

Marubeni Corp. Pleads Guilty to FCPA Bribery Charges

March 24, 2014

On March 19, 2014, the U.S. Department of Justice announced that Tokyo-based trading company Marubeni Corporation had entered a guilty plea and will pay a criminal fine of \$88 million in connection with violations of the U.S. Foreign Corrupt Practices Act. This is one of multiple FCPA-based resolutions announced by a Japanese company in the last three years alone, and continues several recent trends in FCPA enforcement. Marubeni is not an “issuer” within the meaning of the FCPA and, accordingly, there was no parallel enforcement action brought by the U.S. Securities and Exchange Commission.

The Facts

According to court filings, Marubeni participated in a seven-year scheme to pay and conceal bribes to high-ranking government officials in Indonesia in order to obtain a \$118 million power project. Specifically, Marubeni, its employees, and others paid bribes to a high-ranking member of the Indonesian Parliament and high-ranking officials at the state-owned and controlled electricity company. To conceal the bribes, Marubeni and its consortium partner retained two third-party “consultants” to make the payments. These consultants, however, were not retained to provide legitimate services, but, instead, Marubeni, through employees and others, caused funds to be wired to the consultants’ bank accounts for the purpose of making payments to government officials in Indonesia. In all, nearly \$2.3 million was paid to the consultants’ U.S.-based bank accounts for this purpose.

In connection with the foregoing scheme, Marubeni pleaded guilty to seven counts of violating the FCPA’s anti-bribery prohibition, and one count of conspiring to violate the FCPA. Two employees of Marubeni’s consortium partner (identified through other sources as international power company Alstom) also entered guilty pleas. In addition, DOJ filed charges against two other former employees of the consortium partner. Marubeni’s plea agreement is subject to approval by the federal district court, and sentencing has been scheduled for May 2014. As noted by Acting Assistant Attorney General [Mythili Raman](#), then head of DOJ’s Criminal Division, “this is one of only a handful of parent-level guilty pleas in an FCPA prosecution” by DOJ, due to the “extremely serious” criminal conduct of Marubeni.

FCPA Trends

Several aspects of the Marubeni resolution demonstrate growing trends and attitudes of U.S. regulators toward FCPA enforcement.

- **Cooperation Among U.S./International Anti-Corruption Regulators.** The Marubeni matter is further evidence of a growing trend of cooperation by DOJ, as well as the U.S. Securities and Exchange Commission (“SEC”), with international law enforcement agencies. In its release describing the matter, DOJ stated that it “greatly appreciates the significant cooperation provided by its law enforcement colleagues in Indonesia at the Komisi Pemberantasan Korupsi (Corruption Eradication Commission), the Office of the Attorney General in Switzerland and the Serious Fraud Office in the United Kingdom.” This cooperation is consistent with statements by [Andrew Ceresney](#), Director of the Enforcement Division at the SEC, and Acting Assistant Attorney General Raman at DOJ, indicating that they expect greater collaboration with foreign agencies.
- **Resolutions with Non-Issuers.** As noted, Marubeni itself was not an issuer (thus explaining the lack of parallel SEC enforcement action), nor a “domestic concern” within the meaning of the FCPA: DOJ’s charge of direct liability was pursuant to 15 U.S.C. § 78dd-3, which provides

liability for actions taken “while in the territory of the United States,” and was based in part on meetings that took place in Connecticut with the U.S.-based subsidiary of Marubeni’s consortium partner, as well as payments made from a Marubeni bank account in New York to a consultant’s bank account in Maryland.

- **Resolutions with Japanese Companies.** The Marubeni resolution is the fourth resolution since April 2011 by a Japanese corporation involving the payment of substantial sums to U.S. regulators (and, significantly, the second such resolution for Marubeni). These resolutions have involved charges of direct liability under the FCPA, as well as conspiracy and/or aiding and abetting, based in some instances on limited contacts with U.S. commerce (see above). In short, Japanese companies should be aware that, even if they do not maintain pervasive contacts with the U.S., they may still face liability under the FCPA.
- **Focus on Asia.** The resolution announced with Marubeni is also evidence of U.S. regulators’ continued interest in FCPA-related misconduct in Asia, which is often singled out for its heightened corruption risk. 2013 public disclosures by other companies further reveal ongoing FCPA-related investigations arising out of conduct in China, India, Korea, and Bangladesh.
- **Prosecution of Individuals.** Although the resolution does not involve the prosecution of any Marubeni employees, the entry of guilty pleas by and the additional prosecution of employees of Marubeni’s consortium partner are consistent with recent [statements](#) by DOJ and the SEC highlighting the agencies’ successful pursuit of charges against individual corporate executives, and their [expectation](#) to file more actions against individuals in FCPA cases.
- **Cooperation Credit.** According to DOJ’s [release](#), Marubeni’s plea agreement cites Marubeni’s “decision not to cooperate with the department’s investigation when given the opportunity to do so” as one of the “factors considered by the department in reaching an appropriate resolution.” Additionally, the release quotes Acting Assistant Attorney General Raman as stating: “The company refused to play by the rules, then refused to cooperate with the government’s investigation. Now Marubeni faces the consequences for its crooked business practices in Indonesia.” As part of its plea agreement, Marubeni has agreed to cooperate with DOJ’s ongoing investigation.
- **Importance of Compliance.** As part of its plea agreement with DOJ, Marubeni also agreed to maintain and implement an “enhanced global anti-corruption compliance program.” Like its refusal to cooperate with the government’s investigation, Marubeni’s “lack of an effective compliance and ethics program at the time of the offense” was cited by DOJ as a factor considered in reaching an appropriate resolution. Notably, the plea agreement is the second time that Marubeni has agreed with U.S. authorities to make efforts relating to corporate compliance. Marubeni had previously agreed, in entering into a deferred prosecution agreement with DOJ in January 2012, to engage a “corporate compliance consultant,” although that agreement post-dated the conduct at issue in the present matter. According to a [statement](#) released by Marubeni, the terms of the prior settlement were completed earlier this year and Marubeni to date has taken “extensive efforts to enhance its anticorruption compliance program, and believes that its current program is robust and effective.”

“The company refused to play by the rules, then refused to cooperate with the government’s investigation. Now Marubeni faces the consequences for its crooked business practices in Indonesia.” **Mythili Raman, Acting Assistant Attorney General**

DOJ’s release announcing the guilty plea can be found [here](#).

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