

Client Alert

Grand Jury Returns Second FCPA Indictment of Former Alcatel Executives

March 21, 2007

Yesterday, a Miami federal grand jury indicted a second former executive of Alcatel, S.A., a French telecommunications company, for violations of the Foreign Corrupt Practices Act. The indictment supersedes a December 2006 indictment of another former Alcatel executive and charges both with conspiring to make over \$2.5 million in indirect payments through a foreign “consulting” firm to Costa Rican officials in order to obtain a telecommunications contract on Alcatel’s behalf.

This prosecution provides a reminder of several lessons for companies engaged in international business activity in the context of the Department of Justice’s increased vigilance in prosecuting FCPA violations in recent months.

First, the case highlights the broad jurisdictional scope of the FCPA and the minimal U.S. contacts needed to support an FCPA prosecution. The companies and executives were citizens of, and located in, foreign countries, and the alleged conduct took place outside the United States. Still, the DOJ alleged that Alcatel’s trading of American Depositary Shares (ADRs) on the New York Stock Exchange, and the use by its executives of New York and Miami banks to channel the alleged payments to foreign officials, were sufficient to bring the case within the FCPA’s reach.

Second, the case is a reminder to companies of the risks involved in conducting business with state-owned or operated utilities or other business entities or in countries where such state involvement is prevalent. In this case, the “foreign official” who received the alleged payments was a director of the Costa Rican state-owned telecommunications authority and an advisor to a senior Costa Rican government official.

Third, the DOJ’s attention to “commission” payments made by Alcatel to the Costa Rican “consulting” firm that ultimately transferred funds to government officials highlights the particular risks associated with consultancy and other agency arrangements in the FCPA context. It is critical for company management to understand the nature (and to ensure proper recording) of all payments to outside entities retained to assist in business activities abroad.

There is no sign that the DOJ’s recent spate of FCPA prosecutions is slowing down. To the contrary, the DOJ’s public statements and recent actions demonstrate that FCPA prosecution is one of its highest priorities. This most recent case reinforces the lesson that due diligence on agents and counterparties and a comprehensive system of internal controls, as well as an effective compliance and training program, remain the best defense against FCPA prosecution.

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