

CLIENT MEMORANDUM

Alstom S.A. Pleads Guilty to FCPA Violations and Agrees to Pay a Record \$772 Million Criminal Fine

December 23, 2014

AUTHORS

Martin Weinstein | Robert Meyer | Jeffrey Clark | Elizabeth Gray

On December 22, 2014, Alstom S.A. (“Alstom”), a French power generation and rail transport company, agreed to pay a record \$772,290,000 fine after pleading guilty to violating the U.S. Foreign Corrupt Practices Act (the “FCPA”). The charges stem from allegations that Alstom paid over \$75 million in bribes to help secure more than \$4 billion in projects in various countries, including Indonesia, Saudi Arabia, Egypt, Taiwan, and the Bahamas. The penalty is the largest FCPA criminal fine ever and the second largest FCPA settlement overall.

Alstom is a publicly traded company in France that designs, constructs, and services power grids, power generation facilities, and rail transportation systems. Until August 2004, Alstom listed its securities publicly on the New York Stock Exchange and thus qualified as an “issuer” under the FCPA.

According to court filings, from 1999 to 2004, Alstom made millions of dollars in improper payments to foreign government officials and disguised those payments in its books and records. Improper payments continued well after Alstom delisted itself from the New York Stock Exchange in 2004; the bribery scheme allegedly extended through at least 2011. Many of the improper payments involved sham consultancy arrangements in which Alstom falsely recorded bribes as “commissions” or “consultancy fees.” To conceal improper payments, Alstom created false documentation, including phony consultancy agreements with provisions purportedly prohibiting unlawful payments; instructed consultants to submit false invoices and other fraudulent backup documentation; and repeatedly submitted false certifications to regulatory

Alstom S.A. Pleads Guilty to FCPA Violations and Agrees to Pay a Record \$772 Million Criminal Fine

Continued

agencies, such as the United States Agency for International Development (which helped fund certain Alstom projects), falsely stating that no unlawful payments had been made and that no consultants were being used.

In certain instances, Alstom used code names to identify consultants, including “Mr. Geneva,” “Mr. Paris,” “London,” “Quiet Man,” and “Old Friend.” For example, according to court documents, “Mr. Geneva” was the brother of a high-level official at the Saudi Electric Company; he was paid approximately \$5 million in connection with power projects in Saudi Arabia even though he had no technical expertise and failed to provide legitimate services commensurate with the fees. Similarly, “Mr. Paris” was a close relative of another high-level official at the Saudi Electric Company who was paid at least \$4 million under similar circumstances. Another sham consultant, code-named “London,” received at least \$30 million in fees. Alstom did not require documentation justifying the large sums paid, and what little documentation Alstom maintained was created after the fact with the assistance of Alstom employees.

In Indonesia, Alstom retained two consultants primarily for the purpose of bribing government officials, including officials at the Indonesian state-owned power company, Perusahaan Listrik Negara (“PLN”), and a “[k]ey legislator” who served as the Vice Chairman of a Parliamentary commission related to power and energy, who allegedly had “[e]asy direct access personally to the PLN board.” Alstom conducted little or no due diligence on these consultants despite numerous red flags. Among other things, Alstom hired both consultants even though they were to provide the same services and, in violation of Alstom’s policies regarding payment terms, front-loaded payments for one of the contracts to facilitate the payment of bribes.

Alstom also paid bribes directly to foreign officials, including through gifts, travel, entertainment, and petty cash and by providing jobs for family members. In one instance, Alstom and its subsidiaries paid \$2.2 million to a charity, a U.S.-based Islamic education foundation, associated with a key Saudi government official believed to have 70% of the decision-making responsibility for Saudi Electricity Company matters. The payments were made in three installments and recorded as expenses related to the Saudi Electricity Company rather than as independent charitable contributions.

“During the relevant time period,” according to the Department of Justice (the “DOJ”), Alstom “had policies in place prohibiting unlawful payments to foreign officials,” but the company “knowingly failed to implement and maintain adequate controls to ensure compliance with those policies.” In particular, the government alleged that Alstom failed to implement and maintain adequate controls to ensure that the company conducted meaningful due diligence before retaining third-party consultants and failed to react properly to red flags, such as the fact that some consultants had no relevant expertise and the fact that some consultants were located or requested payment in countries other than where they operated.

According to the DOJ, Alstom also knowingly failed to implement and maintain adequate controls for approving consultancy agreements. Although Alstom’s consultancy agreements provided that consultants would be paid only on a pro rata basis based on project milestones or Alstom’s receipt of payment, employees in various instances changed the amount and terms of payments for consultants in violation of the company’s policies and Alstom executives and employees responsible for approving consultancy agreements failed to adequately scrutinize the changes. Alstom also

Alstom S.A. Pleads Guilty to FCPA Violations and Agrees to Pay a Record \$772 Million Criminal Fine

Continued

maintained an unwritten policy discouraging consultancy arrangements that would subject Alstom to the jurisdiction of the United States, and Alstom intentionally used consultants outside the United States, paid consultants through non-U.S. bank accounts, and paid consultants in currencies other than U.S. dollars.

Alstom pleaded guilty to two FCPA criminal counts: (1) knowingly falsifying or causing to be falsified its books, records, and accounts and (2) knowingly failing to implement and maintain an adequate system of internal accounting controls. Alstom's Swiss subsidiary, Alstom Network Schweiz AG (formerly Alstom Prom), pleaded guilty to conspiracy to violate the FCPA's antibribery provisions, and two U.S. subsidiaries, Alstom Power, Inc. and Alstom Grid, Inc., entered into deferred prosecution agreements in which they likewise admitted to conspiracy to violate the FCPA's antibribery provisions.

The United Kingdom's Serious Fraud Office (the "SFO") also charged Alstom Power Ltd. and two of its employees with bribery in connection with contracts in Lithuania. In July, the SFO charged another Alstom subsidiary, Alstom Network UK Ltd., with corruption in connection with transport projects in Poland, India and Tunisia. These charges remain pending. Alstom is also reportedly facing investigations elsewhere, including Brazil.

The settlement is the largest criminal fine ever imposed by the DOJ in an FCPA case and the second largest FCPA settlement overall. In December 2008, Siemens settled criminal FCPA charges brought by the DOJ for \$450 million and civil FCPA charges brought by the Securities and Exchange Commission for \$350 million, for a total of \$800 million with U.S. enforcement authorities—the largest FCPA settlement overall. The Alstom plea agreement cites various factors for the severity of the fine, including: (i) Alstom's failure to voluntarily disclose the misconduct even though it was aware of related misconduct at a U.S. subsidiary that had previously resolved corruption charges; (ii) Alstom's refusal to cooperate for several years; (iii) the breadth of Alstom's misconduct; (iv) Alstom's lack of an effective compliance program at the time of the misconduct; and (v) Alstom's prior criminal misconduct in other matters.

Three Alstom executives have pleaded guilty to bribing officials in Indonesia and charges remain pending against two other individuals in connection with Alstom's conduct. The "[k]ey legislator" in Indonesia also was convicted there of accepting bribes from Alstom and is serving a three-year prison sentence. Marubeni Corporation, Alstom's partner on the Indonesia project, pleaded guilty in March 2014 and agreed to pay a fine of \$88 million.

The enforcement action against Alstom highlights the serious risks that companies doing business internationally can face under the FCPA. It is not enough to have anticorruption policies and procedures in place. Companies must effectively implement those policies and procedures, train employees, and monitor and adjust controls as business needs and risks change. The conduct outlined in the Alstom charging documents reflects some of the most challenging areas of FCPA risk: engaging third parties and conducting effective anticorruption due diligence; identifying and resolving corruption red flags when they arise; and implementing and enforcing effective policies and procedures relating to gifts, travel, entertainment, petty cash, and charitable contributions. The DOJ's long-running investigation and the record-setting penalty demonstrate the vigor with which the DOJ will pursue FCPA cases, even in the absence of full cooperation from a

.....

Alstom S.A. Pleads Guilty to FCPA Violations and Agrees to Pay a Record \$772 Million Criminal Fine

Continued

company. Finally, the charges and investigations against Alstom and its executives in multiple jurisdictions across the world demonstrate the increasingly global nature of enforcement of antibribery laws against companies and their executives.

If you have any questions or need assistance on FCPA compliance, please contact Martin Weinstein (202-303-1122, mweinstein@willkie.com), Robert Meyer (202-303-1123, rmeyer@willkie.com), Jeffrey Clark (202-303-1139, jdclark@willkie.com), Elizabeth Gray (202-303-1207, egray@willkie.com), or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

December 23, 2014

Copyright © 2014 Willkie Farr & Gallagher LLP.

This memorandum is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum may be considered advertising under applicable state laws.