

FCPA and Anti-Corruption News E-Alert

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FCPA Investigation Follows Allegations of Improper Payments to Customs Officials in Kazakhstan

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Several major international oil exploration companies and a logistics provider have allegedly initiated internal investigations in response to allegations of bribery involving a joint venture entity and Kazakh Customs officials, according to a recent Wall Street Journal ("WSJ") article. E-mails received by Karachaganak Petroleum Operating BV ("KPO") detailed payments allegedly transmitted by KPO and its logistics provider to Customs officials in Kazakhstan. As described in the WSJ, the payments, often valued at the equivalent of US\$400, were intended to avoid paperwork challenges and shipment delays in the clearance of goods through Aksai City. The logistics provider's employees allegedly referred to these payments as "extra verification" payments.

KPO is a joint venture between BG Group, ENI, Chevron and Lukoil and was established for exploration and development of the Karachaganak field, one of the world's largest gas condensate fields, located in northwest Kazakhstan.

Neither the Department of Justice ("DOJ") nor the Securities and Exchange Commission ("SEC") has publicly confirmed whether they are investigating. However, KPO confirmed that it has begun a full internal investigation into the matter. Spokespersons for ENI and BG Group also reported that separate internal investigations were underway. The logistics provider has hired an outside audit firm to assist in its own internal investigation.

The Foreign Corrupt Practices Act ("FCPA") broadly prohibits providing anything of value to a foreign official, which includes Customs officials of any rank, to influence an official act that assists a company in retaining or obtaining business. As such, payments in connection with foreign customs issues, including licenses, permits and paperwork challenges, have been frequent targets of FCPA enforcement activity. Moreover, the logistics industry is particularly susceptible to FCPA risk, especially with regard to its operations in corruption-prone areas. Past settlements from such enforcement actions, such as the \$70.56 million in criminal penalties paid by Panalpina World Transport (Holding) Ltd. in conjunction with payments made to Customs officials in Nigeria, Angola, Brazil, Russia and Kazakhstan from 2002 to 2007, and the \$30 million in criminal penalties paid by Royal Dutch Shell plc and \$13.44 million paid by Transocean, Inc. for payments made to Nigerian Customs officials through the companies' respective custom brokers, among others, indicate DOJ's and SEC's focus on the industry.

What Can You Do to Protect Your Company?

- **FCPA Compliance Policy:** A comprehensive and rigorous FCPA compliance policy and program are essential to preventing and detecting unlawful conduct.
- **Global Implementation:** Corporate FCPA compliance programs must apply not only to the U.S. entity and its employees, but also to its non-U.S. subsidiaries, and agents, sales representatives, distributors, joint venture partners, or other business affiliates in any country in which the company is doing business.
- **Due Diligence Guidelines:** Devise specific FCPA due diligence guidelines for acquisitions and investments, as well as the use of agents in high-risk areas. Use FCPA counsel or other experts in the FCPA, working under counsel to maintain attorney-client privilege, who know what to look for in conducting FCPA due diligence.
- **Training:** FCPA training for employees as well as agents and other business partners around the world is critical.
- **Oversight:** Under the auspices of counsel to maintain attorney-client privilege, conduct a risk-based, highly-focused audit to ensure that your company's anticorruption measures are being used and that they are effective.

If you have any questions concerning the FCPA or how to protect your company against possible FCPA liability, please contact the authors or other attorneys in Venable's [Foreign Corrupt Practices Act](#)

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