

They Grow Up So Fast: Alstom and the UK Bribery Act at Five Years

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In April 2015, the **UK Bribery Act (UKBA)** celebrated its fifth birthday. In the same month, the Serious Fraud Office brought a third round of corruption charges under the UKBA in the Alstom case. Those allegations, brought against *Alstom Network UK* and one of its former employees, add to the expanding case against multiple UK subsidiaries of the French company's transport and power division. A look at the Alstom case shows that the young UKBA is gaining the strength to nip at the heels of a culture of corruption, but may not yet have the bite to cause systemic changes.

Background

In December 2014, Alstom admitted to bribing officials to win power and transportation projects from government-owned entities around the world. According to the Department of Justice, Alstom paid more than \$75 million in bribes to secure \$4 billion in projects. Pursuant to a plea agreement with DOJ, Alstom paid a criminal penalty to U.S. regulators of about \$772 million.

More recently, a cooperative enforcement action between the DOJ and SFO, with help from Indonesian, Swiss, German, Singaporean, Saudi, Cypriot, and Taiwanese enforcement officials, led to further charges under the UK Bribery Act. Those charges will go to trial in the UK courts in May, 2016.

The UK Enforcement

The charges brought by the SFO against Alstom will be a test for the UKBA. The SFO investigation into Alstom has reportedly been underway for five years. The charges are a result of a global effort to track the methods and means of an international corruption scheme. The case is likely to be the largest and most multi-faceted brought under the young law.

But there is some question as to how far the prosecution will go. A conviction leading to a fine would, of course, have a punitive effect on the French conglomerate. But the SFO has a much more powerful sanction at its disposal: it can disbar the company from competing for EU public contracts. Debarment has not yet been meted out as a punishment in a UKBA prosecution, but the Act provides for such a penalty. It will be interesting to watch how much the prosecution chooses to flex its enforcement muscle.

Compliance Takeaways

The UKBA makes it a crime for a company to fail to prevent bribery by persons associated with the company. But the Act also contains an absolute safe harbor for that offense, where the company has “adequate procedures” in place to prevent persons associated with it from bribing. Because the UKBA is relatively new, it is not always clear (even with the help of UKBA guidance) what compliance programs will constitute “adequate procedures” under the Act. However, a lack of precision in the regulations does not appear to have been the problem for companies and individuals convicted under the Act to date. All have committed acts clearly intended to exchange a thing of value for an unfair business advantage.

Perhaps during the adolescence of the UKBA, we will have time and leisure to debate whether a yearly or twice-yearly training constitute an adequate compliance procedure under the Act. For now, however, it is clear that companies need to implement a compliance program tailored to their liability risk profile, support that program with a strong anti-corruption tone from the top, and follow the measures contained in their compliance program to detect and prevent potential UKBA violations. Then, perhaps, we can share a bit of the UKBA birthday cake.

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