

COVINGTON

US DOJ Unseals Criminal Charges Against Hong Kong National and Former Foreign Minister of Senegal; China Investigates Chairman of Sponsoring Organization

美国司法部公布针对一名香港公民和塞内加尔前外长的刑事指控；中国政府调查出资公司董事长

Alleged Misconduct Involves Bribery of High-Level African Officials for the Benefit of Chinese Oil and Gas Company

被控不当行为涉及为一家中国油气公司之利益向非洲高级官员行贿

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Anti-Corruption 反腐败

On November 20, 2017, the U.S. Department of Justice (“DOJ”) unsealed a [criminal complaint](#) against Chi Ping Patrick Ho, the head of a non-governmental organization (“Energy NGO”), which holds “Special Consultative Status” with the United Nations (“UN”) and is funded by a Chinese oil and gas conglomerate, CEFC China Energy Company Limited (“CEFC”), and Cheikh Gadio the former Foreign Minister of Senegal. Mr. Ho and Mr. Gadio were both charged with one count of conspiring to violate the Foreign Corrupt Practices Act (“FCPA”), two counts of violating the FCPA, one count of conspiring to commit money laundering, and one count of money laundering. Mr. Ho also was charged with two additional counts of violating the FCPA and one additional count of money laundering for an additional alleged bribery scheme that did not involve Mr. Gadio. The charges were filed in the U.S. District Court for the Southern District of New York, and both Mr. Ho and Mr. Gadio have been arrested. In January 2018, Mr. Ho pleaded not guilty to the charges.

2017 年 11 月 20 日，美国司法部（“美国司法部”）公布了针对由一家中国油气集团--中国华信能源有限公司（“中国华信”）出资设立且被联合国（“联合国”）授予“特别咨商地位”的一个非政府组织（“能源非政府组织”）负责人何志平和塞内加尔前外交部长 Gadio 的[刑事起诉书](#)。何志平和 Gadio 均被控以一项共谋违反《美国反海外腐败法》（“美国反海外腐败法”）的罪名、两项违反《美国反海外腐败法》的罪名、一项共谋实施洗钱的罪名以及一项洗钱的罪名。同时，在不涉及 Gadio 的另一贿赂指控中，何志平还被控以其他两项违反《美国反海外腐败法》的罪名以及其他一项洗钱的罪名。前述指控提起于美国纽约南区联邦地区法院，何志平和 Gadio 目前已被捕。2018 年 1 月，何志平做出不认罪答辩。

CEFC has denied authorizing Mr. Ho to engage in any misconduct. On March 1, 2018, press in China reported that the chairman of CEFC was under investigation for unspecified “economic crimes.”

中国华信否认批准何志平从事不法行为。2018年3月1日，中国媒体报道中国华信的董事长涉嫌未指明的“经济犯罪”被调查。

Background and Alleged Misconduct

背景和被控不当行为

According to the [DOJ press release](#), between the Fall of 2014 and January 2017 Mr. Ho and Mr. Gadio engaged in a scheme to bribe officials “at the highest levels of the governments of” Chad and Uganda in order to obtain “lucrative business advantages” for the CEFC. As detailed in the DOJ complaint, the first scheme involved an alleged “\$2 million bribe to be pledged to the President of Chad, for the purpose of securing business advantages for the CEFC in its efforts to obtain valuable oil rights from the Chadian government.” The second scheme allegedly involved the payment of a \$500,000 bribe to the Foreign Minister of Uganda and “gifts and promises of future benefits” to the Ugandan Foreign Minister and President of Uganda “made in exchange for assistance . . . in obtaining business advantages.”

根据美国司法部的新闻通告，2014年秋至2017年1月间，何志平和Gadio共谋向乍得和乌干达的“政府最高级”官员行贿，从而为中国华信获得“有利的商业优势”。如美国司法部起诉书所详述，第一项同谋计划涉及被控“承诺向乍得总统行贿200万美元，目的在于为中国华信获得商业优势从而使其从乍得政府取得宝贵的石油权利”。第二项同谋计划涉及被控向乌干达外长支付500,000美元贿款以及向乌干达外长和乌干达总统给予“礼物和未来利益承诺”“以换取获得商业优势过程中的协助”。

Jurisdictional Nexus

管辖联系

According to the complaint, Mr. Ho is the Deputy Chairman and Secretary-General of the Energy NGO, which is based in Hong Kong and Virginia. An affiliate of the CEFC, which is headquartered in Shanghai, China, is incorporated in New York State and maintains an office New York City. The Energy NGO is registered in Virginia as a charitable organization under Section 501(c)(3) of the Internal Revenue Code and is a “domestic concern” under the FCPA (15 U.S.C. § 78dd-2). As a director and officer the NGO, Mr. Ho is an officer, director, employee, and agent of a domestic concern under the FCPA.

根据起诉书，何志平担任位于香港及弗吉尼亚的能源非政府组织的常务副主席兼秘书长。总部位于中国上海的中国华信的一个关联方在纽约州注册登记并在纽约市设有办事处。能源非政府组织是依照《美国国内税收法》第501(c)(3)条在弗吉尼亚设立的一家慈善组织，且是《美国反海外腐败法》（《美国法典》第15卷第§ 78dd-2条）下的“美国国内法人”。作为前述非政府组织的董事和高级管理人员，何志平构成《美国反海外腐败法》下“美国国内法人”的高级管理人员、董事、员工和代理。

According to the complaint, Mr. Gadio was the Minister of Foreign Affairs of Senegal between approximately 2002 and 2009. According to the complaint, Mr. Gadio has been a lawful permanent resident of the United States—and thus a “domestic concern”—since approximately 2000. Mr. Gadio is the founder and chief executive officer of a consulting company (“Gadio Firm”) based in Dakar, Senegal. Mr. Gadio’s son (who was mentioned but not charged in the complaint) is the Managing Director of the Gadio Firm and has also been a lawful permanent resident of the United States since approximately 2000.

根据起诉书，Gadio 大约在 2002 年至 2009 年期间任塞内加尔外交部长。根据起诉书，Gadio 大约自 2000 年起已经成为美国合法的永久居民，因此构成“美国国内个人”。Gadio 是一家位于塞内加尔达喀尔的咨询公司（“Gadio 公司”）的创始人兼首席执行官。Gadio 的儿子（起诉书中提及但未对其提出指控）是 Gadio 公司的常务董事，且大约自 2000 年起已经成为美国合法的永久居民。

The DOJ also alleges that the Energy NGO’s “consultative status” with the UN’s Economic and Social Council (“ECOSOC”) allowed it to participate in various United Nations-sponsored meetings and activities, and that several acts in furtherance of the alleged bribery schemes, including meetings between Mr. Ho and Mr. Gadio, as well as between Mr. Ho and the Ugandan Foreign Minister, occurred at the UN building in New York City. The complaint also alleges that Mr. Ho furthered the alleged bribery scheme by causing three payments, totaling approximately \$900,000, to be wired through New York City. Mr. Ho and Mr. Gadio were charged with violations of the FCPA as domestic concerns and agents of domestic concerns (15 U.S.C. § 78dd-2) and, given the acts that were alleged to have occurred within the United States, were also charged with violations under the FCPA’s territorial jurisdiction (15 U.S.C. § 78dd-3).

美国司法部还称，联合国经社理事会授予能源非政府组织的“咨商地位”使其可以参加联合国经济与社会理事会（“经社理事会”）发起的各种会议和活动，且推动被控贿赂同谋计划的数项活动发生于纽约市的联合国大楼，包括何志平与 Gadio 之间的会面以及何志平与乌干达外长之间的会面。起诉书还称，何志平通过促成经由纽约市汇付总金额大约 900,000 美元的三笔款项推动了被控的贿赂同谋计划。何志平和 Gadio 被控作为美国国内法人的代理以及美国国内个人（《美国法典》第 15 卷第§ 78dd-2 条）违反《美国反海外腐败法》，且考虑到被控发生于美国境内的行为，还被控实施《美国反海外腐败法》属地管辖（《美国法典》第 15 卷第§ 78dd-3 条）下的违反行为。

The Chad Scheme

乍得同谋计划

According to the DOJ complaint, Mr. Ho, with Mr. Gadio’s assistance, caused the CEFC to offer a \$2 million bribe to the President of Chad in order to help the CEFC acquire exclusive oil rights free of international competition, although ultimately negotiations over the oil rights failed. The complaint also alleges that the Energy NGO paid Mr. Gadio a total of \$400,000 for his services in facilitating the meetings and negotiations with the President of Chad.

根据美国司法部的起诉书，何志平在 Gadio 的协助下，促使中国华信向乍得总统支付 200 万美元贿款以帮助中国华信获得无国际竞争的独家石油权利，尽管关于石油权利的谈判最后以失

败告终。起诉书还称，能源非政府组织就 Gadio 在促成与乍得总统的会面和谈判中所提供的服务向 Gadio 总计支付 400,000 美元。

Specifically, the complaint alleges the following:

具体而言，起诉书称：

Financial Assistance for Chad President's Political Campaign Allegedly Offered to Resolve Chinese State Oil Company Legal Issues

据称为乍得总统的政治活动提供财务资助以解决中国国有石油公司的法律问题

In October 2014, during a meeting at the UN in New York, Mr. Ho allegedly enlisted Mr. Gadio's help to facilitate access to the President of Chad (a personal acquaintance of Mr. Gadio) to help resolve legal issues in Chad faced by a Chinese government-owned oil and gas company ("Chinese State Oil Company") that the CEFC wanted to partner with. According to the complaint, Mr. Gadio met the President of Chad near the end of October 2014 and offered "*confidential financial assistance for his [the President's] political campaigns*" in exchange for a reduction of the fine against the Chinese State Oil Company and reconsideration of the Chadian Government's decision to cancel the Chinese State Oil Company's oil permit. After this meeting, the President of Chad reportedly told Mr. Gadio that he was "*ready to reconsider [his] decision*" to pull the Chinese State Oil Company's oil exploration license. Ultimately however, near the end of October 2014, the Chinese State Oil Company's legal issues were resolved through other means.

2014 年 10 月，在纽约联合国大楼召开的一次会议中，据称 Gadio 帮助促成何志平接触到乍得总统（Gadio 的个人相识）以帮助解决中国华信想与之合作的一家中国政府所有的油气公司（“中国国有石油公司”）在乍得面临的法律问题。根据起诉书，Gadio 大约在 2014 年十月底与乍得总统见面并许诺“为其[总统]政治活动提供保密的财务资助”以换取减少针对中国国有石油公司的罚款以及重新考虑乍得政府取消中国国有石油公司石油许可的决定。此次会议后，据报道乍得总统告知 Gadio 其“乐意重新考虑[其]取消中国国有石油公司石油开采许可的决定”。但是，在将近 2014 年 10 月底的时候，中国国有石油公司的法律问题最终通过其他方式得以解决。

\$2 Million Donation Allegedly Offered in Connection with Oil Rights Negotiation

据称提供的 200 万美元捐款与石油权利谈判有关

In November 2014, Mr. Ho allegedly asked Mr. Gadio to continue to foster a relationship with the President of Chad in order to help the CEFC obtain its own oil rights in Chad. According to e-mails obtained by the DOJ, Mr. Gadio and his son agreed that as long as the CEFC agreed to "*pay up and invest where [the Gadio's said]*" then they would act as the CEFC's "*trusted door openers*" and pass along the CEFC's offer of a "*more holistic and comprehensive partnership*" with the President of Chad.

2014 年 11 月，据称何志平要求 Gadio 继续保持与乍得总统的关系以帮助中国华信获得其自己在乍得的石油权利。根据美国司法部得到的电子邮件，Gadio 及其儿子同意，只要中国华信

同意“付清款项并在[Gadio 所说的]地方投资”，则他们将是“值得信赖的敲开大门的伙伴”并将传递中国华信提出的与乍得总统建立“更为全面和综合的合作关系”的意愿。

Mr. Gadio subsequently arranged several meetings with the President of Chad to help the CEFC/NGO obtain oil rights in Chad. According to the complaint, Brazilians interested in the oil rights had already paid a bribe to acquire the oil rights, but the President of Chad assured the CEFC he was willing to personally give the rights to the CEFC. According to e-mails obtained by the DOJ, Mr. Gadio urged Mr. Ho to quickly “reward” the President with a “nice financial package” in order to immediately secure the oil rights. Other e-mails indicate that Mr. Gadio and his son discussed advising the President of Chad on how much he should request as a bribe for the oil rights.

Gadio 随后安排了几次与乍得总统的会面，以帮助中国华信/非政府组织获得在乍得的石油权利。根据起诉书，对石油权利有兴趣的巴西人已经为取得石油权利而行贿，但是乍得总统向中国华信保证其愿意亲自将权利授予中国华信。根据美国司法部得到的电子邮件，Gadio 催促何志平尽快向总统提供“可观的财务报酬”以便立即取得石油权利。其他电子邮件表明 Gadio 及其儿子曾讨论就乍得总统针对石油权利应要求获得的贿款金额向乍得总统提供建议。

In January 2015, the Energy NGO sent a letter through Mr. Gadio offering the President of Chad a \$2 million donation to be distributed to social and other justice programs as he saw fit. The letter described the donation as being intended for “actions favoring the most vulnerable strata (children, handicapped people, refugees and others).” The CEFC subsequently engaged in negotiations with the Government of Chad regarding the potential oil rights purchase. According to the complaint, during these negotiations the Government of Chad shared confidential information concerning the development of the oil fields in Chad, and Mr. Gadio repeatedly emphasized that the CEFC enjoyed “a business advantage relative to other potential buyers” in that the Chadian Government was not going to open an international bidding process (despite interests in the oil fields by other operators).

2015 年 1 月，能源非政府组织通过 Gadio 发送了一封信函，表示向乍得总统提供 200 万美元捐款用于总统认为合适的社会项目和其他道义项目。该信函描述此捐款意在“支持帮助弱势阶层（儿童、残疾人士、难民等）的行动”。中国华信随后参与了与乍得政府关于潜在购买石油权利的谈判。根据起诉书，在该等谈判中，乍得政府共享了关于乍得油田开发的保密信息，且 Gadio 反复强调中国华信拥有“相对其他潜在买方而言的商业优势”，因此乍得政府将不再启动国际竞标程序（尽管其他运营者也对油田感兴趣）。

Ultimately, in January 2017, after two years of negotiations, the CEFC’s attempts to purchase oil rights from the Government of Chad failed and the CEFC instead entered into an agreement with a Taiwanese oil company to purchase some of the Taiwanese company’s exploration rights in Chad.

最终，在 2017 年 1 月，经过两年时间的谈判，中国华信企图从乍得政府购买石油权利的努力以失败告终，之后中国华信改为与一家台湾石油公司签订了一份协议，购买该台湾公司在乍得的部分开采权利。

CEFC Allegedly Pays \$400,000 as Compensation to Mr. Gadio

中国华信被指向 Gadio 先生支付 400,000 美元的报酬

According to the complaint, around November 2014, Mr. Gadio suggested that an agreement be finalized between the CEFC and the Gadio Firm, and that “*some cash fund*” be provided to compensate Mr. Gadio for not only expenses in connection with trips to Chad, but also “*the effort, time, diplomacy, energy and hard work put forth . . . to open wide the doors of the most attractive African President today.*” In February 2015, the Energy NGO issued a letter appointing Mr. Gadio and his firm as consultants and offered a total of \$400,000 in compensation for services promoting the interests of the CEFC in Chad and in Africa, as well as for helping the CEFC/NGO “*construct an amicable relationship with the President of Chad.*”

根据起诉书，大约在 2014 年 11 月，Gadio 先生建议中国华信与 Gadio 公司达成一项协议，并提供“一些现金款”补偿 Gadio 先生去乍得的旅行相关费用以及“为获得当今最有魅力的非洲总统的信任……所作出或贡献的努力、时间、外交活动、精力和勤奋工作”。2015 年 2 月，能源非政府组织出具一份信函，委派 Gadio 先生及其公司为顾问，并就在乍得和非洲促进中国华信和利益以及帮助中国华信/非政府组织“与乍得总统建立良好关系”的服务提供总计 400,000 美元的报酬。

According to the complaint, Mr. Gadio attempted to negotiate a higher fee for his services. In one notable e-mail, Mr. Gadio tells Mr. Ho that it is “*difficult to comprehend a 2 million dollar gift to the President [of Chad] and only one hundred thousand dollar [sic] to the facilitator who made all of this possible . . .*” After the Energy NGO suggested that Mr. Gadio agree to the initial offer to “*keep their relations ‘friendly’*” since “*this was ‘only the beginning of [their] relationship,*” Mr. Gadio sent a letter generally accepting the offer.

根据起诉书，Gadio 先生试图为其服务谈判更高的费用。在一封值得注意的电邮中，Gadio 先生告诉何先生，“难以理解给[乍得]总统 200 万美元的礼物而只给促成这一切的中间人十万美元[原文如此]这种做法……”在能源非政府组织以“这只是[双方]友好关系的开端”为理由建议 Gadio 同意最初的要约以“保持双方友好关系”之后，Gadio 发出一封信，基本上同意了该要约。

On March 25, 2015, the Energy NGO/Company wired \$200,000 from a bank account in Hong Kong, through a bank in New York City, to an account in the name of the Gadio Firm at a bank in Dubai. The wire receipt was sent to Mr. Gadio along with a request that Mr. Gadio let the CEFC know when the “President” would be available for a meeting. On July 3, 2015, the Energy NGO/Company wired an additional \$200,000 from a bank account in Hong Kong, through a bank in New York City, to an account in the name of the Gadio Firm at a bank in Dubai.

2015 年 3 月 25 日，能源非政府组织/公司通过纽约市的一家银行从香港的一个银行账户汇出 200,000 美元到迪拜一家银行 Gadio 公司名下的一个账户。该电汇收据发给了 Gadio 先生，并请求 Gadio 先生在“总统”有空会面时告知中国华信。2015 年 7 月 3 日，能源非政府组织/公司通过纽约市的一家银行从香港的一个银行账户再次汇出 200,000 美元到迪拜一家银行 Gadio 公司名下的一个账户。

The Uganda Scheme

乌干达同谋计划

The complaint also alleges that in May 2016, Mr. Ho caused the Energy NGO/Company to pay a \$500,000 bribe, via wires transmitted through New York, to the Ugandan Foreign Minister in exchange for helping the CEFC secure contracts and other business advantages in Uganda's financial and energy sectors. In addition, Mr. Ho promised future benefits to both the Ugandan Foreign Minister and President of Uganda in exchange for the Foreign Minister's assistance with helping the CEFC obtain business in Uganda, including the facilitation of its potential acquisition of a bank. Notably, Mr. Gadio is not charged with having participated in the Uganda scheme.

起诉书还指称，在 2016 年 5 月，何先生指示能源非政府组织/公司以电汇方式通过纽约向乌干达外交部长支付了 500,000 美元的贿赂，作为交换条件，后者需帮助中国华信在乌干达金融和能源行业获取合同及其他商业利益。此外，何先生对乌干达外交部长和总统均许诺将来给予好处，作为交换条件，外交部长需帮助中国华信在乌干达获得业务，包括促成其对一家银行的潜在收购。值得注意的是，Gadio 先生未被指控参与乌干达同谋计划。

Specifically, the complaint alleges the following:

具体而言，起诉书指称：

Mr. Ho Allegedly Uses the NGO's Special Consultative Status to Cultivate a Relationship with the Ugandan Foreign Minister

何先生被指利用非政府组织的特别咨商地位与乌干达外交部长培养关系

In September 2014, the Ugandan Foreign Minister began serving a one-year term as the President of the General Assembly ("PGA") for the 69th Session of the UN General Assembly.¹ Shortly thereafter, Mr. Ho, using the NGO's Special Consultative status, met with the Ugandan Foreign Minister and invited him to visit the Energy NGO/Company in China. The DOJ alleges that at the meeting the Ugandan Foreign Minister offered to arrange a meeting between the CEFC and his relative, the President of Uganda. Over the course of the next several months, Mr. Ho and the Ugandan Foreign Minister met several more times in New York City, including at the PGA office and the Ugandan Foreign Minister's home.

2014 年 9 月，乌干达外交部长开始担任联合国大会第 69 届会议主席（“联大主席”），任期一年。² 之后不久，何先生利用非政府组织的特别咨商地位与乌干达外交部长会面，并邀请他到中国访问能源非政府组织/公司。司法部指称，在会面时，乌干达外交部长提议安排中国华信

¹ As the DOJ did in its complaint, we will refer this individual as "Ugandan Foreign Minister" throughout the update for the sake of clarity. However, during the year that he served as President of the General Assembly, he did not simultaneously serve as the Foreign Minister of Uganda.

² 如同司法部在起诉书中的做法一样，我们在本文中将此入称为“乌干达外交部长”，以免混淆。但是，在他担任联大主席期间，他并未兼任乌干达外交部长。

与他的亲戚（即乌干达总统）见一次面。在接下来的几个月里，何先生与乌干达外交部长在纽约市又见了几次面，包括在联大主席办公室和乌干达外交部长家里。

According to the complaint, in August 2015, the Ugandan Foreign Minister appointed the Chairman of the CEFC a “Special Honorary Advisor” to the PGA. Also in August 2015, the Ugandan Foreign Minister travelled to China, accompanied by his wife. While there, the CEFC/NGO “coordinated all of [the Ugandan Foreign Minister’s] *unofficial activities*,” including meetings with the CEFC in Shanghai, as well as the Energy NGO in Hong Kong. According to the complaint, at the meeting with the Ugandan Foreign Minister, the Chairman agreed to contribute \$500,000 towards the President of Uganda’s reelection campaign.

根据起诉书，2015年8月，乌干达外交部长任命中国华信董事长为联大主席“特别荣誉顾问”。同样在2015年8月，乌干达外交部长携夫人到中国访问。在中国期间，中国华信/非政府组织“协调了[乌干达外交部长的]所有非官方活动”，包括在上海与中国华信以及在香港与能源非政府组织的会议。根据起诉书，在与乌干达外交部长的会面中，董事长同意为乌干达总统竞选连任活动赞助500,000美元。

Following the meetings in China, the Ugandan Foreign Minister’s wife asked Mr. Ho with help finding investors for her personal business, as well as for introductions to Chinese companies that could help her own company.

在中国的会面后，乌干达外交部长夫人请何先生帮忙为其个人业务寻找投资者以及介绍可以帮助其自有公司的中国公司。

\$500,000 Bribe Allegedly Wired to the Ugandan Foreign Minister’s Purported “Foundation”

500,000 美元的贿赂被指汇往乌干达外交部长所称的“基金会”

After completing his term as PGA, the Ugandan Foreign Minister resumed his duties as Uganda’s Minister of Foreign Affairs in November 2015. Between February and March of 2016, Mr. Ho and the Ugandan Foreign Minister’s wife exchanged several e-mails regarding the CEFC’s pledge of support for the Ugandan Foreign Minister, as well as VIP invitations to the President of Uganda’s inauguration, including invitations for Mr. Ho and the Chairman. On February 24, 2016, the Ugandan Foreign Minister’s wife provided Mr. Ho with wiring instructions for the Ugandan Foreign Minister’s “foundation.” The DOJ alleges that while an organization bearing the name of the Ugandan Foundation was registered in or about July 2015, the FBI has not been able to find additional information regarding the Ugandan Foundation. In addition, the DOJ alleges that in an April 24, 2016 e-mail from Mr. Ho to the CEFC Chairman, Mr. Ho reminds the Chairman that he pledged \$500,000 to the President of Uganda’s reelection campaign. In the e-mail, Mr. Ho supposedly suggests that if he is able to travel to Uganda, the Chairman should “*give the money in cash to the president’s representatives directly.*”

在完成联大主席任期后，乌干达外交部长于2015年11月继续担任乌干达外交部长。在2016年2月至3月期间，何先生与乌干达外交部长夫人就中国华信支持乌干达外交部长的保证以及乌干达总统就职仪式VIP邀请函（包括何先生和董事长的邀请函）事宜交换了数次电邮。2016年2月24日，乌干达外交部长夫人向何先生提供了关于乌干达外交部长“基金会”的书面指

示。司法部指称，尽管有名为乌干达基金会的组织于 2015 年 7 月前后注册，但 FBI 未能找到关于乌干达基金会的进一步信息。此外，司法部指称，在 2016 年 4 月 24 日发往中国华信董事长的一封信件中，何先生提醒董事长他曾保证向乌干达总统竞选连任活动赞助 500,000 美元。在该电邮里，何先生似乎建议，如果董事长能到访乌干达，他应当“直接将该笔款项以现金形式给予总统的代表。”

Bank records reflect that on or about May 6, 2016, a wire transfer of \$500,000 was sent from an account held by the Energy NGO/Company at a bank in Hong Kong to an account held in the name of the Ugandan Foundation at a bank in Kampala, Uganda, through a bank in New York. The account details for this transaction allegedly match the instructions provided by the Ugandan Foreign Minister's wife.

银行记录显示，在 2016 年 5 月 6 日或前后，一笔 500,000 美元的电汇款通过纽约的一家银行从能源非政府组织/公司在香港一家银行持有的账户汇往乌干达坎帕拉一家银行名为乌干达基金会的账户。该笔交易的账户详情据称与乌干达外交部长夫人给予的指示相符。

Mr. Ho Allegedly Meets with Ugandan Officials, Provides Gifts, and Seeks Business Advantages

何先生被指与乌干达官员会员、赠与礼品并寻求业务利益

After the May 6, 2016 payment, a delegation from the CEFC, including Mr. Ho, traveled to Uganda to meet with the President of Uganda, and other high-level officials in an attempt to secure business for the CEFC. Once in Uganda the CEFC delegation allegedly provided gifts, described in e-mails between Mr. Ho and the Ugandan Foreign Minister's wife as “*very ‘nice’ gifts*” that would “*require special assistance with [Ugandan] customs procedure*” to the President, the Ugandan Foreign Minister, and the Ugandan Foreign Minister's wife.

在 2016 年 5 月 6 日的付款后，中国华信的一个代表团（包括何先生在内）到访乌干达，与乌干达总统及其他高官会谈，旨在为中国华信获得业务。据称，一到乌干达，中国华信代表团就向总统、乌干达外交部长及乌干达外交部长夫人提供了礼品（在何先生与乌干达外交部长夫人的电邮中被描述为“需要[乌干达]海关手续方面特别协助”的“非常精美的礼品”）。

Following the trip, Mr. Ho communicated with the Ugandan Foreign Minister, and his wife, about forming a partnership between the CEFC and the “family businesses” of the Ugandan Foreign Minister and the President of Uganda in order to explore various “*investment opportunities for the Energy Company*” in Uganda, including the acquisition of a particular Ugandan bank (“Ugandan Bank”). Despite the CEFC's interest in the Ugandan Bank, it was ultimately purchased by a Ugandan commercial bank in January 2017.

在该次旅行后，何先生与乌干达外交部长及其夫人就下列事项进行了沟通：在中国华信与乌干达外交部长和乌干达总统“家族企业”之间建立合伙关系，以探讨“能源公司”在乌干达的各种“投资机会”，包括收购一家特定的乌干达银行（“乌干达银行”）。尽管中国华信表示对乌干达银行有兴趣，但该银行最终于 2017 年 1 月被一家乌干达商业银行收购。

Observations and Lessons Learned

观察结果及经验教训

The complaint illustrates the potentially broad application of the FCPA. For example, although the complaint does not allege that a bribe was paid to the President of Chad, both Mr. Ho and Mr. Gadio have been charged with FCPA violations based on an alleged *pledge* to bribe the President of Chad (through a purported charitable donation). Additionally, the complaint also illustrates that prosecutors may bring an FCPA enforcement action based on improper business advantages such as the opportunity to negotiate or pursue a potential business opportunity, even where the purported business deal ultimately is not consummated. In both Chad and Uganda, the CEFC is alleged to have had improper access to certain business opportunities or negotiations and charges have been filed against Mr. Ho and Mr. Gadio even though ultimately the opportunities apparently did not result in any business deals.

起诉书表明 FCPA 有可能宽泛地适用。例如，虽然起诉书未指称乍得总统被贿赂，何先生与 Gadio 先生均因一项被指的贿赂乍得总统的 *保证*（通过一项所谓的慈善捐赠）而被控违反 FCPA。此外，起诉书还表明，检方可基于不当商业利益（如谈判或寻求潜在商业机会的机会，即使所称商业交易最终未达成）发起 FCPA 执法行动。在乍得和乌干达，中国华信被指不当地获得某些商业机会或谈判，何先生与 Gadio 先生也被提起指控，虽然最终这些机会似乎并未构成任何商业交易。

The complaint also underscores the compliance risks that charitable donations can present: despite their purported benevolent purposes, charitable donations can be used as vehicles for improper payments. In the Chad scheme, the CEFC allegedly offered a \$2 million payment to the President of Chad disguised as a donation for charitable purposes. In the Uganda scheme, money was allegedly wired directly to a purported charitable foundation; however, that foundation allegedly did not have a registered domain name or actual office, and was not known in the country. This enforcement action reinforces the importance of conducting due diligence on charitable donations to ensure that the donations are not being given to sham organizations, or made in exchange for an improper business advantage.

起诉书还凸显了慈善捐赠可能带来的合规风险：尽管有所称的慈善目的，慈善捐赠仍可被用作不当付款的幌子。在乍得同谋计划中，中国华信被指提出以慈善捐赠的名义付给乍得总统 200 万美元。在乌干达同谋计划中，据称贿赂款被直接汇往一个所谓的慈善基金会；但是，据称该基金会没有注册域名或实体办公室，且在该国无人知晓。该执法行动表明，对慈善捐赠务必需做尽职调查，以确保该捐赠不是给予虚假组织或用于交换不当商业利益。

Like the recent criminal charges brought against [Rolls-Royce employees](#), the complaint serves as an important reminder that the DOJ remains focused on individuals involved in alleged criminal misconduct.

如同近期对 [Rolls-Royce 雇员](#) 提起的刑事指控一样，该起诉书提醒人们，司法部对于参与所指刑事不当行为的个人仍然保持关注。

It is unclear whether the DOJ charges prompted the Chinese government to investigate CEFC or its chairman, or if such investigation was preexisting. Regardless, it shows the risks that misconduct can attract attention from regulators in multiple countries.

目前尚不明晰美国司法部的指控是否促使中国政府展开对中国华信或其董事长的调查，或是中国的调查既存于美国的指控。无论怎样，这表明了不当行为可以引发多国执法者关注的风险。

If you have any questions concerning the material discussed in this client alert, please contact the following China-based members of our Anti-corruption/FCPA practice:

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