

**INVISION ACQUISITION CLOSES AFTER INVISION AND GE REACH
AGREEMENT WITH THE DEPARTMENT OF JUSTICE OVER FCPA
ALLEGATIONS**

On December 6, 2004, General Electric Co. (“GE”) completed its \$900 million acquisition of InVision Technologies, Inc. (“InVision”), after GE and InVision reached agreements with the United States Department of Justice (“DOJ”) concerning alleged Foreign Corrupt Practices Act (“FCPA”) violations by InVision. InVision initially disclosed the allegations to DOJ and the United States Securities and Exchange Commission (the “SEC”) in July 2004, following its agreement to merge with GE. InVision’s disclosure involved allegations that one or more of InVision’s agents or distributors may have made or offered to make potentially improper payments to foreign government officials in connection with certain foreign sales transactions. The merger closed only after InVision entered into an agreement (the “Agreement”) and GE entered into a letter agreement (the “Letter Agreement”) with DOJ on December 3, 2004, ending the agency’s criminal investigation of InVision.

Under the InVision Agreement, DOJ agreed not to prosecute InVision under the FCPA or certain other specified federal criminal statutes for the conduct voluntarily disclosed by InVision or GE to DOJ and the SEC. In exchange, InVision agreed to (1) negotiate a good-faith settlement with the SEC regarding the allegations; (2) pay a monetary penalty in the amount of \$800,000; and (3) continue to cooperate with DOJ and the SEC regarding investigations of responsible individuals.

Solely for purposes of the Agreement, InVision accepted responsibility for alleged improper payments or promises to make payments to foreign officials in connection with sales transactions in Thailand, China and the Philippines (the “Foreign Transactions”), as well as for failing to devise and maintain a system of internal controls with respect to foreign sales activities. All of the alleged improper payments or promises to pay involved sales or attempted sales of InVision’s airport security explosive detection products. In China and the Philippines, InVision employees allegedly authorized payments to foreign agents while aware of the high probability that those agents would in turn pay bribes to foreign officials in connection with InVision sales. The facts surrounding the Thai transaction are somewhat more complex, in that they involve allegations of improper promises to pay foreign officials by a company denominated as InVision’s “distributor.” In connection with the Thai transaction, DOJ alleged that the source of the funds for the improper payments would be the difference between the price paid by the distributor for the InVision equipment and the price received by the distributor. The InVision executive and the manager who negotiated the contract with the distributor were each allegedly aware of the high probability that the price differential would be used to make improper payments to Thai government officials and officials of a Thai political party. InVision has agreed that the Thai transaction will proceed, if at all, as a direct sale and not through a distributor.

In the Letter Agreement, DOJ agreed that it will not prosecute GE or any successor or subsidiary based on the Foreign Transactions or any other foreign transactions or events voluntarily disclosed by InVision or GE prior to the effective date of the InVision Agreement. In exchange, GE agreed to cause InVision to perform its obligations under the Agreement; to cooperate fully and truthfully with DOJ and the SEC; and to retain and pay, for up to a year, an independent consultant “to evaluate the efficacy of, and report to the [DOJ] on, GE’s integration of InVision into GE’s FCPA compliance program.”

In this case, InVision appears to have benefited substantially from its voluntary disclosure and cooperation with DOJ. DOJ’s investigation was swiftly resolved and the penalty levied was relatively modest. It should be noted, however, that any settlement with the SEC remains to be negotiated. In addition, it is unclear whether charges will be filed against any individual InVision employees by either DOJ or the SEC. This matter highlights the increasing importance of FCPA-related due diligence as part of merger transactions.

If you have any questions concerning the foregoing or would like additional information, please call Martin J. Weinstein (Chair, Compliance and Enforcement Practice Group) at (202) 303-1122, or Robert J. Meyer (Vice-Chair) at (202) 303-1123.

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