

U.S. Sanctions and AML Measures Target Human Rights Abuses and Corruption

June 21, 2018

On June 12, 2018, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued an advisory to U.S. financial institutions to "highlight the connection between corrupt senior foreign political figures and their human rights abuses."¹ This advisory represents another step by the Treasury Department to employ its "unique tools" to target corrupt actors and their financial facilitators. Other recent actions, such as the imposition of sanctions under the U.S. Global Magnitsky Act – with the latest designations taking place on June 12 and 15, 2018– and special measures taken under the USA PATRIOT Act against ABLV Bank, further demonstrate the Treasury Department's increased leveraging of economic sanctions and anti-money laundering ("AML") requirements to target human rights abuses and foreign corruption.



Any company doing business outside the United States or with non-U.S. counterparties, particularly in areas with higher human rights and corruption risks, needs to be mindful of these developments in constructing their compliance approaches. Such attention is particularly important for U.S. financial institutions subject to supervisory review of their sanctions and AML compliance programs, including their new customer due diligence requirements.

FinCEN's Corruption Advisory

FinCEN's advisory provides an overview of the Treasury Department's sanctions and AML-related efforts to address high-level corruption and human rights abuses. The advisory describes a wide range of U.S. programs that authorize sanctions against corrupt senior foreign political figures and their facilitators. In addition, the United States has implemented international AML standards published by the Financial Action Task Force ("FATF"), which calls on countries to ensure that financial institutions

¹ FinCEN, Advisory on Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and their Financial Facilitators, FIN-2018-A003 (June 12, 2018), https://www.fincen.gov/sites/default/files/advisory/2018-06-12/PEP%20Facilitator%20Advisory_FINAL%20508.pdf.

implement controls to prevent corrupt political figures from accessing the financial system with their ill-gotten gains.

To assist U.S. financial institutions in identifying illicit activity, the advisory describes three common “typologies” of money laundering activity by corrupt political figures and their financial facilitators. The first centers on the the source of corrupt proceeds by discussing the misappropriation of state assets. The second involves the use of shell companies “to obfuscate ownership and mask the true source of the proceeds of corruption.” The third relates to ways in which the real estate sector is a particularly attractive and vulnerable entry point for laundering illicit funds.

The advisory then offers several “red flags” that may signal closer investigation of a political figure (or in some cases, a facilitator) is warranted:

- Using family members or close associates to act as legal owners,
- Making financial declarations that are inconsistent with public asset declarations and published official salaries,
- Repeatedly moving funds to or from jurisdictions with which he or she has no apparent connections,
- Having substantial authority over or access to state assets or funds, or
- Directing government-related transactions to apparently unrelated companies.

Some red flags are directed at certain types of transactions, such as:

- Relevant government-related transactions that lack comprehensive documentation and appear to involve payments above market rates, or
- Transactions involving property that has been expropriated or taken over by corrupt regimes.

The advisory reminds U.S. financial institutions of their compliance obligations, which include undertaking adequate customer due diligence, filing suspicious activity reports (“SARs”), assessing the risks presented by correspondent accounts for foreign financial institutions and, in the case of private accounts, enhanced due diligence of foreign senior political figures. An appendix to the advisory lists several “case examples” involving political figures and financial facilitators who are now subject to U.S. sanctions or forfeiture complaints. Schemes described include embezzling government funds from The Gambia and Nigeria, using shell companies to launder stolen mining

revenues from the Democratic Republic of Congo, and purchasing real estate with the proceeds of embezzlement in Equatorial Guinea and to launder money in Venezuela. Further actions mentioned involve illicit ivory and weapons trading for the Lord's Resistance Army in the Central African Republic, a corruption scheme in South Sudan, and human rights abuses in Iran. FinCEN requests that SARs document any links to the individuals and activities highlighted in this advisory by marking the 35(l) field and using the key term "Financial Facilitator FIN-2018-A003" in the 35(z) field.

Implementation of the Global Magnitsky Act

FinCEN's advisory comes in the wake of several key actions undertaken by the United States to target corruption and human rights abuses. Between December 2017 and June 2018, the Treasury Department's Office of Foreign Assets Control ("OFAC") has sanctioned over 50 individuals and 80 entities in connection with such conduct, largely under the Global Magnitsky Human Rights Accountability Act² ("Global Magnitsky Act") and Executive Order 13818.³

The Global Magnitsky Act, signed by President Obama in December 2016, significantly expanded the human rights sanctions targeted toward Russia that were authorized under the Sergei Magnitsky Rule of Law Accountability Act of 2012.⁴ The Global Magnitsky Act authorizes sanctions against any "foreign person" determined to (a) be responsible for certain specified human rights violations, (b) be a foreign government official responsible for or complicit in acts of "significant corruption" or (c) have materially assisted, sponsored or provided support for significant corruption. The Global Magnitsky Act also requires an annual report to Congress, now undertaken by the State Department, detailing relevant activity (e.g., sanction designations) of the previous year and a "description of the efforts of the President to encourage the governments of other countries to impose [similar] sanctions."⁵

² 22 U.S.C. § 2656 note.

³ State Department, Special Briefing – Background Briefing on the Rollout of the Global Magnitsky Sanctions (Dec. 21, 2017), available at <https://www.state.gov/r/pa/prs/ps/2017/12/276734.htm>.

⁴ 22 U.S.C. § 5811 note.

⁵ A number of countries have authorized similar sanctions, including the United Kingdom with the Criminal Finances Act (2017, c. 22), Part 1, Ch. 3(13); Estonia through an amendment to its 1998 Obligation to Leave and Prohibition on Entry Act § 29; and Canada with the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (S.C. 2017, c. 21). The European Parliament is considering similarly expansive legislation per its April 2018 study titled Targeted sanctions against individuals on the grounds of grave human rights violations – impact, trends and prospects at EU level, available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU\(2018\)603869_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU(2018)603869_EN.pdf).

Executive Order 13818 and First Designations

Executive Order 13818, signed on December 20, 2017, cites authorization under both the Global Magnitsky Act and the International Emergency Economic Powers Act⁶ (“IEEPA”). The Order is broader than the Global Magnitsky Act in several ways, authorizing sanctions against any foreign person:

- “responsible for or complicit in” any “serious human rights abuse” (the Global Magnitsky Act authorizes sanctions only for one or more “gross violations of internationally recognized human rights” specified in the statute);
- involved in “corruption” or facilitating the transfer of the proceeds of “corruption” (without the “significant” requirement of the Global Magnitsky Act);
- that is a leader or official of an entity whose members have engaged in a serious human rights abuse or corruption “relating to the leader’s or official’s tenure”; or
- that has materially assisted or supported (i) a serious human rights abuse or corruption or (ii) any foreign entity that has committed such an abuse or act (the Global Magnitsky Act applies only to persons that provide assistance for acts of significant corruption).

Almost immediately, OFAC used the Executive Order to target 13 individuals (8 for human rights violations and 5 for corruption) and 39 associated companies and other individuals.⁷ The targeted activities included corrupt mining and oil deals, hidden foreign currency, and embezzlement and funneling of improper company payments to government officials, among other schemes. The human rights abuses targeted included torture and extra-judicial killings of political opponents, protesters and journalists; the forced removal and trafficking of a kidnapped laborer’s organs; and the detention of a human rights activist in inhumane conditions that ultimately led to her death.

Further sanctions under the Global Magnitsky Act and Executive Order 13818 were implemented on June 12 and 15, 2018, collectively designating 2 individuals and 19 entities for corruption in the Dominican Republic and the Democratic Republic of the Congo and for human rights abuses in Cambodia.⁸

⁶ 50 U.S.C. § 1701 *et seq.*

⁷ OFAC, Press Release – United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe (Dec. 21, 2017), available at <https://home.treasury.gov/news/press-releases/sm0243>.

⁸ Treasury Department, Press Release – Treasury Sanctions Two Individuals and Five Entities Under Global Magnitsky (June 12, 2018), available at <https://home.treasury.gov/news/press-releases/sm0411>; Treasury Department, Press Release – Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan

Involvement of the U.S. Department of Justice

Executive Order 13818 calls for designations to be determined in consultation with the U.S. Department of Justice (“DOJ”). There have been instances of overlap between corruption targeted under the Order and large-scale Foreign Corrupt Practices Act (“FCPA”) investigations by the DOJ and U.S. Securities and Exchange Commission, including those involving the Brazilian construction company Odebrecht and the hedge fund Och-Ziff Capital Management group.⁹ Whether the department’s input into the Global Magnitsky Act designation process will play any role in its investigations or prosecutions remains an open question.

As noted in our FCPA Update, however, the DOJ appears to be looking for ways to target foreign nationals involved in bribery and corruption schemes but who may not clearly fall under the statutory jurisdiction of the FCPA.¹⁰ In February 2018, for example, the DOJ indicted five former Venezuelan government officials for their alleged involvement in an international money laundering scheme involving corrupt payment for contracts from Venezuela’s state-owned, and now U.S.-sanctioned, energy company, Petróleos de Venezuela S.A. (“PdVSA”). All five were charged with various money laundering offenses (with one guilty plea to date), while only two were charged with conspiracy to violate the FCPA.¹¹ At the time the charges were unsealed, the then-Acting Assistant Attorney General for the Criminal Division stated, “we are sending a strong message to corrupt foreign officials: if you launder your ill-gotten gains through the United States, you will be prosecuted.”

Gertler Under Global Magnitsky (June 15, 2018), available at <https://home.treasury.gov/news/press-releases/sm0417>.

⁹ See Debevoise FCPA Update, October 2016, *In First Major FCPA Enforcement Action Against a Hedge Fund, U.S. Settles with Och-Ziff Capital Management*, available at https://www.debevoise.com/~media/files/insights/publications/2016/10/fcpa_update_october_2016.pdf; See also Securities & Exchange Commission, Administrative Proceeding No. 3-17595, available at <https://www.sec.gov/litigation/admin/2016/34-78989.pdf>; Bloomberg, Congo Backs Billionaire Gertler After Och-Ziff Allegations, available at <https://www.bloomberg.com/news/articles/2016-10-04/congo-backs-billionaire-gertler-after-u-s-och-ziff-allegations>; DOJ, Press Release, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (Dec. 21, 2016), available at <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>.

¹⁰ See Debevoise FCPA Update, November 2017, available at https://www.debevoise.com/~media/files/insights/publications/2017/11/fcpa_update_november_2017_v9no4.pdf.

¹¹ DOJ, Press Release 18-169 Five Former Venezuelan Government Officials Charged in Money Laundering Scheme Involving Foreign Bribery (Feb. 12, 2018), available at <https://www.justice.gov/opa/pr/five-former-venezuelan-government-officials-charged-money-laundering-scheme-involving-forei-0>; DOJ Press Release 18-506 Former Venezuelan Official Pleads Guilty To Money Laundering Charge In Connection With Bribery Scheme (Apr. 19, 2018), available at <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-money-laundering-charge-connection-bribery-scheme>.

More Sanctions to Come?

There have been several indications since its implementation that the Global Magnitsky Act will continue to be invoked as part of a broader use of sanctions to target corruption and human rights abuses. Numerous nongovernmental organizations have been encouraging additional sanctions under the Act, and the U.S. Government has signaled that it is receptive. During a background briefing, the U.S. State Department and OFAC stated that “we ... have taken an expansive view” of our authority and plan to “leverage this new global tool to pursue ... those who commit human rights abuses and engage in corruption.” Following the announcement, U.S. Senators Ben Cardin (D-Md.) and John McCain (R-Ariz.), authors of the Global Magnitsky Act, suggested in a press release that they would like to see a more geographically diverse and rigorous list going forward.¹² They had previously sent a letter to President Trump requesting that 20 individuals, not publicly identified, be considered for Global Magnitsky Act sanctions (13 for human rights violations, 7 for corruption).¹³ Since then, members of the U.S. Congress have continued to bring attention to potential human rights violations and abuses worldwide, including in Ethiopia,¹⁴ Turkey¹⁵ and China.¹⁶

Additionally, the Global Magnitsky Act calls on the President to consider credible information provided by nongovernmental organizations that monitor violations of human rights. In their background briefing, the State Department and OFAC acknowledged that they worked closely with nongovernmental organizations to implement the Act. On March 5, 2018, a group of human rights and anticorruption organizations, including Human Rights First and Transparency International, sent a letter to Secretaries Tillerson and Mnuchin applauding the government’s action and

¹² John McCain, Press Release – McCain & Cardin Welcome Global Magnitsky Sanctions For Human Rights Abuses, Corruption (Dec. 21, 2017), available at <https://www.mccain.senate.gov/public/index.cfm/2017/12/mccain-cardin-welcome-global-magnitsky-sanctions-for-human-rights-abusers-corruption>.

¹³ Ben Cardin, Press Release – Cardin, McCain Prod Trump Administration to Use Global Magnitsky Tools to Punish Human Rights Violators and Corrupt Officials from Around the World (Aug. 11, 2017), available at <https://www.cardin.senate.gov/newsroom/press/release/cardin-mccain-prod-trump-administration-to-use-global-magnitsky-tools-to-punish-human-rights-violators-and-corrupt-officials-from-around-the-world>.

¹⁴ See U.S. House Resolution No. 129, available at <https://www.congress.gov/bill/115th-congress/house-resolution/128/text?q=%7B%22search%22%3A%5B%22government+act+ethics+1978%22%5D%7D>.

¹⁵ See Jeanne Shaheen, Press Release – Senators Shaheen and Lankford Call for Sanctions on Turkish Officials (Apr. 20, 2018), available at <https://www.shaheen.senate.gov/news/press/senators-shaheen-and-lankford-call-for-sanctions-on-turkish-officials>.

¹⁶ See UNPO, U.S. Senator Marco Rubio Calls for Investigation of Incarcerations and Surveillance of Uyghurs (Apr. 6, 2018), available at <http://unpo.org/article/20728>.

“meaningful outreach to civil society” while also advocating for further sanctions and pledging to submit additional documentation of human rights abuses and corrupt acts.¹⁷

In parallel to the implementation of the Global Magnitsky Act and Executive Order 13818, the Treasury Department has continued using additional Executive Orders under IEEPA and other Acts to impose sanctions targeting human rights abuses and corruption. For example, in January 2018, OFAC sanctioned 14 individuals and entities under Executive Orders 13553 and 13606, amongst others, targeting serious human rights abuses by the governments of Syria and Iran.¹⁸ The same month, 8 individuals and entities were sanctioned for human trafficking and bribery, amongst other crimes, in Laos, Hong Kong and Thailand.¹⁹ Sustained efforts since have targeted individuals affiliated with Hizballah and the Central Bank of Iran,²⁰ as well as corruption contributing to the humanitarian crisis in Venezuela.²¹

Unlike Executive Orders 13553 and 13606, which are geographically limited, Executive Order 13818 enables sanctions reaching any “serious human rights abuse” worldwide. The broad wording of the Order and its separate authorization under IEEPA appear to enable the administration to target financial support for any significant human rights violation it deems appropriate.

Special Measures against ABLV Bank

In February, FinCEN used AML tools to target corruption when it proposed special measures under the USA PATRIOT Act against ABLV Bank, AS (“ABLV Bank”), which would prohibit U.S. financial institutions from opening or maintaining correspondent accounts for the Latvian bank in the United States. In finding it of “primary money laundering concern” under Section 311 of the Act, FinCEN stated the Latvian bank had, among other illicit activities, “facilitated public corruption . . . for corrupt CIS-based politically exposed persons (“PEPs”) and other corrupt actors.”

¹⁷ Human Rights First, Letter to Secretaries Rex Tillerson and Steven Mnuchin (Mar. 5, 2018), available at <https://www.humanrightsfirst.org/sites/default/files/GloMag-NGO-Letter.pdf>.

¹⁸ Treasury Department, Press Release – Treasury Sanctions Individuals and Entities for Human Rights Abuses and Censorship in Iran (Jan. 12, 2018), available at <https://home.treasury.gov/news/press-releases/sm0250>.

¹⁹ Treasury Department, Press Release – Treasury Sanctions the Zhao Wei Transnational Criminal Organization (Jan. 30, 2018), available at <https://home.treasury.gov/news/press-releases/sm0272>.

²⁰ Treasury Department, Press Release – Treasury Targets Human Rights Abuses, Censorship, and Enhanced Monitoring by the Iranian Government (May 30, 2018), available at <https://home.treasury.gov/news/press-releases/sm0397>; Treasury Department, Press Release - Treasury Targets Key Hizballah Financing Network and Iranian Conduit (May 17, 2018), available at <https://home.treasury.gov/news/press-releases/sm0388>.

²¹ See e.g., Treasury Department, Press Release – Treasury Sanctions Four Current or Former Venezuelan Officials Associated with Economic Mismanagement and Corruption (March 19, 2018), available at <https://home.treasury.gov/news/press-releases/sm0318>.

FinCEN described a wide range of money laundering activity by the bank, including providing banking and financial services to corrupt PEPs in the successor states to the Soviet Union, conducting transactions for U.N. and U.S.-sanctioned persons, including persons sanctioned for involvement in North Korea's ballistic missiles program and facilitating the theft of more than \$1 billion in assets from three Moldovan banks in 2014. FinCEN commented that "ABLV executives, shareholders and employees have institutionalized money laundering as a pillar of the bank's business practices."

According to news reports, FinCEN's announcement precipitated a run on the bank, and the following week, the European Central Bank and the EU's Single Resolution Board declared ABLV Bank to be failing or likely to fail, directing the relevant national authorities to wind up the bank.²² ABLV Bank, even with emergency central bank liquidity support, was unable to demonstrate to EU authorities that it would be able to pay its debts or other liabilities. National authorities in Latvia and Luxembourg, where ABLV Bank also maintains a subsidiary bank, are now responsible for resolving or recapitalizing the bank.

For U.S. financial institutions, FinCEN's action further demonstrates that corruption and related money laundering risks flow not only from corrupt actors but also from the institutions and individuals that support them.

Implications

With the Treasury Department undertaking an expansive application of sanctions and money laundering laws to target corruption and human rights abuses, U.S. companies and financial institutions should reassess their customer due diligence, sanctions and AML compliance mechanisms and consider how well they address related risks. Such mechanisms should:

- Account for risks of organizational clients' more remote connections to corruption, building on improvements mandated by the U.S. Treasury Department's new beneficial ownership requirement.²³

²² European Central Bank, Press Release – ECB Determined ABLV Bank Was Failing or Likely to Fail (Feb. 24, 2018), available at <https://www.bankingsupervision.europa.eu/press/pr/date/2018/html/ssm.pr180224.en.html>; EU Single Resolution Board, Press Release – The Single Resolution Board does not take resolution action in relation to ABLV Bank, AS and its subsidiary ABLV Bank Luxembourg S.A. (Feb. 24, 2018), available at <https://srb.europa.eu/en/node/495>.

²³ U.S. Federal Register, Customer Due Diligence Requirements for Financial Institutions (May 11, 2016), available at <https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions>.

- Assess in detail risks related to PEPs, both as immediate clients and in connection with institutional clients who may engage in business with PEPs.
- Integrate human rights risk indicators in know-your-client and other regulatory due diligence to identify counterparties' potential engagement, facilitation or material support for serious human rights abuses, including but not limited to torture, extra-judicial killings, trafficking and inhumane detention. Effective indicators would incorporate metrics of both operational risk and corporate governance risk.
- Incorporate the FinCEN advisory's red flags and SAR filing instructions into existing due diligence, AML and SAR processes.

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Please do not hesitate to contact us with any questions.

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