

Client Alert

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Consultants Indicted in Japan for Paying Bribes in Vietnam

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Following on the heels of Japanese trading company Marubeni's recent admission that it violated the U.S. Foreign Corrupt Practices Act (you can find our client alert regarding the Marubeni guilty plea [here](#)), again a Japanese company is in the crosshairs of anti-corruption regulators, but this time in Japan, not the United States. On July 10, 2014, the Tokyo District Public Prosecutors Office indicted the railway consulting firm Japan Transportation Consultants (JTC) and three of its current and former executives on charges of paying bribes to foreign officials in Vietnam.¹ JTC allegedly paid a total of JPY 69.9 million (approximately USD 690,000) to various Vietnamese government officials in order to win consulting contracts related to a rail project funded by the Japan International Cooperation Agency (JICA)—the agency responsible for administering the Japanese government's Overseas Development Assistance (ODA) projects.²

JAPANESE ANTI-BRIBERY LAW

Although Japanese law prohibits the bribery of both domestic and foreign public officials, Japan's commitment to enforcement of its foreign anti-bribery laws has been criticized (see the OECD Working Group on Bribery's recent report on Japanese anti-bribery enforcement [here](#)). The indictment of JTC for foreign bribery may signal that a more vigorous enforcement attitude is emerging among Japanese authorities. We predicted this trend in our client alert earlier this year, which is available [here](#).

Article 18 of Japan's Unfair Competition Prevention Law prohibits bribing or offering to bribe a foreign (i.e., non-Japanese) public official. This prohibition applies when a Japanese citizen or corporation offers to bribe a foreign public official anywhere in the world, or when a non-Japanese national or corporation bribes or offers to bribe a foreign public official in Japan. In addition, Article 198 of Japan's Penal Code prohibits any person from bribing or offering to bribe a Japanese public official (including individuals whose appointment as a public official is imminent, and former public officials).

BACKGROUND

Japan contributes substantial funds to infrastructure development in foreign countries through its ODA program. This funding is often directed towards projects where the expertise of Japanese companies can be very useful (e.g., heavy industry, transportation, or utilities). As a result, Japanese companies and accompanying support personnel are often involved in JICA-funded ODA projects. Japanese ODA projects are funded by JICA in many

¹ See JTC railway-consultant firm, executives charged with bribing Vietnamese officials, *The Asahi Shimbun* available at http://ajw.asahi.com/article/behind_news/social_affairs/AJ201407110035 (last accessed 7/17/14).

² *Id.*

Client Alert

countries considered to pose a high risk for corruption by independent organizations such as Transparency International (as noted in its [Corruption Perceptions Index](#)), including Myanmar, Kazakhstan, Ukraine, Papua New Guinea, Bangladesh, Pakistan, Argentina, India, China, and Mongolia, among others.³

In this case, the Tokyo Regional Taxation Bureau discovered that JTC—a Tokyo-based railway consulting firm—paid kickbacks to government officials in foreign countries (Vietnam, Indonesia, and Uzbekistan) in order to obtain work orders on various projects funded by ODA. The media in Vietnam has focused significant attention on alleged improper payments to senior officials at Vietnam Railways (the state-owned operator of Vietnam's railroads) to ensure JTC would receive a consulting contract for a planned rail-route funded by JICA.⁴

The Vietnamese project in question concerns the construction of a 28-kilometer section of elevated railway and began in 2008.⁵ A joint venture led by JTC won a bid to serve as a consultant on the project, which has expanded in scope and cost over time. To date, the project has received approximately JPY 21.2 billion in ODA funds paid through JICA. After the initiation of the investigation that led to the indictments, however, the Vietnamese Ministry of Transportation suspended contract negotiations between Vietnam Railways and the joint venture, as well as disbursement of the first stage of project funds. The Vietnamese minister of transportation also dispatched a fact-finding delegation to Japan to work with Japanese officials and agencies in gathering information about the bribe allegations.⁶

Although it is unclear at this point what prompted the initial investigation, the alleged improper payments appear to have first been discovered by the Tokyo Regional Taxation Bureau, which forwarded the information to Japanese prosecutors.⁷ Media reports of bribes allegedly paid by JTC first surfaced after JTC's then president, Tamio Kakinuma, allegedly admitted to Tokyo public prosecutors that JTC had made illegal payments to foreign officials on at least 40 separate instances over the last six years, in amounts totaling JPY 164.5 million (approximately USD 1.62 million).⁸ The amount of kickbacks paid in connection with any given project appears to have been based on the size of the consulting project JTC was pursuing, with media reporting that JPY 69.9 million (approximately USD 690,000) was paid in Vietnam in return for a work order worth approximately JPY 4.2 billion (approximately USD 42 million).⁹ The indictment filed on July 10 charges Kakinuma, 65; Tatsuro Wada, 66, a former managing director; and Koji Ikeda, 58, a current board member.

³ See JICA 2013 Annual Report, available at <http://www.jica.go.jp/english/publications/reports/annual/2013/c8h0vm00008m8edo-att/all.pdf>.

⁴ *Supra* note 1.

⁵ Vietnam seeks info about bribery case from Japan, Thanh Nien News, available at <http://www.thanhniennews.com/society/vietnam-seeks-info-about-bribery-case-from-japan-24952.html> (last accessed 4/3/2014).

⁶ Vietnam, Japan Launch Joint Probe into Bribe Allegations, Voice of America, available at <http://www.voanews.com/content/vietnam-japan-launch-joint-investigation-into-bribe-allegations/1879106.html> (last accessed 4/3/2014).

⁷ See A railway consultant paid JPY 100 million in kickbacks to foreign civil servants in return for orders for ODA projects (ODA jigyo juchu de ribeito tetsudou konsaru, gaikokukomuin e ichi oku en), MSN Sankei News, available at <http://sankei.jp.msn.com/affairs/news/140320/crm14032010200006-n1.htm> (last accessed 4/7/2014).

⁸ *Supra* note 1.

⁹ Consulting Firm Execs Indicted for bribing Vietnamese Railway Officials, Mainichi News, available at <http://mainichi.jp/english/english/newsselect/news/20140711p2a00m0na006000c.html> (last accessed 8/12/14).

Client Alert

HISTORY REPEATS ITSELF?

The allegations of JTC's bribery are not the first bribery allegations levelled against Japanese companies operating in Vietnam. In 2008 and 2009, Pacific Consultants International (PCI), a Japanese consulting company, was fined JPY 70 million (approximately USD 680,000) by the Tokyo District Court, and three former PCI executives were given suspended sentences of imprisonment for 18 months, 20 months, and 2 years, respectively, for paying bribes to Vietnamese government officials in order to obtain consulting contracts for a highway project also funded by ODA and distributed by JICA.¹⁰ These suspended sentences were criticized in OECD's Working Group on Bribery's Phase 3 Report on Japan questioning whether these suspended sentences were "effective, proportionate and dissuasive" as required by Article 3.1 of the Anti-Bribery Convention.¹¹ In Vietnam, one government official was convicted of receiving approximately USD 262,000 in bribes from PCI and was sentenced to 20 years in prison.¹²

The PCI case also garnered significant media attention, which caused Japan to temporarily suspend hundreds of millions of dollars in development projects.¹³

IMPACT

As we discussed in our prior client alert, Japan has recently added new resources to its anti-corruption enforcement agencies, and the JTC indictment may well signal that those resources are already making a difference in Japan's response to foreign bribery by Japanese companies. Indeed, if it is true that the illegal payments were first discovered by Japanese tax authorities, that would confirm Japan's improved inter-agency cooperation and commitment to foreign anti-bribery enforcement. The close contact between Vietnamese and Japanese enforcement officials over these allegations also augurs a future of increased cross-border cooperation regarding enforcement of anti-bribery laws.

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¹⁰ See Former PCI's executives are found guilty of bribery (ODA Zowai de PCI Moto Yakuinra Yuzai: Tokyo Chisai Hanketsu), 47 NEWS available at <http://www.47news.jp/CN/200901/CN2009012901000284.html> (last accessed 4/7/2014).

¹¹ OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan at 19, ¶ 43 (Dec. 2011), available at <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Japanphase3reportEN.pdf>.

¹² *Supra* note 4.

¹³ *Supra* note 5.

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