

Macau Billionaire Convicted of Bribing U.N. Officials

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Conduct Related to China, the United Nations, and Other Countries

其行为涉及中国、联合国及其他国家

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On July 27, 2017, a Manhattan federal jury convicted Macau billionaire Ng Lap Seng of bribing Caribbean diplomats to the United Nations (“UN”) to secure the organization’s support for a multi-billion dollar convention center that Ng hoped to build in Macau. After a five-week trial, the jury took just seven hours to return a guilty verdict on all six charges: one count of conspiracy to commit bribery and to violate the Foreign Corrupt Practices Act (“FCPA”), two counts of violating the FCPA, one count of federal program bribery, one count of conspiracy to commit money laundering, and one count of money laundering. With this verdict, the Department of Justice (“DOJ”) marked its first victory in six years in a contested FCPA proceeding when put to its burden of proof.

2017年7月27日，一位曼哈顿的联邦法官判定澳门亿万富豪吴立胜（Ng Lap Seng）向两位加勒比国家驻联合国外交官行贿，旨在为吴在澳门的一个数十亿美元的会议中心项目获取该组织的支持。在经过为期五周的审理后，陪审团只用了七个小时就对全部六项指控作出有罪判决：一项共谋行贿及违反美国《反海外腐败法》（下称“FCPA”）的指控、两项违反FCPA的指控、一项联邦项目贿赂的指控、一项共谋洗钱的指控以及一项洗钱的指控。此项判决标志着美国司法部（下称“司法部”）在六年来第一次在由其承担举证责任的FCPA诉讼中胜诉。

Background and Alleged Misconduct 背景和被指不当行为

According to [prosecutors](#), from 2011 to 2015, Ng paid hundreds of thousands of dollars in bribes to two high-ranking UN officials—former UN Ambassador for Antigua and Barbuda and President of the UN General Assembly, John W. Ashe, and former Deputy UN Ambassador for the Dominican Republic, Francis Lorenzo. Prosecutors said that Ng hoped the payments would secure the UN’s support for his proposal to build a multi-billion dollar UN-conference center in Macau, dubbed the “[Geneva of Asia](#).” Ng hoped, according to prosecutors, that the conference center would serve as a location for events associated with the UN and pave the way for hotels, luxury housing, a shopping mall, marinas, and a heliport. In particular, prosecutors alleged that Ng wanted the Macau conference center to become the permanent home of the annual “Global South-South Development Expo,” which is traditionally hosted in a different city each year.

根据检方的指控，从 2011 年至 2015 年，吴向两名高级别的联合国官员（前安提瓜和巴布达驻联合国大使及联合国大会（下称“联大”）主席 John W. Ashe 以及前多米尼加驻联合国副大使 Francis Lorenzo 支付了数十万美元的贿赂。检方称，吴希望通过这些贿赂获得联合国对其在澳门建造一个造价数十亿美元、号称“亚洲日内瓦”的联合国会议中心项目的支持。据检方称，吴希望该会议中心将作为联合国相关活动的举办场所，从而为酒店、豪华住宅、购物中心、游艇码头和直升机场的开发铺平道路。检方还特别指控，吴想让该澳门会议中心成为一年一度的“全球南南开发博览会”的永久会场（该博览会传统上每年在不同城市举办）。

As part of the scheme, prosecutors alleged that Ng paid the two ambassadors in a variety of forms. For example, Ng allegedly made multiple payments through a New York-based media organization funded by Ng, South-South News. According to Ambassador [Lorenzo](#), who pleaded guilty and cooperated with the government, Ng appointed Lorenzo as president of South-South News despite Lorenzo having no relevant journalism experience. Also, through South-South News, Ng allegedly made payments to Ambassador Ashe’s wife, who South-South News paid as a “consultant,” and to an account that Ambassador Ashe had established, purportedly to raise money for his role as president of the UN General Assembly. In addition, prosecutors claimed that Ng paid both ambassadors directly through cash and wire transfers.

检方指控，吴为实现该图谋以各种形式向两位大使支付了款项。例如，吴被指通过由吴出资的一家总部在纽约的媒体组织 South-South News 进行了多项付款。Lorenzo 大使认罪并同意与政府合作，据他称，吴委派 Lorenzo 为 South-South News 总裁，尽管其没有任何相关新闻从业经验。而且，吴被指通过 South-South News 向 Ashe 大使的妻子付款（South-South News 对其支付“顾问”费），并向 Ashe 大使开立的一个账户付款（据称该账户用于为其联大主席一职募集资金）。此外，检方称，吴直接通过现金和电汇方式向两位大使付款。

In exchange for these payments, prosecutors alleged that Ng sought support for his proposed conference center in Macau. For example, Ambassador Ashe, aided by Ambassador Lorenzo, allegedly submitted an official document to the UN Secretary General in support of the Macau conference center. Later, on Ng's request, the ambassadors allegedly revised the document to refer to one of Ng's companies as a partner of the proposed project. Asked at trial why he helped Ng, Ambassador Lorenzo made a direct connection to the payments: "Because I was getting paid."

检方称，作为这些付款的交换条件，吴为其在澳门的筹建会议中心寻求支持。例如，Ashe 大使被指在 Lorenzo 大使的帮助下向联合国秘书长提交了一份正式文件，支持澳门会议中心项目。之后，应吴的请求，两位大使被指修改了该文件，将吴的一家公司称为拟议项目的合作伙伴。在庭审中当被问及为何帮助吴时，Lorenzo 大使直接提到了上述付款：“因为我当时收了钱。”

At trial, Ng's attorneys **argued** that the payments were actually philanthropic. They said that Ng was throwing money at the plan at the recommendation of his friends, but that his friends and the UN officials were taking advantage of him.

在庭审时，吴的律师辩称，上述付款实际上是慈善性质的。律师称，吴是在其朋友的建议下向该计划投钱，而其朋友和联合国官员是在利用他。

Consequences 后果

Based on the above allegations, the government **charged** Ng with, among other things, two violations of the FCPA. Specifically, the government charged Ng with violating the FCPA's anti-bribery provisions (1) while in the United States, and (2) as an officer, director, employee, or agent of a domestic concern, or a stockholder acting on behalf of a domestic concern.

基于上述指控，政府主要指控吴两项 FCPA 违法行为。具体而言，政府指控吴：（1）在美国期间及（2）作为国内主体（**domestic concern**）的高级职员、董事、雇员或代理人或代表国内主体行事的股东违反了 FCPA 的反贿赂规定。

In addition, the government also charged Ng with (1) paying bribes to officials of an organization (i.e. the UN) that receives over \$10,000 from a federal program, (2) conspiring to commit bribery and to violate the FCPA, (3) money laundering, and (4) conspiring to commit money laundering.

此外，政府还控告吴：（1）向接受联邦项目超过 10,000 美元的组织（即联合国）的官员行贿，（2）共谋从事贿赂及违反 FCPA，（3）洗钱，和（4）共谋从事洗钱。

All in all, after his conviction, Ng faces up to 65 years in prison. Sentencing is currently scheduled for December 18, 2017.

总之，在其被定罪后，吴将面临最高 65 年监禁的刑罚。目前定于 2017 年 12 月 18 日宣判。

Observations and Lessons Learned 观察结果及经验教训

The Ng enforcement action is noteworthy for a number of reasons. Most notably, it represents only the fifth time since 2011 that the DOJ has been put to its burden of proof in a contested FCPA proceeding. The action also demonstrates the DOJ's continued commitment **“to prioritize prosecutions of individuals”** who have allegedly violated the FCPA. In addition, this enforcement action shows the government's willingness to bring other charges, such as conspiracy and money laundering, on top of FCPA charges.

对吴的执法行动因若干原因而值得关注。最明显的，此案是 2011 年以来司法部第五次在 FCPA 法庭审讯中承担举证责任。该项行动也证明了司法部“优先对（被指违反 FCPA 的）个人起诉”的持续承诺。此外，该项执法行动表明，除 FCPA 指控外，政府也愿意提起共谋和洗钱等其他指控。

Finally, the Ng case will likely provide a rare opportunity for a federal appellate court to weigh in on the FCPA. Most FCPA matters **never see** the inside of a courtroom—especially an appellate courtroom. But, here, Ng's attorneys have already **vowed** to appeal.

最终，吴案将有可能为联邦上诉法院就 FCPA 提出意见提供宝贵的机会。大多数 FCPA 事项都没上过法庭——尤其是上诉法庭。但此案中，吴的律师誓言要上诉。

Such an appeal will likely tee up multiple important FCPA issues for the U.S. Court of Appeals for the Second Circuit. For example, on the eve of trial, Ng's defense team **battled** with the government over the reach of the FCPA's “local law” affirmative defense—a provision that has been subject to judicial scrutiny only **once before**. Ng's case raises the question of whether payments, in order to qualify as “lawful under the written laws and regulations” of a country, need to be *expressly* permitted by local law, or simply need not be prohibited. The case also **brings up** questions over what qualifies as an official act under the FCPA in light of the Supreme Court's narrowing, in *McDonnell v. United States*, of what qualifies in the domestic context. We will continue to monitor this case as any appeal progresses.

该上诉可能会为美国第二巡回上诉法院提出几个重要的 FCPA 问题。例如，在庭审前夜，吴的辩护团队就 FCPA 的“本地法”肯定性抗辩（之前仅有一次接受司法审查的一项规定）的适用范围与政府展开争论。吴案引起了以下疑问：为了满足在一个国家“成文法律法规下合法”的条件，付款是否需被本地法明确允许，或干脆不需禁止。鉴于美国最高法院在“McDonnell 诉美国”一案中将美国国内背景下的职务行为进行了界定，此案还引发了关于 FCPA 下何以构成职务行为的疑问。

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