

An update distributed on a monthly basis by Dorsey & Whitney providing a summary of the latest developments in corruption enforcement action around the world.

Corruption issues are also addressed in the Anti-Fraud Network's newsletters: see <http://www.antifraudnetwork.com> for current and archived material.

■ THE USA

Settlements/Plea Agreements

BAE Systems

In March BAE Systems pleaded guilty in federal court in Washington, D.C. to various charges, including making false statements about its FCPA compliance program. The company also agreed to pay a \$400 million fine.

According to court documents, from approximately 2000 to 2002, BAE represented to various U.S. government agencies that it would create and implement policies and procedures to ensure its compliance with the FCPA. However, BAE knowingly and willfully failed to create mechanisms to ensure compliance with these legal prohibitions on foreign bribery. Further, BAE made a series of substantial payments to shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAE told the U.S. government the payments would be subjected.

According to court documents, the gain to BAE from the various false statements and failures to make required disclosures to the U.S. government was more than \$200 million.

As part of its guilty plea, BAE agreed to maintain a compliance program to detect and deter violations of the FCPA. Under the plea agreement, BAE also agreed to retain an independent compliance monitor for three years.

BAE simultaneously entered into an agreement with the UK's Serious Fraud Office to settle

actions in the UK.

Innospec Inc.

Innospec Inc., a Delaware corporation that has its headquarters in London and manufactures specialty chemicals, pleaded guilty in March to defrauding the United Nations and violating the FCPA in connection with its activities in Iraq. More specifically, Innospec pleaded guilty to paying kickbacks to the former Iraqi government under the UN Oil for Food Program (OFFP), as well as to FCPA violations in connection with bribes it provided to officials in the Iraqi Ministry of Oil.

According to court documents, from 2000 to 2003, Innospec's Swiss subsidiary, Alcor, was awarded five contracts valued at more than EUR40 million to sell tetraethyl lead to refineries run by the Iraqi Ministry of Oil under the OFFP. To obtain these contracts, Innospec admitted that Alcor paid or promised to pay at least \$4 million in kickbacks to the former Iraqi government.

Innospec also admitted to paying and promising to pay more than \$1.5 million in bribes, in the form of cash and travel, to officials of the Iraqi Ministry of Oil to secure sales of tetraethyl lead in Iraq from 2004 to 2008, as well as to paying \$150,000 in 2006 to officials in the Iraqi Ministry of Oil to ensure that a competing product to tetraethyl lead was not approved for use in Iraqi refineries.

As part of its plea agreement with the U.S. Department of Justice (DOJ), Innospec agreed to pay a \$14.1 million criminal fine and to retain an independent compliance monitor for a minimum of three years to oversee the

implementation of a robust anti-corruption and export control compliance program. Innospec also agreed to fully cooperate with the DOJ and other U.S. and foreign authorities in ongoing investigations of corrupt payments by Innospec employees and agents.

In a related matter, Innospec settled a civil complaint filed by the U.S. Securities and Exchange Commission (SEC) that alleged Innospec had violated the FCPA's anti-bribery, internal controls, and books and records provisions. Innospec will disgorge \$11.2 million in profits to the SEC.

Innospec was fined in the UK for bribery offences relating to Indonesia.

Alcatel-Lucent

In February Alcatel-Lucent agreed to pay \$137.4 million and change internal procedures to avoid U.S. prosecution over alleged bribes paid in Costa Rica, Taiwan and Kenya, according to a company regulatory filing. Under an agreement in principle, the DOJ would defer prosecution of Alcatel on charges it violated the internal controls and books and records provisions of the FCPA. Alcatel-Lucent's new management has implemented vigorous compliance and training programs designed to prevent similar situations from happening in the future, the company said in a statement.

Daimler AG

In April the SEC announced a settlement with Daimler AG for violations of the FCPA. Specifically, it had been alleged that Daimler made at least \$56 million in improper payments over a period of more than 10 years. The payments involved more than 200 transactions in at least 22 countries.

Daimler agreed to pay \$91.4 million in disgorgement to settle the SEC's charges and \$93.6 million in fines to settle charges in separate criminal proceedings recently announced by the DOJ. Daimler also agreed to retain an independent monitor for three years.

"It is no exaggeration to describe corruption and bribe-paying at Daimler as a standard business

practice," said Robert Khuzami, Director of the SEC's Division of Enforcement. "The financial and reputational costs incurred by Daimler as a result are a lesson that should be studied closely by all companies."

Jean Fourcand

The president of a Florida-based company pleaded guilty in February to a scheme to bribe former Haitian government officials. According to a criminal information filed in connection with the plea, Jean Fourcand, the president of Fourcand Enterprises Inc., received funds between November 2001 and August 2002 originating from U.S. telecommunications companies for the benefit of an official of the Telecommunications D'Haiti (Haiti Teleco). Fourcand also admitted that Robert Antoine, the former director of international relations at Haiti Teleco, was the recipient of the bribes.

The charged crime carries a maximum penalty of 10 years in prison and a fine of the greater of \$250,000 or twice the value of the property involved in the transaction. Fourcand also agreed to forfeit \$18,500 as part of his guilty plea.

Prosecutions

On January 19, 2010, the U.S. District Court for the Central District of California unsealed an indictment charging Juthamas Siriwan, the former governor of the Tourism Authority of Thailand, and her daughter with conspiracy to commit money laundering, money laundering, and one count of aiding and abetting.

The indictment follows a September 2009 trial in which Gerald and Patricia Green were convicted of violating the FCPA by making payments to Siriwan that had been described as "commissions," but actually were bribes made to secure a contract to manage a Thai film festival.

The charges against Siriwan are consistent with DOJ's stated intent to prosecute those who receive bribes, even though the receipt of bribes is not specifically punishable pursuant to the FCPA.

■ THE UK

Bribery Act

On 25 March 2009 the Bribery Bill was published in draft for pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Committee published its report in July 2009 supporting the draft Bill in principle and made a number of recommendations, many of which were reflected in the Bribery Bill as introduced in the House of Lords in November 2009.

The Bribery Bill received Royal Assent on 8 April 2010 as part of the conclusion of the government's legislative programme prior to the general election. The Act is expected to come into force in stages between June and October 2010. For a review of the Act, contact Nick Burkill (see the last page for contact details).

Chemical Firm Fined For Indonesia Bribes

The British arm of a chemical firm (Innospec Ltd) was fined £8.3 million after it admitted prolonging the use of harmful lead-based fuel in Indonesia by bribing Employees of Pertamina (an Indonesian state-owned refinery) and public officials in return for Indonesian government contracts between February 2002 and December 2006.

In separate moves Innospec resolved a DOJ prosecution and SEC claim in the USA, as discussed above.

UK Serious Fraud Office Arrest Alstom Directors

On 24 March the SFO arrested three British directors of the UK subsidiary of France's engineering group Alstom on allegations over international bribery, money laundering and false accounting. The SFO said "It is suspected that bribes have been paid in order to win contracts overseas, and that this has involved associated money laundering and other offence".

■ REST OF THE WORLD

Bahrain

After investigations by the Anti-Money Laundering Directorate, Bahraini authorities detained the Minister of State, Mansoor Bin Rajab, to answer questions on charges of carrying out money laundering activities at home and abroad. The Public Prosecution have reported that legal action will be taken once the investigations have been completed.

China

Chinese government official, Wang Cheng has been arrested after a series of diary entries he wrote appeared online on suspicion of taking bribes for about 482,000 Yuan between 2002 and 2010 while working for the tobacco bureau. If convicted he could face up to 10 years in jail.

China- Rio Tinto

The four Rio Tinto employees, Stern Hu, Wang Yong, Liu Caikui and Ge Minqiang, have now been convicted in Shanghai. The court sentenced the men to between 7 and 14 years in jail for accepting bribes and stealing company secrets by offering inducements to Chinese steel companies in order to obtain secret commercial information. All of the men were also given fines and had assets worth between 300,000 Yuan (£30,000) and 5 Million Yuan confiscated.

France

French oil company Total was charged with corruption in April relating to Iraq's oil-for-food programme, for bribing Iraqi officials while Saddam Hussein was in power.

Germany

German engineering group Ferrostaal is alleged to have paid bribes to secure contracts and to have organised the payment of bribes on behalf of other firms for a fee. In one case it is alleged that the company paid DM 460 million for the construction of a metal-processing plant. Few allegations have stood up in court because some of the payments occurred during a period when so called "useful expenditures", or payments made to procure contracts, were not

illegal in Germany. However, a member of the executive board was arrested in March and the Munich public prosecutor's office is also investigating other board members and senior executives for what official investigators described as "a particularly serious case of bribing foreign officials in connection with international business arrangements". The investigators are reviewing five projects, worth a total of almost one billion Euros, which Ferrostaal is alleged to have secured through bribery.

German Market regulator BaFin is investigating whether UBS's German operations adhered to money laundering rules.

Indonesia

It has been alleged that four former legislators from the United Development Party (PPP) and 12 Golkar politicians took combined bribes of Rp 2.25 billion during the 2004 election of a central bank senior deputy governor.

Pakistan

The deadline to convert the Anti-Money Laundering Ordinance into permanent legislation has successfully been met after getting approval from both houses of the Parliament. In March, President Asif Ali Zardari approved and signed the Anti-Money Laundering Act.

It has been reported that since the enactment of the Act, the Asia Pacific Group on Financial Action Task Force (FATF) upgraded Pakistan's ranking from high risk countries to lowest risk countries or category III.

CONTACTS

LONDON

Nicholas Burkill

Partner
+44 (0)20 7826 4583
burkill.nick@dorsey.com

Minal Upadhyay

Trainee Solicitor
+44 (0)20 7826 4560
upadhyay.minal@dorsey.com

NEW YORK

Nick Akerman

Partner
+1 (212) 415-9217
akerman.nick@dorsey.com

Joshua Colangelo-Bryan

Senior Attorney
+1 (212) 415-9234
colangelo.bryan.josh@dorsey.com

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