

# NEW CORRUPTION CONVICTIONS IN THE UK AND THE USA



**Following our Briefing of 19 December 2014, which focussed on the UK Government's new Anti-Corruption Plan and the conviction of two individuals in December for offences under the Bribery Act 2010 (Bribery Act), we discuss below further convictions obtained by the SFO. We also review some recent convictions under the extra-territorial legislation of the United States of America (US), where we see an example of a company's global liability and the reach of national regulators.**

## **New convictions under the Prevention of Corruption Act 1906**

On 22 December 2014, the Serious Fraud Office (SFO) announced the successful conviction of a company and two of the company's employees for corrupt payments made to foreign public officials in exchange for business contracts. This is significant as it is the first time that the SFO has successfully brought a conviction against a corporation for offences involving bribery of

foreign public officials. Two others, the company's international sales manager and a sales agent, were acquitted of the same offences. The prosecutions were brought under the Prevention of Corruption Act 1906 (PCA) instead of the Bribery Act because the bribes took place before July 2011 when the Bribery Act entered into force.

## **The illegal payments**

Between November 2006 and December 2010, Smith and Ouzman Limited, a printing company based in Eastbourne, Sussex, England, made corrupt payments of almost £400,000 to public officials in Kenya and Mauritania in order to acquire business contracts. The company made the payments contrary to section 1(1) of the PCA, which prohibits making such corrupt payments to public officials as an inducement to show favour to the person making the payments.



The two employees who were also successfully convicted of various counts of corruptly agreeing to make payments contrary to the PCA were Christopher John Smith and Nicholas Charles Smith. These individuals were respectively the chairman and the sales and marketing director of the company. Persons in these positions are likely to have sufficient authority and knowledge of the actions undertaken on behalf of a company to allow the SFO to prosecute a company for these actions successfully as in the present case. However, it should be noted that the Bribery Act now contains the no fault corporate offence of failure to prevent bribery.

### The investigation

The investigation was conducted with the assistance of the authorities in Kenya, Ghana and Switzerland. Charges were first brought against the four men on 30 August 2013. Whilst not all individuals who agreed to make the corrupt payments were charged, the SFO did name them in its report. This could potentially have a detrimental effect on those individuals in the future. These other individuals include agents of the company, as well as officials employed in Kenya, Ghana and Mauritania. The PCA, like the Bribery Act, has extra-territorial reach and the offences in question need not have taken place in the UK.

Sentencing of the convicted parties is due to take place in February 2015. On conviction on indictment, the PCA allows for imprisonment for up to seven years, or a fine or both. The severity of the potential sentences that may be applied indicates how serious these offences are.

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### The SFO's reach

As discussed above, the SFO brought the charges under the PCA because the payments took place prior to the implementation of the Bribery Act, and because the Bribery Act is not retrospective. The PCA was repealed by the Bribery Act and so it does not apply to conduct or payments which took place after 1 July 2011. Prosecutions for acts of corruption which take place after the implementation of the Bribery Act on 1 July 2011 are likely to be made under the Bribery Act. These PCA convictions are significant because they show that the SFO is very serious in its fight against corruption, and will use any legal route possible to eradicate it. The SFO may use legislation which is no longer in force to prosecute for historic corruption.

Companies and their directors should take steps designed to ensure that all levels of their business and operations run 'bribery-free' worldwide, and should note that payments made before the implementation of the Bribery Act may be prosecuted using previous legislation.

### Alstom pays US\$772 million for corruption and compliance failures - international accountability

The UK is not alone in its fight against corruption. The US is also particularly known for enforcing its anti-corruption legislation extra-territorially. In fact, only two of the top ten fines imposed under the US Foreign Corrupt Practices Act (FCPA) have been against US companies. There are occasions when the same company or group of companies will be prosecuted

for corruption in more than one jurisdiction, simultaneously. The recent prosecutions of the Alstom group are a good example of an international effort to punish, and thereby deter, corruption.

The US, like the UK, is a member of the Organisation for Economic Co-operation and Development (OECD) and has ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention). This is an initiative which requires its signatory parties, amongst other things, to: criminalise bribery of foreign public officials in international business transactions; impose effective, proportionate and dissuasive sanctions for natural and legal persons; establish jurisdiction over the offence according to the Anti-Bribery Convention; and facilitate mutual legal assistance and extradition. Companies may be prosecuted in more than one jurisdiction. The US is one of the most active parties to the Anti-Bribery Convention, and has proved its zeal to prosecute foreigners as well as US citizens through its enforcement of the FCPA.

On 22 December 2014 Alstom S.A. (Alstom), a French power and transportation company, pleaded guilty to violating the FCPA. Alstom agreed to pay approximately US\$772 million in fines to the US Department of Justice (DOJ), the regulator with the responsibility for enforcing the anti-bribery legislation. The criminal penalty was the largest ever levied by the US for foreign bribery. Alstom paid more than US\$75 million in bribes from 2000 to 2011 in countries such as Indonesia, Saudi Arabia, Egypt, Taiwan and the Bahamas to secure US\$4 billion in



contracts, which led to profits of about US\$300 million. Alstom admitted to falsifying records and failing to implement adequate internal controls to monitor and prevent corruption.

The US regulator also investigated other companies in the Alstom group, including its US and Swiss subsidiaries:

1. Alstom Network Schweiz AG (formerly Alstom Prom), Alstom's Swiss subsidiary, which pleaded guilty to conspiracy to violate anti-bribery provisions of the FCPA.
2. Alstom Power Inc (Alstom Power) and Alstom Grid Inc (Alstom Grid), both US subsidiaries of Alstom which also admitted to the conspiracy to violate anti-bribery provisions of the FCPA and entered into deferred prosecution agreements.

Alstom and its subsidiaries paid bribes to government officials in exchange for assistance in securing business contracts. The companies then sought to conceal the schemes by using consultants as conduits for the corrupt payments to the government officials.

The DOJ also prosecuted various individuals within the companies, as well as the companies themselves:

1. Frederic Pierucci, Alstom's former Vice President of global boiler sales.
2. David Rothschild, Alstom Power's former Vice President of regional sales.
3. William Pomponi, Alstom Power's former Vice President of regional sales.
4. The case against Alstom's former Senior Vice President for the Asia region remains outstanding. The DOJ press release<sup>1</sup> announcing Alstom's guilty plea states;

*"The charges against Hoskins are merely allegations, and he is presumed innocent unless and until proven guilty".*

Factors considered by the US Department of Justice in reaching the plea agreement with Alstom include Alstom's failure voluntarily to disclose the misconduct, its refusal to cooperate in the investigation over a period of several years, as well as the absence of an effective compliance programme at the time of the FCPA breaches. Alstom's prior criminal misconduct also contributed to the record-breaking fine. The sentencing hearing will be held on 23 June 2015.

The Indonesian justice system has similarly convicted a member of its Parliament, who is currently serving a three year prison sentence for accepting Alstom's bribes. Indonesia is not a member of the OECD or a signatory to the Anti-Bribery Convention. However it has its own anti-corruption initiative and corresponding legislation and, like China and India, regularly attends the OECD Working Group on Bribery as an active participant.

### Alstom charges in the UK

In the UK, Alstom Power Limited, a UK subsidiary of Alstom, has been charged with bribing officials linked to a Lithuanian energy project between February 2002 and March 2010.

This is the second Alstom UK subsidiary to be investigated for corruption offences by the SFO. In July 2014, the SFO brought criminal proceedings against Alstom Network UK Ltd for section 1 corruption offences under the PCA, and for three offences of conspiracy to corrupt contrary to section 1 of the Criminal Law Act 1977. As with the Smith and Ouzman Limited

case, the alleged offences pre-date the implementation of the Bribery Act, and so the SFO has used the legislation in operation at the time.

### International jurisdiction and cooperation?

According to Article 4 of the OECD Anti-Bribery Convention, it is for each party to the Convention to establish whether it has jurisdiction to prosecute alleged offenders. Parties should consult to determine which is the most appropriate jurisdiction for prosecution. In the Alstom case, the US prosecuted the French parent and the Swiss and US subsidiaries, and left the UK to prosecute the UK subsidiaries. As the DOJ, the SFO and other national regulators bring more prosecutions under anti-corruption legislation, it remains to be seen whether international companies will often find themselves prosecuted by more than one national regulator, or whether the countries will consult with each other and divide the responsibility.

In any event, the UK and US regulators certainly showed their zeal for making prosecutions in 2014, and we can expect much more of this in 2015 as the regulators seek successful convictions and gain in expertise.

According to Transparency International's most recent report on enforcement of the OECD Anti-Bribery Convention, Germany and Switzerland are also among the most active anti-bribery enforcers, with Italy, Canada, Australia, Austria and Finland rated as engaged in "moderate enforcement".

It is therefore all the more important for businesses to put in place procedures designed to prevent bribery by all employees, agents and other associates and actively to monitor compliance.

1 <http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>





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