

US DOJ Unseals Criminal Charges Against Rolls-Royce Employees Alleged Misconduct Involves China and Kazakhstan

美国司法部公布对罗尔斯•罗伊斯员工涉及中 国、哈萨克斯坦之相关不当行为的刑事指控

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On November 7, 2017, the U.S. Department of Justice ("DOJ") unsealed criminal charges against five individuals in connection with an alleged bribery scheme to assist Rolls-Royce plc ("Rolls-Royce" or the "Company") in obtaining a US \$145 million government contract to supply equipment and services for a gas pipeline from Kazakhstan to China.

2017年11月7日，美国司法部（“司法部”）公布对五名个人的贿赂同谋行为所提起的刑事指控 -- 协助罗尔斯•罗伊斯有限公司（“罗尔斯•罗伊斯”或“公司”）获得哈萨克斯坦到中国的天然气管道提供设备和服务，价值为1.45亿美元的政府合同。

The charges, which were filed in the U.S. District Court for the Southern District of Ohio, were brought against:

司法部在美国俄亥俄州南区联邦地区法院对下列人员提起公诉：

- three former employees of Rolls-Royce and its former U.S.-based subsidiary Rolls-Royce Energy Systems, Inc. ("RRESI"): Keith Barnett ("Barnett"), James Finley ("Finley"), and Aloysius Johannes Jozef Zuurhout ("Zuurhout");

罗尔斯•罗伊斯及其美国子公司罗尔斯•罗伊斯能源系统公司（“RRESI”）的三名前雇员：Keith Barnett (“Barnett”), James Finley (“Finley”) 和 Aloysius Johannes Jozef Zuurhout (“Zuurhout”）；

- a former agent for RRESI in Kazakhstan, Petros Contoguris ("Contoguris"); and
- RRESI 在哈萨克斯坦的一名前代理人：Petros Contoguris (“Contoguris”）；及
- an executive at an unnamed international engineering and consulting firm, Andreas Kohler ("Kohler").

一家未被透露名字的国际工程咨询公司的高管，Andreas Kohler (“Kohler”）。

Defendants Barnett, Zuurhout, Kohler each pleaded guilty – on December 28, 2016, June 13, 2017, and July 20, 2017, respectively – to one count of conspiracy to violate the U.S. Foreign Corrupt Practices Act ("FCPA"). Defendant Finley pleaded guilty to count of conspiracy to violate the FCPA and one count of violating the anti-bribery provisions of the FCPA. Defendant Petros Contoguris, who is a fugitive, was indicted on one count of conspiracy to violate the

FCPA, seven counts of violating the FCPA's anti-bribery provisions, one count of conspiracy to launder money, and ten counts of money laundering. The court has to set sentencing dates for the four defendants who pleaded guilty.

被告 Barnett、Zuurhout 与 Kohler 已分别在 2016 年 12 月 28 日、2017 年 6 月 13 日和 2017 年 7 月 20 日对其违反美国反海外腐败法（“FCPA”）的一项同谋指控进行认罪。被告 Finley 对一项违反 FCPA 的同谋指控和一项违反 FCPA 反贿赂规定的指控认罪。在逃被告 Petros Contoguris，被控一项违反 FCPA 的同谋罪行、七项违反 FCPA 反贿赂规定的罪行、一项洗钱的同谋罪行及十项洗钱罪行。法院已确定日期对上述四名认罪被告人进行量刑宣判。

As background, Rolls-Royce in January 2017 entered into a global settlement with authorities in the U.S., U.K., and Brazil to resolve charges that it had bribed government officials in several countries, including Kazakhstan, in exchange for receiving government contracts. In connection with this global settlement, Rolls-Royce entered into a deferred prosecution agreement (“DPA”) with DOJ under which the Company agreed to pay a US \$170 million penalty for conspiring to violate the anti-bribery provisions of the FCPA. As part of the DPA, Rolls-Royce agreed to cooperate with DOJ’s ongoing investigation. Separately, the Company (1) entered into a DPA with the U.K. Serious Fraud Office (“SFO”) pursuant to which it agreed to pay a penalty of US \$600 million and (2) resolved charges with Brazil’s Ministério Pùblico Federal (“MPF”) in which the Company agreed to pay a US \$25.5 million penalty.

本案的背景为罗尔斯•罗伊斯于 2017 年 1 月与美国、英国和巴西当局达成一项全球范围内的和解，以解决对其为获得政府合同而贿赂包括哈萨克斯坦在内等国家政府官员的指控。据此项和解，罗尔斯•罗伊斯与司法部达成一份暂缓起诉协议。依据该协议，公司同意为其违反 FCPA 反贿赂规定的同谋行为支付 1.7 亿美元罚金。同时，暂缓起诉协议要求罗尔斯•罗伊斯对司法部展开的调查进行配合。此外，公司向英国严重欺诈办公室（“SFO”）支付 6 亿美元的罚金与其达成一份暂缓起诉协议，并向巴西联邦检控部门支付 2,550 万美元的罚金对其指控达成和解。

DOJ’s prior prosecution of Rolls-Royce alleged, among other things, that RRESI made commission payments of approximately US \$5.4 million to various commercial advisors while knowing that a portion of the payments would be used to bribe foreign officials who had influence over a joint venture between the Kazakh and Chinese governments that was developing a gas pipeline between the countries. Further, DOJ’s prior prosecution alleged that the Company hired a local distributor in Kazakhstan while knowing the distributor was owned by a high-ranking Kazakh government official with decision-making authority over the joint venture’s awarding of contracts.

司法部之前对罗尔斯•罗伊斯的公诉称，RRESI 支付约 540 万美元的佣金给多名商业顾问，且明知部分款项可能被用于行贿一些对哈萨克斯坦和中国政府的一家开发两国间天然气管道的合资企业具有影响力的政府官员。同时，司法部先前称，公司聘用了一名由哈萨克斯坦政府高级官员拥有的当地经销商，并且明知该政府官员对合资企业能否获得合同具有决定权。

DOJ’s most recent charges against the aforementioned five individuals appear to be based, in part, on the conduct relating to the Company’s activities in Kazakhstan that is described in the January 2017 DPA.

司法部对上述五人的最新指控似乎部分基于其与公司于 2017 年 1 月达成的暂缓起诉协议中所述公司在哈萨克斯坦的行为相关。

Relevant Parties:

相关方：

- RRESI was until 2014 a U.S.-based subsidiary of Rolls-Royce and a “domestic concern” under the FCPA’s 15 U.S.C. § 78dd-2. RRESI produced and supplied power turbines for oil and gas and power generation projects throughout the world.

RRESI 在 2014 年之前是罗尔斯•罗伊斯美国的子公司，属于美国法典第 78dd-2 款规定的美国国内法人。RRESI 为世界各地的石油天然气和发电项目生产并供应动力涡轮机。

- Defendant Keith Barnett is a U.S. citizen and former employee of RRESI – and thus a domestic concern and employee of a domestic concern – who, at the time of his departure from RRESI, was serving as a Regional Director of Sales for the Asia/Pacific region.

被告 Keith Barnett 是一名美国公民及 RRESI 的前雇员-- 因而属于美国国内个人及国内法人的雇员。Keith Barnett 离职前担任 RRESI 亚太区域销售总监。

- Defendant James Finley is a U.K. citizen who formerly served as a senior executive at Rolls-Royce and was responsible for the Company's energy sales division, including the sales of equipment manufactured and distributed by RRESI. According to the criminal information, Finley was thus an "agent" of a domestic concern (i.e., RRESI).

被告 James Finley 是一名英国公民，之前在罗尔斯•罗伊斯担任高管，负责公司的能源销售部门，包括销售 RRESI 生产和经销的设备。根据公诉文件，Finley 是一家国内法人（即 RRESI）的“代理人”。

- Defendant Aloysius Johannes Jozef Zuurhout is a Dutch national and a former energy sales employee of Rolls-Royce who assisted in the sale of equipment manufactured by RRESI. Although the information does not identify Zuurhout as an employee of a domestic concern, Zuurhout met with other co-conspirators in Ohio to discuss the bribery scheme.

被告 Aloysius Johannes Jozef Zuurhout 是一名荷兰籍人士，罗尔斯•罗伊斯前能源销售员工，曾协助销售 RRESI 生产的设备。尽管相关信息未将 Zuurhout 认定为国内法人的雇员，但 Zuurhout 曾在俄亥俄州与其他同谋者进行会面，对贿赂密谋进行商讨。

- Asia Gas Pipeline, LLC ("AGP") was a state-owned joint venture between Kazakhstan's KazMunayGas and China's National Petroleum Corporation that was established to construct a gas pipeline between the two countries.

Asia Gas Pipeline, LLC ("AGP") 是哈萨克斯坦 KazMunayGas 公司与中石油为建设两国间天然气管道而设立的一家国有合资企业。

- Gravitas & CIE International Ltd. ("Gravitas") is a Turkish-based commercial agent and advisor for oil and gas projects. Defendant Petros Contoguris, who was the Founder and Chief Executive Officer of Gravitas, acted as a commercial agent for RRESI in connection with RRESI's bid for certain pipeline contracts that were awarded by AGP. According to the indictment, Contoguris is thus an agent of a domestic concern.

Gravitas & CIE International Ltd. ("Gravitas") 是一家土耳其石油天然气项目商业代理顾问公司。被告人 Petros Contoguris 为 Gravitas 的创始人和首席执行官，曾为 RRESI 就投标 AGP 授予的某些管道项目合同担任该公司的商业代理。据公诉书，Contoguris 被认定是一家美国国内法人的代理人。

- An unnamed international engineering and consulting firm (identified in the charging documents as "Technical Advisor") served as an independent consultant to AGP. Defendant Andreas Kohler is an Austrian national and employee in the Munich office of the Technical Advisor. The information states that, among other conduct in furtherance of the conspiracy, Kohler's actions caused RRESI to make corrupt payments from RRESI's bank account in Ohio.

一家未被透露名字的国际工程和咨询公司（在公诉文件中被称为“技术顾问”）担任 AGP 的独立顾问。被告 **Andreas Kohler** 是一名奥地利籍人士，为该国际工程和咨询公司慕尼黑办公室雇员。公诉书称，除推动共谋等行为外，**Kohler** 的行为还致使 **RRESI** 从其位于在俄亥俄州的银行账户中支付腐败款项。

Conduct Alleged:

被控行为：

- According to the charges, the Defendants conspired between 2008 and 2012 to pay bribes to a foreign official in Kazakhstan in exchange for the foreign official's directing a government contract to RRESI. In connection with this scheme, DOJ alleges that AGP began accepting bids for contracts for the construction of a pipeline between Kazakhstan and China in or around 2008.

指控称，被告在 2008 年至 2012 年期间同谋行贿在哈萨克斯坦的一名外国公职人员，使其指示将一份政府合同授予 RRESI。由于该同谋行为，美国司法部称 AGP 在 2008 年左右开始接受中哈管道建设合同投标。

- At around this time, RRESI, acting through Finley, Barnett, and Zuurhout, allegedly hired Contoguris to assist RRESI with its efforts to obtain the AGP contracts. According to DOJ, RRESI specifically sought Contoguris's assistance to pay bribes to various government officials in order to help RRESI win the AGP contracts.

与之同时，RRESI 通过 Finley、Barnett 和 Zuurhout 雇用 Contoguris 协助其获得 AGP 合同。据司法部称，RRESI 尤其要求 Contoguris 协助其向各政府官员行贿，以帮助 RRESI 获得 AGP 合同。

- During the same period, DOJ alleges that Contoguris conspired with several employees of the Technical Advisor to identify bidders for the AGP contracts who would be willing to pay kickbacks in exchange for receiving the contracts.

美国司法部称，在此期间 Contoguris 与技术顾问的几名员工同时共谋寻查愿意支付回扣以获得合同的 AGP 合同投标人。

- In or around 2008, DOJ alleges that RRESI, Contoguris, and employees of the Technical Advisor began negotiating an agreement pursuant to which RRESI would pay a commission to Contoguris which Contoguris would then apportion among himself, an unnamed Kazakh government official, and the employees of the Technical Advisor.

美国司法部称，约在 2008 年左右，RRESI、Contoguris 以及技术顾问的员工开始磋商一份协议，根据该协议，RRESI 向 Contoguris 支付佣金，此后 Contoguris 将与一名哈萨克政府官员（未透露姓名）以及技术顾问的员工对该佣金进行分配。

- In or around 2009, AGP awarded RRESI a contract to supply 11 gas turbine units to AGP, which contract was valued at approximately US \$145 million. Between 2009 and 2013, AGP purportedly transferred the funds due under the contract to RRESI's bank accounts in the Southern District of Ohio.

大约在 2009 年左右，AGP 向 RRESI 授予一份合同，由其向 AGP 供应 11 组燃气轮机机组，该合同总价值约为 1.45 亿美元。据称，AGP 在 2009 年至 2013 年期间向 RRESI 在俄亥俄州南区开立的银行账户划转了合同款项。

- Between 2010 and 2012, the Defendants allegedly transferred a portion of these funds to Gravitas's bank accounts in the U.K. as commission payments while knowing that a portion of these payments would later be paid as bribes to the unnamed Kazakh government official who had influenced AGP's decision to award the US \$145 million contract to RRESI.

在 2010 年至 2012 年期间，被告人将上述资金的一部分作为佣金款项划转到 Gravitas 在英国开立的银行账户，被告人当时明知部分款项之后将会被作为贿赂款项支付给一名影响 AGP 向 RRESI 授予 1.45 亿美元合同之决定的哈萨克政府官员（未透露姓名）。

Items of Note:

要点：

- These charges are among the first since the issuance of the Yates Memo in which DOJ has brought FCPA-related charges against a company's employees after first bringing an enforcement action against the company itself. In the Yates Memo, which was issued in September 2015, DOJ expressed its intention to pursue charges against individuals responsible for corporate criminal violations. Up until this point, however, there have been few criminal prosecutions of individuals, though, as here, charges in other cases may be under seal. These charges thus serve as an important reminder that DOJ remains focused on individuals involved in criminal conduct.

上述指控是《耶茨备忘录》发布以来，美国司法部首次先针对公司进行执法，再对公司员工提起相关 FCPA 的指控的执法行为。《耶茨备忘录》发布于 2015 年 9 月，在备忘录中，美国司法部表明其有意针对那些应为公司刑事违法行为负责的个人提出指控。但至今为止，尽管某些案件的指控未对外公开，但实践中很少存在针对个人的刑事指控。因此，这些指控给予一个重要警示，即美国司法部对涉嫌刑事违法的个人仍予以密切关注。

- In the same vein, the Rolls-Royce DPA stated that the Company had earned full cooperation credit. Under the Yates Memo, a corporation is not eligible for cooperation credit unless the company discloses "all relevant facts about individual misconduct." Here, that cooperation appears to have yielded results for DOJ.

同理，罗尔斯•罗伊斯暂缓起诉协议表明公司赢得所有的“合作从宽”的优惠。按照《耶茨备忘录》规定，除非一个公司披露“关于个人不当行为的所有相关事实”，否则公司不满足“合作从宽”处理的要求。此案中，美国司法部似乎也因公司的合作而获益。

- These charges are yet another example of the coordinated efforts by law enforcement across different jurisdictions in bribery investigations. DOJ's press release announcing the charges recognizes the efforts of its counterparts in the U.K. and Brazil and also credits law enforcement in Austria, Germany, the Netherlands, Singapore, and Turkey.

这些指控再一次展示各辖区的执法部门在贿赂调查方面而共同付出的努力。在宣布上述指控的通告中，美国司法部对其英国和巴西的同行所做出的努力予以认可，并对奥地利、德国、荷兰、新加坡和土耳其的执法部门表示赞赏。

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