THE GUIDE TO ANTI-MONEY LAUNDERING

FIRST EDITION

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Publisher's Note

The Guide to Anti-Money Laundering is published by Global Investigations Review (GIR) – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing. We tell our readers everything they need to know about all that matters in their chosen professional niche.

Thanks to GIR's position at the heart of the investigations community, we often spot gaps in the literature. *The Guide to Anti-Money Laundering* is a good example. For, despite a greater effort than ever to prosecute and eliminate money laundering by targeting financial gatekeepers, there is still no systematic work tying together all the trends in the area. This guide addresses that.

Its title is a little misleading. In fact, it covers both sides of the coin – trends in both the enforcement of money laundering laws (comprising Part I) and the operation of anti-money laundering regimes and the exigencies of compliance (Part II). Incorporating all of that in the title would have made it a little long (and slightly alarming: '*A Guide to Money Laundering . . .*' sounds quite wrong).

The guide is part of GIR's steadily growing technical library. This began six years ago with the first appearance of the revered GIR *Practitioner's Guide to Global Investigations*. *The Practitioner's Guide* tracks the life cycle of any internal investigation, from discovery of a potential problem to its resolution, telling the reader what to do or think about at every stage. Since then, we have published a series of volumes that go into more detail than is possible in *The Practitioner's Guide* about some of the specifics, including guides to sanctions, enforcement of securities laws, compliance and monitorships. I urge you to get copies of them all (they are available free of charge as PDFs and e-books on our website - www.globalinvestigationsreview.com).

Last, I would like to thank our external editor, Sharon Cohen Levin, for helping to shape our lumpier initial vision, and all the authors and my colleagues for the elan with which they have brought the guide to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at insight@globalinvestigationsreview.com.

David Samuels
Publisher, GIR
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CHAPTER 4

Money Laundering and International Corruption

Zachary Goldman, Erin Sloane, Emily Stark and Jason Raymond[1]

With a different structure from the US Foreign Corrupt Practices Act (FCPA), the Money Laundering Control Act (MLCA) has become an important tool in the US government's fight against international corruption. The reach of the MLCA is not limited to individuals or companies who personally visit the shores of the United States. Indeed, federal prosecutors have increasingly used the MLCA to charge foreign officials and others in international bribery schemes who had limited or no direct contact with the United States, especially after a decision by the Second Circuit in December 2020. That decision, *United States v. Ho*, held that the MLCA permits prosecutions in the United States when a transaction clears or goes through a US correspondent bank[2] – reasoning that stands to see the MLCA continue to figure prominently in international corruption prosecutions,

1 Zachary Goldman and Erin Sloane are partners, Emily Stark is a counsel and Jason Raymond is an associate at Wilmer Cutler Pickering Hale and Dorr LLP.

2 984 F.3d 191 (2d Cir. 2020), cert. denied, 141 S. Ct. 2862 (2021).

in addition to a new wave of sanctions enforcement actions coming out of the Russian invasion of Ukraine, an area in which the US Department of Justice (DOJ) has pledged increased activity.[3]

FCPA's inherent jurisdictional limitations

The numerous and varied FCPA resolutions (plea agreements, deferred prosecution agreements and non-prosecution agreements) since the statute's enactment in 1977 prove the broad interpretation and global reach of the FCPA's anti-bribery provisions. Nonetheless, the three main jurisdictional triggers of the anti-bribery provisions do have some inherent limitations. These provisions reach the conduct of:

- issuers[4] (both US and foreign) and domestic concerns[5] who make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of a violation of the FCPA;
- US issuers and domestic concerns who corruptly engage in conduct outside the United States, whether or not the conduct makes use of interstate commerce; and
- foreign nationals who, while in the territory of the United States, (1) corruptly make use of the mails or any means of interstate commerce or (2) commit acts in furtherance of a violation of the FCPA.

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3 See US Dep't of Justice, Office of Public Affairs, 'Deputy Attorney General Lisa O. Monaco Delivers Keynote Remarks at 2022 GIR Live: Women in Investigations' (16 June 2022) (https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-keynote-remarks-2022-gir-live-women (accessed 10 July 2023) (discussing increased sanctions enforcement and noting: 'Over the last couple of months, I've given notice of that sea change by describing sanctions as "the new FCPA".')); see also Joseph R Biden, Jr, President of the United States, 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest' (3 June 2021) (https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/ (accessed 10 July 2023) (describing efforts to fight corruption globally by, among other things, using anti-money laundering and sanctions tools in concert with the US Foreign Corrupt Practices Act (FCPA)).

4 An issuer is 'any person who issues or proposes to issue any security', 15 U.S.C. § 78c(a)(8), and an issuer company is a company that has issued securities registered in the United States or that is subject to the reporting provisions of the 1934 Act or that is required to file reports under Section 15(d) of the Act, 15 U.S.C. § 78dd-1(a).

5 A domestic concern is (1) any business that has its principal place of business in the United States or that is organized under the laws of the United States, its territories, possessions, states, or commonwealths, U.S.C. § 78dd-2(h)(1)(B), and (2) 'any individual who is a citizen, national, or resident of the United States', 15 U.S.C. § 78dd-2(h)(1)(A).

In the context of FCPA enforcement, 'instrumentality' and 'interstate commerce' have been broadly interpreted: any use of the mail, telephone, email, financial transaction or method of interstate transportation is likely to trigger jurisdiction unless the communication, transmittal or transport occurs entirely outside the United States. Similarly, 'nationality jurisdiction' gives US authorities broad reach over US persons and companies regardless of where the misconduct occurs; however, establishing jurisdiction over foreign nationals while in the territory of the United States – known as 78dd-3 territorial jurisdiction – has proven a more difficult path to enforcement for US authorities, with courts repeatedly holding that physical presence in the United States is required.[6] Accordingly, while sending a wire to or from a US bank constitutes interstate commerce, it is not the requisite physical presence needed to establish conduct '*in* the territory' under Section 78dd-3.

In addition to these jurisdictional thresholds, the FCPA does not provide a means to legal action against the bribe recipient, even when the bribe recipient is a foreign government official. This does not mean the actions of foreign government official bribe recipients are unimportant or out of scope for US authorities. On the contrary, in his June 2021 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest', President Biden noted that corruption 'corrodes public trust; hobbles effective governance' and 'undermines democracies worldwide'. He identified as priorities holding accountable corrupt individuals and 'addressing the demand side of bribery'.[7] Because the FCPA is not a viable enforcement mechanism against bribe recipients, prosecutors frequently rely on the MLCA and sanctions laws to reach to corrupt conduct not under the jurisdiction of the FCPA.

MLCA's broad jurisdictional reach in international corruption cases

Several of the FCPA's jurisdictional constraints are avoided by using the MLCA and a money laundering charging theory to fight international corruption. Under the MLCA, as affirmed by a recent Second Circuit decision,[8] money laundering charges can be brought against individuals – including foreign nationals who may have never set foot in the United States – where the only US nexus is a

6 See, e.g., *United States v. Hoskins*, 902 F.3d 69, 84 (2d Cir. 2018); Transcript of Jury Trial at 29, *United States v. Goncalves*, No. 09-CR-335 (D.D.C. 6 June 2011), ECF No. 434.

7 Joseph R Biden, Jr, President of the United States, 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest' (op. cit. note 3).

8 *Ho*, 984 F.3d (op. cit. note 2), at 203–07.

financial transaction that cleared through a US correspondent bank.[9] Thanks to the pre-eminence of the US financial system, which clears most US dollar-denominated transactions of more than a *de minimis* value, no matter where in the world they are initiated and terminated, this jurisdictional element is typically met in international bribery schemes where payments are denominated in US dollars. This phenomenon can make it much easier for the DOJ to bring money laundering charges, as opposed to FCPA bribery charges, in international corruption cases.

MLCA's international money laundering provision

The MLCA prohibits several forms of money laundering, including international money laundering, and imposes a maximum penalty of up to 20 years in prison.[10] Criminal liability under the international money laundering provision of the MLCA requires federal prosecutors to prove three elements beyond a reasonable doubt: (1) that the defendant transferred money (2) from the United States to another country or from another country to the United States (3) to promote certain criminal activities or to conceal their proceeds.[11] Notably, the MLCA applies extraterritorially if (1) the proscribed conduct is by a US citizen or occurs 'in part' in the United States and (2) the transaction, or series of related transactions, involves funds exceeding US$10,000 in value.[12]

To satisfy the first element of international money laundering, federal prosecutors must prove that the defendant transported, transmitted or transferred a monetary instrument or funds.[13] It is long-settled law that a wire transfer can satisfy this element.[14] To satisfy the second element, prosecutors must show that funds moved 'from' the United States to another country, or from another country

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9 In transactions involving correspondent banks, a non-US originator may seek to transfer US dollars to a non-US beneficiary using non-US banks. To effectuate the transfer, the originator's bank will remit funds to its correspondent account at a US financial institution. If the beneficiary's bank uses the same US correspondent, the correspondent will credit the beneficiary bank's account, after which point the beneficiary's bank may make the funds available to the beneficiary. If the beneficiary's bank and originator's bank do not use the same US correspondent, there may be several intermediate transactions between the originator's bank and the beneficiary's bank.

10 18 U.S.C. § 1956(a), (b).

11 18 U.S.C. § 1956(a)(2).

12 18 U.S.C. § 1956(f).

13 18 U.S.C. § 1956(a)(2).

14 *United States v. Piervinanzi*, 23 F.3d 670, 678 (2d Cir. 1994). Other circuits have similarly held that international wire transfers were a transfer of 'a monetary instrument or funds' under 18 U.S.C. § 1956(a)(2). See *United States v. Jenkins*, 633 F.3d 788 (9th Cir. 2011).

'to' the United States.[15] And to satisfy the third element, prosecutors must prove that the defendant made the transfer with the intent to promote or to conceal the proceeds of a specified unlawful activity (as stated in the text of the MLCA).[16] Specified unlawful activities include violations of the FCPA, the International Emergency Economic Powers Act and other US laws.[17]

Notably, specified unlawful activities are not confined to violations of US law. Implicating the laws of other nations, the text of the MLCA also identifies 'an offense against a foreign nation involving . . . bribery of a foreign official' as a specified unlawful activity that can generate liability under the statute. To establish liability under the MLCA for financial transactions intended to promote an offence against a foreign nation – where that offence is the bribery of a foreign official – the DOJ must prove that the offence itself constituted a violation of that foreign nation's law.[18] This has required US courts, on occasion, to conduct an inquiry into the laws of other jurisdictions.

For example, *United States v. Thiam* involved a US citizen who served as Minister of Mines and Geology of the Republic of Guinea in 2009 and 2010, 'in which capacity he received an $8.5 million bribe from a Chinese entity in return for supporting a Chinese joint venture with Guinea', which he then transferred to bank accounts he possessed in the United States.[19] He was convicted under the MLCA but, on appeal, he challenged his conviction on the basis that the payments in question had not been exchanged for an 'official act', as required under US bribery statutes and as defined by the US Supreme Court.[20] The Second Circuit disagreed, however. The court observed that the 'predicate' acts for the money laundering charge – bribery of a foreign official – arose under the Guinea Penal Code: 'Articles 192 and 194 of Guinea's Penal Code criminalize "passive corruption", or the receipt of bribes by a public official, and "active corruption", or

15 18 U.S.C. § 1956(a)(2).

16 18 U.S.C. § 1956(a)(2)(A), (B).

17 18 U.S.C. § 1956(c)(7).

18 *United States v. Thiam*, 934 F.3d 89, 92 (2d Cir. 2019), cert. denied, 140 S. Ct. 654 (2019); see also *United States v. Prevezon Holdings LTD.*, 122 F. Supp. 3d 57, 72–73 (S.D.N.Y. 2015) (holding that an 'offense against a foreign nation involving . . . bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official' required establishing a violation of foreign law at trial).

19 ibid., at 92.

20 ibid., at 93; see *McDonnell v. United States*, 136 S. Ct. 2355, 2371–72 (2016).

the payment of bribes to a public official, respectively'.[21] Accordingly, the court held that *McDonnell* did not apply to interpretations of foreign law, and so upheld Thiam's conviction.[22]

Notably, *Thiam* did not involve a defendant who was convicted, or even charged, with an offence in the foreign jurisdiction in question, and courts have not treated the MLCA as requiring an antecedent conviction or charge by a foreign tribunal.[23] This has raised the question of how US courts determine whether a violation of foreign law has occurred. Rule 26.1 of the Federal Rules of Criminal Procedure empowers a US district court to interpret foreign law based on 'any relevant material or source', and US courts have relied on expert testimony and affidavits,[24] published foreign legal materials[25] and ordinary principles of statutory interpretation[26] in construing foreign law to determine whether that law might serve as a predicate to money laundering charges. No foreign charge or conviction is required.[27]

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21 ibid., at 93.

22 ibid., at 95.

23 ibid., at 94 ('Although Thiam was not prosecuted in Guinea for his actions, presumably he could have been, and our interpretation of the Guinean statutes at issue here should not vary depending on that event.').

24 ibid., at 93.

25 *United States v. Wathne*, No. CR 05-0594 VRW, 2008 WL 4344112, at *11 (N.D. Cal. Sept. 22, 2008) ('"[E]expert testimony accompanied by extracts from foreign legal materials has been and will likely continue to be the basic mode of proving foreign law"') (quoting *Universe Sales Co. v. Silver Castle, Ltd.*, 182 F.3d 1036, 1038 (9th Cir.1999)).

26 *United States v. Chi*, 936 F.3d 888, 895, 897 (9th Cir. 2019).

27 Notably, in *Thiam*, the Second Circuit declined to apply the US Supreme Court's definition of an 'official act' to Guinea's criminal law. 'Principles of international comity . . . counsel against applying the [domestic] "official act" definition . . . to Articles 192 and 194 of Guinea's Penal Code because this would require us to interpret Guinean law and, in doing so, limit conduct that Guinea has chosen to criminalize.' 934 F.3d, at 94. As discussed, to the extent available, courts rely instead on foreign interpretations of relevant texts, as well as expert testimony regarding foreign interpretations, and the plain meaning of the text itself.

MLCA's limitations in international corruption cases

The MLCA can apply to overseas conduct involving non-US persons because of a clear statement of extraterritoriality found in the text of the statute.[28] Less clear, however, were the types of conduct that satisfied the second element of the MLCA's international money laundering provision: the movement of funds from or to the United States, at least as a historical matter.

The stakes in this question were on full display in *United States v. Boustani*, an international corruption case in which prosecutors charged money laundering but brought no FCPA charges.[29] *Boustani* involved allegations that the defendant, Jean Boustani, and his co-conspirators executed a fraudulent scheme to obtain business and inflate profits for companies based in the United Arab Emirates (UAE), to enrich themselves and Mozambican officials. Boustani, a Lebanese citizen and the lead negotiator and salesman for a UAE-based shipbuilding company, was alleged to have arranged more than US$150 million in bribes to Mozambican officials in exchange for coastal monitoring contracts. These payments cleared through US financial institutions. Prosecutors charged Boustani with conspiracy to commit securities fraud, wire fraud conspiracy, and conspiracy to commit money laundering, but brought no FCPA charges.[30]

Although Boustani moved unsuccessfully to dismiss the money laundering charge,[31] he ultimately prevailed at trial, despite admitting, while on the stand, to bribing Mozambican officials and receiving kickbacks. Boustani's defence focused on how his conduct, including the bribe payments, had nothing to do with the United States. Boustani emphasised that he was from Lebanon, had never set foot in the United States and was not affiliated to any US company. In respect of the US dollar-clearing payments, Boustani maintained that they did not involve

28 18 U.S.C. § 1956(f) (providing for 'extraterritorial jurisdiction over the conduct prohibited by this section if . . . in the case of a non-United States citizen, the conduct occurs in part in the United States' and the transaction (or transactions) exceed US$10,000 in value). See *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 335 (2016) (holding that 'the presumption against extraterritoriality . . . [means that] [a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application').

29 Indictment, *United States v. Boustani*, No. 18-CR-00681 (E.D.N.Y. 19 December 2018).

30 Prosecutors did not (and likely could not, per *Hoskins*) charge Boustani under the FCPA. Boustani was a foreign national, was not affiliated with a US issuer or domestic concern, and had never set foot in the United States. FCPA bribery, however, was nonetheless one part of the basis for the money laundering conspiracy charge.

31 Motion to Dismiss at 35–36, *United States v. Boustani*, No. 18-CR-00681 (E.D.N.Y. 21 June 2019), ECF No. 98.

any actual transfer of money into or out of the United States. He even called a witness, who testified that when wire transfers are cleared through the US banks, no money is actually moved, only Swift messages are sent and received.

That argument appeared to sway the jury. Jurors who spoke to reporters after the trial stated that their verdict 'came down to a matter of venue [and location]'.[32] The jury foreman reportedly stated: 'I think as a team, we couldn't see how this was related to the Eastern District of New York.'[33] Another juror explained: 'We couldn't find any evidence of a tie to the Eastern District . . . That's why we acquitted.'[34]

Second Circuit affirms broad jurisdictional reach of MLCA

The Second Circuit in *United States v. Ho*, however, later resolved the legal question of whether transactions clearing through US correspondent banks are from or to the United States and, therefore, provide a sufficient basis for international money laundering charges under the MLCA. In *Ho*, the defendant Patrick Ho, a Hong Kong national, was convicted of violations of the MLCA and the anti-bribery provisions of the FCPA for his involvement in schemes to bribe government officials in Chad and Uganda to secure business for a Chinese energy conglomerate.[35] Ho appealed his conviction to the Second Circuit and argued that the MLCA did not reach the transactions at issue – bribe payment wire transfers in US dollars from Hong Kong to Uganda – which Ho claimed only passed through correspondent banks in the United States and did not go to or

32 Decision & Order Denying Motions to Dismiss at 14, *United States v. Boustani*, No. 18-CR-00681 (E.D.N.Y. 3 October 2019), ECF No. 231 (citing *United States v. All Assets Held at Bank Julius Baer & Co.*, 251 F. Supp. 3d 82, 92 (D.D.C. 2017)).

33 Stewart Bishop, 'Boustani Acquitted in $2B Mozambique Loan Fraud Case', Law360 (2 December 2019) (https://www.law360.com/articles/1221333/boustani-acquitted-in-2b-mozambique-loan-fraud-case (accessed 10 July 2023)).

34 id.

35 US Dep't of Justice, press release 18-426, 'Patrick Ho, Former Head Of Organization Backed By Chinese Energy Conglomerate, Convicted Of International Bribery, Money Laundering Offenses' (5 December 2018), https://www.justice.gov/usao-sdny/pr/patrick-ho-former-head-organization-backed-chinese-energy-conglomerate-convicted (accessed 10 July 2023)).

from the United States.[36] Ho claimed that the second element of the MLCA's international money laundering provision required a transaction to originate from or terminate in a bank account in the United States.[37]

The Second Circuit rejected Ho's argument, however, holding that the ordinary understanding of the terms 'to', 'from' and 'through' does not require them to be mutually exclusive. The Court held that the MLCA permits a prosecution to be brought in 'any district in which the financial or monetary transaction is conducted' and held that this includes the use of an electronic funds transfer (EFT) through correspondent bank accounts.[38] Noting that Ho took advantage of US-based correspondent accounts to conduct US dollar-denominated transactions, the Second Circuit held that 'transfers from one place to another' were 'severable' and that the MLCA's venue provisions did not prohibit the court from finding that transactions could be considered severable when moving through US correspondent banks.[39] These transactions, therefore, constituted the movement of funds to or from the United States and satisfied the second element of the international money laundering provision. In so holding, the Court refused to assume that 'Congress did not intend to criminalize the use of United States financial institutions as clearinghouses for criminal money laundering and conversion into United States currency'.[40]

The *Ho* decision conclusively resolved any question as to whether the use of US correspondent banks could serve as a sufficient basis for bringing international money laundering charges under the MLCA. Jurisdiction for such charges is proper even when the sole US nexus is a financial transaction that cleared through the US financial system.[41] This includes transactions that are initiated

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36 The US$500,000 wire at issue in *Ho* originated from HSBC Hong Kong, through to HSBC Bank US then credited to Deutsche Bank in New York as the correspondent for the beneficiary bank Stanbic Bank in Uganda for final credit to a charitable organization in Uganda affiliated with the Foreign Minister of Uganda.

37 *Ho*, 984 F.3d at 203 ('Ho asserts that the money laundering statute does not cover wire transfers where the United States is neither the point of origination nor the end destination for the money, but is instead just an intermediate stop along the way.').

38 *Ho*, 984 F.3d at 205–06; 18 U.S.C. § 1956(i)(1)(A).

39 *Ho*, 984 F.3d at 205–06.

40 *Ho*, 984 F.3d at 207 (quoting *United States v. All Assets Held at Bank Julius Baer & Co*, 571 F. Supp. 2d 1, 12 (D.D.C. 2008)).

41 *Ho*, 984 F.3d at 207 ('we decline to bar juries from finding that a defendant "transports, transmits, or transfers" money "from" or "to" the United States . . . when a defendant arranges a wire transfer that uses the US banking system to go from a foreign source, to a correspondence bank in the United States, to another bank in the United States, and then to a final foreign beneficiary').

and terminated a world away from the United States but that nonetheless clear through banks in the United States, as the Hong Kong-to-Uganda payments did in *Ho*. Accordingly, federal prosecutors have increasingly turned to the MLCA in fighting international corruption, especially when charging foreign nationals who may have had limited or no direct contact with the United States.

However, even after the *Ho* decision, *Boustani* still represents a cautionary tale for prosecutors who might reflexively rely on the MLCA in bringing international corruption cases. After all, a jury might still acquit, as it did in *Boustani*, on the basis that the case has nothing to do with the United States – irrespective of the use of US correspondent banks. This is especially true when the defendant is a foreign national who has never set foot in the United States and the conduct at issue involves bribery schemes that took place elsewhere. Proper venue, at least as a matter of law, is no guarantee of a conviction. Future defendants charged with money laundering who have limited or no direct contacts with the United States are certain to make use of some of Boustani's key arguments at trial. Indeed, *Boustani* is illustrative of the practical – if not the legal – limits of the MLCA in prosecuting international corruption.

MLCA favoured by federal prosecutors in corruption cases

Nonetheless, in light of the jurisdictional limitations associated with the FCPA – and the broad jurisdictional reach of the MLCA – the DOJ has increasingly used the MLCA to target international bribery and corruption. According to data compiled by Stanford Law School's FCPA Clearinghouse, there have been 147 bribery-related prosecutions in which the DOJ has brought charges under the MLCA, 72 of which have arisen in the past five years alone.[42] In fact, in several of these cases – at least 26 initiated since the start of 2020 – prosecutors brought

42 Stanford Law House, FCPA Clearinghouse, Enforcement Actions, Advanced Search (https://fcpa.stanford.edu/search-results.html (available to account holders)), Related Statutory Provision: Conspiracy to Commit Money Laundering; 18 U.S.C. §§ 1956, 1957 or Money Laundering; 18 U.S.C. § 1956 or Money Laundering; 18 U.S.C. § 1957 (since 1 January 2018).

no FCPA charges despite fact patterns that were highly suggestive of or clearly involving bribery, presumably because they lacked jurisdiction under the FCPA and instead relied solely on the MLCA and other statutes.[43]

Prosecutors' use of MLCA to target international bribery schemes

The MLCA has provided federal prosecutors with the means to charge and convict recipients of foreign government official bribes, whose misconduct is outside the reach of the FCPA. For example, in December 2020, the DOJ announced charges against a former Venezuelan national treasurer and her spouse in connection with an international bribery and money laundering scheme. Claudia Patricia Diaz and Adrian Jose Velasquez were each charged with one count of conspiracy to commit money laundering and two counts of money laundering after a Venezuela businessman paid them millions of dollars in bribes to secure the rights to conduct foreign currency exchange transactions for the Venezuelan government at favourable rates.[44] The Venezuelan businessman was a resident of the United States (and, therefore, a domestic concern under the FCPA) and was charged with conspiracy to violate the FCPA, whereas Diaz and Velasquez faced only money laundering charges. According to the DOJ, the Venezuelan businessman had transferred money, including to accounts in Florida, that Diaz and Velasquez used to purchase private jets, yachts, homes, champion horses, high-end watches and a fashion line.

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43 See, e.g., Information, *United States v. Nass*, No. 23-cr-20089 (S.D. Fla. 24 February 2023); Information, *United States v. Gomez*, No. 22-cr-00065 (E.D.N.Y. 24 March 2022); Information, *United States v. Hanst*, No. 22-cr-00075 (E.D.N.Y. 16 March 2022); Indictment, *United States v.* Golindando., No. 22-cr-20087 (S.D. Fla. 8 March 2022); Indictment, *United States v. Vargas*, No. 21-cr-20509 (S.D. Fla. 7 October 2021); United *States v. Barba*, No. 21-cr-00259 (E.D.N.Y. 18 May 2021); Information, *United States v. Manzanilla*, No. 21-cr-00260 (E.D.N.Y. 14 May 2021); Information, *United States v. Kohut*, No. 21-cr-00115 (E.D.N.Y. 6 April 2021); Superceding Indictment, *United States v. Jongh-Atencio*, No. 20-cr-00305 (S.D. Tex. 16 December 2020); Indictment, *United States v. D'Amato*, No. 20-cr-20241 (S.D. Fla. 24 November 2020); Indictment, *United States v. Weinzierl*, No. 20-cr-00383 (E.D.N.Y. 18 September 2020).

44 See US Dep't of Justice, press release 22-1364, 'Former Venezuelan National Treasurer and Husband Convicted in International Bribery Scheme' (15 December 2022) (https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-husband-convicted-international-bribery-scheme (accessed 10 July 2023)).

In total, Diaz and Velasquez accepted more than US$100 million in bribes and were convicted in December 2022 after a jury trial, with each later sentenced to 15 years in prison.[45]

In October 2022, Arturo Carlos Murillo, the former minister of the Bolivian government, pleaded guilty to conspiracy to launder bribes received in exchange for corruptly helping a Florida-based company win a US$5.6 million contract from the Bolivian government.[46] Through a scheme that spanned November 2019 to April 2020, Murillo received at least US$532,000 in bribes in exchange for assisting the Florida-based company in winning a contract from the Bolivian Ministry of Defence. Murillo and his co-conspirators laundered proceeds from the bribery scheme through the US financial system, including bank accounts in Florida. Murillo was sentenced in January 2023 to 70 months in prison and three years of supervised release.[47]

Use of MLCA in aftermath of Russia's invasion of Ukraine

Beyond combating international bribery, the MLCA is a useful prosecutorial tool in fighting other forms of illicit financial activity and has figured prominently in several cases brought by federal prosecutors involved in a new task force created in the aftermath of Russia's invasion of Ukraine in February 2022.

Creation of Task Force KleptoCapture

On the first day of the invasion, 24 February 2022, the Biden administration issued what would be the first of several rounds of unprecedented and expansive economic sanctions and export controls against Russian companies, financial institutions and elites, including several oligarchs with close ties to Russian

45 See US Dep't of Justice, press release 23-437, 'Former Venezuelan National Treasurer and Her Husband Sentenced in Money Laundering and International Bribery Scheme' (19 April 2023) (https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-husband-sentenced-money-laundering-and (accessed 10 July 2023)).

46 See US Dep't of Justice, press release 22-1131, 'Former Government of Bolivia Minister Pleads Guilty to Conspiracy to Launder Proceeds of Bribery Scheme' (20 October 2022) (https://www.justice.gov/opa/pr/former-bolivia-minister-pleads-guilty-conspiracy-launder-proceeds-bribery-scheme (accessed 10 July 2023)).

47 See US Dep't of Justice, press release 23-7, 'Former Bolivian Minister of Government Sentenced for Bribery Conspiracy' (4 January 2023) (https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy (accessed 10 July 2023)).

President Vladimir Putin.[48] Just days later, on 2 March 2022, Attorney General Merrick Garland announced the launch of Task Force KleptoCapture, an interagency effort to enforce the sweeping sanctions, export restrictions and economic countermeasures imposed on Russian interests.[49] In making the announcement, Attorney General Garland warned that the 'Justice Department will use all of its authorities to seize the assets of individuals and entities who violate these sanctions', with Deputy Attorney General Lisa Monaco adding: 'Oligarchs be warned: we will use every tool to freeze and seize your criminal proceeds.'[50]

The MLCA has been one such authority and tool. As at May 2023, Task Force KleptoCapture has used the MLCA in at least 11 prosecutions to charge individuals for activities relating to sanctions evasion, export violations and related illicit conduct. Notably, several of these prosecutions have targeted non-US persons, including Russian, Ukrainian, Estonian and UK nationals, who had limited or no direct contact with the United States.

Recent prosecutions by Task Force KleptoCapture

For example, the DOJ has used the MLCA to bring money laundering charges against several individuals who are alleged to have helped sanctioned Russian oligarch Viktor Vekselberg evade US sanctions. According to separate indictments unsealed earlier this year, Vladislav Osipov, a Russian national, and Richard Masters, a UK national, were charged with facilitating a sanctions evasion and money laundering scheme in relation to the ownership and operation of Tango, Vekselberg's US$90 million, 255-foot luxury yacht.[51]

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48 US Dep't of the Treasury, press release, 'U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs' (24 February 2022) (https://home.treasury.gov/news/press-releases/jy0608 (accessed 10 July 2023)).

49 US Dep't of Justice, press release 22-179, 'Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture' (2 March 2022) (https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture (accessed 10 July 2023)).

50 id.

51 US Dep't of Justice, press release 23-67, 'Arrest and Criminal Charges Announced Against British and Russian Businessmen for Facilitating Sanctions Evasion of Russian Oligarch's $90 Million Yacht' (20 January 2023) (https://www.justice.gov/opa/pr/arrest-and-criminal-charges-announced-against-british-and-russian-businessmen-facilitating (accessed 10 July 2023)).

According to the charging documents, Osipov and Masters facilitated the operation of Tango through the use of US companies and the US financial system to obfuscate Vekselberg's ownership. Osipov designed a complicated ownership structure of shell companies to hide Vekselberg's ownership of the yacht while Masters used a false name for the yacht, the Fanta, to hide from financial institutions that payments in US dollars were ultimately for the benefit of Tango and Vekselberg. US financial institutions then processed hundreds of thousands of dollars in transactions for Tango that they would have blocked had they known of Vekselberg's involvement. Among other offences, federal prosecutors charged both Osipov and Masters with international money laundering. As a jurisdictional basis for the charges, prosecutors cited the series of transactions involving US financial institutions, including wire transfers used to pay Tango's registration, mooring and resort fees.[52] Masters was arrested by Spanish authorities in January 2023 and will undergo extradition proceedings to the United States. Osipov is still at large.

In another recent example, federal prosecutors charged Andrey Shevlyakov, an Estonian national, with international money laundering under the MLCA, among other crimes, for procuring US-made electronics on behalf of the Russian government and military in violation of US export controls.[53] To deliver his goods, which were acquired through a series of front companies, Shevlyakov is alleged to have run an intricate logistics operation involving frequent smuggling trips across the Russian border by himself and others. He also initiated at least two wire transfers through US correspondent banks, giving federal prosecutors the jurisdictional basis to charge him with international money laundering.[54] Estonian authorities arrested Shevlyakov in March 2023 and he is awaiting extradition proceedings to the United States.

52 Indictment at 23–24, *United States v. Osipov*, No. 1:22-cr-00369 (D.D.C. 17 November 2022); Indictment at 23–24, *United States v. Masters*, No. 1:22-cr-00368 (D.D.C. 17 November 2022).

53 US Dep't of Justice, press release, 'Estonian National Charged with Helping Russian Military Acquire U.S. Electronics, Including Radar Components; Sought-Computer Hacking Software' (5 April 2023), https://www.justice.gov/usao-edny/pr/estonian-national-charged-helping-russian-military-acquire-us-electronics-including (accessed 10 July 2023)).

54 Indictment at 16, *United States v. Shevlyakov*, No. 1:22-cr-00490 (E.D.N.Y. 27 October 2022).

Conclusion

Task Force KleptoCapture has used the MLCA in several other recent prosecutions, targeting both US and non-US persons who have violated the unprecedented economic measures imposed by the United States on Russian interests.[55] These prosecutions illustrate how the DOJ is regularly turning to the MLCA to fight illicit activity on the international stage. Although federal prosecutors have increasingly used the MLCA to charge international bribery schemes involving foreign officials and others with limited or no direct contact with the United States, prosecutors have also relied on the MLCA– as these recent prosecutions by Task Force KleptoCapture show – to prosecute sanctions evasion by Russian oligarchs and export violations by smugglers working on behalf of Russia's war machine. Indeed, money laundering charges are becoming a potent weapon in the fight against varied forms of illicit financial activity, a trend that is likely to persist in the coming years.

55 See, e.g., *United States v. Wise*, No. 1:23-cr-00073 (S.D.N.Y.) (US person); *United States v. Voronchenko*, No. 1:23-cr-00073 (S.D.N.Y.) (Russian national but legal permanent resident of the United States); *United States v. McGonigal*, No. 1:23-cr-00016 (S.D.N.Y.) (US person); United States v. Orekhov, No. 1:22-cr-000434 (E.D.N.Y.) (several non-US persons); *United States v. Derkach*, No. 1:22-cr-00432 (E.D.N.Y.) (Ukrainian national).