

The High Costs of Non-Compliance!

On November 13, 1923 a special committee was formed to determine whether Germany would be required to pay for the substantial war debt incurred by Great Britain and its allies in the wake of the first Great War. The substantial monetary penalties imposed would only take Germany a mere 77 years to pay off, as the last 94 million dollar reparation payment was made on October 4, 2010. Today, the substantial debt incurred by Germany, as a result of their transgressions during WWI, appears to be but a distant memory for most people. However, for at least one German company, the imposition of substantial penalties as a result of past misconduct, albeit misconduct of a different nature from Germany in 1923, may be too severe to fade from their memory anytime soon.

On November 29, 2006 Siemens AG, a German conglomerate with over 475,000 employees, operations in 190 countries, and yearly revenue exceeding €87 billion euros, was raided by the Munich prosecutor following allegations that the Company had made various corrupt payments. In response to this raid, the Siemens board of directors began an unprecedented internal investigation aimed at determining whether anti-corruption regulations had been violated. According to settlement documents, Siemens hired more than 300 lawyers, forensic accountants and support staff from law firm Debevoise & Plimpton LLP and accounting firm Deloitte LLP for a two-year internal probe. The company estimated that the firms racked up 1.5 million billable hours. The investigation spanned 34 countries and included 1,750 interviews. Of the roughly 100 million documents collected in the investigation, Siemens produced about 24,000 documents for the Justice Department.

Together these two independent firms conducted the investigation, which included:

- 1,750 Interviews with Siemens employees and other individuals;
- 800 informational briefings with employees to obtain background information;
- 82 million documents electronically searched to identify potentially relevant material
- 14 million documents reviewed
- 38 million financial transactions analyzed; and
- 10 million bank accounts reviewed.

It has been reported that the internal investigation cost Siemens around €550 million euros, with €204 million going to Debevoise and €349 million going to Deloitte. What is even more shocking is that the €550 million euro investigation fee was in addition to the €1 billion euro fine and penalty subsequently imposed by the DOJ and German authorities, as a result of Siemens past corrupt practices.

Siemens is not alone in the high cost of internal investigations and/or fines and penalties. We have recently read filings from other companies in the midst of internal investigations who have disclosed some of the internal investigation costs:

- Avon: The internal investigation is in its fifth year. The reported internal investigation costs are approximately \$280 million dollars!

- Weatherford: The internal investigation is in its sixth year. The reported internal investigation costs are approximately \$125 million dollars!
- Wal-Mart: The internal investigation for Wal-Mart has not yet reached the one year mark- but the reported internal investigation costs are already \$51 million dollars!

These are only the internal investigation costs. We don't know if there will be any fines or penalties imposed upon these organizations. But can you imagine if your company had to pay millions and millions of dollars for the investigation and then get hit with fines and penalties in the range that we have seen in the last few years?

- KBR/Halliburton- \$579 million
- BAE- \$400 million
- Snamprogetti/ENI- \$365 million
- Technip-\$137 million

A review of these cases brings us to the **Practical Pointer** for today: **We understand that you may be placed in a position to justify the cost of implementing and enforcing a compliance program.** "How much is it going to cost us"? That question has to be addressed, and should be. The implementation of a compliance program does not have to break the bank. However, it is important to put the company's money "where their mouth is". **The message to your company is this- the cost of implementing and maintaining a compliance program is far less that the investigation costs, time, embarrassment, and potential fines and penalties (not to mention jail time) that the company will incur if it does not put in a solid compliance program.**

Being proactive in terms implementing and enforcing a compliance program does have a cost. Each company should, without question, implement a compliance program tailored to their specific needs and means. However, as reflected in the reported investigation costs and reported fines and penalties, and jail time, the disparity between the costs of implementing and enforcing a compliance program, in relation to the monetary magnitude of potential costs, fines, and/or jail time makes the implementation of a proper compliance program something of a no-brainer. So if you or your company are thinking of starting to do business internationally make sure to do the smart thing and implement a compliance program, because explaining the paltry sum of a compliance program to your executive management, owners and/or Board of Directors will be a much easier task than trying to explain away your failure to do so in the face of a multi-million dollar investigation costs, fines, penalties or jail time.

At this point you might ask yourself: "Well now that I know what happens if we don't comply with the law- what exactly am I required to do in order to implement a solid compliance program?" The answer to this question is simple. You just have to look at the law, the guidance provided by the various governments, (DOJ, SEC, and UK Fraud office), read what other people failed to do **AND** you can read tomorrow's blog!

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