

## E-ALERT | Anti-Corruption

October 21, 2013

### FORMER MAXWELL EXECUTIVE INDICTED FOR CHINA-RELATED FCPA VIOLATIONS

On October 15, 2013, a grand jury [indicted](#) Alain Riedo, a Swiss citizen, for conspiracy, violating the Foreign Corrupt Practices Act (FCPA), falsifying books and records, and circumventing internal controls. Mr. Riedo previously served as a Vice President and General Manager of Maxwell Technologies, Inc. (Maxwell), which paid a total of \$14.3 million to the DOJ and SEC in 2011 to settle FCPA allegations.

Mr. Riedo's indictment focuses on the same allegations that formed the basis for the DOJ and [SEC's allegations against Maxwell](#): the payment of over \$2.5 million from 2002 through 2009 to bribe Chinese government officials and obtain business from state-owned entities, which generated revenue of over \$15 million. According to the indictment, Mr. Riedo played a role both in bribing the officials and attempting to conceal the scheme.

#### Alleged Misconduct

Maxwell, which manufactures energy storage and power-delivery products, is a Delaware corporation headquartered in San Diego, California with manufacturing capabilities in the United States, Switzerland, and China. In 2011, Maxwell settled charges brought by the DOJ and SEC by agreeing to enter into a deferred prosecution agreement and to pay a total of \$14.3 million. According to the allegations, Maxwell's wholly owned Swiss subsidiary paid more than \$2.5 million to a Chinese agent, who the subsidiary had retained to secure contracts with customers in China. The Chinese agent then used the payments to bribe officials at state-owned manufacturers of electric-utility infrastructure facilities in China. These manufacturers included Pinggao Group Co. Ltd., Xi'an XD High Voltage Apparatus, Co., Ltd., and New Northeast Electric Shenyang HV Switchgear Co., Ltd. The indictment alleges that the first two entities, as "state-owned and state-controlled," were agencies and instrumentalities under the FCPA. The indictment alleges that the third entity was "either state-owned or substantially controlled by the Chinese government." These bribes were recorded in Maxwell's books as expenses relating to sales commissions.

According to the indictment issued against Mr. Riedo, who was based in Switzerland, he and two other unnamed co-conspirators not only knew about the corrupt payments but coordinated with Maxwell's agent to provide the bribes in order to secure sales in China. The indictment alleges that the prices quoted to customers included a twenty percent markup, which the agent would characterize as an "extra amount," "special arrangement," or "consulting fee." The indictment asserts that Mr. Riedo caused Maxwell to pay these extra amounts as if they were commissions to accounts controlled by the agents in China and Hong Kong, which was then passed on to the employees of the state-owned or state-controlled entities. Mr. Riedo received an email from an agent that noted that when Maxwell at one point declined to pay the "extra amounts" to the customer, Maxwell lost a sale to a customer, but the customer placed additional orders after Maxwell agreed again to pay the "extra amounts."

Mr. Riedo also allegedly "hamper[ed] efforts" made by other Maxwell executives to learn about the subsidiary's finances and operations. This alleged cover-up included falsely certifying to Maxwell's headquarters that Maxwell's SEC Form 10-Q for the second quarter of 2006 "did not contain an untrue statement of material fact or omit to state a material fact necessary to make

the statements ... not misleading,” even though he knew that the company’s books and records had recorded the payments as commissions instead of bribes. The indictment alleges that Mr. Riedo also sent various other documents and certifications to Maxwell headquarters regarding the agents’ compliance that he knew to be false.

The indictment asserts that two emails Mr. Riedo sent from Switzerland to Maxwell’s CFO in California constituted “means and instrumentalities of interstate commerce” as part of its argument that it has jurisdiction over Riedo.

## Implications

Mr. Riedo’s indictment reinforces lessons learned from other FCPA and anti-corruption cases, including:

- individuals, including senior executives and non-US citizens, can be held personally liable for actions that violate US securities laws, including the FCPA;
- signing certifications when one knows that they are incorrect can be sufficient basis for the US government to allege an FCPA violation.
- the US government’s broad assertion of jurisdiction, including emails to the United States as sufficient to establish “means and instrumentalities of interstate commerce”;
- the need for an adequate system of internal controls to ensure accountability and accurate recordkeeping;
- the importance of careful oversight, monitoring, and control within the company, including at the executive level; and
- the need for accurate recording of transactions and disbursements in books and records.

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