

# Locke Lord QuickStudy: OFAC Reissues Global Magnitsky ?Sanctions Regulations ?

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## WRITTEN BY

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On March 12, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") amended and reissued the Global Magnitsky Sanctions Regulations (the "Regulations") to further the Global Magnitsky Human Rights Accountability Act (the "Global Magnitsky Act") and a December 20, 2017, Executive Order ("EO") related to combatting human rights violations and corruption. OFAC decided to rewrite the entirety of the Regulations due to the large scope of updates and additions. The new Regulations are more comprehensive and include additional interpretive guidance and definitions, general licenses, and other regulatory provisions that provide further guidance to the public. OFAC also included in the Regulations the Uyghur Human Rights Policy Act of 2020, as amended, (22 U.S.C. 6901 note; Pub. L. 116–145, 134 Stat. 648) at 31 CFR part 583.

## Background

The Global Magnitsky Act, initially enacted in December 2016, is a statutory authority that empowers the President of the United States to impose targeted sanctions on foreign individuals involved in human rights abuses or corruption globally. OFAC's initial Regulations were issued in abbreviated form for the purpose of providing prompt guidance to the public. Then, in 2018, OFAC issued formal Global Magnitsky Sanctions Regulations to implement the Global Magnitsky Act and EO 13818, of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption."

"The Global Magnitsky Act authorizes the President to impose targeted sanctions on any foreign person the President determines, based on credible evidence: (1) is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign country who seek (A) to expose illegal activity carried out by government officials; or (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections; (2) acted as an agent of or on behalf of foreign persons in a matter related to an activity described in (1); (3) is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or (4) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in (3)."<sup>[1]</sup>

We note that the Global Magnitsky Act is a separate legal authority from the Magnitsky Act (a/k/a the "Sergei Magnitsky Rule of Law Accountability Act of 2012"), which targets persons for specific actions related to the death

of Russian lawyer Sergei Magnitsky. Sergei Magnitsky died in 2009 after being arrested and tortured in custody by officers of the Ministry of the Interior of the Russian Federation. The Magnitsky Act also targets persons for gross violations of internationally recognized human rights in Russia. Actions under the Global Magnitsky Act and the Magnitsky Act are detailed in separate annual reports to Congress as required by these statutes. The Magnitsky Act directs the Secretary of State to publish and update a list of each person the Secretary has reason to believe: (1) is responsible for, or benefitted financially from, the detention, abuse, or death of Sergei Magnitsky, participated in related liability concealment efforts, or was involved in the criminal conspiracy uncovered by Sergei Magnitsky; or (2) is responsible for extrajudicial killings, torture, or other human rights violations committed against individuals seeking to promote human rights or to expose illegal activity carried out by officials of the government of the Russian Federation. Under the Magnitsky Act, absent a U.S. Congressional waiver, (A) persons on the list are ineligible to enter or be admitted to the United States (e.g., any visa issued to listed such persons are revoked), and (B) the Secretary of the Treasury is required to freeze and prohibit U.S. property transactions if such property and property interests (i) are in the United States, (ii) come within the United States, or (iii) are in or come within the control of a U.S. person or entity.

By EO 13818, the President declared a national emergency with respect to serious human rights abuses and corruption around the world. Pursuant to the International Emergency Economic Powers Act ("IEEPA"), the President implemented and expanded the Global Magnitsky Act by adding prohibitions on U.S. persons to prevent them from making to, or for the benefit of, listed persons: (i) donations (ii) contributions or provisions of funds, goods, or services, or (iii) any transaction that would evade or avoid, or has the purpose of evading or avoiding, causing a violation of, or attempting to violate any of the prohibitions set forth in E.O. 13818.

## **Regulation Augmentations**

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations implements the prohibitions contained in sections 1, 3, 4, and 5 of EO 13818.

- Section 583.201 of subpart B reorders and restates the prohibited transactions.
- Sections 583.202 and 583.203 of subpart B sets forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts.
- Section 583.204 of subpart B requires the account owners to pay all expenses incident to the maintenance of blocked tangible property, and that such expenses shall not be paid from blocked funds. OFAC may license the account owner to liquidate blocked accounts and retain the net proceeds.
- Section 583.205 of subpart B prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in section 583.201 of the Regulations, and any conspiracy formed to violate such prohibitions.

## **Licenses**

Section 583.206 of subpart B details general licenses that exempt certain transactions from the prohibitions of the Regulations pursuant to section 203(b) of IEEPA, including the following:

- Any payment or transfer involving funds or credit related to a blocked person under § 583.201 must be blocked in an account by U.S. financial institutions, and transfers between blocked accounts within the same institution are allowed, but only if both accounts are held in the same name and not transferred outside the United States.
- U.S. Financial Institutions are permitted to deduct normal service charges from blocked accounts held at their

institution, covering various fees such as interest, communication charges, postage, and administrative costs, as outlined in the Regulations.

- U.S. Financial Institutions are allowed to invest and reinvest assets blocked under § 583.201, so long as the investments are credited to a blocked account in the same name, the proceeds remain within the same account, and no immediate financial benefit is obtained by the blocked person.
- Legal services, including counseling, representation, and initiation of legal proceedings regarding sanctions, are authorized for persons blocked under § 583.201, with payment authorization required as per § 573.508; however, any other legal services not explicitly permitted would require a specific license, while related administrative services are permissible without additional authorization, but altering blocked property through legal processes requires licensing.
- Transactions involving agricultural commodities, common medicine, common medical devices, and related items to individuals blocked under this Regulation are permitted for personal use, provided they are within appropriate quantities. Agricultural commodities include food, animal feed, seeds, fertilizers, and reproductive materials; medicine encompasses items classified as drugs; and medical devices refer to items defined as devices under relevant federal law.
- Sections 583.507 and 583.509 provide general licenses authorizing the provision of certain legal and emergency medical services.
- Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized.

## Penalties For Violations

Fines for violation of the Regulations can amount to \$368,136, or twice the transaction's value. Additionally, willful violations can lead to fines of up to \$1,000,000 or imprisonment for not more than 20 years; penalties are subject to adjustment and violators may also incur penalties under other applicable laws, including imprisonment.

## OFAC Compliance

Companies should establish and implement compliance programs reasonably designed to adhere to OFAC's sanctions regulations. This involves periodic conducting risk assessments, developing internal controls, empowering knowledgeable compliance personnel to oversee the program, and implementing screening processes for customers, business partners, and transactions. In doing so, companies can mitigate the risk of violating applicable law, thereby avoiding legal repercussions, distraction of management resources, and safeguarding their reputation and financial well-being.

## Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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[1] See "[Global Magnitsky Sanctions Regulations](#)".

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