



Ericsson's FCPA Settlement Casts a Significant Shadow Across the FCPA Landscape

Client Advisories

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In what is the second largest Foreign Corrupt Practices enforcement action to date, earlier this month, Swedish telecom giant Ericsson agreed to pay the Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) over one billion dollars to resolve the U.S. Government's multi-year investigation into violations of the FCPA arising from millions of dollars paid in bribes across the world. Ericsson agreed to pay a criminal penalty of over \$520 million and approximately \$540 million to the SEC. One of the company's subsidiaries, Ericsson Egypt Ltd, also pleaded guilty to a charge of conspiracy to violate the anti-bribery provisions of the FCPA. The parent company entered into a three-year deferred prosecution agreement (DPA) with the DOJ in connection with a criminal information filed in the Southern District of New York charging the Company with conspiracies to violate the anti-bribery, books and records, and internal controls provisions of the FCPA, which included an agreement to retain an independent monitor.

According to Ericsson's plea, over the course of 17 years, the company conspired with others in an extensive scheme to pay bribes, falsify books and ignore internal compliance protocols. Utilizing third parties, Ericsson made bribe payments to government officials and also to manage off-the-book slush funds. Ericsson regularly engaged these third parties through fraudulent contracts and paid them through counterfeit invoices. The countries involved included Djibouti, China, Vietnam, Indonesia and Kuwait.

As a result of the DPA, Ericsson has agreed to continue to enhance its internal controls and its compliance program. In addition to the appointed monitor, some of Ericsson's Ethics and Compliance program improvements include hiring additional resources for its compliance and investigative functions, enhancing the due diligence process of third parties, including monitoring third-party engagement, introducing sophisticated analytic tools to better identify and prevent high-risk transactions and engagements, and enhancing internal messaging surrounding compliance-related campaigns.

Takeaways for Your Company

The Ericsson settlement highlights the continuing FCPA enforcement efforts in the telecommunications industry resulting in fines and penalties of over \$3 billion. Ericsson will now pay more than just the price of a \$1 billion settlement; it will undergo significant change under a corporate monitor and will suffer serious reputational harms as it continues to operate. Violations of the FCPA can result in serious repercussions. Criminal sanctions can arise either from violations of the anti-bribery provisions or the FCPA's accounting provisions. Companies that violate the FCPA are subject to fines of up to \$2 million; and individuals making corrupt payments may be fined up to \$100,000 and imprisoned up to five years.

With FCPA prosecutions under the anti-bribery provisions of the FCPA picking up steam, companies can no longer afford to adopt or maintain a lax attitude toward corrupt payments overseas.

Given the current regulatory environment, here are some practical guidelines that companies may want to heed to assure compliance with the FCPA's anti-bribery provisions:

- Companies should establish and implement an effective FCPA compliance program.
- Companies should designate an FCPA compliance officer.
- Companies should create a culture of compliance.
- Companies should create education and training programs to assure effective compliance.
- Companies should establish an anonymous compliance internal tipline.
- Companies should perform FCPA due diligence during mergers and acquisitions.
- Companies should conduct periodic internal FCPA forensic audits.
- Companies that discover FCPA violations should consider the substantial benefits of self-reporting the violations to the government.

With a strong internal compliance program, strong internal controls, and a corporate culture that does not tolerate illegal behavior, companies can avoid being the subject of the next SEC or DOJ cautionary tale.

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