

Société Générale Enters Into First Coordinated Resolution of Foreign Bribery Case by U.S. and French Authorities

June 6, 2018

On June 4, 2018, the U.S. Department of Justice announced that Société Générale S.A. (“Société Générale”) and its wholly-owned subsidiary, SGA Société Générale Acceptance, N.V. (“SGA”), have agreed to pay over \$1 billion in total penalties to U.S. and French authorities in connection with bribe payments to Libyan officials and manipulation of the London Interbank Offered Rate (“LIBOR”). SGA pled guilty on June 5 to conspiracy to violate the U.S. Foreign Corrupt Practices Act’s (“FCPA”) anti-bribery provisions. Société Générale entered into a three-year deferred prosecution agreement relating to charges of conspiracy to violate the FCPA’s anti-bribery provisions and conspiracy to transmit false commodities reports. As the first coordinated resolution by U.S. and French authorities of a foreign bribery case, the case highlights the increasing potential legal exposure for multinationals based on violations of the FCPA and anticorruption laws in other jurisdictions. The resolution signals that French authorities will actively exercise the authority they derive from the “Sapin II” anticorruption law, as also demonstrated by the recent bribery charges in France against former Havas chairman Vincent Bolloré. The resolution also underscores the potential benefits of cooperation, remediation and joint resolutions with multiple authorities.

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Background

FCPA Case

From around 2004 to 2009, Société Générale paid over \$90 million in commissions to a Libyan intermediary, who paid portions of the commissions to Libyan officials to secure 14 investments from Libyan state institutions for Société Générale. In total, the investments were worth approximately \$3.66 billion and earned Société Générale approximately \$523 million in profits. A former subsidiary of U.S. investment management firm Legg Mason, Inc. participated in the scheme.¹

LIBOR Case

USD LIBOR. Between May 2010 and October 2011, Société Générale's U.S. Dollar LIBOR submitters made submissions that were lower than the rates at which the company borrowed dollars. Certain managers directed the USD LIBOR submitters to make the deflated submissions. The deflated submissions were meant to protect the company's reputation by creating the appearance that it could borrow money at more favorable rates than were actually available to it.

JPY LIBOR. In 2006, a Société Générale derivatives trader requested and obtained submissions by a Société Générale Japanese Yen LIBOR submitter that benefited the trader's

positions and the positions of other traders. The JPY LIBOR submitter made the submissions at the direction of his supervisor.

The Settlement

Pursuant to the deferred prosecution agreement with the Department of Justice, Société Générale agreed to pay a total criminal penalty of \$585 million in connection with the FCPA case, making it the fifth largest FCPA settlement. The Department will credit approximately \$293 million in penalties (equal to 50% of the Department's penalty) that Société Générale will pay to the Parquet National Financier in France, pursuant to a Convention Judiciaire d'Intérêt Public based on the French anticorruption law.²

With respect to the LIBOR case, Société Générale agreed to pay a \$275 million criminal penalty, under the deferred prosecution agreement with the Department of Justice.

The Department determined that it was not necessary to appoint an independent compliance monitor given the company's substantial cooperation, its significant remediation and its ongoing monitoring by the newly-minted French Anticorruption Agency.

Separately, the U.S. Commodity Futures Trading Commission issued an order on June 4 requiring Société Générale to pay a \$475 million civil

¹ In addition to the resolution with Société Générale and SGA, on June 4, the Department entered into a non-prosecution agreement with Legg Mason, Inc., which agreed to pay \$64 million in criminal penalties and disgorgement to resolve an FCPA case.

² For a general discussion of the French anticorruption reform: <https://www.clearygottlieb.com/-/media/organize-archive/cgsh/files/publication-pdfs/alert-memos/alert-memo-201733.pdf>

Société Générale previously paid \$1.1 billion last year to settle a lawsuit filed by the Libyan Investment Authority in London High Court involving related allegations.

In 2016, Och-Ziff Capital Management Group LLC agreed to pay a \$213 million criminal penalty and enter into a deferred prosecution agreement relating to a bribery scheme including Libyan officials. A wholly-owned subsidiary of the company pled guilty to conspiracy to violate the FCPA's anti-bribery provisions.

monetary penalty related to its submissions for LIBOR and the Euro Interbank Offered Rate.

Takeaways

There are several important takeaways from the Société Générale cases:

- *First*, companies face heightened exposure based on violations of anticorruption laws given the focus by the Department of Justice on FCPA enforcement and the recent strengthening of France’s anticorruption laws.
- *Second*, along with an increased risk of enforcement action, greater coordination by authorities in multiple jurisdictions may provide incentives for companies to seek joint resolutions. As reflected in the Société Générale resolution, the Department of Justice may credit companies’ payments to other authorities to offset penalties owed to the Department, pursuant to its policy to limit the imposition of multiple penalties on a company for the same conduct.
- *Third*, the Department’s FCPA Corporate Enforcement Policy provides useful guidance for companies addressing potential violations of the FCPA and other U.S. laws. As explained in the policy, a company may receive a discounted fine if it did not voluntarily disclose its misconduct, but fully cooperated in the investigation and timely and appropriately remediated. According to Société Générale’s Deferred Prosecution Agreement, the company did not voluntarily and timely disclose the bribery or LIBOR-related conduct. The Department of Justice also highlighted several aggravating factors in the FCPA and LIBOR cases, such as the length of the misconduct, the high value of the bribes

paid and the involvement, awareness or willful ignorance of high-level employees. The company still received cooperation credit for conducting thorough internal investigations, producing voluminous evidence located in other countries and providing regular updates on the internal investigations. Because of issues early on in the investigations, however, it did not receive full cooperation credit. The company also received credit for its remedial measures, including disciplinary action and enhancements to its compliance program.

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