

# The Asia Pacific Top 10 FCPA Cases of 2011

Continuing to focus an unblinking eye on the Asia Pacific region, US anti-corruption enforcement authorities resolved 10 investigations in 2011 against companies operating in that region under the Foreign Corrupt Practices Act (FCPA).

This may not be a surprise considering the corruption risk ranking that many Asia Pacific countries share, according to Transparency International (Indonesia 100, Thailand 80, China 75). However, some of the cases involved considerably less risky jurisdictions (Japan 14, Singapore 5) and merit a second look. Here they are in alphabetical order.

## 1. Alcatel

In a case that illustrates the broad definition of foreign officials, bribes Alcatel allegedly paid to employees of Telekom Malaysia, a 43% state-owned company, led to FCPA charges.

On June 1, 2011, Alcatel, a French-based telecommunication company, resolved criminal charges brought by the US Department of Justice (DOJ) involving bribery in various countries, including Taiwan and Malaysia. Besides bribes to government officials in Malaysia for information leading to a successful bid from Telekom Malaysia, there were also alleged bribes paid to Taiwanese legislators and a minister by consultants to obtain contracts with the Taiwan Railway Administration.

Alcatel entered into a three-year deferred prosecution agreement (DPA) with the DOJ and the three charged subsidiaries pled guilty. Criminal fines amounted to

US\$92 million, in addition to US\$45,372,000 in disgorgement of profits and pre-judgment interest imposed by the Securities & Exchange Commission (SEC). Other governments are also investigating this matter, including the Malaysian Anti-Corruption Commission, resulting in charges against a former account leader.

## 2. Aon

One of the first major corruption cases prosecuted in the UK, before enactment of the UK Bribery Act, also led to a settlement in the United States. On December 20, 2011, Aon, a global insurance broker headquartered in the United States, and its UK subsidiary announced a settlement of FCPA charges with the DOJ and SEC.

The charges involved bribes, totaling US\$3.6 million, including training, travel and entertainment, offered in Myanmar, Bangladesh, Indonesia, and Vietnam, and other countries to government officials who were responsible for awarding insurance contracts.

Aon entered into a two-year non-prosecution agreement (NPA) with the DOJ, agreed to pay a US\$1.76 million fine, and simultaneously settled with the SEC for US\$14,545,020 in disgorgement and pre-judgment interest. The UK Financial Services Authority (FSA) had imposed a fine of £ 5.25 million.

## 3. Diageo

In a case notable for the breadth, variety and intricacy of the bribery schemes, UK-based spirits producer Diageo

entered into a settlement with the SEC on July 27, 2010, for improper payments totaling approximately US\$2.7 million made through its subsidiaries in India, Thailand and South Korea to obtain sales and tax breaks worth over US\$61 million. The SEC imposed penalties totaling over US\$16 million. Additionally, the Korean authorities convicted five former Diageo Korea employees.

## 4. IBM

Illustrating the principle that bribes may come in forms other than cash, IBM agreed to a final judgment with the SEC on March 18, 2011, for alleged bribery of government officials in South Korea and China, involving cash, gifts, overseas travel for training and entertainment in order to secure sales of its products. IBM agreed to pay penalties to the SEC amounting to US\$82 million.

## 5. Innospec/Atmomartoyo

Although the US FCPA case against Innospec was resolved on March 18, 2010 when the US-based chemical manufacturer pled guilty to paying bribes to Indonesian and Iraqi government officials to secure sales of a fuel additive, on November 30, 2011, the Indonesian Corruption Eradication Commission (KPK) announced that it had charged a former director at state oil and gas firm PT Pertamina, with accepting bribes from Innospec.

The case was also prosecuted in the UK and is pending against several Innospec employees who appeared in UK court in 2011 to face corruption charges. Innospec has paid US\$40.2 million in fines to the DOJ, SEC and UK Serious Fraud Office.

## 6. JGC

In a case illustrating just how aggressively the United States asserts its jurisdiction, JGC, a Japanese company that is not a US issuer itself and committed no acts in the United States, nevertheless was held accountable as a joint venture partner that paid bribes to Nigerian officials to secure development contracts for liquefied natural gas facilities.

JGC entered into a two-year DPA with DOJ, agreeing to pay US\$218.8 million in fines on April 6, 2011. US jurisdiction was obtained by virtue of its partnership with a US company and US issuers, and because the bribes were paid with US dollars, processed through US correspondent accounts.

## 7. Johnson & Johnson

The DPA entered into by Johnson & Johnson (J&J) on April 8, 2011, sets forth the US's expectations as to corporate compliance programs and required enhanced due diligence when red flags are discovered.

J&J, the US-based provider of medical devices, pharmaceuticals, and consumer healthcare products, was charged for its alleged conduct in making improper payments to employees of state-owned healthcare providers in various countries to obtain contracts. Chinese authorities are reportedly investigating J&J's Shanghai office regarding bribes paid to a deputy chief of the Chinese State Food and Drug Administration.

While the company resolved its US charges by agreeing to pay US\$70 million in criminal and civil penalties to the DOJ and SEC respectively, the Chinese investigation remains open.

## 8. Maxwell Technologies

In a case that stands as a warning against ignoring an employee's report of bribery, on January 31, 2011, Maxwell Technologies, a US-based electronic and power producer, entered into a three-year DPA with DOJ, on charges that its Swiss subsidiary had paid US\$2.5 million on inflated invoices as "sales commissions" to a sales agent who passed it on to officials at Chinese state-owned entities to secure contracts. Maxwell Technologies knew of the bribes for six years before it took effective action to stop them.

Ultimately, the company paid US\$8 million in criminal fines and US\$6.38 million to the SEC in disgorgement of profit and prejudgment interest.

## 9. Rockwell Automation

The case involving Rockwell Automation illustrates that the DOJ and SEC have different enforcement priorities and will sometimes reach results that appear inconsistent. On May 3, 2011, Rockwell, a US-based manufacturer, agreed to entry of an SEC cease and desist order, after DOJ declined to prosecute charges that Rockwell's former Chinese subsidiary had paid bribes, including cash and sightseeing trips to employees of Chinese Design Institutes through third-party intermediaries, expecting that the employees would influence its state-owned customers to buy Rockwell products.

Rockwell agreed to pay US\$2.76 million in fines, disgorgement, and prejudgment interest.

## 10. Watts Water Technologies

This case demonstrates the importance of being proactive. After it learned of the

Rockwell Automation investigation, Watts Water Technologies developed an anti-corruption training program that generated questions about certain of its practices leading to an internal investigation.

On October 13, 2011, the US-based valve manufacturer resolved an FCPA investigation by the SEC following its disclosure of payments made by a subsidiary in China to employees of state-owned agencies. Watts agreed to entry of a cease and desist order in which it paid US\$3.78 million in fines, disgorgement, and prejudgment interest to the SEC.

## Conclusion

The ten Asia Pacific cases of 2011 present a microcosm of the FCPA enforcement trends we see globally. All of the settlement documents are an interesting read in predicting the enforcement agencies' priorities and touch points.

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