The US Department of Justice (DOJ) is increasingly using the money laundering statute to prosecute individuals in corruption and bribery cases. The Foreign Corrupt Practices Act (FCPA) is the primary statute prohibiting persons and entities from corruptly paying, offering to pay, or promising to pay anything of value to foreign officials to obtain or retain business. However, the Money Laundering Control Act (MLCA) provides another avenue to hold individuals accountable for bribery-related misconduct. Recently, the DOJ has secured more convictions grounded in bribery allegations using the MLCA—even when the misconduct would traditionally fall under the FCPA.

On November 8, 2019, Lawrence Hoskins, a former executive of Alstom’s International Network, was convicted on six counts of violating the FCPA, three counts of money laundering, and two counts of conspiracy for allegedly hiring two consultants to bribe Indonesian officials—including a high-ranking member of the Indonesian Parliament—to obtain a $118 million contract from Indonesia’s state-owned electricity company.

Hoskins is a resident of the United Kingdom who worked in France and claimed that he never entered the United States during the scheme. Hoskins previously challenged the government’s argument that he could be liable under the FCPA because he did not fall under any of the three enumerated categories of persons subject to the FCPA. In August 2018, the Second Circuit issued an opinion limiting the extraterritorial reach of the FCPA and jeopardizing the FCPA charges in Hoskins. The DOJ ultimately used another theory to convict Hoskins on the FCPA charges, overcoming the Second Circuit’s jurisdictional limitations. But—notably—the DOJ did not face similar obstacles to proving the money laundering charges because the MLCA applies to a broader set of individuals.

Hoskins is just the latest example of the DOJ bringing money laundering charges separately or in conjunction with FCPA charges to successfully prosecute individuals engaged in corruption and bribery misconduct. In the past few months, the DOJ has repeatedly used this strategy to pursue charges related to corruption and bribery schemes, including misconduct involving the Ecuador state-owned and state-controlled oil company, Empresa Pública de Hidrocarburos del Ecuador (PetroEcuador).

For example, on October 11, 2019, Frank Roberto Chatburn Ripalda, a financial advisor based in Florida, pled guilty to a single count of conspiracy to commit money laundering. Chatburn admitted to agreeing to make bribe payments to former PetroEcuador officials to obtain and retain contracts, and then establishing Panamanian shell companies with Swiss bank accounts to launder the money and conceal approximately $3 million in bribes. Even though Chatburn’s indictment included one count of conspiring to violate the FCPA and
one count of violating the FCPA, and the underlying facts related to $3 million in bribes, Chatburn pled guilty to a single count of conspiracy to commit money laundering. Similarly, in 2018, the other financial advisor indicted with Chatburn also pled guilty to conspiracy to launder money, only.

So far, all individuals convicted for bribes paid to PetroEcuador officials have pled guilty to money laundering charges, and none of them have pled to FCPA charges. As another example, two Ecuadorian citizens living in Florida were charged with conspiracy to violate the FCPA, conspiracy to commit money laundering, and nine counts of money laundering. They allegedly helped launder more than $4 million in bribes for the benefit of PetroEcuador officials. In August 2019, one of those individuals pled guilty solely to one count of conspiracy to launder money. Even though the allegations involved the payment of $4 million in bribes, the plea did not include the FCPA charge.

The number of individuals charged with money laundering and pleading guilty only to money laundering charges when the allegations relate to bribery and corruption misconduct is growing. To pursue these convictions, the DOJ is charging individuals with violating the MLCA (18 U.S.C. §§ 1956 and 1957), which prohibits conducting financial transactions involving funds generated by a specified unlawful activity (SUA), defined by statute to encompass a large range of illicit activities.

Section 1956(a)(1) prohibits conducting or attempting to conduct a financial transaction involving the proceeds of an SUA, knowing that the property involved represents the proceeds of an SUA. The DOJ must also prove that the defendant had the intent to promote the SUA; to engage in tax fraud or tax evasion; to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the SUA; or to avoid a transaction reporting requirement. Section 1957 prohibits individuals from knowingly conducting a monetary transaction exceeding $10,000 that are the proceeds of an SUA. Unlike § 1956, § 1957 requires only the knowledge that the transaction is occurring and that the transaction involves criminally derived property—the DOJ does not have to prove that the individual intended to promote the scheme, engage in tax fraud or tax evasion, conceal the proceeds, or avoid a reporting requirement.

Paying bribes to a public official is an SUA for the purpose of the MLCA. As a result, misconduct can potentially be a violation of both the MLCA and the FCPA. Where overlap exists, the DOJ can use the MLCA independently or in conjunction with the FCPA to charge individuals involved in corruption and bribery schemes and to levy additional sanctions.

The MLCA provides for harsher sanctions, including forfeiture, than does the FCPA. While both the FCPA and the MLCA provide for criminal penalties, the MLCA’s penalties exceed those available under the FCPA. For example, an FCPA violation can result in up to a five-year prison sentence and a $100,000 fine, while each transaction under § 1956 carries up to a 20-year prison sentence.
sentence and a fine of up to $500,000 or twice the amount involved (whichever is greater). 4

The MLCA also provides an avenue for forfeiture under 18 U.S.C. §§ 981 and 982, whereas the FCPA does not have its own forfeiture remedy. Under §§ 981 and 982, property involved in, or traceable to, violations of §§ 1956 and 1957 are subject to forfeiture. The government may file in rem actions (against the property) and in personam actions (against the person), which are civil and criminal remedies, respectively. Given this broad authority, individuals convicted of money laundering or conspiracy to launder money face significantly higher sanctions than if they were charged only with FCPA violations.

Furthermore, the DOJ can use the MLCA to bring corruption and bribery charges against a broader group of individuals involved in the alleged misconduct. In August 2018, the US Court of Appeals for the Second Circuit rejected the government’s argument in Hoskins that Hoskins could be held liable under the FCPA as an accomplice even if—as a nonresident acting outside of the United States that may not have fallen under one of the FCPA’s three enumerated categories of persons—he could not be held liable for the underlying substantive FCPA offense. The Second Circuit limited the FCPA’s extraterritorial prosecutorial reach and added an additional hurdle to the government’s FCPA case. However, in that same decision, the Second Circuit held that Hoskins could be liable under the FCPA if he was an agent of a domestic concern, and the DOJ ultimately prevailed using that theory. These additional, nuanced arguments to squeeze Hoskins into one of the categories of persons subject to the FCPA were not required to prove the money laundering charges, as the MLCA is not similarly limited to certain categories of persons.

The FCPA also does not apply to those soliciting or demanding bribes—it criminalizes only the act of offering to pay or paying bribes to foreign officials. In August 2019, a group of bipartisan legislators co-sponsored the Foreign Extortion Prevention Act (FEPA), 5 which, if passed, would provide a mechanism for the DOJ to prosecute foreign officials who demand bribes. However, in the meantime, the DOJ is using the MLCA to fill that void and to prosecute foreign officials for soliciting bribes if they also took actions to launder the proceeds or conspired to launder the proceeds.

For example, in June 2019, the DOJ indicted two Venezuelan foreign officials on seven counts of money laundering and one count of conspiring to launder money because they allegedly awarded procurement contracts with a state-owned and state-controlled electricity company to companies in exchange for bribes, and then laundered the proceeds to and from Florida-based bank accounts. 6 Even though the allegations were based on their receipt of bribes, the two Venezuelan officials could not be charged under the FCPA because they were foreign officials soliciting the bribes, requiring the DOJ to charge them under the MLCA instead.

In another example, the former president of Uzbekistan’s daughter—and a
foreign official—was charged with conspiracy to commit money laundering in a case that has resulted in over $2.6 billion in global fines and disgorgements. She allegedly solicited $866 million in bribes from three publicly traded telecommunications companies in exchange for exerting her influence over the Uzbek governmental body that regulated the telecom industry, and then laundered the bribes through various bank accounts. Notably, the DOJ simultaneously charged her co-conspirator, who was not a foreign official, with two counts of violating the FCPA and one count of conspiracy to violate the FCPA, in addition to conspiracy to commit money laundering.

We noted in a prior legal alert that prosecutors and defendants alike have needed to pursue novel theories in FCPA cases. It is likely that increased FCPA enforcement against individuals will continue, as the DOJ continues to emphasize publicly its commitment to holding individuals accountable for foreign bribery, and as the DOJ continues to incentivize companies to identify key individuals involved in misconduct. The increased use of money laundering charges appears to be assisting the DOJ in these efforts, in the Hoskins case and elsewhere. Given this trend, it is likely that individuals will face harsher sanctions for bribery-related misconduct in the future.

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2 United States v. Diaz and Alarcon, Case No. 19-20294-CR-SCOLA/TORRES (S.D. Fl. May 9, 2019).
7 Former Uzbek Government Official And Uzbek Telecommunications Executive Charged In Bribery And Money Laundering Scheme Involving The Payment Of Nearly $1 Billion In Bribes, U.S. Dep’t of Justice, (March 7, 2019).

If you have any questions about this legal alert, please feel free to contact any of the attorneys listed under 'Related People/Contributors' or the Eversheds Sutherland attorney with whom you regularly work.