

## CORPORATE COMPLIANCE ALERT

1/13/14

### **Alcoa Pays \$384 Million in the Fifth Largest Foreign Corrupt Practices Act Case**

Alcoa World Alumina LLC, a majority-owned subsidiary of Alcoa, has agreed to plead guilty to one count of violating the Foreign Corrupt Practice Act (FCPA). As part of the plea agreement, Alcoa will pay a criminal fine of \$209 million and will disgorge \$161 million to the Securities and Exchange Commission (SEC), ranking the global settlement with the SEC and Department of Justice (DOJ) as the fifth largest FCPA settlement to date.<sup>1</sup>

According to the government, Alcoa World Alumina LLC paid millions of dollars in bribes through an international middleman in London to officials of the Kingdom of Bahrain to obtain lucrative, long-term supply agreements. In fact, according to the government, the sham distributorship permitted the middleman to mark up the price of alumina by \$188 million and Bahrain government officials and senior members of Bahrain's royal family received bribes.<sup>2</sup> To conceal the illicit payments, the middleman and Bahrain officials used offshore bank accounts at major financial institutions in Guernsey, Luxembourg, Liechtenstein and Switzerland.<sup>3</sup>

The United States government was also not the only government pursuing Alcoa for wrongdoing in connection with the ongoing bribes. The United Kingdom's Serious Fraud Office, in one of the UK's largest corruption prosecutions in years, unleashed criminal charges against British-Canadian businessman Victor Dahdaleh (the middleman).<sup>4</sup>

Given the amount of the settlement, the target years of the investigation and prosecution (dating back to 2006), and the British government's ongoing prosecution, manufacturers must be wary of their potential exposure to criminal, civil and administrative consequences when they conduct business overseas, especially in "high risk" countries, such as Bahrain. The government is also not the only entity that should concern manufacturers. Competitors, former employees and other independent third parties, *i.e.* lobbyists, consultants and accountants, are all also perfectly capable of providing the government with sufficiently detailed information about any improper conduct overseas.

To avoid these pitfalls, manufacturing organizations must establish corporate compliance programs meeting the requirements delineated by the DOJ.<sup>5</sup> It is one thing to tell the government that the organization established a compliance program to minimize, monitor and identify any wrongdoing in connection with improper business conduct overseas, and that a particular instance is simply an isolated incident, which the corporation has addressed and remediated. However, it is an entirely different situation when the corporation regularly engages in business overseas with high-risk countries without the benefit of a comprehensive corporate compliance program or attorneys familiar with anti-corruption laws in foreign countries. In fact, because Alcoa agreed to maintain and implement an enhanced global anti-corruption compliance program as part of their plea agreement, the agreement is a strong reminder to manufacturing organizations that, knowledge of and ongoing compliance with foreign anti-bribery laws are an indispensable part of any effective corporate compliance program.<sup>6</sup>

For further information, please contact the following Roetzel attorneys:

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<sup>1</sup> <http://www.justice.gov/opa/pr/2014/January/14-crm-019.html>

<sup>2</sup> *Ibid*, at note 1.

<sup>3</sup> *Ibid*, at note 1.

<sup>4</sup> *Ibid*, at note 1.

<sup>5</sup> See U.S. Attorney's Manual, Chapter 9-28. 800 – "Corporate Compliance Programs"; see also United States Sentencing Guidelines, Section 8B1.2.