



Swiss Energy Company Agrees to Pay \$58M Fine For Violation of U.S. Foreign Corrupt Practices Act

Insights

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ABB Ltd., the Swiss electricity network builder, recently agreed to pay combined civil and criminal fines of more than \$58M for violations by its employees and agents of the U.S.'s Foreign Corrupt Practices Act. ABB also agreed to a three-year deferred prosecution agreement.

The charges, which were levied by the U.S. Department of Justice in the Southern District of Texas, related to two separate bribes made on ABB's behalf. In the first case, an executive with ABB Network Management and an outside sales representative of ABB together paid approximately \$1.9M in bribes to officials at a state-owned Mexican utility company, Comision Federal de Electricidad, which bribes netted ABB contracts for \$81M. In the second case, an ABB unit operating in Jordan paid in excess of \$300,000 in kickbacks to Iraqi government officials in consideration for \$5.9M in business related to the now-defunct U.N. "oil-for-food" program.

ABB's \$58M fine is just the most recent in a long string of multinational corporations that have found themselves paying serious fines and agreeing to other non-economic restrictions to resolve FCPA charges (including General Electric and Universal Corporation just this year). And these penalties are serious, especially in cases such as ABB's where the U.S. Department of Justice insists the offending corporation agree to a deferred prosecution agreement. What is unique about the ABB case, and what is perhaps of most concern to cross-border employers, is the fact that ABB is being held responsible (at least in part) for the activities of one of its independent contractors (in this case, a member of its outside sales force). This is a lesson that corporations in the worldwide have learned with increasing frequency – an employers can no longer insulate itself from liability, even potential criminal liability, by engaging an independent contractor. In the FCPA context, multinational employers must now be sure they are monitoring the interaction between their independent contractors and government officials, and may even consider including a reference to the FCPA in any contractual agreements they make with independent contractors.