

## E-ALERT | Anti-Corruption

July 19, 2012

### **NORDAM GROUP INC., PAYS \$2 MILLION PENALTY TO SETTLE FCPA ALLEGATIONS** **Improper Payments Made to Employees of China's State-owned Airlines**

On July 17, 2012, NORDAM Group, Inc. ("NORDAM"), [agreed to pay \\$2 million](#) to settle charges by the US Department of Justice ("DOJ") that NORDAM employees violated the US Foreign Corrupt Practices Act ("FCPA") by making improper payments to employees of state-owned airlines in China to secure contracts to perform maintenance, repair, and overhaul ("MRO") services for those airlines. To settle the charges, NORDAM agreed to pay a \$2 million penalty, to report to the DOJ periodically during the term of a [three-year non-prosecution agreement](#), and to continue to implement an enhanced compliance program and internal controls to prevent and detect future FCPA violations.

#### **Misconduct**

NORDAM provides MRO services for airframe and engine parts for commercial and business airlines through its headquarters in Oklahoma, US, and via facilities in Mexico, Singapore, and the United Kingdom. It conducts international sales and marketing through its wholly-owned affiliate World Aviation Associates Pte Ltd ("WAAPL").

According to the DOJ non-prosecution agreement, employees of a NORDAM affiliate paid bribes from 1999 to 2008 to employees of airlines created, controlled, and exclusively owned by the People's Republic of China to secure MRO service contracts with the airlines. NORDAM employees in the United States were "made aware of and approved" the bribes, which were referred to internally as "commissions" or "facilitator fees." The facilitator fees were paid to "facilitators" who were in fact employees of the state-owned airline customer and were nicknamed "internal guys," "internal ghosts," or "our friends inside."

According to the non-prosecution agreement, NORDAM and WAAPL employees made improper payments both directly and indirectly to airline employees. Initially, the facilitator fees were paid directly via wire transfer to the employees' bank accounts, or indirectly by depositing the money into personal bank accounts of WAAPL employees, who then withdrew money to pay the airline employees in cash. Later, NORDAM employees created sales representation agreements with fictitious entities and used the money generated under these agreements to make improper payments to the airline employees. NORDAM and its affiliates also artificially inflated the invoices to customers to offset the bribes paid to the airline employees.

## Consequences

NORDAM agreed to pay a \$2 million penalty as part of the non-prosecution agreement. DOJ noted that this fine was “below the standard range” because of “NORDAM’s timely, voluntary, and complete disclosure of the conduct, its cooperation with the department, and remedial efforts,” and because NORDAM had demonstrated, and an independent accounting expert had confirmed, that a fine in excess of \$2 million would “substantially jeopardize” the company’s ongoing viability.

## Implications

The NORDAM enforcement action follows other recent FCPA prosecutions in the aerospace sector. In March 2012, Tulsa-based aircraft maintenance company Bizjet International Sales and Support Inc., [agreed to pay \\$11.8 million](#) to settle FCPA offenses arising from its activities in Latin America. In connection with that investigation, Bizjet’s owner, Lufthansa Technik AG, a German company, also entered into a three-year deferred prosecution agreement with the DOJ.

The NORDAM enforcement action also follows seven other FCPA actions related to conduct in China since January 2011: [Garth Peterson](#) (April 2012), [Stuart & Rose Carson](#) (April 2012), [Biomet](#) (March 2012), [Watts Water](#) (October 2011), [Rockwell Automation](#) (May 2011), [IBM](#) (March 2011), and [Maxwell Technologies](#) (January 2011).

This enforcement action reinforces lessons learned from other FCPA and anti-corruption cases, including the need for:

- scrutiny from an anti-corruption perspective, and careful control of, payments to third parties;
- an adequate system of internal controls to ensure payments are made to legitimate and established parties; and
- careful oversight, monitoring, and control of company employees.

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