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Mondelēz Agrees to Pay $13 Million to Settle FCPA Charges Related to Inadequate Due Diligence and Accounting Controls over Third Party in India

Attorneys
Ryan Rohlfsen
G. David Rojas
Bryan M. Weynand

On January 6, 2017, the U.S. Securities and Exchange Commission ("SEC") announced that Illinois-based multinational confectionery company Mondelēz International Inc. and its subsidiary Cadbury agreed to settle Foreign Corrupt Practices Act ("FCPA") charges relating to allegations of bribery in India. Mondelēz, formerly Kraft Foods Inc., and Cadbury will pay $13 million to settle the charges arising from payments Cadbury made to a consultant in India to obtain licenses and approvals for a chocolate factory. The SEC alleged due diligence failures by both Cadbury and Mondelēz. Allegedly, Cadbury failed to conduct adequate diligence on the consultant, whereas Mondelēz failed to conduct adequate diligence on Cadbury, both before and after acquiring the U.K. company.

Resolution Details

An SEC investigation concluded that, in 2010, Cadbury India retained a consultant to represent the company in interactions with the Indian government. Cadbury India paid the agent $90,666 over the course of six months. The services detailed in the agent's invoices included drafting license applications for a chocolate factory Cadbury India planned to build in Baddi, India. Nevertheless, Cadbury employees, not the agent, prepared these license applications. Moreover, the agent withdrew most of the funds in cash upon receipt of each payment. One such approval designated the chocolate factory as two distinct units for tax purposes, resulting in approximately $85 million in tax benefits for Mondelēz.

The SEC charged Mondelēz and Cadbury with violating the books-and-records and internal-controls provisions of the FCPA. Cadbury allegedly failed to maintain records that accurately reflected the nature and value of the services provided by the consultant. The SEC also found that Cadbury did not maintain internal accounting controls sufficient to reasonably prevent improper or unauthorized payments. Moreover, the SEC alleged that Cadbury failed to conduct appropriate due diligence on and monitor the activities of the agent, which created the risk that the funds could be used for improper or unauthorized purposes.

The SEC's investigation also determined that parent company Mondelēz failed to perform adequate anti-corruption compliance diligence when it acquired Cadbury. Mondelēz acquired Cadbury on February 2, 2010, at the beginning of Cadbury's relationship with the agent. Mondelēz did not conduct complete pre-acquisition due diligence, and its six-month post-acquisition due diligence did not identify the contemporaneous relationship between Cadbury and the agent. The SEC concluded that, as a result of Mondelēz's acquisition of Cadbury, it is responsible for the subsidiary's violations.

Mondelēz discovered the relationship in October 2010 and commenced an internal investigation, which resulted in the termination of Cadbury's relationship with the consultant. Mondelēz then implemented its global compliance program at Cadbury and comprehensively reviewed Cadbury India's use of third parties in its business. Mondelēz did not disclose the potential violations, which were reported to the SEC by a whistleblower in 2015. The SEC's settlement order, however, noted Mondelēz's cooperation with the investigation.

A dispute with the Indian government over the tax designation remains ongoing.

Key Takeaways

This settlement illustrates the importance of several key principles for mitigating the anti-corruption risks associated with conducting business in high-risk markets:

- Perform robust anti-corruption due diligence prior to international acquisitions.
- Identify and monitor high-risk third-party relationships as part of a comprehensive compliance program.
- Demand accurate, itemized, and timely invoices and supporting documentation for all payments to third parties.

If you have any questions, please contact your usual Ropes & Gray advisor.