of faith in the President’s willingness to enforce sanctions consistently with applicable law and policy, particularly where the President’s foreign policy, political, or other views may not align with the intent and purpose of existing sanctions programs or traditional policy.

A prime example of Congressional activism was the passage, overwhelmingly, in 2017 of the Countering America’s Adversaries Through Sanctions Act (CAASTA) that, among other measures, codified Russia-related sanctions executive orders issued by President Obama. As discussed in an earlier MassPoint publication, President Trump signed CAASTA with reservations, indicating in a [signing statement](#) that CAASTA may have “unconstitutionally encroached on his Executive authority to conduct foreign affairs.”

Earlier this year, in response to the President’s reversal of the Commerce Department’s denial order barring exports of critical U.S. technological goods and services to China’s ZTE, legislation was introduced in the House to [statutorily re-impose](#) the denial order. Congress retreated after negotiations between the Administration and the Republican majority, effectively [abandoning](#) efforts to undo the presidentially-ordered reinstatement of ZTE’s export privileges. The efforts to reverse Presidential action in the ZTE case were, while ultimately abandoned, a manifestation Congressional activism on sanctions.

The Saudi Accountability adds yet another chapter to the unfolding story of Congressional efforts to constrain, check, and force action by the Trump Administration on sanctions in ways that, in Congress’ view, advance existing law and policy.⁹

Conclusion

The introduction of the Saudi Accountability Act by is momentous, even if the legislation fails to become law. The mere introduction of the legislation strongly telegraphs Congress’ posture and willingness to act, in principle, on the Khashoggi case and on U.S.-Saudi policy more generally. Moreover, and again, the Act is a further manifestation of Congress’ increasingly activist sanctions stance, reflecting

Related MassPoint Publications

- [Global Magnitsky Sanctions FAQs](#), Oct. 20, 2018.
- [Global Magnitsky: The Swiss Army Knife of Sanctions](#), Aug. 8, 2018.
- [United States Sanctions High-Ranking Turkish Officials Under Global Magnitsky](#), Aug. 1, 2018.
- [House Bill “Blocks Bailout” of ZTE After Export Ban](#), May 19, 2018.
- [United States Directly Sanctions Foreign Government Officials for Corruption](#), Magnitsky Series, No. 4, April 6, 2018.
- [How the Trump Administration Supercharged Global Magnitsky Corruption and Human Rights Sanctions](#), Magnitsky Series, No. 3, April 3, 2018.
- [From Sergei Magnitsky to Global Magnitsky: United States Asserts Universal Jurisdiction Over Corruption and Human Rights Abuses](#), Magnitsky Series No. 2, March 27, 2018.
- [New U.S. Sanctions Are a Powerful Weapon Against Corruption and Human Rights Abuse Worldwide](#), Magnitsky Series No. 1, March 5, 2018.

the continuing skepticism among lawmakers of both major parties (and the few independents in Congress) of the Administration's willingness to enforce U.S. sanctions consistently and in accordance with law and policy. ■

For information about this publication or [MassPoint PLLC](#), contact [Hdeel Abdelhady](#) at habelhady@masspointpllc.com.

NOTES

¹ Presumably, most of the persons sanctioned on November 15 had their [visas revoked](#) by the State Department in October.

² Global Magnitsky Sanctions Regulations, 31 C.F.R. § 583.201, Note 2 (drawing on the authority of the International Emergency Economic Powers Act, pursuant to which the Global Magnitsky Sanctions are authorized in part, to impose sanctions pending investigation).

³ "Interests in property" refers to property that is directly or indirectly owned 50% or more by one or more blocked persons. U.S. Department of the Treasury, [Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked](#), August 13, 2014. For a discussion of the 50% rule and related due diligence (sanctions screening) practices, see, e.g., Hdeel Abdelhady, [United States Adds Russian Direct Investment Fund, Other Russian Financial Services Actors to Sectoral Sanctions List](#), [MassPoint PLLC](#), Aug. 7, 2015.

⁴ The provisions authorizing sanctions for parties who support Houthi rebels would likely apply mostly to Iran and Iran-backed actors. As to oversight, the Act requires, for example, multiple agencies in the Executive Branch to report periodically to Congress.

⁵ For perspective, note that a quick search of the United States Code Congressional and Administrative News, which contains Congressional materials (e.g., public laws, committee reports, floor statements) and Executive Branch materials (e.g., presidential executive orders and proclamations) dating back nearly 80 years yields no government records proposing or contemplating sanctions against Saudi Arabia or its officials or members of its royal family. More developed searches of the same database or others may produce different results.

⁶ Saudi Arabia Accountability Act, § 201.

⁷ 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).

⁸ Indeed, as discussed in an installment MassPoint's Magnitsky Law and Sanctions [series](#), the Trump Administration "[supercharged](#)" the Global Magnitsky Sanctions by substantially broadening the scope of sanctionable corruption and human rights abuse beyond the scope of the Global Magnitsky Act.

⁹ Congressional involvement in the nitty gritty of sanctions has clear drawbacks, as sanctions enforcement often requires a nimbleness and flexibility (within reasonable legal and policy boundaries) of the Executive Branch.