

FCPA Indictment Involving Officials in Argentina

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On December 13, 2011, the U.S. Department of Justice (the Department) announced the indictment of eight former executives and agents of Siemens AG and its subsidiaries for allegedly engaging in what the Department describes as "a decade-long scheme to bribe senior Argentine government officials to secure, implement and enforce a \$1 billion contract with the Argentine government to produce national identity cards" The indictment charges the eight individuals with conspiracy to violate the Foreign Corrupt Practices Act (the FCPA); wire fraud and conspiracy to commit wire fraud; and conspiracy to commit money laundering. The indicted former executives include a former member of the central executive committee of Siemens AG, a former CEO of Siemens Argentina and a former CFO of Siemens Argentina. Others in the conspiracy, according to the indictment, include lawyers and managers working on the identity card project, as well as other "agents and conduits for the payment of bribes to Argentine government officials"; the indictment also alleges that "17 conduit entities" were employed in the scheme.

Under the FCPA, U.S. companies and their personnel conducting business with foreign government entities and government officials are proscribed from bribing any foreign official to obtain or retain business; the FCPA also imposes books and records and internal control requirements. According to the Department of Justice, during the bidding and implementation phase of the national identity card project, the eight defendants, and others, "caused Siemens to commit to paying nearly \$100 million in bribes to sitting officials of the Argentine government, members of the opposition party and candidates for office who were likely to come to power during the

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performance of the project." The Argentine government issued a tender for bids on the national identity card project in 1994; a special-purpose subsidiary of Siemens bid on the project in or about December 1996 and was awarded the project in 1998.

In 2001, a new Argentine government terminated the identity card project. According to the indictment, the eight indicted individuals continued their scheme even after this date "through additional bribes and corrupt conduct, including the pursuit of a fraudulent arbitration in Washington, D.C., against the Argentine government, demanding nearly \$500 million [in allegedly lost profits and expenses] while actively hiding the corruption from the tribunal." The indictment further charges the individuals with conspiring to cause Siemens to use such means as tampered witness statements and false pleadings to prevent the arbitration tribunal from discovering that the identity card project had been secured through bribes.

The indictment of the eight former executives and agents of Siemens AG and subsidiaries follows the December 15, 2008, guilty pleas of Siemens AG and Siemens Argentina to criminal FCPA violations. In connection with those 2008 pleas, Siemens AG agreed to pay \$448.5 million in fines; Siemens Argentina agreed to pay \$500,000 in fines. In its December 13, 2011, statement announcing the indictments of the eight individuals in this matter, the Department of Justice noted "the laudable actions of Siemens AG and its audit committee in disclosing potential FCPA violations to the department." The Department's statement also noted both the company's "extensive" and "authentic" cooperation with the investigation and its remedial action, "including the complete restructuring of Siemens AG and the implementation of a sophisticated compliance program and organization."

In addition to the criminal action against the former Siemens executives and agents, the Securities and Exchange Commission has announced a parallel civil enforcement action.

As the 2008 guilty plea of Siemens AG and the pending criminal and civil enforcement actions against the eight former Siemens executives and agents underscore, companies and individuals found in violation of the FCPA may be subject to substantial fines, imprisonment, and/or forfeiture of property. The indictment of the former Siemens individuals continues the recent upsurge in FCPA enforcement by government agencies. Companies need more than ever to work diligently to ensure compliance with the FCPA and its provisions.