

## **FCPA PLAYING LARGER ROLE IN INTERNATIONAL ACQUISITIONS**

Increasingly, FCPA compliance is becoming an integral element of international M&A work. Searching for potential FCPA-related red flags is crucial to cross-border deals. Deciding when and how to approach regulators, as described in a precedent-setting DOJ opinion procedure release such as 08-02, and fully grasping the risks of successor liability have become increasingly embedded as central M&A due diligence tasks.

For example, General Electric Company's plans in 2004 to acquire Vetco Gray was delayed when General Electric's pre-acquisition due diligence revealed potential FCPA violations related to payments to foreign officials in Nigeria. Both General Electric and Vetco Gray disclosed this finding to the DOJ and the SEC. Ultimately, the merger was carried out, with Vetco Gray and a successor Aibel paying a penalty and entering into a Deferred Prosecution Agreement.

The US Department of Justice has weighed in on pre-acquisition due diligence. In Opinion Procedure Release 08-02, the DOJ gave its opinion on the steps required by a US company contemplating a transaction which would have foreign component. This opinion held that if Halliburton satisfactorily completed a rigorous, DOJ-mandated 180-day FCPA and anticorruption due diligence work plan after the closing, then the DOJ did not "presently intend" to take enforcement action [against Halliburton] for any disclosed unlawful pre-acquisition conduct by Expro within 180 days of the closing. Halliburton was not the successful bidder for Expro but the DOJ's flexibility and Halliburton's open dialogue with the DOJ indicates there will be increased involvement between companies and regulators during due diligence.

The clear import for all of this is the any US Company seeking to purchase a US company which does business internationally or an international company which does business outside the US, must perform a stringent level of pre-acquisition due diligence and follow up with more thorough and complete review post-acquisition. A US company should also work closely with the appropriate US Governmental authorities so that it does succeed any unknown FCPA violations.