

FCPA and Bribery Act Compliance in the Global Supply Chain

Ed. Note-recently speaks to Harriet O'Brien, Program Director for Compliance in the Global Supply Chain, spoke with Adrian Mebane, Director of the Ethics and Compliance Group for Weatherford International Ltd., on issues relating to compliance in the global supply chain. With permission, we reprint the issue on this posting.

Why is it important to focus on compliance in the context of the global supply chain?

In the various countries in which we operate, we're always on the lookout for particular supply chain issues, specifically as they relate to procurement activities. We may encounter individuals not abiding by our procurement policy; either the global procurement policy that's in place or the procurement policies in respective countries. By that I mean that vendors and/or suppliers may not have been selected appropriately, in that the business neglected to follow competitive bidding practices such as failing to obtain three quotes/bids or failed to have a clear segregation of duties. These practices can lead to an individual selecting a vendor or supplier in which they may have some sort of ownership interest or by showing preferential treatment to a company in which that individual's family or friends may work. These conflicts of interest can potentially lay a foundation for code of business conduct violations. I'd say that these are some of the prevalent compliance issues companies' encounter from a supply chain context.

Whilst these types of incidents thankfully do not expose companies to the same level of risk as other forms of corruption like improper payments and gifts to government officials in order to obtain or retain business, they certainly can create headaches to operations and impact its bottom line. When we initiate investigations into these matters, we conduct interviews and assess the sufficiency of the relevant documentation to attempt to determine if the business may be paying above market for goods and services and if so, whether employees may have inappropriate relationships with vendors. We can then recommend remedial measures to ensure that the business is getting competitive rates, the best services and that the process in doing so is an efficient one. These supply chain issues come to our attention in a variety of ways but predominately via 'Listen Up', our anonymous hotline. As a result, and when we've been able to fully investigate these allegations, the majority of these matters have resulted in some form of disciplinary action, ranging from letters of reprimand to termination. Procurement involving vendors and suppliers is something our business units and product lines are keenly sensitized and an area in which our compliance team is acutely aware.

What would you say is the biggest challenge or risk for oil and gas companies with regards to compliance?

I'd say the biggest challenge or risk for many, if not all oil and gas companies, will always be with respect to 3rd parties and intermediaries acting on a company's behalf in dealings with covered persons. We all do business in the "high risk" countries with reputations for corruption and we're all somewhat reliant on sales agents, consultants and brokers in many of these

countries. Many of the DOJ and SEC FCPA settlements we hear about started because of some bad act or acts by an agent for that company. Obviously, if you're going to engage a 3rd party, the company must perform comprehensive due diligence and do all it can to have that 3rd party abide by its compliance policies.

How will the UK bribery act change the compliance landscape?

It will change the compliance landscape certainly but to what extent, it's hard to tell. Many articles and FCPA practitioners refer to the UK Bribery Act as the "FCPA on steroids". The Act incorporates many of the same elements that the FCPA has, but the envelope's been pushed in some respects. For instance, the Act prohibits facilitation payments, although typically illegal in the countries where they're being made anyway, there is at least the room within the FCPA to allow these "grease payments". Serious Fraud Office ("SFO") prosecutors will likely enforce this standard in a realistic and practical fashion but many companies are concerned. Given the fact that Weatherford operates in over 100 countries, we've banned facilitation payments at our company but for situations where employees are faced with an imminent threat to bodily harm and felt that it was just cleaner to do so. Keep in mind also that the Act provides a defense for companies with robust compliance programs and those companies, humbly; like Weatherford's should be well insulated if the SFO comes knocking on the door. At the end of the day, I think the UK Bribery Act will be effective, and some companies are definitely looking to beef up their compliance programs to ensure that they do not fall afoul of the new act.

Adrian D. Mebane is the Director of the Ethics and Compliance Group for Weatherford International Ltd., joining the company in May 2009. Adrian is responsible for leading, managing, developing and implementing the global ethics and compliance program for Weatherford, which has operations in over 100 countries and more than 50,000 employees. For 4 years, Adrian was a federal prosecutor at the Fraud Section of the Department of Justice's Criminal Division, where he prosecuted FCPA and other sophisticated white collar matters.

Adrian Mebane will speak at the conference, Compliance in the Global Supply Chain, in Houston, TX, on April 26 and 27. Through Friday, registrants can receive up to \$400 USD off standard prices as well as an extra 10% for booking through this blog. Code to quote: FCPA2

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