

Former Alstom Executive Granted Post-Trial Acquittal of FCPA Charges 前阿尔斯通高管审后裁定 FCPA 罪名不成立

March 4, 2020
2020 年 3 月 4 日

Anti-corruption/FCPA
反腐败/FCPA

The following alert is a summary of the district court's acquittal of UK citizen Lawrence Hoskins, a former senior vice president at the French power and transportation company Alstom S.A. ("Alstom"), on FCPA bribery and conspiracy charges. Alstom pleaded guilty in 2014 to two counts of violating the FCPA in connection with a worldwide bribery scheme that encompassed Hoskins's alleged actions. In connection with the guilty plea, Alstom paid a \$772 million criminal penalty.

本期刊是关于联邦地区法院对英国公民、法国电力和交通公司阿尔斯通公司（下称“阿尔斯通”）前高级副总裁劳伦斯·霍金斯被指控 FCPA 相关贿赂和密谋一案所作无罪判决的概述。阿尔斯通于 2014 年就两项违反 FCPA 的罪名认罪，这些罪名涉及包含霍金斯被指控行为的一项全球范围的贿赂密谋。就其认罪请求，阿尔斯通支付了 7.72 亿美元的刑事罚金。

Following a two-week trial, on November 8, 2019, Hoskins was convicted of six counts of violating the FCPA, three counts of money laundering, and two counts of conspiracy for his role in a scheme to bribe Indonesian government officials in exchange for helping Alstom and its partner, Marubeni Corporation, secure a \$118 million contract to provide power-related services in Indonesia. The jury deliberated for one day before returning a guilty verdict on all counts save one money laundering count.

在经过为期两周的审理后，2019 年 11 月 8 日，因参与贿赂印尼政府官员的密谋以帮助阿尔斯康及其合作伙伴丸红株式会社获得在印尼提供电力相关服务的价值 1.18 亿美元的合同，霍金斯被判六项违反 FCPA 的罪名、三项洗钱罪名以及两项密谋罪名成立。陪审团经过一天的审理，裁定除一项洗钱罪名以外的所有罪名成立。

On February 26, 2020, the District Court for the District of Connecticut granted Hoskins's motion for acquittal as to the FCPA counts but denied the motion as to the money laundering counts.

2020 年 2 月 26 日，康涅狄格州联邦地区法院批准了霍金斯关于 FCPA 罪名不成立的动议，但驳回了关于洗钱罪名的动议。

Background 背景

Hoskins was alleged to have engaged in a scheme to pay bribes to Indonesian government officials in order to secure an \$118 million contract (known as the Tarahan Project) for Alstom's U.S. subsidiary, Alstom Power Incorporated ("API"), to provide power-related services in Indonesia. As covered in our previous [alert](#), Hoskins initially challenged the indictment by arguing he was not subject to jurisdiction under the FCPA because he did not fall within one of the statute's explicit categories of covered persons – for example, as an employee of a U.S. domestic concern or issuer. DOJ maintained that Hoskins nevertheless could be prosecuted as an accomplice or co-conspirator of a covered person. In its August 2018 opinion, the Second Circuit rejected the argument that a person can be “guilty as an accomplice or a co-conspirator for an FCPA crime that he or she is incapable of committing as a principal,” but left open the possibility that Hoskins could be held liable “as an agent of a domestic concern” – a theory of liability expressly provided for in the statute.

霍金斯被指从事一项向印尼政府官员支付贿赂的密谋，其旨在为阿尔斯通美国子公司阿尔斯通电力股份有限公司（下称“阿尔斯通电力”）取得一份在印度尼西亚提供电力相关服务的价值 1.18 亿美元的合同（称为 Tarahan 项目）。正如我们在之前的[期刊](#)中所述，霍金斯最初对起诉书提出质疑，辩称其不受 FCPA 的法定管辖，因为其不属于该法律明确规定的涵盖人类别之一，例如，美国国内法人或发行人的员工。司法部主张，尽管如此，霍金斯仍可作为同谋者或共谋者被起诉。在 2018 年 8 月的意见中，第二巡回法院拒绝了一个人可“因其不能作为主犯实施的 FCPA 罪行而作为同谋者或共谋者被定罪”的主张，但未排除霍金斯可能“作为国内法人代理人”（这是 FCPA 明确规定的责任理论）而被追究责任。

Accordingly, the government proceeded to trial seeking to prove that Hoskins was liable for FCPA offenses as an agent of API, a U.S. company. Evidence at trial showed that a consortium of Alstom entities, including API, 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 evidence also demonstrated that a second consultant was hired because Hoskins and others determined that the original consultant had not been effective in bribing key officials. Witnesses testified that Hoskins had been responsible for hiring the two consultants and, along with others, pressured API to front-load payments to the second consultant to facilitate and expedite the bribe payments.

因此，政府在接下来的审理中设法证明霍金斯作为美国公司阿尔斯通电力的代理人而为违反 FCPA 的行为承担责任。庭审证据表明，包括阿尔斯通电力在内的多家阿尔斯通实体聘请了一名顾问，其主要目的是对有影响力的印尼政府官员行贿，以获得 Tarahan 项目合同。证据还表明，因为霍金斯等人认为该顾问在贿赂重要官员方面没有达到预期效果，他们又请了第二名顾问。证人的证词称，霍金斯负责聘请了这两名顾问，并与其他人一起向阿尔斯通电力施压，向第二名顾问先期付款，以促成和加快贿赂付款。

District Court's Analysis 联邦地区法院的分析

In its judgment of acquittal, the district court held that the government had failed to prove that Hoskins was an agent of API. Specifically, the court concluded that there was insufficient evidence of API's control over Hoskins's actions – an essential element of an agency relationship. Although it stated that the government had presented sufficient evidence to establish that API generally controlled the hiring of consultants for the Tarahan project, and that Hoskins followed API's directions related to this task, the court found the evidence lacking with respect to API's control over Hoskins's actions. The court emphasized that a principal's right of control over an agent, as opposed to control over a project, "is what distinguishes an agency relationship from a mere contractual one."

在无罪判决中，联邦地区法院认为，政府未能证明霍金斯是阿尔斯通电力的代理人。具体而言，法院推断，没有足够证据证明阿尔斯通电力对霍金斯行动的控制——这是代理关系的基本要素。尽管法院称，政府已提交足够证据证明阿尔斯通电力总体上控制了为 Tarahan 项目聘请顾问一事，且霍金斯遵从了阿尔斯通电力关于该项任务的指示，但法院认为阿尔斯通电力控制霍金斯行动的证据不足。法院强调，委托人对代理人的控制权，不同于对项目的控制权，“是区分代理关系和单纯合约关系的依据。”

The court also focused on the absence of the "indicia of control" typically present in an agency relationship. The court relied on witness testimony demonstrating that no one at API could "fire, reassign, demote, or impact the compensation of" Hoskins, nor did they have the power to "terminate Mr. Hoskins's authority to participate in the hiring of consultants for the Tarahan Project, to assess Mr. Hoskins's performance, or to otherwise exert control over his actions." Because no reasonable jury could find that Hoskins was an agent of API, the court held that the evidence introduced at trial could not support his convictions on the FCPA counts.

法院还关注了通常存在于代理关系中的“控制迹象”。法院采信了证明下列事实的证人证言：在阿尔斯通电力，无人能够“解聘、重新委任霍金斯，或对其降职或影响其薪酬”，也无人有权“终止霍金斯先生参与为 Tarahan 项目聘请顾问的权限、评估霍金斯先生的绩效或以其他方式对其行动施加控制。”由于理性的陪审团均无法认定霍金斯是阿尔斯通电力的代理人，法院认为，在审理中提交的证据不能支持其被判 FCPA 罪名成立。

Observations 评述

Increased Investigation of Agency Relationships 关于代理关系的更多调查

Following *Hoskins*, the government can be expected to focus heavily on developing facts to prove potential agency relationships. This could result in burdensome requests from the government seeking extensive HR and corporate governance documents. On the other hand, companies and individuals engaging in settlement or plea discussions can point to corporate reporting hierarchies and approval processes analogous to those presented in *Hoskins* to show a lack of control by the covered person over the purported agent.

在霍金斯案之后，政府可能会非常重视通过梳理事实来证明潜在的代理关系。这可能导致政府提出提供大量人事和公司治理文件的麻烦要求。另一方面，进行和解或辩诉讨论的公司和个人可能会提出与霍金斯案中情况类似的公司报告层级和审批流程，以表明涵盖人对所谓代理人缺乏控制。

In light of *Hoskins's* surprise acquittal, DOJ may finally reign in its aggressive stance on agency theories of liability under the FCPA. Indeed, even before *Hoskins's* acquittal, Assistant Attorney General Brian Benczkowski announced that “the Department is not looking to stretch the bounds of agency principles beyond recognition.”

鉴于霍金斯案令人意外的无罪判决，司法部可能最终会控制其关于 FCPA 下代理责任理论的强硬立场。事实上，甚至在霍金斯无罪判决之前，助理司法部长布莱恩·本茨科夫斯基就已宣布“司法部不打算过度扩大代理原则的界限。”

One area where *Hoskins* has the potential to make a lasting and significant impact is on cases involving foreign, non-controlled joint ventures of issuers and domestic concerns, and foreign joint-venture partners. In such cases, DOJ may struggle post-*Hoskins* to prove that an agency relationship existed with a covered person due to the absence of control over the foreign joint venture or joint-venture partner – a critical factor in any agency inquiry.

霍金斯案的一个方面有可能对涉及外国发行人和美国人或实体的非控股合资企业以及外国合资伙伴的案件产生持久深远的影响。在此类案件中，司法部可能会努力在霍金斯案后证明：由于缺乏对外国合资企业或合资伙伴的控制，涵盖人存在代理关系（在任何代理关系调查中的关键因素）。

Consider the *Snamprogetti* and *JGC* settlements from several years ago. These cases involved a joint venture alleged to have hired non-U.S. agents to bribe Nigerian officials in order to win a multi-billion dollar series of contracts. Both companies entered deferred prosecution agreements premised on the theory that they aided and abetted the FCPA violations of a U.S.-based joint-venture partner subject to jurisdiction as a domestic concern. Neither company was an issuer or a domestic concern itself, and the settlement agreements did not contain any allegations that company employees took acts in furtherance of the bribery scheme while in U.S. territory. It will be difficult for DOJ to pursue similar cases after *Hoskins* if it cannot point to evidence of an agency relationship.

我们可以考虑一下几年前的斯南普吉提和日挥株式会社的和解案。这些案例均涉及一个合资企业，该合资企业被指聘请非美国代理人贿赂尼日利亚官员，以取得价值数十亿美元的系列合同。两家公司均签订了暂缓起诉协议，而这些协议基于下列理论：上述公司协助并唆使作为美国实体而受管辖的美国合资伙伴从事违反 FCPA 的行为。上述公司本身既非发行人亦非美国实体，且和解协议不包含任何关于公司员工在美国境内采取行动促成贿赂密谋的指控。在霍金斯案后，如果司法部不能提出代理关系的证据，则很难追究类似的案件。

Other Statutory Tools to Combat Corruption 其他打击腐败的法律工具

DOJ of course has other statutory tools to combat foreign corruption, including the anti-money laundering laws. DOJ recently has leveraged the anti-money laundering statutes to bring charges against over a dozen individuals in relation to the bribery of officials of PetroEcuador, Ecuador's state-owned energy company. Nothing in the *Hoskins* decision, which upheld his conviction on the money laundering counts, is likely to dissuade such prosecutions.

司法部当然有其他打击海外腐败的法律工具，包括反洗钱法律。司法部最近运用反洗钱法规就贿赂厄瓜多尔石油公司（厄瓜多尔国有能源公司）官员一事对十多名个人提出指控。霍金斯案的裁定（支持对洗钱罪名的定罪）并无可能阻止此类诉讼的内容。

Charges Against Additional Conspirators **对更多共谋者的指控**

On February 18, 2020, the district court unsealed charges against three other alleged conspirators in the Alstom bribery scheme. Two of those defendants are alleged to have acted as agents of API, a domestic concern under the FCPA. The government may struggle to articulate factual support for these defendants' agency relationships with API under the parameters set by the district court in its recent judgment.

2020年2月18日，联邦地区法院启封对阿尔斯通贿赂密谋中的另外三名被指共谋者的起诉书。其中两名被告人被指曾作为阿尔斯通电力（FCPA下的国内法人）的代理人行事。基于联邦地区法院于其近期判决中设定的框架内，政府可能会在阐明这些被告人与阿尔斯通电力存在代理关系的事实证据过程中遭遇困难。

Circuit Split **巡回区分歧**

The *Hoskins* case is not likely to be the end of litigation on theories of agency or even accomplice liability under the FCPA. In its 2019 opinion in [United States v. Firtash](#), the District Court for the Northern District of Illinois determined that Seventh Circuit precedent on conspiratorial and accomplice liability clashed with the Second Circuit's reasoning in *Hoskins* and therefore declined to dismiss FCPA charges against foreign nationals allegedly to have engaged in corrupt conduct outside of the United States, even though the indictment did not charge that they acted as agents of covered persons. Extradition proceedings against Firtash and his co-defendant are pending.

霍金斯案不太可能成为FCPA下代理理论或甚至同谋责任的最后一个诉讼。在2019年关于“[美国诉 Firtash](#)”一案的意见中，伊利诺伊州北区联邦地区法院认定，第七巡回法院关于共谋和同谋责任的判例与第二巡回法院在霍金斯案的推理有冲突，因此拒绝驳回对被指在美国境外从事腐败行为的外国公民的FCPA指控，即使诉状未指控他们担任涵盖人的代理人。对Firtash及其共同被告人的引渡程序正在进行中。

* * *

If you have any questions concerning the material discussed in this article, please contact the following attorneys:

如果您对本客户期刊中讨论的材料有任何疑问，请联系下列律师：

Eric Carlson (柯礼晟)	+86 21 6036 2503	ecarlson@cov.com
Helen Hwang (黄玉玲)	+86 21 6036 2520	hhwang@cov.com
Min He (何敏)	+86 10 5910 0510	mhe@cov.com
Ping An (安平)	+86 21 6036 2512	pan@cov.com
Huanhuan Zhang (张欢欢)	+86 21 6036 2515	h Zhang@cov.com
Audrey Zhi (支虹)	+86 21 6036 2609	azhi@cov.com
Shuai Kong (孔帅)	+86 21 6036 2521	skong@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

本文信息无意作为法律意见。阅读者在就本文中提及的事项采取行动前应寻求具体的法律意见。

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

科文顿·柏灵律师事务所是一家国际律师事务所，为客户提供公司、诉讼及监管专业知识，以助其实现目标。本通讯旨在向我们的客户及其他有兴趣的同事提供相关的动态。如果您将来不希望收到电邮或电子期刊，请发送电邮至 unsubscribe@cov.com。