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From Tepid Competition to Confrontation: United States Targets Chinese Belt & Road Project With Global Magnitsky Sanctions

The United States on September 15, 2020 imposed [Global Magnitsky Sanctions](#)¹ on Union Development Group Co., Ltd., the Chinese state-owned company (“UDG”) behind the Dara Sakor development project that is part of China’s ambitious Belt and Road Initiative (“BRI” also known as the *New Silk Road* or *One Belt, One Road*). The move is significant, and might signal a ratcheting up of U.S. opposition to the BRI, which has largely been comprised of rhetoric, [diplomatic lobbying](#), and relatively tepid competition, such as by the establishment of the U.S. International Development Finance Corporation (DFC).²

Global Magnitsky Sanctions target corruption and human rights abuses worldwide. Because the sanctions program defines “corruption” broadly and does not delineate what constitutes “serious human rights abuse” within the scope of sanctions, a [broad range of conduct that might not be actionable under other anticorruption and human rights regimes is sanctionable](#) under Global Magnitsky. The latitude afforded by Global Magnitsky Sanctions authorities is evident in the UDG sanctions action.

In its announcement of the UDG sanctions, the Treasury Department, which administers Global Magnitsky Sanctions through its Office of Foreign Assets Control (OFAC), [stated](#) that UDG was sanctioned for corruption, specifically “for being a person acting for or on behalf of a current or former government official . . . responsible for or complicit 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.” The government official [referred to](#) is Kun Kim, a “senior Cambodian general” who was sanctioned under Global Magnitsky on December 2, 2019.

According to the Treasury Department, UDG, through Kun Kim, used Cambodian military forces to “intimidate local villagers” and clear land for the Dara Sakor project. UDG is also accused of burning down villagers’ houses and preventing them from planting rice. Kun Kim was, the Treasury Department [said](#), “instrumental in the UDG development and reaped significant financial benefit from his relationships with UDG.”

Other language in the Treasury Department’s announcement of the sanctions is noteworthy, and speaks to the foreign policy and geostrategic significance of the UDG sanctions action. The release [speaks of](#) China’s “malign” investment in Cambodia, its use of the UDG projects in Cambodia to “advance ambitions to project power globally,” “disproportionality benefit” itself through BRI projects, and concerns that the Dara Kakor project “could be converted to “host military assets.” The Treasury Department’s language echoes U.S. concerns about the BRI and other Chinese international project financing activities, including that China engages in “debt trap” financing.³

Whether the imposition of sanctions on UDG in connection with the BRI or other Chinese state-backed financing of international projects is a one-off or the first of coming uses of U.S. legal countermeasures in response to the BRI remains to be seen. For now, international development and project finance stakeholders should note the action and its potential significance in context. The Trump Administration has stated as policy that U.S. sanctions, anti-corruption, and other laws are “[tools of economic diplomacy](#)” to deter and coerce “rivals.”⁴

Notes

¹ For more Global Magnitsky Sanctions analysis, visit MassPoint PLLC's [Global Magnitsky Law and Sanctions publications](#).

² The DFC was established by the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, through a combination of the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Responding to the BRI and China's international development finance activities was a "key policy rationale" for the BUILD Act. Congressional Research Service, [BUILD Act: Frequently Asked Questions About the New U.S. International Development Finance Corporation](#), Jan. 15, 2019.

³ For context and background, see MassPoint PLLC's [chart of U.S.-China issues](#), including U.S. concerns about "debt trap" financing.

⁴ The Department of Justice in 2018 launched the [China Initiative](#) to combat China's "economic aggression." The China Initiative expressly calls for the use of anti-corruption laws (particularly the Foreign Corrupt Practices Act) in relation to Chinese companies that compete against American businesses (the implicit point being that some Chinese companies employ corruption to compete unfairly). *See also* Hdeel Abdelhady, [What Academia Must Know About DOJ's China Initiative](#), Law360, Jan. 28, 2019 (discussing the China Initiative's implications for academic and research institutions). For additional background, *see also* MassPoint PLLC, [United States National Security Strategy in Africa Targets Chinese Dominance and Corruption](#), Feb. 25, 2018.