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## Former Hong Kong Government Official Convicted of FCPA and International Money Laundering Crimes in Connection with African Bribery Schemes

One week after Deputy Attorney General Rod J. Rosenstein announced key DOJ policy revisions focusing on individual accountability, a federal jury in Manhattan convicted Hong Kong's former Secretary of Home Affairs, Chi Ping Patrick Ho, of FCPA and international money laundering crimes. Ho's conviction—which stemmed from two schemes in which he bribed high-ranking government officials in Chad and Uganda in exchange for business advantages for the Chinese conglomerate CEFC China Energy Company Limited (“CEFC China”)—also signals the DOJ's continued strategy of prosecuting non-resident foreign nationals for FCPA violations under the agency theory of liability recently articulated in *United States v. Hoskins*.

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### The Bribery Schemes

Ho was convicted of engaging in two bribery schemes on behalf of CEFC China while serving as the Deputy Chairman of the non-governmental organization China Energy Fund Committee (“CEFC NGO”). The CEFC NGO is funded by CEFC China and based in Hong Kong and Virginia. In the first scheme, Ho and CEFC China executives offered a \$2 million cash bribe, concealed in several gift boxes, to the President of Chad, Idriss Déby, to secure valuable oil rights from the Chadian government. The former Minister of Foreign Affairs of Senegal, Cheikh Gadio, connected Ho and CEFC China to President Déby and was named as a co-defendant in the government's criminal indictment. The charges against Gadio, however, were dismissed in exchange for his testimony against Ho, pursuant to a non-prosecution agreement. In the second scheme, Ho directed the CEFC NGO to wire \$500,000 to an account provided by Sam Kutesa, the Minister of Foreign Affairs of Uganda, and advised the Chairman of CEFC China to provide \$500,000 in cash to the President of Uganda, Yoweri Museveni. These bribes were made to influence Kutesa and Museveni to steer business advantages in Uganda's financial and energy sectors to CEFC China, beginning with the potential acquisition of a Ugandan bank.

### Ho's Conviction

The federal jury convicted Ho of seven of the eight counts alleged in the government's criminal indictment for his participation in the two bribery schemes, including alleged violations of the FCPA and international money laundering laws. Ho faces a maximum of 10 years in prison for conspiring to violate and violating the FCPA, and 40 years in prison for conspiring to commit and committing international money laundering. A sentencing hearing is scheduled before U.S. District Court Judge Loretta A. Preska on March 19, 2019.

### Applying Hoskins

Ho's trial afforded the court an early opportunity to examine the U.S. Court of Appeals for the Second Circuit's recent decision in *United States v. Hoskins*. In *Hoskins*, the Second Circuit held that a non-resident foreign national cannot be held criminally liable for aiding or abetting or conspiring to violate the FCPA unless the government can prove that he acted as an agent of a “domestic concern” or while physically present within the United States. Notably, the Second Circuit stated that the “single, obvious omission” from the FCPA is “jurisdiction over a foreign national who acts outside the United States, but not *on behalf of* an American person or company as an officer, director, employee, agent, or stockholder.” *United States v. Hoskins*, 902 F.3d 69, 85 (2d Cir. 2018) (emphasis added).

Relying on *Hoskins*, Ho argued that neither CEFC China nor the CEFC NGO were “domestic concerns” under the FCPA. However, the criminal indictment’s logic—that registration as a 501(c)(3) non-profit organization in Virginia (for the CEFC NGO) and the maintenance of an affiliate incorporated and with an office in New York, New York (for CEFC China) were sufficient to satisfy the “domestic concern” requirement—ultimately prevailed.

Ho also proposed jury instructions on two counts—both alleging violations of the FCPA as an agent of a domestic concern—that would have required the jury to find that Ho was acting under the “control” of CEFC China and the CEFC NGO while carrying out the alleged criminal acts. The government argued that the instructions were “wrong, and would be highly confusing to the jury,” because agents may act within the scope of their delegated agency without each act being “controlled” by the principal. The court again sided with the government and rejected Ho’s proposed jury instructions. Ho filed an objection to preserve this argument on appeal.

### Takeaways

In the wake of Ho’s conviction, we can expect the government to continue to pursue FCPA charges against non-resident foreign nationals based on the agency theory of liability. As Deputy Attorney Rosenstein recently remarked, the DOJ’s policy moving forward will be to focus on holding “individuals responsible for wrongdoing” in order to increase the deterrent effect of prosecutions.

In addition, Ho’s case demonstrates that the DOJ will continue to rely on both the FCPA and Money Laundering Control Act (“MLCA”) to punish bribery by foreign nationals. Unlike the FCPA, the MLCA does not require the government to prove that a foreign national committed illegal acts while physically present within the United States or on behalf of a “domestic concern.” Instead, a non-resident foreign national may violate the MCLA by accepting funds laundered through the U.S. financial system.

Finally, Ho’s case demonstrates that the DOJ will continue to offer non-prosecution agreements to cooperating individuals whose criminal involvement makes them a potential subject of prosecution, as the government did here with the former Minister of Foreign Affairs of Senegal, Cheikh Gadio. Although entering into a non-prosecution agreement with the government may allow an individual to avoid a criminal trial, the government may still require the individual to pay a fine, admit the relevant facts, and cooperate with the government’s investigation and any related criminal or civil proceedings.

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