

White Collar Update: Rolls-Royce Reaches Global \$800 Million Resolution in Bribery Scheme

January 25, 2017

On January 17, 2017, the Department of Justice (“DOJ”) announced that British multinational manufacturer Rolls-Royce plc (“Rolls-Royce” or the “Company”) had entered into a Deferred Prosecution Agreement (“DPA”) on December 20, 2016 in the U.S. District Court for the Southern District of Ohio for conspiring to violate the Foreign Corrupt Practices Act (“FCPA”), in connection with a scheme to bribe government officials in several countries in exchange for government contracts. Rolls-Royce has also entered into a DPA with the U.K. Serious Fraud Office (“SFO”), approved on January 16, 2017, in which it agreed to pay £497 million (approx. \$605 million) plus interest and costs, and a leniency agreement with Brazil’s Ministério Público Federal (“MPF”), in which it agreed to pay approximately \$25.6 million. The matter is one of several recent FCPA cases in which DOJ acted jointly with foreign anti-corruption authorities to reach a multinational resolution, and the third since September reflecting cooperation between the U.S. and Brazil.

Factual Background

According to DOJ, between 2000 and 2013, Rolls-Royce conspired to pay over \$35 million in bribes through third parties to foreign officials in exchange for providing confidential information and awarding government contracts. Specifically, Rolls-Royce admitted to conspiring with their indirect subsidiary, Rolls-Royce Energy Systems, Inc. (“RRESI”), to bribe officials in Angola, Azerbaijan, Brazil, Iraq, Kazakhstan, and Thailand. In each country, Rolls-Royce engaged an intermediary who would use part of its “commission payment” to bribe government officials:

- In Thailand, Rolls-Royce bribed officials at state-owned and state-controlled oil and gas companies in exchange for equipment and aftermarket product and service contracts.
- In Brazil, RRESI made commission payments to an intermediary to be used to pay officials at Petrobras in return for equipment contracts and “long term service agreements.”
- In Kazakhstan, Rolls-Royce and RRESI conspired to bribe officials for contracts to supply gas turbines to AGP, a joint venture between Kazakh and Chinese state-owned entities formed to build a gas pipeline between the two countries; years later, RRESI engaged a local distributor that it knew was beneficially owned by a high-ranking Kazakh government official with decision-making authority over Rolls-Royce’s continued operations in the country.
- In Azerbaijan, Rolls-Royce paid foreign officials through an intermediary’s commission payments in exchange for confidential information and assistance with contract awards to supply turbines on several projects.
- In Iraq, Rolls-Royce paid government officials to obtain contracts to supply gas generators to Iraqi state-owned South Oil Company (“SOC”) and to maintain future business in Iraq after SOC threatened to “blacklist” the Company.
- In Angola, Rolls-Royce bribed officials at state-owned oil company SONANGOL in exchange for confidential information and government contracts.

Rolls-Royce Settles with Regulators in Three Countries for \$800 Million

Rolls-Royce entered into DPAs with DOJ and the SFO, and a leniency agreement with MPF, agreeing to pay a total of approximately \$800 million in penalties. Of that amount, the Company agreed to a criminal penalty of approximately \$170 million to DOJ (after credit for the Brazil payment), a \$25.6 million payment to Brazilian authorities, and a £497 million (approx. \$605 million) payment in disgorgement and penalties to the U.K. under a DPA that includes additional conduct in Indonesia, China, Malaysia, Nigeria, Russia, and India.

According to DOJ's [press release](#), the Company did not disclose the criminal conduct to DOJ until the media began reporting allegations of corrupt payments, and after the SFO had initiated an inquiry. Rolls-Royce did receive, however, a 25% reduction off the bottom of the U.S. Sentencing Guidelines fine range for its full cooperation with the investigation (the maximum amount allowed under DOJ's [Pilot Program](#) in the absence of voluntary self-disclosure). DOJ also credited the company with significant remediation efforts, including firing implicated employees, terminating suspect business relationships, and implementing enhanced internal controls and compliance policies.

Observations

- **International Cooperation:** The Rolls-Royce matter is one of several recent FCPA resolutions reflecting growing cooperation among U.S. and various foreign regulators. In particular, the resolution is the third since September 2016 that reflects cooperation with the MPF in Brazil relating to an anti-corruption investigation. See Davis Polk [client alert](#), "Odebrecht and Braskem to Pay Record FCPA Penalty of at Least \$3.5 Billion in Petrobras Fallout" (December 23, 2016). The resolution also reflects continuing close cooperation with the SFO, which will be further strengthened by DOJ's recent decision to temporarily second a DOJ lawyer to the SFO and the U.K. Financial Conduct Authority. See the December 9, 2016 DOJ [announcement](#), "New Fraud Position in London Aimed to Help Fight Economic Crime and Foreign Corruption". The SFO has used DPAs sparingly, and the Rolls-Royce agreement is of a much larger magnitude than any preceding it, suggesting a possible significant shift in the U.K.'s approach to anti-bribery enforcement.
- **Foreign Payment Credit:** In the Rolls-Royce matter, as in the Embraer and Odebrecht resolutions, DOJ credited the Company with an amount paid to a foreign authority. DOJ calculated the fine to Rolls-Royce at \$195 million, and the approximately \$170 million to be paid to DOJ reflects a credit of \$25.6 million paid in connection with its leniency agreement in Brazil. Overall, the U.S. authorities received less than a quarter of the total amount Rolls-Royce paid to authorities worldwide. This likely reflects the involvement of the SFO and the U.K.-based nature of the Company. Notably, the U.K. DPA includes schemes in several countries that were not included in DOJ's resolution, and covered a longer span of time dating back to 1989.
- **Self-disclosure, Cooperation, and the DOJ Pilot Program:** Though not technically a DOJ "Pilot Program" case, the Rolls-Royce resolution is consistent with DOJ's published guidance under the Program—which is seemingly being applied across all resolutions, including those with investigations that began prior to the announcement of the Pilot Program. Specifically, the Company received a 25% discount off the bottom of the sentencing guidelines range—the maximum amount available where a company receives full cooperation and remediation credit, but no self-disclosure credit. Initial disclosure of criminal conduct in this case reportedly came in 2013 from a whistleblower who was a former employee and alleged in a series of online comments that Rolls-Royce had bribed the son of Indonesia's former president with \$20 million and a blue Rolls-Royce car. As seen in a string of recent SEC enforcement actions, U.S. authorities continue to increase protections for whistleblowers in an effort to encourage disclosure of criminal conduct to regulators. See Davis Polk [client alert](#), "SEC Announces Two Enforcement Actions Regarding Restrictive Language in Severance Agreements" (December 22, 2016).

- **Conspiracy-Only Resolution:** The Rolls-Royce resolution is one of a handful of recent resolutions in which a foreign corporation settled FCPA charges based on either accomplice or conspiracy theories of liability, without an accompanying direct charge under 15 U.S.C. § 78dd-1, § 78dd-2, or § 78dd-3, based on conduct by the corporation that took place outside the United States. The United States Court of Appeals for the Second Circuit is currently considering the scope and availability of these theories of liability against foreign individuals and entities acting outside the United States (see *United States v. Hoskins*, No. 16-1010 (2d Cir.)). Notably, the U.S. connections in the Rolls-Royce matter were the fact that several members of the alleged conspiracy were U.S. “domestic concerns” under 15 U.S.C. § 78dd-2—including RRESI and employees thereof—though DOJ brought no charges against any of these other actors.
- **Other January Resolutions:** The Rolls-Royce resolution is one of several SEC and DOJ FCPA resolutions in January, announced in advance of the change in the U.S. presidential administration. On January 12, Zimmer Biomet Holdings Inc. agreed to pay a \$17.4 million criminal penalty and retain an independent compliance monitor in connection with a scheme to bribe Mexican government officials and for failure to maintain internal controls in Mexico and Brazil. See the Zimmer Biomet DOJ [press release](#), [deferred prosecution agreement](#), and [criminal information](#). The next day, DOJ announced it had entered into a DPA with Chilean chemical and mining company Sociedad Quimica y Minera de Chile (“SQM”), in which the company agreed to pay a fine of \$15.5 million and retain an independent monitor after a fund under the control of high-level executives was used to make contributions to foundations controlled by Chilean politicians. See the SQM DOJ [press release](#). On January 19, DOJ announced a non-prosecution agreement with Las Vegas Sands Corporation, pursuant to which the company will pay \$7 million to resolve allegations that it failed to implement adequate controls to prevent illegitimate payments in China and Macao and fired an employee who had raised concerns about the payments. See the Las Vegas Sands DOJ [press release](#) and [non-prosecution agreement](#). DOJ also announced two prosecutions of individuals for FCPA violations on January 10. In one case, two former energy company owners pled guilty to FCPA violations for bribing Venezuelan officials in exchange for contracts from Venezuela’s state-owned energy company, Petroleos de Venezuela S.A. See the DOJ [press release](#). In another case, four individuals were indicted for their respective roles in a scheme to bribe officials in an unnamed Middle Eastern country in connection with the \$800 million sale of a commercial building in Vietnam to a Middle Eastern sovereign wealth fund. See the DOJ [press release](#).

In addition to joint resolutions with DOJ in the Biomet and SQM matters, the SEC settled FCPA charges with two additional companies in January. The SEC entered an administrative order against Orthofix International N.V. on January 18 based on self-reported allegations of improper payments in Brazil, under which the company will pay \$3.2 million in disgorgement and interest, and \$2.9 million in civil penalties. See the SEC [administrative order](#). The SEC also entered an administrative order on January 6 against Mondelēz International, Inc. and its subsidiary Cadbury Limited for improper payments made to obtain licenses and approvals for a chocolate factory in Baddi, India; Mondelēz will pay \$13 million in civil penalties. See the SEC [administrative order](#).

Click the embedded links for the Rolls-Royce DOJ [press release](#), [deferred prosecution agreement](#), and [criminal information](#).

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