Record $3.5 Billion Penalty for Odebrecht and Braskem Shows Global Community Is Serious About Fighting Corruption

On Wednesday, December 21, the U.S Department of Justice (DOJ) announced the largest penalty ever against companies for engaging in bribery and violating laws including the U.S. Foreign Corrupt Practices Act (FCPA).

Working together, prosecutors in the United States, Brazil, and Switzerland imposed a total penalty of at least $3.5 billion on Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company that colluded with Odebrecht in its bribery schemes.

Facing charges of violating the FCPA, Odebrecht pled guilty and agreed that the appropriate criminal fine is even higher—$4.5 billion—subject to an analysis of the company's ability to pay. As a result of this analysis, the company may end up paying "only" $2.6 billion. Brazil will receive 80% of the penalty, and the United States and Switzerland will receive 10% each.

Braskem, which is subject to the FCPA in part because its American Depository Receipts are publicly traded on the New York Stock Exchange, separately pled guilty to related changes and agreed to pay a criminal penalty of $632 million and to disgorge $325 million in profits.

The Odebrecht "Bribery Department"

What criminal activity led to these massive penalties?

Odebrecht admitted to engaging in a massive bribery and bid-rigging scheme that began in 2001. Over many years, the company paid approximately $788 million in bribes to government officials, their representatives, and political parties in multiple countries to win business. Odebrecht's management team went so far as to establish a "Division of Structured Operations" that functioned as a "standalone bribe department" within the company. This department used a separate, off-the-books communications system and code words to keep its illicit work hidden and highly efficient. Bribes were distributed through subsidiaries, including Braskem. Sometimes funds were wired through off-shore entities. Other times, they were delivered through packages and suitcases left at predetermined locations.

Despite this subterfuge, both Odebrecht and Braskem were caught.

Implications for Global 2000 Companies

This case should remove any doubts about whether regulators around the world are becoming more aggressive in investigating and penalizing companies that engage in corruption.

Over the past several years:

- **More nations such as Brazil have adopted Anti-Bribery and Anti-Corruption (ABAC) laws, many of them modeled on the OECD's Anti-Bribery Convention**.
  And as the Odebrecht case shows, prosecutors from multiple countries are willing to team up to build cases and levy penalties.
- **Penalties for corruption have become more common and more costly**.
  Before the Odebrecht penalty, the largest ABAC penalty had been a $1.6 billion penalty levied jointly by the U.S. and Germany against Siemens in 2008. But even aside from these billion-dollar cases, penalties in the tens or hundreds of millions have become more frequent. Four of the largest FCPA settlements ever occurred in 2016.
- **Governments are using new techniques and creating new organizations to investigate corruption.**
  In the U.S., the DOJ announced it was adopting techniques such as wiretaps and sting operations that previously it had applied mostly to blue-collar crime. In China, the government is establishing new regional committees to investigate graft and seize assets.

The lesson from all these developments is clear: Global enterprises need to ensure that neither they nor their third parties engage in corruption. The odds of avoiding censure and costly penalties are becoming increasingly slim, and the risk to reputation and finances are great.

Enterprises need a thorough and systematic approach to combatting corruption and ensuring compliance. And as Odebrecht case reminds us, they need it now.

To learn about the Aravo solution for Third Party Risk Management, please contact us.