

Foreign Citizens Face FCPA Charges: The Siemens Fallout Continues

On December 13, 2011, U.S. authorities brought criminal and civil charges against a group of former executives of German engineering company Siemens AG and its Argentine subsidiary for violations of the Foreign Corrupt Practices Act (FCPA). The charges come more than three years after Siemens was charged with violations of the FCPA and paid \$800 million to resolve charges with the Department of Justice (DOJ) and Securities and Exchange Commission (SEC), the largest FCPA penalty ever imposed.

According to allegations in the criminal indictment, eight former Siemens senior executives and agents were part of a decade-long bribery scheme in which they committed to pay \$100 million in bribes, and paid more than \$60 million, to secure a \$1 billion contract to produce national identity cards for Argentine citizens. The executives allegedly paid bribes from 1996 to 2007 to various top Argentine officials, including presidents and cabinet ministers. The DOJ claims that the foreign defendants participated in meetings in the United States to negotiate the bribe payments and at least \$25 million in bribes were funneled through U.S. bank accounts.

These charges reflect the U.S. government's continuing trend in prosecuting individuals—not just corporations—for FCPA violations. The indictments come after the DOJ faced criticism from lawmakers who questioned in last year's Senate Judiciary Committee hearing why no individuals had been charged in the Siemens case. Over the past five years, the number of individuals charged with FCPA violations has increased by 175 percent while the number of corporations charged with FCPA violations in the same time period has increased by 75 percent. For those individuals convicted of FCPA violations, courts have been handing down lengthy prison sentences, including a recently imposed 15-year sentence for a former executive, the longest prison term ever handed down in an FCPA prosecution.

The Siemens indictments also illustrate that the U.S. will assert jurisdiction over foreigners in FCPA matters. Indeed, none of the charged former Siemens executives are U.S. citizens or residents. The trend for prosecutors to target aggressively foreign businesses is evident in recent settlements: nine out of ten of the largest FCPA fines have been paid by foreign companies. Many non-U.S. companies and individuals mistakenly believe that they are shielded from the FCPA because it is a U.S. law, when in fact the FCPA's reach covers foreign nationals and businesses.

U.S. authorities also appear to continue their interest in prosecuting not only low- and mid-level employees but also high-level executives for FCPA violations. Indeed, the Siemens defendants include a former CEO and a former CFO of the Argentine branch. Significantly, the Siemens indictment stands out because one of the charged individuals is a former member of Siemens' managing board; according to the DOJ, he is the first former board member of a Fortune Global 50 company to be indicted under the FCPA.

The charges against the ex-Siemens executives also serve as a reminder that U.S. officials are working closely with prosecutors in other countries to bring FCPA charges. In its press release, the DOJ recognized close collaboration with the Munich Public Prosecutors office in bringing the criminal and civil charges. Moreover, as other nations are creating their own anticorruption laws, such as the United Kingdom's Bribery Act, which went into effect in July 2011, companies and individuals may face multiple prosecutions across the globe.

Businesses engaging in international transactions cannot risk engaging in activities that may violate the FCPA. Companies must develop robust compliance policies, with employee training, and diligent monitoring to protect themselves and their employees. Indeed, the DOJ recognized Siemens AG's extensive cooperation with the ongoing investigation and its remedial actions following the 2008 settlement, including a complete restructuring of the company and the implementation of a sophisticated compliance program.

Contact Ropes & Gray

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