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FERROSTAAL

FINAL REPORT

COMPLIANCE INVESTIGATION

13 April 2011

DEBEVOISE & PLIMPTON LLP

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FERROSTAAL

Final Report – Compliance Investigation

I. EXECUTIVE SUMMARY

A. Findings of Questionable Payments

The Compliance Investigation (the "Investigation") found that **Ferrostaal**[1] made questionable or improper payments on many of its largest and highest profile projects. These projects ranged across many business sectors and countries.

Questionable or improper payments do not appear to have been systematic, in that they were not centrally coordinated or controlled but rather the result of various schemes operating independently of each other. However, many of these payments appear to have been systemic, in that they occurred repeatedly throughout the Company on projects of all sizes. Some of the schemes were similar in approach and execution.

While the Investigation uncovered some evidence indicating that certain questionable or improper payments were paid on as bribes, for most payments the available evidence does not establish their ultimate destination. Even in those cases where the circumstances suggest the possibility of bribery, an analysis of the facts may still permit different legal conclusions to be drawn on the potential offenses involved, such as, for example, breach of trust (*Untreue*).

The Investigation reviewed payments made by Ferrostaal between 1999 and 2010. In order to assist in the quantification of the findings, the payments reviewed were divided into four categories:

<u>Category 1</u>: Payments with respect to which the Investigation found clear evidence of corrupt conduct and was able to identify intended or actual end recipients, either by name or generically. This category also includes instances of other forms of potentially criminal conduct that we identified (such as a payment made to a competitor as compensation under a bid-rigging agreement).

<u>Category 2</u>: Payments which gave rise to grounded suspicions of corrupt or other criminal conduct, such as breach of trust, and which could move to Category 1 with additional evidence, such as admissions by witnesses or verification of the payment flows to

[1] "Ferrostaal" (or the "Company") is used in this Report to refer collectively to Ferrostaal AG and to certain affiliated or subsidiary companies whose activities were a focus of the Investigation, including Ferrostal Industrieanlagen GmbH, Fritz Werner Industrie-Ausrüstungen GmbH, Ferrostaal Piping Supply GmbH, Ferrostaal Argentina S.A., Ferrostaal Chile S.A.C., Ferrostaal Colombia Ltda., PT Ferrostaal Indonesia, Ferrostaal South Africa (Pty) Ltd. and DSD de Venezuela C.A. (now ProCon de Venezuela C.A.), but excluding MarineForce International LLP.

the end recipients.

<u>Category 3</u>: Payments which presented serious compliance issues and significant red flags but with respect to which the Investigation did not identify specific evidence of corrupt or other criminal conduct.

<u>Category 4</u>: All other payments substantively reviewed during the Investigation, based on the initial risk assessment, but with respect to which the Investigation found no further evidence warranting inclusion in one of the above categories.[2]

The above categorization represents our assessment of payments based on the evidence identified and the compliance criteria applied during the Investigation. It does not constitute an analysis of the potential criminality of the payments under German or any other applicable law. While we have taken the limited information made available by the Office of the Public Prosecutor in Munich (the "Munich Prosecutor") into account in formulating our views, the payment categorization does not purport to predict how the Munich Prosecutor or other authorities may view such payments.

A detailed table of payments by investigative workstream appears at Annex A. In summary, the four categories contain payments totaling approximately €1.18 billion: just under €9 million in Category 1, just over €81 million in Category 2 and just under €246 million in Category 3.

Almost €1.13 billion of the total payments categorized relate to Ferrostaal AG or one of its subsidiaries other than Ferrostaal Industrieanlagen GmbH ("FIA"). Of that amount, just over €5 million was assessed in Category 1, just over €76 million in Category 2 and approximately €228 million in Category 3. The largest amount of Ferrostaal AG Category 1 payments (approximately €3.4 million) was paid in connection with the Venezuelan business.

Just under €50 million of the total payments categorized relate to FIA and its subsidiary Fritz Werner Industrie-Ausrüstungen GmbH. Of that amount, just under €3.7 million was assessed in Category 1, just over €5 million in Category 2 and approximately €18 million in Category 3. The largest amount of FIA Category 1 payments (approximately €2.1 million) was paid in connection with the Libyan business.

2 Inclusion in Category 4 does not signify that the payment was necessarily commensurate with the services rendered or that the documented proof of performance of the services provided was adequate. It simply means that the evidence of potential criminality or of serious compliance issues inherent in the other categories was absent.

Payments made by MarineForce International LLP ("MFI"), a 50:50 joint venture between Ferrostaal and ThyssenKrupp/Howaldtswerke-Deutsche Werft GmbH ("HDW"), are not included in these categories, but we note that our compliance audit of MFI ("Compliance Audit") did not reveal any payments in Categories 1 or 2. A limited number of MFI payments (£320,926.68 plus €250,000) would qualify under Category 3 (but, again, are not included in the totals noted above).

The table at Annex B lists the various consultants,[3] agents, representatives or other third parties to whom the Company made the payments included in the four categories set out above, again, with the exception of MFI payments.

B. Systems and Controls

This Report analyzes the compliance-related systems and controls at Ferrostaal and the way in which they were implemented. In summary, the Investigation found that:

- Ferrostaal's systems and controls were inadequate to address the risk profile of its business and failed to prevent and detect potential compliance violations.
- Ferrostaal had no meaningful compliance function and no internal audit function. It relied on its parent, MAN SE (until 2009 MAN AG and hereinafter "MAN"), for such central functions.
- The internal control measures that Ferrostaal operated were limited in scope and focused on tax issues, namely the deductibility of consultants' fees as expenses (pursuant to § 160 *Abgabenordnung*).
- The anti-corruption measures and controls that existed were not meaningfully implemented or enforced and were easily circumvented in several instances.
- When compliance red flags or corruption-related issues arose, there was little to no meaningful investigation and no discipline was imposed in cases in which compliance policies (or the laws) were violated. What investigation, review or analysis occurred appeared largely driven by tax considerations, not by compliance, and was primarily aimed at creating a record that would support tax deductibility of potentially improper payments, rather than a diligent effort to root them out.
- The fear of detection in an audit by tax authorities (*Betriebsprüfung*), rather than a substantive concern about compliance, played an important part in

[3] The term "consultant" is used in this Report to include any third party assisting the Company with sales promotion and may therefore include agents or representatives, regardless of the precise term used in the respective contractual documentation.

3. Submarines South Africa

(a) Projects Investigated

The Company identified one project in South Africa with a volume of €660 million, of which €128 million accrued to Ferrostaal, and which involved a number of consultants. During Phase I a significant review of the project – the sale of three Type 209 submarines to the South African Navy by a consortium consisting of Ferrostaal, HDW and TNSW – was conducted. Phase II focused on the open questions pertaining to the consultants, and also took a broader look at the offset obligations arising under the contract and the Company's relations with one former official.

During Phase I, three informational briefings were conducted with one former Ferrostaal employee who worked on the South Africa project. During Phase II, eight interviews were conducted with five current and former employees of Ferrostaal, of which one was an amnesty interview. One former consultant was interviewed, and two informational briefings were conducted with three current and former employees. Key former employees refused to be interviewed. Most of the review of project documents was conducted during Phase I of the Investigation, but it continued during Phase II. The data of nine key custodians and numerous others was reviewed during Phase II, including documents and accounting data retrieved from a site visit to Ferrostaal South Africa (Pty) Ltd. ("**FERISA**").

(b) General Observations

The Investigation identified three main issues of concern regarding the South African submarines project, all of which indicated a lack of controls and minimal concern at ensuring compliant business.

First, Ferrostaal paid very little care to defining and monitoring the precise services of its chief consultants, Tony Georgiadis and Tony Ellingford, even though these two consultants were Ferrostaal's largest payees on the project, taking in more than 25% of Ferrostaal's revenues. There is no sign that anyone at Ferrostaal ever knew with any specificity what the two consultants did (or was at least willing to state it in writing). Their contracts each contained a detailed list of services; but the lists were identical, suggesting both that there was no intent or expectation that they would provide the indicated services, and that the lists were created merely for appearance's sake.

In the one instance where a Ferrostaal employee expressed doubt that a demand for payment was not properly backed up by commensurate services, the message from the very top came back loud and clear: whatever had been done by the consultant was enough, and payment was not to be delayed or withheld on any account. On that occasion, at the start of 2003, the then CFO officially objected to both a fellow *Vorstand* member and to the then CEO that the scant documentation attached to a €2 million invoice from Georgiadis was insufficient to justify such a large payment. The CEO peremptorily told the CFO that he was wrong and ordered that the payment be made. The CFO did not raise further objections or conduct additional checks.

Second, Ferrostaal spent a considerable amount of money (more than €60 million) on offset projects, most of which failed or performed poorly. Responsibility for offset for long periods of time was in the hands of relatively junior employees in South Africa, away from the controls of Essen. The *Vorstand* member then responsible for offset appeared uninterested in it, despite the risk profile that attached to the business. When a senior employee reported that offset was merely a vehicle for *Nützliche Aufwendungen*, there was no investigation into whether his allegation was true.

Third, from 2002 to 2007, Ferrostaal in South Africa had close business connections with Chippy Shaik, the head of acquisitions at the Ministry of Defence from 1997 until 2001, and as such, one of the key people in determining who would win the submarines contract. Such a relationship with a former key decision-maker is not *per se* improper – if due care and consideration is applied prior to entering into any business. Yet there is scant sign that anyone considered the propriety of doing business with Chippy at all;[12] in fact, numerous red flags – Chippy's former position; one brother's role as a South African consul in Germany; another brother's conviction for corruption; and Chippy's own purchase of shares from Ferrostaal at a significant loss to the Company – were simply ignored. When in 2008 the press queried Ferrostaal's business dealings with Chippy, Ferrostaal made the inaccurate statement that it had broken off business relations with Chippy's company as soon as it had learned of his involvement.

(c) Key Consultants

This section proceeds, first of all, to examine the key consultant relationships, then summarizes the Investigation's work on the offset business and, finally, reviews Ferrostaal's relationship with Chippy.

(i) Tony Georgiadis

Through his companies Mallar Inc. and Alandis (Greece) S.A., Georgiadis was paid €16.5 million by Ferrostaal between 2000 and 2004. Georgiadis was introduced to Ferrostaal by Thyssen Rheinstahl-Technik GmbH ("TRT"), with whom Ferrostaal had worked on the first phase of the South African naval project, which was later separated into submarine and frigate components. In 1997, Christoph Hoenings of TRT told the Ferrostaal employee then responsible for the submarines project that Ferrostaal should pay Georgiadis $20 million "*for the purpose of securing the German package*"[13] and that Georgiadis would use the payment to convince "*key*

[12] We refer to Chippy by his first name because he had three brothers – Shabir, Moe and Yunis – two of whom had dealings with Ferrostaal as well.

decision-makers" to support the German bid. The responsible offset employee sought approval from his superior, the then head of Marine, which the latter gave, apparently, without concern.

In October 1998, Ferrostaal and Georgiadis signed an agreement whereby Georgiadis would receive 2.5% of the contract value in return for advising and supporting Ferrostaal in its efforts to win the submarine bid. That 2.5% ultimately worked out to approximately $20 million. Attached to a revised version of the contract was a list of services that Georgiadis was to provide to Ferrostaal. This list was identical to that appended to a Ferrostaal contract with the other main consultant, Tony Ellingford, which indicates that the list was appended to the contract merely for appearance's sake, and raises questions as to whether Georgiadis was expected to perform any of the listed services.

It is apparent that Georgiadis' chief role was as a conduit to politicians. The record shows that he knew a number of senior politicians, including President Thabo Mbeki and possibly Nelson Mandela, and introduced Ferrostaal employees to these politicians. Indeed, the former head of Marine informed the former CFO in 2003 that "*political contacts*" with Mallar (and previously TRT) had a decisive influence on the tender for the submarines. The CEO's overriding of the CFO's objections to paying the €2 million invoice in 2003, set out above, shows how highly Georgiadis' services were valued at the top of the Company.

Mallar also had some involvement with the offset program. It was intended that Mallar would co-invest with Ferrostaal on one offset project, although that does not seem to have eventuated.

Overall, there is little evidence to suggest that Georgiadis did work commensurate with the fee received. By the same token, however, there is no direct evidence that he gave any of the money he received from Ferrostaal to third parties.[13]

There are unanswered questions about a third Georgiadis company, Elmar Maritime Inc. In November 1998, Ferrostaal agreed to pay Elmar approximately $2 million for the transport of oil to South Africa, as part of "*pre-offset obligations*." It paid Elmar $1.865 million in November 2000. It is not clear how "*pre-offset obligations*" could have arisen more than a year before Ferrostaal had even won the submarines contract, or why Ferrostaal needed to bring oil to South Africa. Oil

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13 There is some evidence that Georgiadis passed on money received in connection with a contract to sell frigates to South Africa, a project that involved a Thyssen subsidiary but not Ferrostaal. These payments, among others, were investigated by the Düsseldorf prosecutor in 2006–2008, but the prosecutor dropped the case for lack of evidence. As part of the investigation, the prosecutor raided Ferrostaal's offices. It passed its findings regarding Ferrostaal to the Essen public prosecutor, who passed the case to the Bochum Economic Crimes Unit. Bochum ceased investigations in 2008.

imports were not part of Ferrostaal's offset obligations. Nobody has been able to explain the need or rationale for this agreement and payment.

Georgiadis refused a request for a meeting.

(ii) Tony Ellingford

Tony Ellingford was a former executive in the defense industry hired by Ferrostaal in 1998 to advise on the submarines contract. Like Georgiadis, he was paid €16.5 million by Ferrostaal between 2000 and 2003, through his company Kelco Associates S.A. ("Kelco"). According to consultant Jeremy Mathers, Ellingford was hired because the responsible Ferrostaal *Bereichsvorstand* in the late 1990s, wanted someone with "*political connections*" to help Ferrostaal win the contract. Mathers asked Llewellyn Swan, an old contact from the South African defense industry, for advice; Swan recommended Ellingford, who was then hired by Ferrostaal. Ellingford, like Georgiadis, also had multiple political connections, and introduced Ferrostaal to various decision-makers, including Defence Minister Joe Modise.

As noted, the list of services appended to Ellingford's contract was identical to that of Georgiadis. There is evidence of meetings arranged and intelligence gathered by Ellingford, but the amount of work done does not seem commensurate with the payments he received. It appears that he, like Georgiadis, was paid to provide political access.

The involvement of Swan was another likely instance of payment for access to decision-makers. Swan was CEO of ARMSCOR Ltd., the South African arms procurement parastatal, from late 1998 until late 1999. In that position, he was one of the key individuals deciding who would win the submarine contract.

In November 1999 – weeks before the submarine contract was awarded – Swan unexpectedly resigned from ARMSCOR. No later than March 2000, he was working for Ferrostaal, albeit indirectly: at that time, Ellingford informed Ferrostaal that Kelco was working with a subcontractor called MOIST cc, represented by Swan. In fact, this may not have been Swan's first involvement with Ferrostaal: Mathers stated in an interview that Swan was working for Ferrostaal at least as of 1998, before he became CEO of Armscor. That is, Swan may have worked for Ferrostaal both before and after he was in charge of arms procurement in South Africa. The Investigation found no evidence that Swan tendered his decision in favor of Ferrostaal in return for either payment or promises of payment, but Swan's position was a significant red flag that Ferrostaal ignored.

There is another unexplained similarity between the documentation for consultants' services: three letters to Ferrostaal that were purportedly written by Ellingford are virtually identical to three letters purportedly written by Mathers. During his interview, Mathers remembered writing the letters, but he could not explain why nearly identical versions appeared under Ellingford's name. Mathers seems the more likely original author of these letters because they reported information which, based on Mathers' background and other letters and reports written by him, appeared to be within his knowledge. It is therefore possible that copies were made by Ferrostaal, to be signed by Ellingford and placed in his file, in order to provide documentary evidence of services rendered by him and thus seek to justify the amounts paid to him, if they were ever questioned by the internal controls organs or, indeed, a tax audit.

Ellingford did not respond to requests for a meeting.

(iii) Jeremy Mathers

Jeremy Mathers was a retired admiral hired by Ferrostaal to support the bid, specifically by providing information on the Navy's requirements. Between 1998 and 2005, Ferrostaal paid Mathers €1.2 million under three contracts.

The first contract, signed in 1998, included both monthly payments and a success fee based on the ultimate price of the contract. Mathers said that he did not ask for the success fee and was surprised when his Ferrostaal counterpart inserted it into the contract presented to him. In 1999, before the submarines contract was awarded, Ferrostaal suspended Mathers' contract and told him that it would not pay him the success fee. Mathers learned that the reasons included a complaint by Accounting about the success fee. Over the next few years, Mathers negotiated with Ferrostaal, principally with the then head of Marine, for a resumption of the contractual relationship and/or a payment of his success fee. Eventually, he and the then head of Marine agreed to enter into two new contracts, even though both of them knew that Mathers would not be doing substantial work under the contracts; in other words, the contracts were merely a new documented basis allowing Mathers to get the success fee he was due under the 1998 contract. During his interview, Mathers said that entering the new contracts "*turned an enormous amount of money into something that was more plausible.*"

The contracts were signed in 2001. Under the terms of one contract, Mathers had to produce various studies. He did so, although in his interview he admitted both that they were of little or no use to Ferrostaal and that the amount of work that went into them was only a fraction of what Ferrostaal was going to pay him. One of the studies, for example, concerned the potential naval market in other countries in the region, such as Angola and Mozambique – places where Ferrostaal had no intention of doing naval business. Years later, when Tax was going closely through various payments to Mathers, the successor to the head of Marine gave the various studies and reports that Mathers had compiled to the then head of Tax, telling him that the studies were all "*rubbish.*"

Nonetheless, Mathers was paid more than €1 million under the two 2001 agreements. In 2005, for reasons as yet unexplained, Ferrostaal stopped payments to

Mathers while €400,000 under the two contracts remained unpaid. Mathers continues to contend that he is owed this money by Ferrostaal.

As noted above, Mathers was asked about the identical copies of letters in his and Ellingford's names, but could not provide an explanation, at least as to the genesis of the Ellingford version.

Although the mechanism by which Mathers' 1998 contract was replaced and the envisaged success fee resurrected reveals a lack of controls and compliance with accounting and financial standards, there is no sign that any of the payments to Mathers were passed on to decision-makers or that they were intended to be. The consultant's agreement to meet for an interview suggests a level of openness and transparency about the services he provided that was absent from the vast majority of consultants encountered on the Investigation (although his outstanding claim for payment may also have played a role).

(d) Offset Projects

Offset commitments were a particularly important part of the tenders for the submarines contract. In fact, official South African government documents show that the Ferrostaal consortium won the contract because of its superior offset offer.

The consortium agreed to deliver offset spending worth almost €3 billion. It should be noted that this did not require investment actually worth €3 billion; rather, offset investments are granted multipliers by South Africa's Department of Trade and Industry ("DTI"), one of the contract signatories on the South African side. The offset provider would thus invest a figure that was unknown at the start of the project but in any event significantly less than €3 billion. In its internal calculations, Ferrostaal expected that it would only need to provide investment of approximately 1.5% to 2% of that amount, and indeed it ultimately spent €62 million, approximately 2% of €3 billion.

Offset in South Africa was formally divided into two types: Defence Industrial Participation, ("DIP") and Non-Defence Industrial Participation ("NIP"). The DIP portion was by far the smaller and is of little concern from a compliance perspective.

The NIP bid was predicated on one very large project: a stainless steel plant at Coega on the South African coast. However, between the signing of the contract in December 1999 and its coming into force in July 2000, it became clear to Ferrostaal that it would not be able to proceed with the Coega project. The DTI at that stage agreed that Ferrostaal could fulfill its offset obligations through other projects. In order to find and invest in these other projects, Ferrostaal established a new South African subsidiary, FERISA. Between 2001 and 2010, Ferrostaal AG transferred approximately €35.1 million to FERISA, most of which FERISA spent on loans and capital contributions to offset companies. Ferrostaal AG wrote off almost all of that amount. The remainder of the spending on offset companies was made directly by Ferrostaal AG, principally after 2006.

As noted, investment figures in the offset world are not as they seem at first glance. A project is proposed to the DTI, which then assesses it on a number of criteria, particularly the following three: sustainability (that the project will be long lasting and provide benefits into the future); additionality (that it will provide benefits which did not exist before); and causality (that the project would not happen without the offset partner). Other criteria include involvement of non-whites (Historically Disadvantaged Individuals, in South African government terminology) and the expected amount of exports to be generated.

The DTI applies its multiplier based on these criteria. For example, if Ferrostaal proposes investing €10 million in an electronics company, and that investment scores highly on the stated criteria, the DTI might apply a multiplier of 60, making that investment worth €600 million in offset credits. What evidently mattered to Ferrostaal in determining whether to proceed with a proposed investment was therefore not the business case for the investment, or the likelihood of good returns, but its prediction of how much the DTI would like the project, based on the DTI's published criteria and what multiplier it would receive. This had the potential to create unusual incentives, and it is possible that these played a part in the selection of some projects.

The Investigation found no evidence that projects were selected for improper reasons, such as, for example, to funnel money to a company owned by a relative of a DTI official. But the projects, looked at individually and as a whole, are nonetheless problematic.

At a meeting in 2005, the employee formerly in charge of the offset program in South Africa alleged that a *Vorstand* member had said that South African offset projects had been used to pay *Nützliche Aufwendungen*. He also said that consultants Ellingford, Georgiadis and Swan had approached him in that regard, and that he had seen an agreement regarding these payments. Debevoise was unable to obtain an explanation of this statement, as both the employee and the relevant *Vorstand* members declined to be interviewed. But the lack of investigation or corrective action is in keeping with the Company's general lack of follow-up when serious allegations were made, as noted in other sections of this Report.

Set out below are the offset projects that raise particular concerns, based on the circumstances of the investment or the offset companies involved.

- <u>MAGWA</u>: MAGWA was a tea plantation in the Eastern Cape province of South Africa, the home of many leading politicians from the African National Congress. Ferrostaal made the investment to the Eastern Cape Development Corporation, a quasi-governmental body. Chippy supposedly brought the project to Ferrostaal. Ferrostaal invested ZAR 23.5 million on this project in

2005. As this was paid via a "*non-refundable loan*," Ferrostaal received nothing in return.

- SAMES: Ferrostaal loaned ZAR 42.2 million to SAMES between 2005 and 2007, of which the majority has not been repaid. SAMES is a subsidiary of Labat Africa Ltd., a company with close ties to the African National Congress. Labat Africa was also chaired by Defence Minister Modise until he died in 2001.

- Atlantis Development Trust: Ferrostaal invested more than ZAR 26 million in Atlantis Development, an educational body, between 2003 and 2006. The body failed and there were allegations of fraud; before that, however, the head of Ferrostaal's South African operation had informed Atlantis Development that it would never have to repay the money provided to it.

- Other: In at least two other cases, the project invested in failed utterly and the entire investment had to be written off: Condomi (ZAR 1.5 million invested in 2002 and 2003) and Trimica (ZAR 9 million invested in 2005).

Ferrostaal employees referred us to the frequent use of a "*non-refundable loan*" to make offset investments. Functionally, there is no difference between this and a straightforward grant, which was confirmed by the accounting and tax personnel interviewed in the course of the Investigation. The examples above illustrate that Ferrostaal was prepared to support and invest in projects, including through such loans, that it seemed to have had little interest in succeeding. One former manager responsible for offset said that this just confirmed the questionable nature of the offset business, in which DTI credits were the only real factor driving Ferrostaal's investment decisions.

(e) Chippy Shaik and His Brothers

As noted, Chippy was in charge of acquisitions at the Ministry of Defence from 1997 to 2001. As such, he was one of the key people in determining who would win the submarines contract. As was to be expected, Ferrostaal had numerous dealings with Chippy during his tenure at the Ministry. On one occasion, one interviewee said, Chippy told Ferrostaal and its consortium partners that they must grant the subcontract for the submarine combat suite to African Defence Systems (Pty) Ltd. ("ADS") a company controlled by Chippy's brother, Shabir. According to the same interviewee, HDW, the shipbuilding member of the consortium, refused to do so because of ADS' partnership with a French company.[14] This incident is

[14] ADS was in fact used to provide the combat suite on the frigates contract for the South African Navy. Chippy's involvement in that decision was controversial, and he was censured by the Ministry of Defence. Shabir himself spent four years in jail for corruption in his relations with then Vice President and later President Jacob Zuma.

nonetheless indicative of the possibility that Chippy may have sought to derive a personal benefit from his public function.

Ferrostaal had numerous business dealings with Chippy after he left the Ministry in 2001. These dealings, although not *per se* improper, are problematic; in particular, the commercial rationale for some of them is difficult to understand, and there is no sign that Ferrostaal took appropriate care, or conducted any due diligence, before engaging with Chippy.

Chippy's most extended cooperation with Ferrostaal came through a joint venture called TAN Mining and Exploration (Pty) Ltd. ("TAN"). In 2004, Ferrostaal, Chippy's company Enable Mining (Pty) Ltd. and Mining Projects Development (Pty) Ltd. ("MPD"), a South African engineering company, formed TAN with the purpose of mining tantalum in Mozambique and selling it to manufacturers in Europe. The terms of the joint venture agreement required each partner to contribute capital to TAN, although MPD was allowed to contribute a significant portion of its capital in kind because of its engineering expertise.

Ferrostaal contributed just under $1.5 million to the joint venture between 2004 and 2006. It appears that neither MPD nor Enable Mining made any cash contributions to the joint venture; at one stage, Ferrostaal considered loaning Enable Mining the stake it needed to invest. Ultimately, the joint venture failed and in 2007 Ferrostaal sold its stake in TAN to Enable Mining for ZAR 310,000 (about $40,000). This was not only significantly less than Ferrostaal had invested in the company, but also a fraction of the amount it had been offered for its stake one year previously. Indeed, at that time, BDO advised that Ferrostaal's stake was worth ZAR 10 million (about $1.25 million).

In 2008, members of the press asked Ferrostaal about its association with Chippy through TAN. Ferrostaal replied that it had ended its association with Enable Mining as soon as it discovered that Chippy was behind the company. This answer was plainly false, as it was known to Ferrostaal all along that he was behind Enable Mining; indeed, Ferrostaal negotiated directly with him.

Evidence suggests that Chippy may also have been behind a company called Illima Community Financial Services (Pty) Ltd. ("Illima"), a consultant that supposedly had "*vast knowledge of the South African business environment.*" FERISA paid Illima ZAR 1.8 million in 2005, supposedly in return for services relating to various offset companies and other joint ventures. But Illima's identity and purpose – and whether it performed any of the stated services – are unclear. Its directors were listed as Moses Mayekiso and Julekha Mahomed, both politically connected people (Mayekiso was a leading trade unionist and Mahomed is Jacob Zuma's attorney). However, at a meeting at FERISA in 2006, Ferrostaal staff attacked the management for its ties to Illima and claimed that the engagement of Illima was solely a way to pay Chippy. Given the unavailability of key former employees, we have not been able to obtain any explanation of this issue.

Further connections with the Shaiks include:

- In 1998, while Ferrostaal was bidding for the submarine contract, Chippy's brother Moe, the South African consul in Hamburg, asked Ferrostaal (and other German companies) to donate money to a concert at the Hamburg consulate.
- Ferrostaal paid for Chippy's round-trip, business-class travel to Egypt in 2002 in connection with a gold mining project that was never realized.
- Chippy may have introduced the MAGWA project to Ferrostaal.
- Chippy's brother Yunis tried to broker a deal between Ferrostaal and an offset company, and represented Enable Mining in the purchase of TAN shares.

As already noted, none of these interactions or transactions with Chippy *per se* constitute illegal or even improper conduct, absent the existence of corresponding promises on the part of the Company at the time when he was the principal interlocutor to confer benefits or advantages on him after he ceased being in government. Nonetheless, the level of dealings with a former government official and the complete lack of scrutiny and examination to which these dealings were put, raise important questions about the compliance and risk culture at the Company, as well as the systems and controls in place at the time.

4. Offshore Patrol Vessels

(a) Projects Investigated

The Munich Prosecutor has been investigating allegations that improper payments were made in Argentina in connection with the award of a contract for the design of one offshore patrol vessel ("OPV") in 2008. Debevoise investigated the respective OPV projects in Argentina, Colombia and (to a much more limited extent) Chile. These projects were not investigated in Phase I.

Debevoise conducted a total of nine interviews with seven current or former employees and one consultant. Debevoise also carried out one informational briefing. Certain key employees, including the current head of the responsible division at Fritz Werner Industrie-Ausrüstungen GmbH and the former *Bereichsvorstand* for Marine, declined to meet for interviews. Debevoise reviewed the electronic data of 20 current and former employees, as well as hard copy files of potentially relevant documents.

(b) Argentina

(i) Summary of Allegations

Ferrostaal acted as the representative of the German shipbuilding company Fr. Fassmer GmbH & Co. KG ("Fassmer") in connection with the potential sale of OPVs