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## Global Magnitsky Sanctions Target Human Rights Abusers and Government Corruption Around the World

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On December 20, 2017, President Trump issued a new [Executive Order](#) (EO) targeting corruption and human rights abuses around the world.

The EO implements last year's Global Magnitsky Human Rights Accountability Act (the Global Magnitsky Act), which authorized the president to impose sanctions against human rights abusers and those who facilitate government corruption.<sup>1</sup> The US Department of the Treasury's Office of Foreign Assets Control (OFAC), which will administer the EO, also [added](#) 15 individuals and 37 entities to its Specially Designated Nationals and Blocked Persons List (SDN List).

Although OFAC already administers several sets of sanctions that target corruption and human rights abuses, those programs are significantly more limited because they target activity in particular countries.<sup>2</sup> By contrast, sanctions under the Global Magnitsky Act and the EO target such conduct by current and former government officials *anywhere in the world*. As a result, companies—which already should be focused on anti-corruption and anti-bribery issues—must consider human rights and anti-corruption compliance risks more expansively than ever before, as OFAC is now capable of imposing sanctions that reach commercial and financial relationships in every foreign jurisdiction based on the conduct of foreign government officials.

### *Global Magnitsky Sanctions Authority Is Broad and Undefined*

Under the EO, OFAC may now block the property and property interests of any non-US person if it determines that the person is:

- Responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse;
- A current or former government official, or is acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, 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; or

- A current or former government official, or is acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in the transfer or the facilitation of the transfer of the proceeds of corruption.

The EO also authorizes OFAC to block the property and property interests of, among others, the leader or an official of an entity that has engaged in any of the above-listed activities; those who have attempted to engage in any of the above-listed activities; and those who have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, the above-listed individuals, entities or activities.

When an individual or entity is added to the SDN List, any property or property interest of that SDN that is in the United States, or that comes within the possession or control of any US person, is blocked; i.e., any transfers, payments, exportation, withdrawals or other dealings are prohibited. Such blocking also must be reported to OFAC within 10 business days.

This new authority is extremely broad. In addition to targeting human rights abuses and corruption anywhere in the world, the EO does not differentiate between corruption and “significant” corruption despite the fact that the Global Magnitsky Act specifically authorizes sanctions against government officials connected to “significant” corruption.<sup>3</sup> As a result, the EO appears to contemplate that OFAC may impose sanctions against foreign government officials for varying levels of corruption.

The EO also does not limit the sanctions to corruption by current government officials, but also includes corruption by former government officials, by persons acting on their behalf, and by leaders or officials of entities that have “engaged in” corruption as a result of their tenure.

And importantly, as is typical in OFAC-administered sanctions programs, the EO targets for sanctions and other possible penalties, including substantial fines and possible prosecution, those “persons”—which includes businesses—that have not themselves acted corruptly or abusively but have provided assistance, support, goods or services in support of those who have.

Finally, the EO does not define key terms such as “corruption,” “misappropriation” and “bribery,” among others.

### *The Global Magnitsky Sanctions Raise New Compliance Challenges*

The breadth of the EO and its lack of definitions of key terms increase the compliance challenge for companies engaged in international business operations.

For example, a company that provides goods or services to a foreign government that are “related to government contracts or the extraction of natural resources” must now consider whether such activities may be “corrupt” even if the company itself does not participate directly in the corrupt activity. Likewise, a financial services firm that facilitates the transfer of proceeds of “corruption” may be sanctioned or otherwise penalized under this EO. Notably, the EO, unlike other sets of sanctions, does not require that OFAC find a person to “knowingly” have engaged in the proscribed conduct before it imposes sanctions.<sup>4</sup> As is the case with other sanctions programs, these are “strict liability” offenses whose application is subject to the deference of OFAC.

In addition, US companies or those who rely on US banking or other services must now consider the risk that OFAC could designate their counterparties (e.g., customers, suppliers, joint venture partners, banks and many others) as SDNs. A US company, including US persons working overseas, doing business with an individual or entity that OFAC adds to the SDN List must effectively cease all commercial and financial dealings with that SDN and may encounter legal and commercial challenges to give effect to the “blocking” of that person’s property or property interest.<sup>5</sup>

Companies should review their compliance programs in light of the breadth of the EO, which underscores the importance of harmonizing internal compliance measures addressing different areas of regulation that currently may be siloed: sanctions, export control, anti-corruption and anti-money laundering. A coherent, integrated compliance function allows companies to evaluate the totality of the risks presented by potential counterparties or transactions. In doing so, companies should also review how their due diligence and risk rating systems could be enhanced in response to the Global Magnitsky sanctions.

#### *Global Magnitsky Sanctions Increase Companies’ Potential Corruption-Related Exposure in High-Risk Jurisdictions*

Anti-corruption risk for US and other global companies centers around the Foreign Corrupt Practices Act (FCPA) and similar global anti-corruption laws, and companies should have compliance programs to ensure that bribes are not paid to foreign government officials. But under the Global Magnitsky sanctions, companies may be more exposed to corruption risks than ever before. In addition to facing potential FCPA enforcement for missteps in a high-risk jurisdiction, a company’s distribution channel, joint venture or even its access to an entire foreign market may be jeopardized if OFAC designations under the EO disrupt business relationships that were lawful at the time they were formed. In addition to these business disruptions, the designation of business partners as SDNs may open a new pipeline for investigations by prosecutors and regulators in the US and elsewhere in enforcing the FCPA and similar laws, and accordingly companies may find themselves responding to government inquiries following such designations.

At this point, OFAC has not issued any general licenses or guidance addressing the “winding down” of relationships with individuals or entities designated under these new Global Magnitsky sanctions. OFAC has issued such general licenses and guidance in the past,<sup>6</sup> though they are typically very limited and do not necessarily afford companies adequate time or flexibility to extricate themselves from their relationships without incurring significant costs. They are also case-specific, and global companies should not count on their issuance.

#### *OFAC’s Initial Global Magnitsky Sanctions Designations Underscore the Increasing Intersection of Sanctions and FCPA Compliance*

Included among OFAC’s initial set of designations under the new EO are several individuals who have been connected to high-profile FCPA enforcement actions by the US Department of Justice (DOJ) and the US Securities and Exchange Commission (SEC). For example:

- OFAC designated Gulnara Karimova, the daughter of the now-deceased president of Uzbekistan, who has been widely reported as being the government official who received

millions of dollars in alleged improper payments in recent FCPA settlements involving Telia Company AB (2017), which will pay \$965 million in global criminal and civil penalties, and VimpelCom Limited (2016), which paid global criminal and civil penalties of \$795 million.

- OFAC designated Dan Gertler, whom it described as having “amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals in the Democratic Republic of Congo.”<sup>7</sup> Mr. Gertler was reportedly involved in the activities of a major hedge fund in that country that led to the fund paying penalties in the hundreds of millions of dollars to the DOJ and SEC in 2016.
- OFAC also designated Ángel Rondón Rijo, who, according to OFAC, “funneled money” from the Brazilian construction firm Odebrecht S.A. to officials in the Dominican Republic.<sup>8</sup> Odebrecht, and its subsidiary Braskem S.A., paid \$93 million to the DOJ in 2016 as part of a joint resolution with the US, Brazil and Switzerland that imposed total penalties of \$2.6 billion arising from Odebrecht's conspiracy to violate the FCPA and other anti-corruption laws in Brazil and elsewhere.

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In light of these expansive new Global Magnitsky sanctions, companies should reevaluate their internal compliance programs to ensure that they adequately address relevant human rights and corruption risks applicable to their international operations, including the extent to which this EO and OFAC implementing action necessitate greater attention to the links between sanctions and FCPA liabilities for particular transactions and business relationships.

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<sup>1</sup> Pub. L. No. 114-328, 130 Stat. 2533 et seq. Although similar, last year's legislation is distinct from the Sergei Magnitsky Rule of Law Accountability Act of 2012, which authorized sanctions against human rights abusers in Russia, along with those involved in the detention, abuse and death of Russian journalist Sergei Magnitsky. On December 20, 2017, pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012, OFAC separately promulgated new regulations and [designated](#) five individuals.

<sup>2</sup> See, e.g., Venezuela Sanctions Executive Order 13692 § 1(a)(ii)(A)(2), (4) (Mar. 8, 2015); Zimbabwe Sanctions Regulations, 31 C.F.R. 541.201(a)(3)(iv), (v).

<sup>3</sup> Pub. L. No. 114-328, 130 Stat. 2533 at Sec. 1263(a)(3).

<sup>4</sup> See, e.g., Countering America's Adversaries through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 § 224(a)(1)(A) (authorizing the imposition of sanctions against those who knowingly engage in certain activities related to cybersecurity); 231(a) (authorizing the imposition of sanctions against those who knowingly engage in transactions with the intelligence or defense sectors of the Russian government).

<sup>5</sup> This is further complicated by the “50 Percent Rule,” which requires treating an entity that is owned 50 percent or more by one or more SDNs as though that entity were itself an SDN. See, e.g., [Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked](#) (Aug. 13, 2014).

<sup>6</sup> See, e.g., [Imposing Additional Sanctions with Respect to the Situation in Venezuela, General](#)

License 1 Authorizing Certain Activities Necessary to Wind Down Existing Contracts (Aug. 24, 2017).

<sup>7</sup> Press Release, US Department of the Treasury, "United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe," Dec. 21, 2017.

<sup>8</sup> *Id.*

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