

## E-ALERT | Anti-Corruption

October 24, 2013

### DIEBOLD PAYS OVER \$48 MILLION TO SETTLE FCPA ALLEGATIONS ALLEGATIONS RELATE TO CHINA, RUSSIA, AND INDONESIA

On October 22, 2013, Diebold, Inc. (“Diebold”) agreed to pay more than \$48 million to settle allegations brought by the US Department of Justice (“DOJ”) and US Securities and Exchange Commission (“SEC”) that Diebold violated the Foreign Corrupt Practices Act (“FCPA”) by bribing government officials in China, Russia, and Indonesia. Diebold also entered into a deferred prosecution agreement with the DOJ. This joint settlement, as set out in [the information filed by the DOJ](#) (“the DOJ Information”) and [the complaint filed by the SEC](#) (“the SEC Complaint”), resolves allegations that, from 2005 to 2010, Diebold conspired to violate the FCPA’s anti-bribery and books and records provisions and in fact violated the FCPA’s books and records provisions. To settle the allegations, Diebold agreed to pay a \$25.2 million penalty to resolve the DOJ’s allegations and another \$22.9 million to the SEC in disgorgement and prejudgment interest. The company also agreed to appoint an independent compliance monitor for at least 18 months.

#### Alleged Misconduct

Diebold is a publicly traded Ohio corporation that manufactures ATMs and bank security systems and operates in over 90 countries around the world.

The facts alleged in the SEC Complaint center around Diebold’s misconduct in China. According to the complaint, the Diebold subsidiary in China provided international “leisure trips,” entertainment, and other gifts to foreign officials in order to obtain and retain business with banks owned by the Chinese government. These corrupt payments totaled about \$1.6 million. In particular, the SEC Complaint highlights the free trips provided to officials at government-owned banks, with popular tourist destinations in the United States, Europe, Australia, New Zealand, and Bali. In addition to these trips, Diebold’s Chinese subsidiary also allegedly gave cash gifts to “dozens of officials” each year. The SEC Complaint claims that all of these corrupt payments were falsely recorded in Diebold’s books and records as training or other legitimate business expenses.

The SEC Complaint also highlights Diebold’s lack of “sufficient internal controls” in China to detect and prevent the alleged corruption. Executives in the company allegedly were aware of the ongoing payments and – in some cases – approved the bribes, even after receiving FCPA training. Moreover, the SEC Complaint suggests that Diebold executives were aware of potential corruption issues in the Chinese subsidiary after the Chengdu Administration of Industry & Commerce opened an investigation into the company in 2007 for, among other issues, making improper payments to government-owned bank officials. Diebold settled the matter for RMB 600,000 (approximately \$80,000) for “business registration violations” but, according to the SEC, “failed to effectively investigate and remediate these problems.” The SEC stated that this AIC issue had put Diebold executives “on notice of potential corruption issues at Diebold China.”

According to the DOJ and SEC, Diebold’s Indonesian subsidiary engaged in similar misconduct and falsely recorded the payments as legitimate expenses. As in China, Diebold Indonesia allegedly lacked effective internal controls to detect and prevent the improper payments from occurring.

The government's charges against Diebold for its Russian subsidiary's alleged misconduct focus on the company's interactions with a private Russian company that worked as a distributor for Diebold. According to the DOJ and SEC, Diebold entered into false contracts with the distributor for services that this distributor was not performing. Instead, the distributor used the payments from Diebold to pay bribes to the company's privately owned bank customers in order to obtain and retain contracts. Diebold allegedly continued these improper operations with the distributor even after it discovered that distributors had been used for misconduct in Russia and Ukraine. Unlike the charges related to Diebold's allegation misconduct in China and Indonesia, the charges related to Russia do not involve government-owned bank officials. The government charged the company, however, with falsely recording the improper payments in its books and records as legitimate business expenses.

## Consequences

To settle the DOJ and SEC's claims, Diebold entered into a joint settlement agreement under which:

- Diebold must pay a \$25.2 million criminal penalty to the DOJ and \$22.9 million in disgorgement and prejudgment interest to the SEC, for a total of more than \$48 million.
- Diebold entered into a deferred prosecution agreement with the DOJ. As part of this agreement, the company Diebold must retain a compliance monitor for at least 18 months, at Diebold's expense, and implement rigorous internal controls and a corporate compliance and ethics program designed to prevent and detect violations of anti-corruption laws, including the FCPA.

## Implications

This joint settlement agreement reinforces lessons learned from other FCPA and anti-corruption cases, including the need to:

- provide adequate anti-corruption training to employees of foreign subsidiaries, along with careful oversight and monitoring of both company employees and third-party service providers, including distributors;
- monitor carefully travel benefits to avoid abuses;
- monitor gifts and entertainment provided to government officials;
- establish an adequate system of internal controls to ensure payments are made to legitimate and established third parties; and
- accurately record transactions and disbursements in books and records.

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