

ClientAlert

White Collar

January 2015

No Safe Haven: DOJ Can and Will Seize Proceeds of Wholly Foreign Corruption

Nine pieces of real property in the New Orleans area purchased and owned by Honduran government official Mario Roberto Zelaya Rojas ("Zelaya") are proceeds of criminal activity and subject to seizure, according to a civil complaint filed in the Eastern District of Louisiana by the US Department of Justice ("DOJ") on January 13, 2015. The DOJ alleges that Zelaya purchased these properties in an attempt to hide the proceeds of an all-Honduran bribery scheme. This civil action provides yet another example of the expansive jurisdiction asserted by the US government and serves as a reminder to corporations and individuals abroad how easily even wholly foreign criminal conduct may come within the reach of US law enforcement authorities.

According to the complaint, Zelaya, a former Executive Director of the Honduran Institute of Social Security ("HISS"), solicited and received more than US\$2 million in bribes from a Honduran company, Compania de Servicios Multiples, S. de R. L. ("COSEM"), that did business with HISS. In exchange for the bribes, Zelaya allegedly caused HISS to resume contract payments to COSEM, which had been suspended or delayed by HISS. The scheme was committed in violation of the Penal Code of Honduras, and Zelaya has been arrested and charged by Honduran law enforcement authorities.

The bribes—from a Honduran company to a Honduran official—did not involve any US person or corporation until the time came to move the money. COSEM allegedly transferred the money from a subsidiary in Honduras to a shell company in Panama. From there, Zelaya instructed COSEM to transfer the funds to a title company in Louisiana to purchase various pieces of New Orleans real estate, some in the name of Louisiana businesses registered in the name of Zelaya's brother, a Honduran national residing in Louisiana. The DOJ followed the money back to Zelaya and his various co-conspirators and now seeks forfeiture of the properties.

In a press release announcing the civil forfeiture complaint, DOJ Assistant Attorney General Leslie Caldwell issued a stern warning to non-US persons engaged in criminal activity: "[T]he United States is not a safe haven for the proceeds of your crimes. If you hide or invest your stolen money here, we will use all the legal tools we have to find it and seize it." Indeed, the DOJ's anti-money laundering toolbox is extensive, and as reflected in the Zelaya case, the DOJ's jurisdiction may reach proceeds from crimes committed wholly abroad. In 2001, the USA PATRIOT Act amended the money laundering statutes to include in the definition of "specified unlawful activity," "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



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benefit of a public official.” 18 U.S.C. § 1956(c)(7)(B)(iv). Thus, proceeds derived from wholly foreign bribery schemes may be subject to forfeiture under US law if those proceeds find their way to the United States.

Action in this case was taken by the DOJ Criminal Division’s Kleptocracy Asset Recovery Initiative, which grew out of the 2003 No Safe Haven policy, a commitment by 53 jurisdictions worldwide to “deny safe haven to the corrupt, those who corrupt them, and their assets.” Although the Kleptocracy Initiative has been around for some time, lately it has picked up steam, including the August 2014 forfeiture of US\$480 million in corruption proceeds hidden by Sani Abacha and US\$30 million belonging to Teodoro Obiang.

The DOJ is going after Zelaya’s properties by means of a civil forfeiture action in this case, but the DOJ potentially could pursue criminal money-laundering charges against those involved.

The complaint in this case illustrates that US authorities may eventually reach wholly foreign criminal conduct if the proceeds ever touch the US, even if the underlying crime does not. The complaint also puts non-US persons on notice that where unlawful conduct and proceeds from such conduct reach the United States—even after commission of the crime—US law enforcement authorities have tools to follow the money to its final resting place and take it back.

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