

CORPORATE COMPLIANCE ALERT

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Payments for Lavish Vacations Results in \$48 Million FCPA Settlement for Diebold, Inc.

Ohio-based manufacturer of ATMs and bank security systems, Diebold, Inc., was charged with violating the Foreign Corrupt Practices Act (FCPA) by bribing officials at government-owned banks with pleasure trips in order to procure business.

Allegations of Bribes to Foreign Officials

According to the Securities and Exchange Commission's (SEC) complaint¹ from 2005 until 2010 subsidiaries of Diebold Inc. in China and Indonesia spent approximately \$1.8 million on free trips for senior officials with the ability to influence the banks' purchasing decisions, including a lavish eight destination European vacation and trips to Bali, Australia, and New Zealand.² The expenditures were falsely recorded in the company's books and records as legitimate training expenses. Diebold's subsidiary in China also provided dozens of government bank officials with annual cash gifts ranging from less than \$100 to more than \$600.

The SEC further alleges that from 2005 to 2008, Diebold's Russian subsidiary paid approximately \$1.2 million in bribes in connection with the sale of ATMs to private banks in Russia.³ The bribes were funneled through a distributor in Russia using phony service contracts to hide the transactions that were then falsely recorded as legitimate business expenses.

Global Settlement

To resolve this matter, Diebold agreed to pay \$22.9 million in disgorgement and prejudgment interest and to appoint an independent compliance monitor in order to settle the SEC's charges. Diebold also agreed to pay an additional \$25.2 million fine in the parallel criminal proceeding.

After the SEC entered into the agreement with Diebold, Inc., Scott W. Friestad, an Associate Director in the SEC's Division of Enforcement, reinforced that, "A bribe is a bribe, whether it's a stack of cash or an all-expense-paid trip to Europe." Mr. Friestad further emphasized that, "Public companies must be held accountable when they break the law to influence government officials with improper payments or gifts."⁴

Heightened Anti-Corruption Compliance Required in High Risk Countries, Including Russia and China

This recent global settlement with the SEC and the Department of Justice (DOJ), just like the previous FCPA settlements with Eli Lilly, Nordam Group, and Biomet, further demonstrates the importance of monitoring subsidiaries conducting business in China and Russia. According to the DOJ and the SEC, public and private companies (or their subsidiaries) doing business in China and Russia and other high-risk countries should take additional steps, internally, to ensure that they are committed to the implementation of effective anti-corruption compliance.

¹ *SEC v. Diebold Inc.*, 13-cv-1609, (D.D.C. October 22, 2013); see also *United States v. Diebold*, 13-cr-464 (N.D. Ohio October 22, 2013)

² *SEC v. Diebold Inc.*, 13-cv-1609, (D.D.C. October 22, 2013)

³ *SEC v. Diebold Inc.*, 13-cv-1609, (D.D.C. October 22, 2013)

⁴ <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539977273#.UmcXRjm9LCQ>

In addition, the settlement is a reminder that the SEC and the DOJ are willing to impose steep fines and penalties whenever public companies give “anything of value” that has the potential to influence a government official’s decision to reward future business, including free vacations.

To avoid the risk of a \$48 million settlement and other collateral consequences including debarment from participation in the international banking system, debarment from participation in certain governmental programs, or the loss of export privileges, public and private companies would be well-advised to adopt a proactive approach to FCPA compliance. Establishing a written code of business ethics and a compliance program, however, is insufficient under DOJ guidelines. An effective compliance program requires, among other things, the appointment of a chief compliance officer, regular training of employees, the use of outside consultants, internal audits, and established mechanisms for reporting violations internally, which clarifies that employees that report violations will be rewarded, not sanctioned.

For further information, please contact the following Roetzel attorneys:

Edgar Asebey-Birkholm

954.759.2754 | easebey@ralaw.com

Anthony J. Calamunci

419.254.5247 | acalamunci@ralaw.com

Brian E. Dickerson

202.570.0248 | bdickerson@ralaw.com

Donald S. Scherzer

216.615.7418 | dscherzer@ralaw.com

Rose M. Schindler

954.759.2751 | rschindler@ralaw.com

Jonathan R. Secrest

614.723.2029 | jsecrest@ralaw.com

Andrew S. Feldman

954.759.2753 | afeldman@ralaw.com

Amanda M. Knapp

216.615.7416 | aknapp@ralaw.com