

Global Magnitsky Act and Magnitsky Act designations: same old song, or change of tune?

4 January 2018

The White House and the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) recently took steps to further Congress' longstanding effort to use sanctions against human rights violators and corrupt foreign government officials. President Trump issued [Executive Order](#) 13818 implementing the Global Magnitsky Act, and OFAC issued the first designations responsive to this 2016 statute. Just one day earlier, OFAC issued implementing [regulations](#) for the original Magnitsky Act of 2012, the precursor statute which is focused on Russia, and also issued a new round of designations under that statute.

Notably, the implementation of the Global Magnitsky Act marks the first time that OFAC has broad targeting authority to designate entities and individuals for human rights violations or corruption anywhere in the world. The initial designations demonstrate a broad geographic scope, including designations in countries that are close U.S. allies. The extent to which OFAC will use this authority for further designations, as well as their geographic scope, remains to be seen.

These designations affect all property of persons named, and companies should identify any contracts or other obligations that should be suspended and blocked. Companies should also assess any mandatory reporting obligations. Given the geographic spread of the designations and future activity in this area, compliance departments should provide notice to employees regarding continued U.S. Government enforcement and sanctions for human rights and corruption violations. These developments should be part of sanctions and anti-corruption training programs.

2016 Global Magnitsky Act

In 2016, Congress enacted the Global Magnitsky Act ([Pub. L. 114-328](#), §§ 1261-1265), which authorizes the president to impose sanctions on certain foreign individuals and entities if they are involved in violations of internationally recognized human rights or are government officials or senior associates of government officials responsible for or complicit in acts of corruption.

On December 21, 2017, the White House issued an executive order invoking these authorities to impose financial sanctions and visa restrictions on persons responsible for or complicit in certain human rights abuses or corrupt acts anywhere in the world. The executive order targets any foreign person determined by the Secretary of the Treasury:

- a. To be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse;

- b. To be a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in:
 - i. 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
 - ii. the transfer or the facilitation of the transfer of the proceeds of corruption;
- c. To be or have been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, the activities in (a), (b)(i) or (b)(ii) above during the leader's or official's tenure or an entity whose property and interests are blocked pursuant to the order as a result of activities related to the leader's or official's tenure;
- d. To have attempted to engage in any of the activities described in (a), (b)(i) or (b)(ii) above;
- e. To have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any activity described in (a), (b)(i) or (b)(ii) above that is conducted by a foreign person, any person whose property and interests in property are blocked pursuant to the order, or any entity, including any government entity, that has engaged in, or whose members have engaged in, any of the activities described in (a), (b)(i) or (b)(ii) above, where the activity is conducted by a foreign person;
- f. To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the order; or
- g. To have attempted to engage in any of the activities described in (e) or (f) above.

Concurrently, OFAC [announced](#) the first set of [designations](#) related to the Global Magnitsky Act Sanctions, and released a set of [FAQs](#). These new additions to the Specially Designated Nationals (SDN) List are broad in geographic scope, and target individuals and entities in many countries, including The Gambia, Kenya, Israel, Guatemala, Pakistan, South Sudan, and Russia.

2012 Magnitsky Act

There have also been separate developments regarding the Magnitsky Act ([Pub. L. 112-208](#)), which targets certain persons related to the case of the Russian lawyer Sergei Magnitsky, who died in 2009 after being arrested and tortured in custody by Russian officers. Like the Global Magnitsky Act, the Magnitsky Act also targets persons for gross violations of internationally recognized human rights, but is limited in scope to Russia.

On December 20, 2017, OFAC [announced](#) the [designation](#) of five new individuals under the Magnitsky Act. The newly designated individuals were either involved in the criminal conspiracy Magnitsky uncovered or are responsible for other gross violations of internationally recognized human rights. These individuals include Ramzan Kadyrov, the head of the Chechen Republic, who oversees an administration involved in disappearances and extra-judicial killings, and Ayub Kataev, a law enforcement official in Chechnya who has been involved in abuses against gay men in Chechnya.

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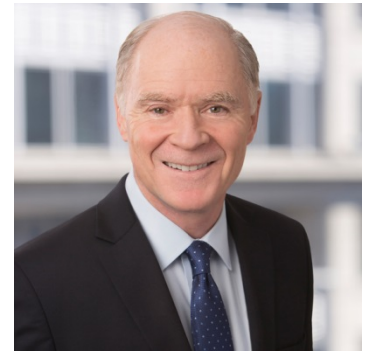
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