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From Sergei Magnitsky to Global Magnitsky: United States Asserts Universal Jurisdiction Over Corruption and Human Rights Abuses

Global Magnitsky Sanctions Export Human Rights Framework of the Sergei Magnitsky Act Globally, Assert U.S. Universal Jurisdiction Over the Corrupt Acts and Human Rights Abuses They Target, and Impose Financial and Immigration Sanctions

Legal Pillars of the Global Magnitsky Sanctions Framework

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.”¹ 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.”²

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**”).³

“The Global Magnitsky Act’s default position is the applicability of U.S. sanctions in response to acts wholly or substantially occurring outside of the United States.”

The Global Magnitsky Act Has its Roots in the Sergei Magnitsky Act of 2012

The Global Magnitsky Act builds and expands on the Sergei Magnitsky Rule of Law Accountability Act of 2012 (the “**Sergei Magnitsky Act**”).⁴ The Sergei Magnitsky Act requires the President to identify and impose sanctions on persons that the President determines, “based on credible information,” to be responsible for the “detention, abuse, or death” of Russian lawyer and whistleblower Sergei Magnitsky, who in 2009 died in prison in Russia after publicly accusing Russian government entities and officials of corruption and other wrongs.⁵ The Sergei Magnitsky Act addresses corruption indirectly, such as by identifying ways in which corruption impedes human rights protections and permits human rights abuses against individuals “seeking to expose illegal activities” by government officials.⁶

The Global Magnitsky Act Exports the Human Rights Framework of the Sergei Magnitsky Act Globally

As the above description indicates, the Sergei Magnitsky Act targets persons and places tied to specific events that occurred in one country.⁷ Moreover, the Sergei Magnitsky Act can be read to

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have been adopted or operate as an alternative or last recourse for justice and accountability, following Congress' findings that there was a denial of "any justice or legal remedies" to Mr. Magnitsky by "all state bodies of the Russian Federation" and "impunity since his death of state officials."⁸

In contrast, the Global Magnitsky Act contains no analogous Congressional findings, nor does it expressly state or imply that it is a last or alternative resort where adequate legal processes to adjudicate corruption or human rights abuses are unavailable in foreign countries where relevant events took place or parties are located, or before foreign tribunals to which relevant states have submitted to jurisdiction. Instead, the Global Magnitsky Act's default position is the applicability of U.S. sanctions (supported by "credible evidence") without the requirement of a jurisdictional nexus with the United States.⁹ Accordingly, the Global Magnitsky Act asserts U.S. universal jurisdiction over the corrupt acts and human rights abuses it targets. EO 13818 goes much further, as discussed in detail in forthcoming installments of this MassPoint series.

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"For human rights abuses and corrupt acts, the Global Magnitsky Act and EO 13818 authorize financial and immigration sanctions."

Sanctions for Covered Human Rights Abuses and Corrupt Acts, Civil and Criminal Penalties for Sanctions Violations

For human rights abuses and corrupt acts, the Global Magnitsky Act and EO 13818 authorize financial and immigration sanctions. The Global Magnitsky Sanctions largely target foreign government officials and private parties (natural and legal). However, some U.S. persons are "foreign persons" under the Global Magnitsky Act and have sanctions exposure in connection with certain corrupt acts and human rights abuses. Moreover, all U.S. persons, like their foreign counterparts, are sanctionable for providing material and other support to certain conduct and persons. U.S. and foreign persons also face civil and criminal penalties for violating or evading sanctions.

"The financial penalties imposed by the Global Magnitsky Sanctions are powerful, as they effectively cut off sanctioned persons from the U.S. financial system and, substantially, U.S. dollar transactions."

Financial Sanctions: Blocking of Property and Prohibition of Transactions with or for the Benefit of Blocked Persons

Financial sanctions entail the "blocking" or freezing of the property or "interests in property" of sanctioned persons that is in or comes within the United States or the possession or control of a U.S. person, including U.S. banks and their foreign branches, U.S. branches of foreign bank and U.S. businesses and individuals. The property of a "blocked" person (a "**Specially Designated National**" or "**SDN**") must be frozen and may not, without approval, be transferred or otherwise transacted in. The "interests in property" of a blocked person is property owned 50% or more, directly or indirectly, by one or more blocked persons individually or in the aggregate.¹⁰ Entities that are owned 50% or more by one or more blocked persons are also blocked, pursuant to the Treasury Department Office of Foreign Assets Control's "50% Rule."¹¹

In addition, EO 13818 prohibits transactions with or for the benefit of sanctioned parties, specifically (1) "the making of any contribution or provision of funds, goods, or services by, or to, or

for the benefit of any . . . [blocked person]” and (2) “the receipt of any contribution or provision of funds, goods, or services from any such person.”¹²

U.S. Financial Sanctions Are Independently and Comparatively Powerful

The financial penalties imposed by the Global Magnitsky Sanctions (and other U.S. sanctions programs) are powerful, as they effectively cut off sanctioned persons from the U.S. financial system and, substantially, U.S. dollar transactions. Given the size and centrality of the U.S. financial system to international commerce and payments, persons without access to U.S. banks and other constituent parts of the U.S. financial system are largely shut out of the international financial system (this assumes, of course, effective enforcement and compliance by U.S. authorities, banks and international financial system participants).¹³

Put in context, the United States’ Global Magnitsky Act and sanctions program 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.¹⁴

Immigration Sanctions

The Global Magnitsky Act and EO 13818 impose immigration sanctions that prohibit sanctioned persons from immigrant and non-immigrant entry into the United States.¹⁵ The Global Magnitsky Act excepts from immigration sanctions persons whose admission to the United States would “further important law enforcement objectives” or is “necessary to permit” the United States to comply with obligations vis-à-vis the United Nations.¹⁶ EO 13818 contains no such exception.

“It remains to be seen how the current Administration will enforce the Global Magnitsky Sanctions. For now, their existence alone is a powerful weapon in the Administration’s arsenal, a reality that should be taken seriously—and for different purposes—by a wide range of foreign government and private parties.”

Civil and Criminal Penalties for Sanctions Evasion and Violations or Conspiracies to Violate Financial Sanctions

EO 13818 prohibits transactions that, in effect or purpose, “evade or avoid[]” or “violate[]” the financial sanctions provisions, as well as conspiracies to violate “any of the [blocking] prohibitions set forth in” the Order.¹⁷

In addition, the Global Magnitsky Act provides that persons who violate or attempt or conspire to violate sanctions authorized by the Act, or persons who “cause[] a violation” of sanctions, are subject to civil and criminal penalties pursuant to the IEEPA.¹⁸ Civil penalties under the IEEPA are up to \$250,000 or twice the amount of a transaction that was the source of a violation.¹⁹ The IEEPA’s criminal penalties attach to willful violations and attempts or conspiracies to violate a relevant sanctions program, as well as the willful aiding or abetting of such acts, punishable by fines of up to \$1,000,000 and/or imprisonment for up to 20 years.²⁰

Key Takeaways

The Global Magnitsky Sanctions are extraordinary for their scope and reach. They embody an unabashed assertion by the United States of universal sanctions jurisdiction over the corruption

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and human rights abuses they target. Particularly with respect to corruption, the Global Magnitsky Sanctions are a departure from U.S. and foreign anti-corruption laws, as well as international frameworks, that defer to national authorities to punish their own government officials for bribery and other corrupt acts. The Global Magnitsky Sanctions are also notable for their broad definition of corruption, which covers not just bribery, but also the expropriation of private assets for personal gain and corruption in government contracting. These corruption-related aspects of the Global Magnitsky Sanctions are discussed in a forthcoming installment of this MassPoint series

As stated in the [first part](#) of this MassPoint series, any number of foreign government officials and private parties could conceivably find themselves on the wrong side of the Global Magnitsky Sanctions, particularly for corrupt acts. It remains to be seen how the current Administration will enforce the Global Magnitsky Sanctions. For now, their existence alone is a powerful weapon in the Administration's arsenal, a reality that should be taken seriously—and for different purposes—by a wide range of foreign government and private parties, from human rights and anti-corruption campaigners to government institutions and state-owned enterprises to banks or other financial institutions that do business with or on behalf of foreign government officials or entities. ■

This publication is the second installment in a MassPoint PLLC series on the Global Magnitsky Act and Sanctions; the first in the series is available [here](#). Future installments will discuss, among other topics, details of the key legal authorities for the Sanctions—the Global Magnitsky Act and Executive Order 13818—as well as the substantial differences between them (hint: EO 13818 significantly expands the scope and reach of U.S. sanctions). For more information about the series or MassPoint's other publications or services, please contact the author, Hdeel Abdelhady, at habelhady@masspointpllc.com or +1-202-630-2512.

Notes

¹ 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. *Id.* at § 12.

² EO 13818, preamble. The President declared a national emergency and invoked powers pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 (**IEEPA**), even though the Global Magnitsky Act does not require such a declaration to impose sanctions. Pub. Law No. 114-328, § 1263(b)(1)(B) (stating that "the requirements of section 202 of the . . . [IEEPA] . . . shall not apply for the purposes of . . . [the imposition of sanctions].") The President's declaration under the IEEPA of a national emergency provides the legal authority needed to support the many provisions of EO 13818 that exceed the scope of the Global Magnitsky Act.

³ 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).

⁴ Sergei Magnitsky Rule of Law Accountability Act of 2012 (Title IV of Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. Law No. 112-208, 126 Stat. 1502 (codified at 22 U.S.C. § 5811 note)).

⁵ *Id.* at § 402(a)(7)-(10) (outlining Congress' findings and sense as to the "politically motivated . . . persecution" of Sergei Magnitsky and subsequent "impunity [of certain Russian state officials] for their involvement in corruption and the carrying out of his repressive persecution."

⁶ *Id.* at § 404(a)(2)(A) (with respect to Mr. Magnitsky) and § 402(a)(4), (a)(9) and (a)(12) (generally).

⁷ A subsequently enacted law targets foreign corruption and human rights abuses, but in particular jurisdictions. The Countering America's Adversaries Through Sanctions Act, Pub. Law No. 115-44, 131 Stat 886 (August 2, 2017) provides for, *inter alia*: the imposition of sanctions on, among others, persons responsible for or complicit in "significant corruption" in the Russian Federation, Pub. Law No. 115-44, § 227, against persons engaged in certain human rights abuses in Iran (Pub. Law No. 115-44, Title II, Countering Iran's Destabilizing Activities Act of 2017 at § 106)) and North Korea (Pub. Law No. 115-44, Title III, Korean Interdiction and Modernization of Sanctions Act, §§ 321-322).

⁸ Sergei Magnitsky Act, Pub. Law No. 112-208, § 402(a)(10).

⁹ It is only after sanctions have been imposed that the Global Magnitsky Act considers whether justice has been administered as it authorizes the President to "terminate the application of sanctions" if he (or she) determines that a sanctioned person "has been prosecuted appropriately" or "credibly demonstrated a significant change in behavior, has paid an appropriate consequence . . . and has credibly committed to not engage in . . . [a sanctionable activity] in the future." Global Magnitsky Act, Pub. Law No. 114-328, § 1263(g)(2)-(3) (providing also at § 1263(g) that the President must report the termination of sanctions to the appropriate congressional committees at least 15 days before such termination).

¹⁰ "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. *See also* OFAC, [Entities Owned by Persons Whose Property and Interest in Property are Blocked \(50% Rule\)](#) ["**OFAC 50% Rule Guidance**"]. 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.

¹¹ *See, e.g.*, OFAC 50% Rule Guidance.

¹² EO 13818, § 4.

¹³ For a discussion of how the international strength of the U.S. financial system and dollar play a role in extending the global reach of U.S. law, *see* Hdeel Abdelhady, [Emerging Trade and Finance Channels Led by Non-Western Nations Could Curtail the Global Reach of U.S. Law](#), [MassPoint PLLC](#), June 11, 2015 (discussing the relationship between U.S. financial system and dollar strength and the extraterritorial reach of U.S. sanctions and other laws).

¹⁴ *See, e.g.*, Michelle Zilio, [Canada sanctions 52 human-rights violators under new Magnitsky law](#), *The Globe and Mail*, Nov. 3, 2017.

¹⁵ The Global Magnitsky Act excepts from immigration sanctions persons whose admission to the United States would "further important law enforcement objectives" or is "necessary to permit" the United States to comply with obligations vis-à-vis the United Nations. Pub. Law No. 114-328, §1263(e).

¹⁶ *Id.* at §1263(e).

¹⁷ EO 13818, § 5.

¹⁸ Global Magnitsky Act, Pub. Law No. 114-328, § 1263(f) (incorporating the penalties of the IEEPA, 50 U.S.C. § 1705). For brief background on the IEEPA's broader role in the Global Magnitsky Sanctions and a full citation, *see note 2 above*.

¹⁹ IEEPA, 50 U.S.C. § 1705(b).

²⁰ *Id.* at § 1705(c).