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NEWS AND DEVELOPMENTS

Global Magnitsky Act: domestic law, transnational effects, and what it reveals about law and power

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When accountability fails where it should prevail, the system once again asks whose side the law is on. In 2009, the lawyer Sergei Magnitsky exposed a fraud scheme and died in state custody in Russia. No effective domestic response followed; nor did international mechanisms offer a real remedy. In 2012, the United States Congress enacted an initial act focused on the Russian case; in 2016, faced with the repetition of this pattern of impunity, it broadened the scope and established a general regime: the Global Magnitsky Human Rights Accountability Act. Within US jurisdiction, the Act authorises personal sanctions—asset freezes and visa restrictions—against foreign individuals and entities for significant corruption or serious human rights abuses. In practice, the machinery is administrative: the Department of State and the Department

operation and listings on the Specially Designated Nationals and Blocked Persons (SDN) List. This is not an international instrument; its effects cross borders by virtue of the dollar's weight, correspondent-banking networks, and US-regulated technology infrastructure.

One should not, however, attribute the Act's transnational efficacy solely to the dollar's gravitational pull. The role of the SWIFT system—the backbone of international financial messaging—must also be considered. Although headquartered in Belgium, SWIFT is, in practice, subject to regulatory and political pressures exerted by Washington and Brussels, effectively making it a technical arm of sanctions. The experience of sanctions on Iran showed that exclusion from this network amounts to a form of de facto economic interdiction, cutting off access to global trade flows. Thus, even though the Magnitsky text does not expressly mention it, the Act's reach is projected over this ecosystem because financial institutions, wary of retaliation, adjust their conduct in advance so as not to jeopardise their continued presence in such a vital network.

The legal design is straightforward—and therefore effective. Designation triggers the blocking of assets within US reach, a prohibition on transactions with “U.S. persons”, and restrictions on mobility. The typical targets are non-US nationals—public officials, corporate leaders, organisations. As a large share of global operations settle in USD or touch systems governed by US rules, banks and companies in other countries adapt their behaviour to preserve access to the dollar system and the US market; wherever there is a US nexus (USD settlement, the involvement of a “U.S. person”, or the facilitation of a breach), non-compliance exposes actors to significant fines and, in commercial-regulatory terms, to the risk that dollar correspondents will be lost at counterparties' discretion (de-risking). On the immigration front, visa restrictions may also be imposed under a parallel statutory basis (§ 7031(c) of the Department of State appropriations acts).

Another salient point lies in the limits of judicial control over such designations. Although there is a formal possibility of recourse to US courts, experience shows that the D.C. Circuit adopts a posture of marked deference

challenges to sanctions rarely succeed. In this setting, the administrative route of delisting before OFAC becomes, in practice, the only realistic hope of reversal—underscoring the asymmetry between the magnitude of the effects and the scarcity of effective procedural safeguards.

It should be emphasised that breaches of Global Magnitsky designations are not confined to commercial repercussions. Under the International Emergency Economic Powers Act (IEEPA), US law provides for administrative and criminal penalties against financial institutions that, even through negligence, facilitate prohibited transactions. Multibillion-dollar fines have been imposed in analogous cases, hitting global banks that violated embargoes on sanctioned countries. Beyond monetary penalties, the greater risk is exclusion from the US market—the core of the international financial system. That scenario turns legal risk into existential risk: a bank unable to access the dollar system will struggle to survive.

Liability is not limited to deliberate conduct. The sanctions regime admits attribution for “facilitation”, an open-textured concept encompassing any act that makes it possible, even indirectly, to carry out transactions with designated parties. Thus, the simple settlement of an operation that passes through a US institution, or the use of technology hosted on servers in the United States, may suffice to trigger the law’s application. This interpretive elasticity greatly expands the exposure of foreign financial institutions, which often do not perceive the hidden links that render their transactions reachable by OFAC’s extraterritorial arm.

We should be clear about what is at stake. Magnitsky does not export a universal concept of human rights; it enacts, in domestic law, the United States’ legal and political interpretation of “serious violations” and “significant corruption”, and projects that reading through its economic and technological power. The same instrument that protects rights also operates as a lever of foreign policy—indeed, of legal hegemony. Law and power march together; recognising this refines—rather than weakens—the debate.

The model has not been confined to Washington. Other jurisdictions have adopted their own regimes—Canada (2017), with the Justice for Victims of

Regulation (EU) 2020/1998). The common denominator is targeted, name-specific sanctions—focused on natural and legal persons, not countries—with asset and mobility consequences that become effective because the world largely operates on infrastructure connected to the US.

Real risks exist: political selectivity in the choice of targets, opaque criteria, and the erosion of procedural safeguards. The regime’s legitimacy depends on public and verifiable criteria, due administrative process with effective avenues of challenge (including delisting petitions to OFAC and, where applicable, judicial review under the Administrative Procedure Act (APA)), and independent institutional oversight. Without that, sanctions become a shortcut to arbitrariness; with it, the message is unambiguous: serious violations carry concrete consequences, within the bounds of legality.

The debate that matters in Brazil is not outsourcing parameters to foreign jurisdictions, but strengthening our own. The Constitution enshrines the primacy of human rights in international relations (Article 4(II) of the Brazilian Federal Constitution). To discuss an analogous regime—with objective criteria, publicity of decisions, and opportunities for defence and review—is to discuss coherence between what is written and what is delivered. In an environment where finance, technology and compliance produce de facto transnational reach, sovereignty is also exercised through clear, stable and predictable rules.

Thus, legal risks for financial institutions are not confined to regulatory compliance; they extend to institutional viability itself. Magnitsky sanctions have become a driver for the reorganisation of global banking conduct, forcing foreign institutions to choose between fidelity to their domestic legal order and pragmatic adherence to US norms. The room for neutrality is ever narrower: when in doubt, banks opt for over-compliance, abandoning legitimate clients and operations to preserve access to the international financial system. Here, law blends with power—and legal risk takes on the features of systemic risk.

The Magnitsky Act achieved global reach not because it is “the law of the world”, but because a significant part of the world operates on US-centred

demand criteria, safeguards and institutional responsibility in the application of any regime. Where there is a serious violation, there should be a sanction—with clear rules, oversight and a commitment to legality—so that justice and power are not conflated.

More broadly, in the global arena, no nation is beyond accountability to others; international relations imply transparency, reciprocity and a ban on arbitrariness by public authorities. To some extent, although there is neither a truly universal conception of human rights nor even a universal concept of corruption—and while there is no doubt about US global hegemony and China's rise—it is impossible to ignore the growing importance of international public opinion and of certain ethical standards of integrity demanded in the observance of human rights by contemporary civilised nations.

In this context, given countries' economic, technological and commercial interdependence, the concept of sovereignty has become ever more complex and exposed to international politics and diplomacy. It is precisely in this new environment that legislation with transnational effects, enacted by sovereign powers, emerges and strengthens.

Finally, it should be noted that Brazilian financial institutions occupy a structurally vulnerable position amid the conflict between national jurisdiction and the extraterritorial authority of the Office of Foreign Assets Control (OFAC). Domestically, the recognition (*homologação*) of foreign decisions by the Superior Court of Justice (STJ) is a constitutionally indispensable requirement for property sanctions to take effect against individuals and companies located in Brazil. In the US legal system, however, OFAC—an agency subordinate to the Department of the Treasury and, ultimately, to the President—is not legally obliged to recognise or await that recognition procedure. OFAC's structure empowers it to administer, supervise and impose financial sanctions immediately under the Global Magnitsky Act, applying them to all institutions that maintain direct or indirect links with the dollar financial system. This means that, even if Brazilian banks invoke a pending analysis before the STJ, OFAC has full discretion to accept or reject that justification—

To this equation one must add the spectre of so-called secondary sanctions, through which the Treasury threatens or restricts foreign banks and companies that, directly or indirectly, facilitate transactions for the benefit of designated parties. This is not just a loss of correspondents; it is the concrete possibility of exclusion from dollar payment networks and isolation from the international financial system. The mechanism operates as an indirect instrument of foreign policy, projecting onto third countries the need to conform to US directives on pain of economic marginalisation. The impact, for jurisdictions such as Brazil, is compulsory insertion into a zone of permanent tension between fidelity to the internal constitutional order and practical submission to the functional extraterritoriality imposed by OFAC.

The gravity of the situation is heightened by the possibility of class actions in US courts. There are precedents in which victims of human rights violations have sought to hold banks liable for alleged complicity in indirectly financing sanctioned regimes. Even if such claims face evidential hurdles, the mere reputational and financial cost of litigating in US federal courts is a powerful deterrent. The logic is clear: non-compliance—or even the appearance of complacency—with designated parties can open flanks for complex litigation, compounding already severe administrative sanctions.

This is, therefore, a field of tension between Brazilian constitutional sovereignty and the United States' economic-normative power, in which banks are exposed to severe risks of secondary sanctions should OFAC choose not to recognise the authority of the Brazilian judiciary.

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