



Decision to include Alstom S.A.

December 2017

Summary

KLP has decided to rescind the exclusion of Alstom S.A. ("Alstom") from KLP and the KLP Mutual Funds' investments. KLP excluded the company in 2007 for association to human rights violations in connection with a dam project in Sudan. Alstom is no longer involved in the project and General Electric (GE) has since acquired Alstom's energy division.¹ KLP has been in dialogue with GE and determined that the integrated company has sufficient human rights policies and guidelines in place such that there is no longer an unacceptable risk of future violations.

The risk of corruption has also been an integral part of KLP's assessment of the remaining Alstom – comprised of the former company's network division. The Norwegian Ministry of Finance placed Alstom under observation for the Norwegian Government Pension Fund – Global (GPF) from 2011 to 2015 due to an unacceptably high risk of serious corruption.²

Alstom was disbarred from the World Bank for corruption from 2012 to 2015³ and in 2014, entered a deferred prosecution agreement with US authorities, including a criminal penalty of 772 million USD for violations of the US Foreign Corrupt Practices Act.⁴ The US Department of Justice cited the company's initial refusal to cooperate with the investigation

¹ *GE and Alstom Energy*. URL: <http://www.ge-alstom.com/>.

² Finansdepartementet, *Statens pensjonsfond utland: Selskap settes til observasjon på grunn av risiko for korrupsjon* (6 desember 2011). URL: <https://www.regjeringen.no/no/aktuelt/statens-pensjonsfond-utland-selskap-sett/id665635/>.

³ World Bank Press Release, *Enforcing accountability: World Bank debars Alstom Hydro France, Alstom Network Schweiz AG, and their affiliates* (22 februar 2012), <http://www.worldbank.org/en/news/press-release/2012/02/22/enforcing-accountability-world-bank-debars-alstom-hydro-france-alstom-network-schweiz-ag-and-their-affiliates> and World Bank Press Release, *Alstom released from debarment* (23 februar 2015), <http://www.worldbank.org/en/news/press-release/2015/02/23/alstom-released-debarment>.

⁴ The United States Department of Justice, *Alstom pleads guilty and agrees to pay \$772 million criminal penalty to resolve foreign bribery charges* (22 desember 2014). URL: <https://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>.



(before the DOJ began charging individual executives) as a key factor in the size of the penalty.⁵

The GPFG withdrew Alstom from observation in 2015, after the company implemented comprehensive anticorruption measures and following GE's acquisition of Alstom's energy division, which accounted for approximately two-thirds of the company's revenues.⁶

In KLP's view, both GE and the remaining portion of Alstom, consisting primarily of rail and transport services, have sufficient guidelines and routines on anticorruption. Evaluating whether company culture and the tone from the top have changed is, however, always a challenging task. Alstom's program for variable remuneration does not incorporate any requirement to comply with the company's ethical guidelines or provide for clawbacks for individuals convicted of corruption. Alstom also does not publish any statistics on its whistleblower program – a measure that would provide some indication of whether the system functions in practice. Nevertheless, KLP cannot conclude that these weaknesses amount to an unacceptable risk of serious corruption, particularly as there do not appear to have been any corruption allegations related to events after 2011 and the company continues to strengthen its anticorruption program. To be sure, there are several ongoing legal and administrative processes concerning allegations of corruption involving Alstom and/or its executives, but all pertain to earlier events.

For all of the above reasons, KLP has decided to rescind the exclusion of Alstom from December 2017.

Incident and company involvement

In 2007, the UN Special Rapporteur on Adequate Housing urged the companies involved in the Merowe Dam project in Sudan, including Alstom, to cease their involvement due to reports of human rights violations connected to the forced resettlement of approximately 60,000 individuals in the local community.⁷ None of the companies followed the Special Rapporteur's recommendation and KLP and the KLP Mutual Funds excluded the company in 2007.

⁵ Ibid.

⁶ Etikkrådet for Statens pensjonsfond utland, *Tilråkning om å ta Alstom S.A. av observasjonslisten* (27 oktober 2015). URL: <http://etikkradet.no/files/2015/12/Tilr%C3%A5dning-om-%C3%A5-ta-Alstom-av-observasjonslisten-28-oktober-2015-2015.pdf>.

⁷ UN Human Rights Council, *UN expert urges Sudan to respect human rights of communities affected by hydro-electric dam projects* (27 august 2007). URL: <http://reliefweb.int/report/sudan/un-expert-urges-sudan-respect-human-rights-communities-affected-hydro-electric-dam>.



In 2010, the Council on Ethics for the GPFG recommended the exclusion of Alstom due to an unacceptable risk of serious corruption.⁸ The Norwegian Ministry of Finance decided instead to place the company under observation for four years.⁹ During this period, the Council on Ethics published annual reports on corruption-related events at Alstom. These included, among others, investigations in the United States, France, the United Kingdom, Brazil, Latvia, Poland, Malaysia and Switzerland.¹⁰ In addition, the World Bank disbarred Alstom from bidding on World Bank contracts from 2012 to 2015.¹¹

In 2014, Alstom entered a deferred prosecution agreement with US authorities for violations of the US Foreign Corrupt Practices Act (FCPA), including the then-largest criminal penalty in FCPA history: 772 million USD.¹² The US Department of Justice explained the size of the penalty as follows:

The plea agreement cites many factors considered by the department in reaching the appropriate resolution, including: Alstom's failure to voluntarily disclose the misconduct even though it was aware of related misconduct at a U.S. subsidiary that previously resolved corruption charges with the department in connection with a power project in Italy; Alstom's refusal to fully cooperate with the department's investigation for several years; the breadth of the companies' misconduct, which spanned many years, occurred in countries around the globe and in several business lines, and involved sophisticated schemes to bribe high-level government officials; Alstom's lack of an effective compliance and ethics program at the time

⁸ Etikkrådet for Statens pensjonsfond utland, *Tilråkning 1. desember 2010*. URL: https://www.regjeringen.no/contentassets/a676db762c2b440d906f507f819c8288/tilradning_alstom.pdf.

⁹ Finansdepartementet, *Statens pensjonsfond utland: Selskap settes til observasjon på grunn av risiko for korrupsjon* (6 desember 2011), s. 1-2. URL: <https://www.regjeringen.no/no/aktuelt/statens-pensjonsfond-utland-selskap-sett/id665635/>.

¹⁰ Etikkrådet for Statens pensjonsfond utland, *Etikkrådets årlige rapport til Finansdepartementet om Alstom SA* (21 juni 2013). URL: http://etikkradet.no/files/2014/12/alstom_observasjonsbrev.pdf.

¹¹ World Bank Press Release, *Enforcing accountability: World Bank debars Alstom Hydro France, Alstom Network Schweiz AG, and their affiliates* (22 februar 2012), <http://www.worldbank.org/en/news/press-release/2012/02/22/enforcing-accountability-world-bank-debars-alstom-hydro-france-alstom-network-schweiz-ag-and-their-affiliates> and World Bank Press Release, *Alstom released from debarment* (23 februar 2015), <http://www.worldbank.org/en/news/press-release/2015/02/23/alstom-released-debarment>.

¹² Stanford Law School Foreign Corrupt Practices Act Clearinghouse, *Top ten by largest monetary sanction*, <http://fcpa.stanford.edu/statistics-top-ten.html> (siste besøk 11. april 2017).



*of the conduct; and Alstom's prior criminal misconduct, including conduct that led to resolutions with various other governments and the World Bank.*¹³

The instances of corruption named in the plea agreement involved both the power and transport segments, and occurred between 2000 and 2011. According to the agreement, Alstom paid approximately 75 million USD in bribes to authorities on four continents in order to win contracts, and hid the bribes through payments to sales agents.¹⁴ Several of the agents had no apparent expertise in the relevant industries and/or demanded payment to offshore bank accounts for no clear business purpose.¹⁵

Alstom's initial failure to cooperate with US authorities factored prominently in the size of the penalty. Alstom began to cooperate only after the US DOJ began charging Alstom executives as individuals.¹⁶ The plea agreement requires Alstom to report annually to US authorities through December 2017 on the company's compliance program, as well as any instances of corruption of which the company becomes aware that have not already been reported.¹⁷

Company response

Alstom no longer uses sales agents, and has implemented a variety of measures to strengthen its anticorruption program.¹⁸ Pursuant to World Bank sanctions, Alstom hosted an independent compliance monitor from 2012 to 2015 to report on progress toward reaching the World Bank standards.¹⁹ In 2015, the World Bank removed Alstom

¹³ The United States Department of Justice, *Alstom pleads guilty and agrees to pay \$772 million criminal penalty to resolve foreign bribery charges* (22 desember 2014). URL: <https://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>.

¹⁴ *United States of America v. Alstom S.A.*, (United States District Court, District of Connecticut, 22 desember 2014), B-8-9, B-12. URL: <https://www.justice.gov/file/189331/download>.

¹⁵ *Ibid*, B-10.

¹⁶ The United States Department of Justice, *Alstom pleads guilty and agrees to pay \$772 million criminal penalty to resolve foreign bribery charges* (22 desember 2014). URL: <https://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>.

¹⁷ *United States of America v. Alstom S.A.*, (United States District Court, District of Connecticut, 22 desember 2014), s. 29. URL: <https://www.justice.gov/file/189331/download>

¹⁸ Alstom, *Agreement between Alstom and the US Department of Justice*, 22 desember 2014, <http://www.alstom.com/press-centre/2014/12/agreement-between-alstom-and-the-us-department-of-justice/>.

¹⁹ Alstom, *Alstom's compliance program meeting the World Bank's guidelines. Alstom Hydro France released from debarment* (22 februar 2015), <http://www.alstom.com/press->



from the sanctions list, determining that the company implemented sufficient anticorruption controls during the sanctioning period.²⁰ Alstom was able to avoid any monitoring obligations from US authorities, as the US settlement provided that a positive conclusion from the World Bank would waive any additional monitoring obligations.²¹ KLP has not able to find any documentation that Alstom has been involved in corruption after 2011.

Dialogue with the company

KLP has been in dialogue with Alstom for several years, regarding both the Merowe project and the various corruption scandals. Alstom confirms that the company is no longer involved in the Merowe project and GE has since acquired the Alstom division involved.

In relation to the corruption case, KLP views it as a positive sign that Alstom took the initiative to contact KLP directly after noticing that the company remained barred from KLP and the KLP Mutual Funds' investments as of December 2016. KLP explained that given that the company was assessed the largest criminal penalty in FCPA history, KLP would not recommend inclusion without a thorough assessment of the risk of future corruption. In that respect, Alstom pointed to the World Bank's decision to lift the company's debarment, as well as Alstom's obligations under the agreement with US authorities.²²

KLP expressed its concern that Alstom does not explicitly connect its variable remuneration to compliance with the company's ethical guidelines and the absence of any clawback mechanism to force repayment of previous years' bonuses – even for an executive subsequently convicted of corruption. Alstom thanked KLP for sharing this view, but explained that the details of the company's compensation policy are not public.²³

[centre/2015/2/alstoms-compliance-program-meeting-the-world-banks-guidelines-alstom-hydro-france-released-from-debarment/](https://www.justice.gov/file/189331/download).

²⁰ Ibid.

²¹ *United States of America v. Alstom S.A.*, (United States District Court, District of Connecticut, 22 December 2014), p. 29 ("Reporting requirements"). URL:

<https://www.justice.gov/file/189331/download>.

²² World Bank Press Release, *Alstom released from debarment* (23 February 2015),

<http://www.worldbank.org/en/news/press-release/2015/02/23/alstom-released-debarment>.

²³ Dialogue with company (February 2017), notes on file with KLP.



Since KLP's conversation with the company, Alstom has achieved ISO 37001 certification for its anticorruption program. KLP views this as a positive sign that the company continues to strengthen its anticorruption measures.²⁴

KLP's analysis

Given that Alstom is no longer involved in the Merowe Dam project, and that this division has since been sold to GE, the exclusion of Alstom for association to human rights violations is no longer justified. KLP is satisfied that the combined entity under GE has sufficient guidelines and policies in place, such that the risk of gross corruption or of contributing to human rights violations are not unacceptably high.

KLP's decision

KLP has decided to rescind the exclusion of Alstom from KLP and the KLP Mutual Funds' investments from December 2017.

²⁴ Alstom, *Alstom obtains ISO 37001 certification for its anti-bribery management system* (27 June 2017). URL: <http://www.alstom.com/press-centre/2017/06/alstom-obtains-iso-37001-certification-for-its-anti-bribery-management-system/>.