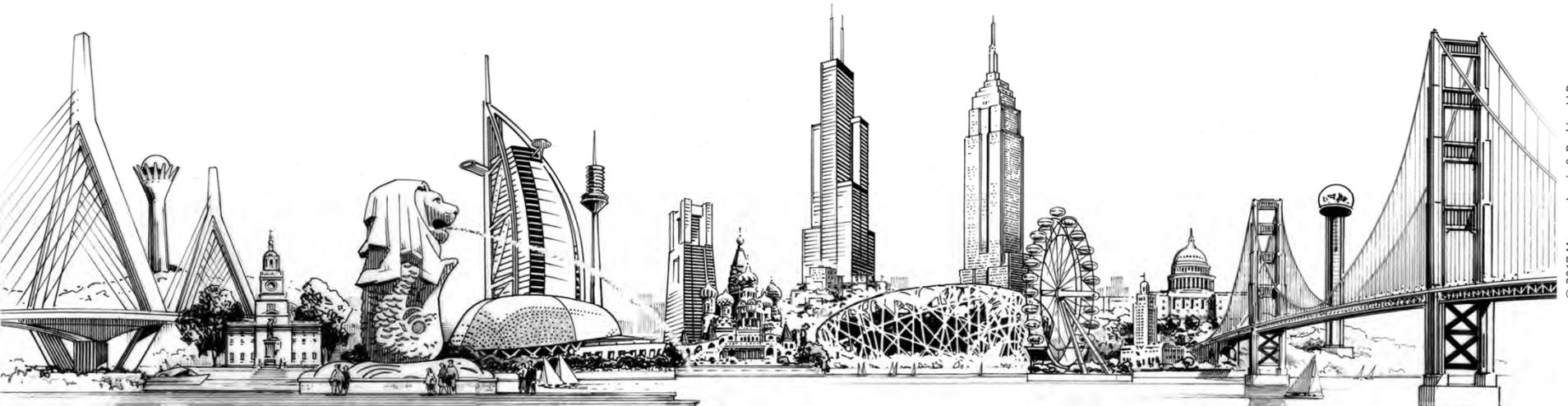


# THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT

**Kenneth J. Nunnenkamp**  
Morgan, Lewis & Bockius LLP

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# THE GLOBAL MAGNITSKY ACT

## ➤ Purpose

- ❖ To extend the principles underlying the Magnitsky Act of 2012 to apply worldwide
- ❖ To authorize the imposition of sanctions against foreign persons in any location who are responsible for
  - ◆ “extrajudicial killings, torture, or other gross violations of internationally recognized human rights”
  - ◆ “ordering, controlling, or otherwise directing acts of significant corruption”

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- Human rights violations are covered if
  - ❖ Against individuals who
    - ◆ Seek to expose illegal activity carried out by government officials
    - ◆ Seek to obtain, exercise, defend, or promote internationally recognized human rights and freedoms
      - Freedoms include but are not limited to
        - Religion, expression, association, assembly
        - Fair trial
        - Democratic elections
    - ◆ Act as an agent of or on behalf of another engaged in any of these activities

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- Corruption is covered if
  - ❖ By a “government official, or a senior associate of such an official”
  - ❖ Responsible for, or complicit in, ordering, controlling, or otherwise directing any act of *significant corruption*

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- Acts of significant corruption
  - ❖ Expropriation of private or public assets for personal gain
  - ❖ Related to
    - ◆ Government contracts
    - ◆ The extraction of natural resources
  - ❖ Bribery
  - ❖ The facilitation or transfer of the proceeds of corruption
  - ❖ Materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, acts of significant corruption

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## Important terms

- ❖ Gross violations of internationally recognized human rights
  - ◆ Incorporates definition in section 502B(d)(1) of the Foreign Assistance Act of 1961, 22 U.S.C. 2304(d)(1)
  - ◆ The term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person
- ❖ Significant corruption (not specifically defined)
- ❖ Expropriation of private or public assets
- ❖ Materially assist
- ❖ Government official or senior associate of one
  - ◆ For example, does this go as far as the FCPA in determining the scope of government officials?

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- Executive Order 13818 (December 20, 2017)
- Applies the sanctions to any foreign person determined to meet any one of the following
  - ❖ Responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse
  - ❖ 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
    - ◆ 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
    - ◆ the transfer or the facilitation of the transfer of the proceeds of corruption
  - ❖ Current or former leader or official of
    - ◆ an entity, including any government entity, that has engaged in or whose members have engaged in, any of these activities relating to (during?) the leader's or official's tenure
    - ◆ an entity whose property and interests in property are blocked pursuant to this order as a result of activities related to the leader's or official's tenure
  - ❖ Attempted to engage in any of these activities
  - ❖ "Materially assisted", sponsored, or provided financial, material or technological support for, or goods or services to or in support of any of these activities

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- Persons designated under Global Magnitsky will become SDNs and have immigration status affected
  - ❖ Inadmissibility to the US
    - ◆ Ineligibility to receive a visa
    - ◆ Revocation of existing visa
  - ❖ Blocking of property
    - ◆ All property and interests in property in the US or the possession or control of a US person/entity

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- No specific public process for determinations
  - ❖ Authority delegated to the Secretary of State under section 1263(i)
  - ❖ Fact of consideration is classified
    - ◆ No acknowledgement of consideration will occur unless and until a person is sanctioned
    - ◆ Sanctioning becomes effective immediately upon announcement (EO includes provision, standard for OFAC EO's, that prior notice would be detrimental to sanctions)

# THE GLOBAL MAGNITSKY ACT

- Regulations at 31 CFR 583
- Substantially similar to other OFAC regulations
- Provisions of interest
  - ❖ Certain definitions:
  - ❖ *Financial, material, or technological support* (in EO 13818)
    - ◆ means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. “Technologies” as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

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- Global Magnitsky Regulations: Provisions of interest
  - ❖ **§583.506 Provision of certain legal services.**
  - ❖ **Specific legal services authorized, *provided, however*,** that receipt of payment of professional fees and reimbursement of incurred expenses must be authorized by an OFAC license pursuant to §583.507, which authorizes payments for legal services from funds originating outside the United States or by a specific license
  - ❖ The following types of legal services are the only ones licensed
    - ◆ The provision of legal advice and counseling on the requirements of and compliance with US laws, provided that such advice and counseling are not provided to facilitate violations
    - ◆ Representation for the purpose of filing, or of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency
    - ◆ Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of US sanctions
    - ◆ The provision of legal services in any other context in which prevailing US law requires access to legal counsel at public expense

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- Global Magnitsky Regulations: Provisions of interest
  - ❖ **Provision of certain legal services.**
  - ❖ US persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of legal services authorized by the regulations
  - ❖ US persons who provide authorized legal service do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services (i.e., private investigators or expert witnesses), including the payment for such services
  - ❖ **Settlements and other enforcement actions are not authorized absent specific license if related to blocked property**
  - ❖ Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to §583.201 or any further Executive orders relating to the national emergency declared in Executive Order 13818 of December 20, 2017 is prohibited unless licensed pursuant to this part

# THE GLOBAL MAGNITSKY ACT

- Global Magnitsky Regulations provisions of interest
  - ❖ **§583.506 and .507 Payment for provision of certain legal services**
  - ❖ Payments for professional fees and reimbursement of incurred expenses for the provision of legal services to blocked persons is authorized pursuant to §583.506(a)
    - ◆ Must come from funds originating outside the United States
    - ◆ Cannot come from funds originating from
      - (1) A source within the United States;
      - (2) Any source, wherever located, within the possession or control of a U.S. person
      - (3) Any individual or entity, other than the person on whose behalf the legal services are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute
  - ❖ A specific license is required for US persons to release blocked funds to pay legal fees and expenses incurred to seek administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property
  - ❖ Applies where alternative funding sources are not available

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- State accepts “nominations” of persons from any source
- Requires “credible evidence” of actions within the scope of the Act
  - ❖ “Credible evidence” generally means source documents and original, direct testimony (written or transcribed)
  - ❖ Mere submission of a name should not result in consideration, unless from Congress (and potentially NGO)

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- Statutory references to “consideration” of information provided by Congressional committee chairs
  - ❖ Refers to requirement that such information be considered, not that this is the only information that State can consider
  - ❖ State considers “credible evidence” from any outside or internal US government source
- No timeline for consideration or determination other than the 6-year sunset
  - ❖ But reports to Congress are required every year

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- State Department will accept credible/source information from any party pertinent to a nomination
  - ❖ But will not confirm a person is under consideration
- Sanctions have been imposed on
  - ❖ Current foreign government persons
  - ❖ Persons for actions taken while in the government, but after left the government
  - ❖ Private individuals with ties to foreign governments
- Approximately 94 designations to date
- Anticipation of more usage of Global Magnitsky in store

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- President can terminate sanctions, once imposed, after 15 days' notice to Congress that one of the following has been satisfied
  - ❖ Credible information exists that the person did not engage in the activity for which sanctions were imposed
  - ❖ The person has been prosecuted appropriately, by the home country, for the activity for which sanctions were imposed
  - ❖ The person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity described in subsection in the future; or
  - ❖ The termination of the sanctions is in the national security interests of the United States

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- Termination can be unilateral by the US government or the result of an appeal by the sanctioned party
- Permanent body exists to review SDN status upon request and upon information available to the US government
- Appeal process the same as that used for other sanctions programs

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- Reports to Congress
  - ❖ Initial report 120 days after enactment (June 2017)
  - ❖ Report every December 10
- Report must
  - ❖ Identify each foreign person sanctioned under the Act during the preceding year
  - ❖ Describe the type of sanctions imposed on each such person
  - ❖ Provide the number and date(s) of foreign persons sanctioned under the Act and for whom sanctions under the Act were terminated that year, and the reason(s) sanctions were imposed and/or terminated

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- Report must also describe the President's efforts to encourage other governments to impose sanctions similar to the sanctions authorized by the Act
  - ❖ Implicit directive to encourage sanctions by other governments

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- Sunset
  - ❖ President's authority to impose sanctions terminates six (6) years after enactment (December 2022)
- Does not terminate sanctions imposed on or before the termination date in effect as of that date

# Thanks!



**Kenneth Nunnenkamp**

Washington, D.C.

T +1.202.739.5618

F +1.202.739.3001

[kenneth.nunnenkamp@morganlewis.com](mailto:kenneth.nunnenkamp@morganlewis.com)

Ken Nunnenkamp represents clients in international trade and national security matters before United States federal courts and government agencies, including the US departments of State, Commerce, Homeland Security, Defense, and Treasury. His practice involves internal investigations and disclosures, including voluntary disclosures and responding to government demands, as well as federal court defense against government actions. He also advises on compliance counseling and training, transactional due diligence—including both domestic and cross-border transactions—and statutory submissions to US government agencies.