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United States Targets Chinese Belt & Road Project With Global Magnitsky Sanctions: Corruption, Human Rights, and Geostrategy¹

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The United States on September 15, 2020 imposed Global Magnitsky Sanctions² on Union Development Group Co., Ltd.,³ 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 comprised rhetoric, diplomatic lobbying,⁴ and relatively tepid competition, such as by the establishment of the U.S. International Development Finance Corporation (**DFC**).⁵

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.⁶ The latitude afforded by Global Magnitsky Sanctions authorities is evident in the UDG sanctions action, and has come through in prior sanctions actions.⁷

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.”⁸ The government official referred to is Kun Kim, a “senior Cambodian general” who was sanctioned under Global Magnitsky on December 2, 2019.⁹ Kun Kim was, the Treasury Department said, “instrumental in the UDG development and reaped significant financial benefit from his relationships with UDG.”¹⁰

Viewed in light of the entire Treasury Department announcement, it is notable that the United States chose to invoke Global Magnitsky anti-corruption sanctions, rather than human rights sanctions, or both. The Treasury Department announcement says that UDG, through Kun Kim, used Cambodian military forces to “intimidate local villagers” and clear land for the Dara Sakor project. UDG is accused of burning down villagers’ houses and preventing them from planting rice, with the assistance of Cambodian military forces.¹¹ UDG also, according to the Treasury Department, used private security and military forces to “control the movements of local villagers.”¹² The UN High Commission for Human Rights (UNHCR) asked “asked UDG to stop using Cambodian military forces to take land from the Cambodian people,” the Treasury Department announcement recounted, and Cambodia’s Council of ministers “issued a directive ordering UDG to stop destroying villagers’ property; however, UDG ignored the directive and continued the destruction.”¹³

As indicated above, Global Magnitsky Sanctions legal authorities, particularly Executive Order 13818 of December 20, 2017,¹⁴ authorizes sanctions for “serious human rights abuse” without defining that term or providing examples. The ambiguity creates space for a U.S. administration to impose Global Magnitsky human rights sanctions to a wider range of conduct, as illustrated by the imposition by the Trump

Administration of Global Magnitsky human rights sanctions on the Turkish justice and interior ministries for the then-continuing detention of an American pastor who was prosecuted for alleged involvement in the widely reported coup attempt targeting the Turkish president.¹⁵

Given the Trump Administration's prior willingness to impose human rights sanctions under Global Magnitsky in doubtful cases, the Treasury Department's reliance only on the anti-corruption prong of the Global Magnitsky Sanctions while describing conduct arguably constituting human rights abuse (recognizing the lack of a universally agreed definition) is noteworthy. It may be that imposing anti-corruption sanctions was more straightforward given the links between UDG and Kun Kim, who again was sanctioned under Global Magnitsky in 2019. Or, there may have been concern that resorting to Global Magnitsky human rights sanctions on the stated facts would set an unwanted precedent. Whatever the rationale for the action, the Treasury Department's language sounding in human rights should be noted, even if Global Magnitsky human rights sanctions were not asserted.

Other language in the Treasury Department's announcement more directly addresses the foreign policy and geostrategic context 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."¹⁶ 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.¹⁷ It is somewhat ironic that U.S. unilateral sanctions have been used in relation the BRI, which could in the future, if successful, stem the global reach of U.S. unilateral sanctions, which in some cases reach foreign parties, property, and events by attaching U.S. jurisdiction to dollar transactions that occur outside of the United States.¹⁸

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 U.S. legal countermeasures—including U.S. unilateral sanctions—in response to the BRI remains to be seen. For now, international development and infrastructure finance stakeholders should note the action and its context. The Trump Administration has stated as policy that U.S. sanctions, anti-corruption, and other laws are "[tools of economic diplomacy](#)"¹⁹ to deter and coerce "rivals," namely China.²⁰

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¹ This is an expanded version of a MassPoint Legal and Strategy Advisory note published on September 23, 2020, and reprinted in the International Enforcement Law Reporter, Vol. 36, Issue 10 (Oct. 2020).

² Hdeel Abdelhady, *Global Magnitsky Corruption and Human Rights Sanctions Overview*, MassPoint Legal and Strategy Advisory PLLC (Aug. 18, 2018), at <https://masspointpllc.com/global-magnitsky-sanctions-overview/> (last visited Oct. 19, 2020).

³ Notice of OFAC Sanctions Actions, 85 Fed. Reg. 58,427 (Sept. 18, 2020).

⁴ Orange Wang, *US steps up belt and road offensive saying it offers fairer deals than China's 'debt trap'*, South China Morning Post, May 3, 2019, at <https://www.scmp.com/news/china/diplomacy/article/3008640/us-steps-belt-and-road-offensive-saying-it-offers-fairer-deals> (last visited Oct. 19, 2020).

⁵ The DFC was established by the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, and is an amalgamation 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.

⁶ Hdeel Abdelhady, *The Trump Administration Supercharged Global Magnitsky Act Human Rights and Corruption Sanctions*, MassPoint Legal and Strategy Advisory PLLC (April 3, 2018), at <https://masspointpllc.com/publications/magnitsky-law-and-sanctions/how-the-trump-administration-supercharged-global-magnitsky-act-human-rights-and-corruption-sanctions/> (last visited Oct. 19, 2020) (“**Trump Supercharged Global Magnitsky**”).

⁷ For a discussion of the flexibility and unique utility of the Global Magnitsky Sanctions, see Hdeel Abdelhady, *Global Magnitsky: The Swiss Army Knife of Sanctions*, Law360 (Aug. 7, 2018) (discussing sanctions imposed on a Turkish ministry and minister), at <https://www.law360.com/immigration/articles/1070748/global-magnitsky-the-swiss-army-knife-of-sanctions> (last visited Oct. 19, 2020).

⁸ Release, U.S. Dept. of the Treasury, *Treasury Sanctions Chinese Entity in Cambodia Under Global Magnitsky Authority* (Sept. 15, 2020), at <https://home.treasury.gov/news/press-releases/sm1121> (last visited Oct. 19, 2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Exec. Order 13818 of December 20, 2017, Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption, 82 Fed. Reg. 60,839 (Dec. 26, 2017).

¹⁵ See *Trump Supercharged Global Magnitsky*, supra n. 5; Abdelhady, *Global Magnitsky: The Swiss Army Knife of Sanctions*, supra n. 6.

¹⁶ *Id.*

¹⁷ For context, see MassPoint Legal and Strategy Advisory PLLC (Jan. 26, 2019), available at <https://masspointpllc.com/ united-states-china-issues-graphic-visualization/> (depicting U.S.-China policy issues as identified by the United States or U.S. parties, including “debt trap” financing) (last visited Oct. 19, 2020).

¹⁸ Hdeel Abdelhady, A Great BRIC Wall? Emerging Trade and Finance Channels Led by Non-Western Nations Could Curtail the Global Reach of U.S. Law, MassPoint Legal and Strategy Advisory PLLC (Jun. 11, 2015), available at <https://masspointpllc.com/wp-content/uploads/Emerging-Challenges-to-U.S.-Dollar-Jurisdiction.Abdelhady.pdf> and Hdeel Abdelhady, *Reimposed U.S. anti-Iran sanctions leverage American economic power*, Reuters (Nov. 15, 2018), at <https://www.reuters.com/article/bc-finreg-iran-sanctions/insight-reimposed-u-s-anti-iran-sanctions-leverage-american-economic-power-idUSKCN1NK2FE> (stating in both publications that “America’s economic and financial heft facilitates the extraterritorial reach of U.S. sanctions and other law. For example, global transactions denominated in U.S. dollars and processed through the U.S. financial system create a jurisdictional nexus between the United States and foreign parties, property, and events”); See also Hdeel Abdelhady, *Leveraging Market Power to Achieve Legislative Hegemony: The Long and Well-Traveled Arm of U.S. Law* (manuscript) (on file with author).

¹⁹ Hdeel Abdelhady, *U.S. Law as Trade War Weapon*, Law360 (May 21, 2018), available at <https://masspointpllc.com/wp-content/uploads/US-Law-As-Trade-War-Weapon-Law360.pdf> (last visited Oct. 19, 2020) (discussing ZTE sanctions and export penalties in the context of the Trump Administration’s stated strategy involving sanctions, anti-corruption, and anti-money laundering laws).

²⁰ The Department of Justice in 2018 launched the China Initiative to combat China’s “economic aggression.” Release, U.S. Dept. of Justice, China Initiative Fact Sheet (Nov. 1, 2018), at <https://www.justice.gov/opa/speech/file/1107256/download> (last visited Oct. 19, 2020). 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), available at <https://masspointpllc.com/wp-content/uploads/What-Academia-Must-Know-About-DOJs-China-Initiative.pdf> (last visited Oct. 19, 2020). For additional background, see also MassPoint Legal and Strategy Advisory PLLC, *United States National Security Strategy in Africa Targets Chinese Dominance and Corruption*, Feb. 25, 2018, available at <https://masspointpllc.com/wp-content/uploads/China-Africa-Corruption-and-U.S.-National-Security.MassPoint-PLLC.p.pdf> (last visited Oct. 19, 2020).