

Jury Convicts Former Alstom Executive of FCPA Charges

陪审团裁定前阿尔斯通高管 FCPA 指控成立

UK Citizen Working for French Company Found Guilty of Bribing Indonesian Officials

为法国公司工作的英国公民被裁定贿赂印度尼西亚官员罪名成立

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On November 8, 2019, a federal jury convicted Lawrence Hoskins, the former senior vice president of Alstom, of violating the Foreign Corrupt Practices Act (“FCPA”) for his role in a multi-million dollar bribery and money laundering scheme in Indonesia. The question at trial turned on whether Hoskins, a U.K. citizen who worked for a French company, acted as an agent of Alstom’s U.S.-based subsidiary by assisting in the hiring of consultants to bribe the Indonesian government officials. The conviction of Hoskins was a significant development in FCPA enforcement, particularly for non-U.S. companies and individuals assessing potential liability under the FCPA for conduct taking place outside of the United States.

2019年11月8日，一个联邦陪审团裁定阿尔斯通前高级副总裁 Lawrence Hoskins（劳伦斯·霍金斯）因参与印度尼西亚一起涉及数百万美元的贿赂和洗钱计划而违反美国的《反海外腐败法》（下称“FCPA”）。此案审理的核心问题在于，作为一个为一家法国公司工作的英国公民，Hoskins 是否因协助聘用顾问以贿赂印度尼西亚政府官员而充当了阿尔斯通美国子公司的代理人的角色。Hoskins 的定罪是 FCPA 执法领域的一项重要发展，对于那些就美国境外发生的行为评估潜在的 FCPA 责任的非美国公司和个人而言尤为重要。

Summary 概要

On July 30, 2013, the U.S. Department of Justice (“DOJ”) indicted Hoskins on 12 counts, including conspiracy to violate the FCPA, conspiracy to commit money laundering, and substantive FCPA and money laundering violations. The charges were filed in the District of Connecticut and were [announced](#) by Mythili Raman, the then-Acting Assistant Attorney General.

2013年7月30日，美国司法部（下称“司法部”）以12项罪名起诉英国公民、阿尔斯通前高级副总裁 Hoskins，包括密谋违反 FCPA，密谋从事洗钱以及实质性违反 FCPA 和洗钱相关法规的行为。上述指控提交至康涅狄格州联邦地区法院，并由当时的代理助理司法部长 Mythili Raman [宣布](#)。

According to the [post-indictment](#) and [post-conviction](#) DOJ press releases, Hoskins engaged in a scheme to pay bribes to Indonesian government officials in order to secure an \$118 million contract for Alstom’s American subsidiary, Alstom Power Incorporated (“Alstom Power”), to provide power-related services in Indonesia. According to the government, the scheme included bribery payments to a high-ranking member of the Indonesian Parliament, as well as the President of the state-owned and state-controlled electricity company of Indonesia, the Perusahaan Listrik Negara (“PLN”). Evidence provided at trial showed that Hoskins and his co-conspirators attempted to conceal the bribes by funneling the payments through two consultants. In 2014, Alstom [pleaded guilty](#) to two counts of violating the FCPA in connection with a worldwide bribery scheme that included Hoskins’ actions in Indonesia, as well as tens of millions of dollars of bribery payments in other countries. Alstom also paid a \$772 million criminal penalty.

根据[起诉后](#)及[定罪后](#)的司法部新闻稿，Hoskins 从事一项向印度尼西亚政府官员支付贿赂的密谋，旨在为阿尔斯通美国子公司 Alstom Power Incorporated（下称“Alstom Power”）取得一份在印度尼西亚提供电力相关服务的价值 1.18 亿美元的价值 1.18 亿美元价值的合同。根据政府所称，该项密谋包括对印度尼西亚议会一名高级成员以及印度尼西亚国有及国家控股电力公司 Perusahaan Listrik Negara（下称“PLN”）总裁的贿赂付款。庭审时提供的证据表明，Hoskins 及其共谋者企图通过将付款转给两名顾问来隐瞒贿赂。2014 年，阿尔斯通就两项违反 FCPA 的指控[认罪](#)，这些指控涉及一项全球范围的贿赂密谋，包括 Hoskins 在印度尼西亚的行动，以及在其他国家数千万美元的贿赂付款。阿尔斯通还支付了 7.72 亿美元的刑事罚金。

Hoskins initially challenged the indictment by arguing that he was not subject to the FCPA’s statutory jurisdiction because he: (1) was not an employee of a U.S. domestic concern or issuer; (2) was not a citizen, national, or resident; and (3) never took any acts within the U.S. to further a corrupt payment. DOJ argued that Hoskins could still be prosecuted under the FCPA as an accomplice or co-conspirator, despite being incapable of violating the FCPA as a principal. The Second Circuit ultimately ruled that Hoskins could not be held liable for FCPA violations as an accomplice or co-conspirator unless he was directly liable as an “agent” of a U.S. entity. Legal analysts viewed the *Hoskins* opinion as setting limits on DOJ’s ability to charge non-resident foreign nationals, acting outside of the U.S., with FCPA offenses.

Hoskins 最初对起诉书提出质疑，辩称其不受 FCPA 的法定管辖，因为其(1)不是美国国内法人或发行人的员工；(2)不是美国公民、国民或居民；且(3)从未在美国境内采取任何行动以促成腐败付款。司法部主张，尽管 Hoskins 不能作为主犯违反 FCPA，但他仍可作为同谋者或共谋者被起诉违反 FCPA。第二巡回法院最终裁定，Hoskins 不能承担作为同谋者或共谋者违反 FCPA 的责任，除非其作为美国实体的“代理人”负有直接责任。法律分析人士将 Hoskins 案的裁定意见理解为法院为对司法部起诉在美国境外违反 FCPA 的非居民外国国民的能力设定了限制。

Relevant Parties & Conduct 相关方和行为

- Alstom, a company headquartered in France, provided power generation and transportation-related services around the world through a variety of subsidiary entities, including a U.S.-subsidiary, Alstom Power. Alstom Power was headquartered in Connecticut and incorporated in Delaware and was therefore a “domestic concern” under the FCPA.

阿尔斯通是一家总部在法国的公司，在世界各地通过各种附属实体（包括美国子公司 Alstom Power）提供发电和输电相关服务。Alstom Power 总部在康涅狄格州，设立于特拉华州，因此是 FCPA 下的“国内法人”。

- Marubeni Corporation was a Japanese trading company and consortium partner of Alstom Power, Alstom Indonesia, and other Alstom subsidiaries (collectively, the “Consortium”). In 2014, Marubeni pleaded guilty to criminal charges for its role in the Indonesian bribery scheme.

丸红株式会社是一家日本贸易公司，也是 Alstom Power、Alstom 印尼及其他阿尔斯通子公司（合称“财团”）的财团合作伙伴。2014 年，丸红就其参与印度尼西亚贿赂密谋的刑事指控认罪。

- Hoskins was a U.K. citizen and an employee of Alstom U.K., but was assigned to work for Alstom Resources Management S.A. in France as part of Alstom’s International Network. Hoskins was the Senior Vice President for the Asia region and his general duties included helping Alstom subsidiaries secure contracts.

Hoskins 是一名英国公民，阿尔斯通英国的员工，但被指派到法国为隶属阿尔斯通国际网络的 Alstom Resources Management S.A. 工作。Hoskins 当时是亚洲区高级副总裁，其日常职责包括帮助阿尔斯通子公司获得合同。

- The Tarahan Project sought to provide power-related services to the citizens of Indonesia. The project was bid and contracted through the PLN, Indonesia’s state-owned and state-controlled electricity company. As a result of the described bribery scheme, the Consortium was ultimately awarded the \$118 million dollar Tarahan Project contract.

Tarahan 项目试图向印度尼西亚公民提供电力相关服务。该项目是通过印度尼西亚国有及国家控股电力公司 PLN 招标和签约的。由于所述的贿赂密谋，财团最终被授予价值 1.18 亿美元的 Tarahan 项目合同。

- Beginning in 2002, the Consortium hired a consultant whose primary purpose was to pay bribes to Indonesian government officials with influence over the awarding of the Tarahan Project contract. The consultant received hundreds of thousands of dollars in a Maryland bank account, which he then transferred to an account in Indonesia and used to pay bribes to a member of Parliament.

从 2002 年开始，财团聘请了一名顾问，其主要职责是向能够对 Tarahan 项目合同的授予施加影响力的印度尼西亚政府官员支付贿赂。该顾问在一个马里兰州的银行账户中收到了数十万美元，然后他将这些钱转到印度尼西亚的一个账户，用于向一名议会成员支付贿赂。

- According to e-mails admitted at trial, Hoskins and his co-conspirators had detailed discussions in which they described the consultant's bribes to the member of Parliament (referred to as the "cashier"), as well as the influence the member of Parliament had over the Tarahan Project.

根据庭审时采纳的电邮，Hoskins 及其共谋者进行了详尽的讨论，期间他们描述了顾问对该议会成员（称为“收款人”）的贿赂以及该议会成员对 Tarahan 项目具有的影响力。

- Evidence at trial showed that a second consultant was hired because Hoskins and his co-conspirators determined that the original consultant was not effectively bribing key PLN officials. Hoskins was responsible for hiring the consultants and, according to the trial evidence, Hoskins and his co-conspirators pressured Alstom Power to frontload payments to the second consultant in order to more effectively facilitate the payment of bribes to PLN officials.

庭审证据表明，第二名顾问的聘请是因为 Hoskins 及其共谋者认定，原先的顾问没能有效地贿赂 PLN 的重要官员。Hoskins 负责聘请这些顾问，且，根据庭审证据，Hoskins 及其共谋者向 Alstom Power 施压，将对第二名顾问的付款日期提前，以便更有效地促成对 PLN 官员的贿赂付款。

Items of Note 值得注意的事项

Hoskins is most notable for the jurisdictional and agency issues the case raised. The first issue is whether a foreign national, who never set foot in the United States and did not work for a U.S. company, and therefore could not be guilty of FCPA violations as a principal, could be guilty as an accomplice or co-conspirator. In what was seen at the time as a blow to DOJ's aggressive assertion of FCPA jurisdiction, the Second Circuit affirmed the District Court's conclusion that Congress did not intend to impose accomplice liability on individuals who did not fall under one of FCPA's three jurisdictional bases. According to the Second Circuit, Congress drafted the FCPA to exclude individuals like Hoskins, a non-resident foreign national, acting outside of the U.S., from FCPA liability. Moreover, the Second Circuit found that Congress' omission was "not accidental, but instead was a limitation created with surgical precision to limit [the FCPA's] jurisdictional reach." [*United States v. Hoskins*](#), 902 F.3d 69, 84 (2d Cir. 2018).

Hoskins 案最值得注意的是该案提出的管辖和代理问题。第一个问题是，一个从未进入美国境内且未曾为美国公司工作（因而不可能作为主犯被裁定违反 FCPA 之罪）的外国国民是否可以作为同谋者或共谋者被定罪。第二巡回法院维持了联邦地区法院的下列结论：国会无意对不属于 FCPA 三个管辖领域之一的个人施加同谋责任，这在当时被认为是对司法部关于 FCPA 管辖权的激进主张的打击。根据第二巡回法院，国会起草 FCPA 时排除了 Hoskins 这样的个人（即在美国境外行事的非居民外国国民）的 FCPA 责任。而且，第二巡回法院认为，国会在这方面的不作为“并非是偶然的，而是对 FCPA 管辖范围施加的十分精确的限制。” [*美国政府诉 Hoskins 案*](#)，902 F.3d 69, 84 (2d Cir. 2018)。

In light of the Second Circuit's ruling, the government had to show that Hoskins had acted as an agent of Alstom Power, Alstom's U.S. subsidiary, and was therefore subject to the FCPA's jurisdiction. The FCPA does not define the term "agent," so the establishment of an agency relationship had to be proved under the general principles of agency (i.e., whether Alstom Power exercised control over Hoskins' conduct). The battle to define the standard for establishing an agency relationship was waged over competing jury instructions put forth by the defense and prosecution:

鉴于第二巡回法院的裁定，政府必须表明，Hoskins 担任过阿尔斯通美国子公司 Alstom Power 的代理人，因而受 FCPA 管辖。FCPA 未定义“代理人”一词，因此必须根据一般代理原则证明代理关系的建立（即 Alstom Power 是否对 Hoskins 的行为行使控制权）。控辩双方提出了矛盾的陪审团指示，就此产生了关于定义建立代理关系的标准争论。

- The defense argued that jurors should be instructed that “[a]n agent of one corporation is not necessarily also an agent of an affiliated corporation unless a separate agency relationship with that affiliated corporation is established.” Control of an agent “is more than merely the ability to [have] influence [over].” A jury should consider whether Alstom’s U.S. subsidiary “had the right to control Hoskins’ conduct,” such as supervising his work and terminating “his services.”

辩方认为，陪审团应当收到下列指示：“一家公司的代理人不一定也是关联公司的代理人，除非与该关联公司建立了单独的代理关系。”代理人控制权“不仅仅是[对某事的]影响力。”陪审团应当考虑阿尔斯通的美国子公司“是否有权控制 Hoskins 的行为，”例如监督他的工作和终止“他的服务”。

- The prosecution wanted an instruction that “[p]roof of agency need not be in the form of a formal agreement between agent and principal; rather, it may be inferred circumstantially and from the words and actions of the parties involved” – a description that could capture the relationship between colleagues at the same company.

控方要求作出下列指示：“代理关系的证明不需要是代理人与委托人之间正式协议的形式；可根据具体情形以及相关方的言语和行为推断出。”此描述可发现在同一家公司的同事之间的关系。

The court ultimately disregarded the specific instructions proposed by the parties and instead instructed the jury to consider the definition of “agent” to include: (1) a manifestation by the principal that the agent will act for it; (2) the agent’s acceptance of an “undertaking,” meaning “acts or services” for the principal; and (3) an understanding that the principal is “in control” of those acts or services. The jury was also instructed that “one may be an agent for some business purpose and not others,” and that in order for Hoskins to be convicted, the agency relationship had to be “in connection with the specific events related to the contract known as the Tarahan project.”

法院最终未采纳双方提议的具体指示，只是要求陪审团在“代理人”的定义中包括以下考量：(1) 委托人关于代理人将为其行事的声明；(2) 代理人对一项“任务”（指为委托人从事的“行为或服务”）的接受；和(3) 关于委托人“控制”上述行为或服务的理解。陪审团还收到下列指示：“一个人可以是某些业务目的（而非其他）的代理人”，而且，要对 Hoskins 定罪，代理关系必须“与称为 Tarahan 项目的合同相关的具体事件相关”。

The jury ultimately concluded that Hoskins acted as an agent for Alstom Power. The prosecution argued that even though Hoskins’ actions were executed overseas, the acts were part of an “undertaking” that Alstom Power required him to perform. The jury’s decision was no doubt informed by the testimony of a former Alstom executive, Ed Thiessen. Thiessen testified that Alstom Power was required to approve the bribery payments to foreign officials. Furthermore, Thiessen told jurors that if Alstom Power did not agree to the terms and conditions of payment to the consultants, and by extension the terms and conditions of the bribery payments, Hoskins was responsible for renegotiating the terms with the consultants, thereby accepting an undertaking on behalf of Alstom Power.

陪审团最终认定 Hoskins 担任了 Alstom Power 的代理人。控方主张，即使 Hoskins 的行动是在海外执行的，但这些行动是 Alstom Power 要求其履行的一项“任务”的一部分。陪审团的决定无疑是基于阿尔斯通前高管 Ed Thiessen 的证言提供的信息。Thiessen 作证称，Alstom Power 被要求批准对外国官员的贿赂付款。此外，Thiessen 告诉陪审团，如果 Alstom Power 没有同意对顾问付款的条款和条件（乃至贿赂付款的条款和条件），那么 Hoskins 就要负责与顾问重新谈判这些条款，因此可以认为他代表 Alstom Power 接受了一项任务。

Hoskins's conviction has quieted those who thought that the Second Circuit's decision curtailing accomplice and conspiracy liability would prevent non-resident foreign nationals from being subject to FCPA liability. Instead, at least one jury was willing to find that such an individual was liable as an agent.

对于认为第二巡回法院限制同谋和共谋责任的裁定会阻止非居民外国国民承担 FCPA 责任的人来说，Hoskins 的定罪算是个安慰。因为，至少有一个陪审团愿意裁定，此类个人应作为代理人承担责任。

The *Hoskins* case is not likely to be the last word on accomplice liability under the FCPA as a circuit split seems inevitable. For instance, in *United States v. Firtash*, 392 F. Supp. 3d 872, 892 (N.D. Ill. 2019), a judge in the Northern District of Illinois declined to dismiss a criminal count against non-resident foreign nationals operating outside of the U.S. for which no agency relationship to a U.S. entity was alleged. In reaching this decision, the court determined that, based on existing case law, the Seventh Circuit would likely reject the Second Circuit's reasoning in *Hoskins*. Specifically, the court found that exclusions to accomplice liability can only be derived from the statutory text and that Seventh Circuit case law limits the applicable exclusions to three circumstances: (1) where the commission of a crime requires a second participant; (2) where the participant is a victim of the crime; and (3) where the participant is a member of the group the statute protects.

Hoskins 案不太可能成为关于 FCPA 下同谋责任的定论，因为巡回法院间的分歧似乎是不可避免的。例如，在 *美国政府诉 Firtash*, 392 F. Supp. 3d 872, 892 (N.D. Ill. 2019) 一案中，伊利诺伊州北区联邦地区法院的一名法官拒绝驳回一项针对在美国境外运营的非居民外国国民（未指称其与美国实体的代理关系）的刑事指控。在作出这一裁定时，法院认定，基于现有案例法，第七巡回法院很可能会拒绝第二巡回法院在 *Hoskins* 案中的推论。具体而言，该法院认为，同谋责任的排除只能源自法律文本，第七巡回法院案例法将适用的排除限定为下列三种情形：(1) 一项犯罪的实施要求第二个参与者；(2) 参与者是犯罪的受害者；和(3) 参与者是受法律保护群体的成员。

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