

FCPA Update

A Global Anti-Corruption Newsletter



Also in this issue:

6 UK Investigation Results in First Conviction and Sentencing of Foreign Public Official under Bribery Act

[Click here for an index of all FCPA Update articles](#)

If there are additional individuals within your organization who would like to receive *FCPA Update*, please email prohlik@debevoise.com, eogrosz@debevoise.com, or pferenz@debevoise.com

European Wealth Manager Pleads Guilty in PDVSA-Linked FCPA Case After Fifth Circuit Twice Reverses Dismissal of Indictment

Bringing an end to one chapter in the long-running series of criminal prosecutions related to bribery involving the Venezuelan national oil company PDVSA, Portuguese national Paolo Jorge Da Costa Casqueiro Murta reached an agreement to plead guilty in late April¹ and was sentenced on May 21, 2024 to time served, *i.e.*, 13 months in custody/home confinement in addition to time spent unable to leave the United States since his July 2021 extradition.² Murta and another defendant, César David Rincón Godoy, became the eighteenth and nineteenth defendants

[Continued on page 2](#)

1. *United States v. De Leon-Perez*, No. 4:17-cr-00514-8, docket minute entry (S.D. Tex. filed Apr. 24, 2024).
2. See Austin Cope, "Murta sentenced to time served after guilty plea," *Global Investigations Review* (May 21, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/murta-sentenced-time-served-after-guilty-plea>; see also *United States v. Murta*, Case 4:17-cr-00514, Docket 631, Pablo Murta's Sentencing Memorandum (S.D. Tex. Filed May 19, 2024).

European Wealth Manager
Pleads Guilty in PDVSA-Linked
FCPA Case After Fifth Circuit
Twice Reverses Dismissal
of Indictment

Continued from page 1

to be sentenced in PDVSA-related cases filed in the Southern District of Texas. For DOJ, the Murta case is another example of its success in bringing charges against foreign bankers and investment professionals who participate in bribery schemes. The case is also an example of the difficulties facing FCPA defendants in obtaining pre-trial relief. Prior to pleading guilty, Murta's charges were twice dismissed by the district court (once with prejudice), and twice reinstated by the Fifth Circuit Court of Appeals.

Charges Against Murta and the PDVSA Defendants

In August 2017, DOJ charged Luis Carlos de Leon-Perez and four others in connection with an alleged conspiracy to bribe PDVSA officials (including some of the charged defendants) in order to obtain contracts with PDVSA or to be paid for outstanding invoices that were delayed due to a liquidity crisis in Venezuela.³ The conduct at issue took place between 2011 and 2013. The indictment listed a large number of co-conspirators (some of whom were separately indicted) as well as an unnamed Swiss company and a Swiss banker who was involved in setting up back accounts allegedly used to hide bribe payments.⁴

In April 2019, a superseding indictment was filed, adding three additional defendants. Two of these defendants, Daisy Teresa Rafoi Bleuler, a partner of the Swiss wealth management firm referred to in the original indictment, and Murta, a dual Swiss-Portuguese national who was an employee of a different Swiss wealth management firm,⁵ were charged with money laundering, conspiracy to commit money laundering, and conspiracy to violate the FCPA.⁶ They were alleged to have assisted the co-conspirators in setting up bank accounts in offshore jurisdictions, establishing shell companies, and papering relevant transactions with allegedly false justifications for payment. The jurisdictional basis for the FCPA charge was that they were allegedly "agents" of "domestic concerns" (i.e., their co-conspirators were U.S. residents or dual U.S./Venezuelan citizens); Murta was additionally alleged to have attended one meeting in Miami, Florida in furtherance of the scheme.

Continued on page 3

-
3. *United States v. De Leon-Perez*, No. 4:17-cr-00514-8, Docket 1, Indictment ¶¶48-54 (S.D. Tex. filed Aug. 23, 2017) (hereinafter "Indictment").
 4. *Id.* at ¶¶ 32-33.
 5. *United States v. Villalobos-Cardenas, et al.*, No. 4:17-cr-00514-8, Docket 129, Superseding Indictment ¶¶ 11-12, 38-39 (S.D. Tex. filed Apr. 24, 2019) (hereinafter "Superseding Indictment").
 6. See *United States v. Murta*, Docket 631, *supra* n. 2; *United States v. Rafoio-Bleuler*, Case 4:17-cr-00514, Docket 255, *2-*3 (S.D. Tex. Filed Nov. 10, 2021).

European Wealth Manager
Pleads Guilty in PDVSA-Linked
FCPA Case After Fifth Circuit
Twice Reverses Dismissal
of Indictment

[Continued from page 2](#)

District Court Success and Appellate Disappointment for Murta

As we previously reported, in November 2021, Rafoi-Bleuler succeeded in having the district court dismiss charges against her on the ground that the government had failed to demonstrate that she belonged to any of the categories of defendants covered by the statute. Murta prevailed on a similar theory in July 2022.⁷ In both opinions, District Judge Kenneth M. Hoyt dismissed the charges because the government had failed to demonstrate in the indictment that an agency relationship existed between the foreign non-issuer defendants and their co-conspirators in the United States.⁸ In February 2023, the Fifth Circuit reversed on appeal, holding that agency was a merits question and that it is sufficient for an indictment merely to allege that someone acted as an agent. With regard to Murta, the Fifth Circuit also found that the superseding indictment's express statement that he attended a meeting in the United States was itself sufficient to withstand a motion to dismiss.⁹

“Murta’s guilty plea and the continuing proceedings against his co-defendant (Rafoi-Bleuler) signal DOJ’s willingness to go after even relatively small players in the global financial system if they facilitate international bribery.”

In June 2023, Murta succeeded a second time in convincing Judge Hoyt to dismiss the charges against him, this time based on a violation of the Speedy Trial Act. The dismissal was with prejudice, in part because of a finding of bad faith on the part of the government and in part because Portuguese authorities were also investigating the matter, making it unlikely a dismissal would result in immunity from charges.¹⁰ The Fifth Circuit again vacated the district court judgment, finding that although there had been a Speedy Trial Act violation, the district judge had erred in his analysis of the factors relevant to whether the dismissal should have been with prejudice.¹¹

[Continued on page 4](#)

-
7. See Bruce E. Yannett, Winston M. Paes, Philip Rohlik, and Sarah Grace DeYoung, “Fifth Circuit Reverses FCPA Dismissals, Holding Agency Allegations Sufficient Without Reaching Secondary Liability Issue of *Hoskins*,” FCPA Update, Vol. 14, No. 7 (Feb. 2023), <https://www.debevoise.com/insights/publications/2023/02/fcpa-update-february-2023>.
 8. *Id.* at 3.
 9. *United States v. Rafoi*, 59 F.4th 718, 730 (5th Cir. Feb. 8, 2023).
 10. *United States v. Murta*, No. 4:17-cr-00514-8, Docket 482, Memorandum and Order at 15-24 (S.D. Tex. June 6, 2023).
 11. *United States v. Murta*, No. 23-20276, 2023 WL 8227535 (5th Cir. Nov. 28, 2023). The opinion was withdrawn and reissued in January 2024, adding a footnote rejecting the district judge’s finding of bad faith on the part of the government. *United States v. Murta*, No. 23-20276, 2024 WL 64764 (5th Cir. Jan 5, 2024).

European Wealth Manager
Pleads Guilty in PDVSA-Linked
FCPA Case After Fifth Circuit
Twice Reverses Dismissal
of Indictment

Continued from page 3

Unusually, in remanding the case, the Fifth Circuit ordered the case to be reassigned to a different judge to determine whether the case should be dismissed, “because of the history of this case and some findings of the district judge not discussed herein.”¹²

Analysis

DOJ’s often repeated goal of holding individuals, not just companies, accountable for foreign bribery has had mixed results. It is still rare for individuals to be charged as part of corporate resolutions and the vast majority of individuals charged are related to a small number of cases, like the PDVSA case. In recent years, however, DOJ has been successful in charging foreign bankers or wealth management professionals who provided services that facilitated bribery schemes. For example, former Goldman Sachs banker Roger Ng was found guilty of money laundering and FCPA offenses in connection with the 1MDB scandal.¹³ Three former investment bankers at Credit Suisse (Europe) Limited pleaded guilty to wire fraud and money laundering offenses in connection with the Mozambique “Tuna Bond” scandal.¹⁴

Unlike the Goldman Sachs or Credit Suisse bankers, Murta was not an employee of an issuer and/or domestic concern. As a foreign wealth management professional unconnected with an issuer or even a large international bank, Murta’s guilty plea and the continuing proceedings against his co-defendant (Rafoi-Bleuler) signal DOJ’s willingness to go after even relatively small players in the global financial system if they facilitate international bribery.

The characteristics that led to DOJ’s ultimately successful prosecution of Murta also demonstrate the difficulties individuals encounter in defending against FCPA charges. DOJ was able to indict Murta primarily on the allegation that he served as an agent of his alleged co-conspirators. Such an allegation could be used to bring potentially all foreign non-issuers within the scope of the FCPA, raising legal questions that have already been addressed by the Second Circuit Court of Appeals in *U.S. v. Hoskins*.¹⁵ Murta raised these objections, but, as explained above, the Fifth Circuit’s February 2023 order relating to agency essentially precluded such arguments until trial. Unable to obtain pre-trial relief, Murta, separated from family and income,¹⁶ decided to plead guilty rather than remain in the United States and run the risk of a conviction at trial and a harsher sentence.

Continued on page 5

12. *Id.* at n.10.

13. See U.S. Dep’t. of Justice, “Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme” (Apr. 8, 2022), <https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering-scheme>.

14. See U.S. Dep’t. of Justice, “Credit Suisse Resolves Fraudulent Mozambique Loan Case in \$547 Million Coordinated Global Resolution” (Oct. 19, 2021), <https://www.justice.gov/usao-edny/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>.

15. *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018) and *United States v. Hoskins*, 44 F.4th 140 (2d Cir. 2022).

16. *United States v. Murta*, Case 4:17-cr-00514, Docket 631, Sentencing Memorandum (S.D. Tex. filed May 19, 2024).

European Wealth Manager
Pleads Guilty in PDVSA-Linked
FCPA Case After Fifth Circuit
Twice Reverses Dismissal
of Indictment

Continued from page 4

Conclusion

This case has demonstrated DOJ's ability to hold foreign financial professionals (even those not affiliated with international investment banks) accountable for their part in assisting violations of the FCPA, but also highlights the difficulty faced by defendants in criminal cases seeking to obtain the dismissal of their case before trial. Foreign defendants like Murta, in particular, are often detained pending trial, creating unique pressure to plead guilty and bring the matter to a close.

Winston M. Paes

Douglas S. Zolkind

Philip Rohlik

Winston M. Paes and Douglas S. Zolkind are partners in the New York office. Philip Rohlik is a counsel in the Shanghai office. Full contact details for each author are available at www.debevoise.com.

Continued on page 6

UK Investigation Results in First Conviction and Sentencing of Foreign Public Official under Bribery Act

On May 10, 2024, the former Chief of Staff to the President of Madagascar, Romy Andrianarisoa, was sentenced to three and a half years' imprisonment for soliciting bribes, contrary to section 2 of the UK Bribery Act 2010 ("UKBA"). Andrianarisoa is the first-ever public official to be convicted under the UKBA since it was introduced in 2011.¹

Background

Andrianarisoa and her associate, Philippe Tabuteau, both were charged in August 2023 after requesting payments from Gemfields Group Ltd ("Gemfields"), a UK-headquartered mining company, in exchange for helping it to secure mining rights and an exclusive joint venture with the government of Madagascar.

In early 2023, Andrianarisoa approached Gemfields via an agent to offer her assistance in expanding its operations in Africa. Andrianarisoa was Chief of Staff to the President of Madagascar at the time of these meetings and made clear that she had significant influence in government. Tabuteau, who assisted with the negotiations, described himself as working for the government in a personal capacity, albeit without a formal role.

Andrianarisoa and Tabuteau requested a fee of 10,000 Swiss Francs (approximately £8,600) each from Gemfields for their services. They also requested a payment of 250,000 Swiss Francs (approximately £215,000) for the delivery of an "*invitation to initiate the collaboration*" from the President, and the government's signature of key terms relating to a joint venture with Gemfields. Further, Andrianarisoa and Tabuteau sought a success fee in the form of a five percent equity stake in the venture, which it was estimated could have amounted to approximately £4 million.

Gemfields reported its concerns regarding possible corruption to the UK National Crime Agency ("NCA"), which launched an investigation. The NCA used surveillance and other covert tactics to record meetings with Andrianarisoa and Tabuteau starting in June 2023, during which it gathered evidence relating to the requests for payment and Andrianarisoa's influence with senior government officials in Madagascar.

Continued on page 7

1. National Crime Agency, "Former Chief of Staff to Madagascan President convicted of bribery" (Feb. 20, 2024), <https://www.nationalcrimeagency.gov.uk/news/former-chief-of-staff-to-madagascan-president-convicted-of-bribery>.

UK Investigation Results
in First Conviction and
Sentencing of Foreign Public
Official under Bribery Act
[Continued from page 6](#)

On August 10, 2023, Andrianarisoa and Tabuteau were arrested in London by NCA officers. Tabuteau pled guilty to attempting to solicit a bribe in September 2023. Andrianarisoa was found guilty after trial in February 2024 and sentenced on May 10, 2024 to three years and six months' imprisonment. Tabuteau was sentenced to two years and three months' imprisonment.

Key Takeaways

- **Self-reporting and cooperation:** Gemfields played a key role in the NCA's investigation, both by notifying the NCA of its concern regarding Andrianarisoa's and Tabuteau's conduct, and by allowing the NCA to deploy an undercover officer. This cooperation likely increased the speed at which the case progressed; it took just over a year from Andrianarisoa's first approach to Gemfields to her sentencing. This high level of cooperation drew praise from both the judge and the NCA. This case underscores the importance of prompt self-reporting and maintaining open communication channels with enforcement agencies.
- **Investigative tactics:** The NCA's use of an undercover agent indicates a growing willingness on the part of UK law enforcement to diversify their tactics, particularly for offences that require evidence of knowledge or intention. Enforcement agencies must comply with legislative safeguards when conducting surveillance, and the use of covert tactics may affect the admissibility of particular pieces of evidence. However, this case demonstrates that they are increasingly willing to use such tactics to secure crucial evidence that might otherwise be difficult to obtain.
- **Publication of evidence:** The NCA also took the unconventional step of releasing partial transcripts of audio recordings obtained during the investigation. While they did not provide an explanation for releasing these recordings, businesses should be aware that the NCA and other UK enforcement agencies may be more willing to publicise details of their investigations. This could have implications for businesses assessing the risks involved in reporting potential criminal activity.
- **The wide remit of the Section 2 UKBA offence:** In light of the recent enactment of the US Foreign Extortion Prevention Act to punish the "demand side" of bribery involving government officials, this case is a timely reminder that Section 2 of the UKBA criminalises passive bribery (*i.e.*, receiving bribes) by both foreign public officials and private parties.

[Continued on page 8](#)

**UK Investigation Results
in First Conviction and
Sentencing of Foreign Public
Official under Bribery Act**
Continued from page 7

Karolos Seeger

Aisling Cowell

Andrew H. Lee

Sophie Michalski

Karolos Seeger is a partner in the London office. Aisling Cowell, Andrew H. Lee, and Sophie Michalski are associates in the London office. Full contact details for each author are available at www.debevoise.com.

FCPA Update

FCPA Update is a publication of
Debevoise & Plimpton LLP

66 Hudson Boulevard
New York, New York 10001
+1 212 909 6000
www.debevoise.com

Washington, D.C.
+1 202 383 8000

San Francisco
+1 415 738 5700

London
+44 20 7786 9000

Paris
+33 1 40 73 12 12

Frankfurt
+49 69 2097 5000

Hong Kong
+852 2160 9800

Shanghai
+86 21 5047 1800

Luxembourg
+352 27 33 54 00

Bruce E. Yannett
Co-Editor-in-Chief
+1 212 909 6495
beyannett@debevoise.com

Andrew J. Ceresney
Co-Editor-in-Chief
+1 212 909 6947
aceresney@debevoise.com

David A. O'Neil
Co-Editor-in-Chief
+1 202 383 8040
daoneil@debevoise.com

Karolos Seeger
Co-Editor-in-Chief
+44 20 7786 9042
kseeger@debevoise.com

Douglas S. Zolkind
Co-Editor-in-Chief
+1 212 909 6804
dzolkind@debevoise.com

Philip Rohlik
Co-Executive Editor
+852 2160 9856
prohlik@debevoise.com

Kara Brockmeyer
Co-Editor-in-Chief
+1 202 383 8120
kbrockmeyer@debevoise.com

Andrew M. Levine
Co-Editor-in-Chief
+1 212 909 6069
amlevine@debevoise.com

Winston M. Paes
Co-Editor-in-Chief
+1 212 909 6896
wmpaes@debevoise.com

Jane Shvets
Co-Editor-in-Chief
+44 20 7786 9163
jshvets@debevoise.com

Erich O. Grosz
Co-Executive Editor
+1 212 909 6808
eogrosz@debevoise.com

Andreas A. Glimenakis
Associate Editor
+1 202 383 8138
aaglimen@debevoise.com

Please address inquiries regarding topics covered in this publication to the editors.

All content © 2024 Debevoise & Plimpton LLP. All rights reserved. The articles appearing in this publication provide summary information only and are not intended as legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein. Any discussion of U.S. Federal tax law contained in these articles was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under U.S. Federal tax law.

Please note:
The URLs in *FCPA Update* are provided with hyperlinks so as to enable readers to gain easy access to cited materials.