

Why Perform FCPA Due Diligence?

So what are Red Flags and where do they appear? What level of due diligence does your company require for an entity based in the United States? How often during the pendency of a transaction or business relationship should your company update its due diligence? These questions and others were brought up in a recent article in the Wall Street Journal (WSJ) about a civil-racketeering lawsuit by the government of Ukraine against Olden Group, an Oregon based company. In the June 13, 2011 edition of the WSJ was an article by Dionne Searcy entitled, “*Court Order US Firm to Pay Ukraine*”. The article details a lawsuit which stemmed from an investigation, ordered by the President of the Ukraine, into medical supplies purchased by the government administration which preceded the most current administration.

The investigation was assisted by the US Company Kroll Inc., which issued a report on Olden Group. In its report, Kroll noted that Olden was tied to a “web of offshore companies registered in the US and tied Olden to past fraudulent schemes.” The Kroll Report and other information led the Ukrainian government to file the lawsuit. The Ukraine lawsuit alleged that Olden entered into sham contracts with a Ukrainian firm named Interfarm LLC to submit “phony customs declarations” which misstated prices that the Ukrainian government paid for vaccines. These overcharged monies were then laundered through both US and Latvian banks. These monies have disappeared.

As reported in the WSJ, based upon corporate records obtained from the state of Oregon, Olden Group is owned by two separate companies. The first is named Worldwide Management and has an address which is a post office box in Belize. The second is an entity named International United Holding AG and is based in Niue, an island in the South Pacific. Further these two companies are shareholders of numerous companies owned by two individuals, Charles Mathias and W. Rick Fletcher, who were reported in WSJ article to be “shareholders in numerous companies incorporated in Oregon.” When reached by the WSJ for comment, Mr. Mathias related that he has “registered numerous firms on behalf of several Eastern European organizations.” State of Oregon records revealed that Mr. Mathias had registered **about 2,762** companies in Oregon.

The WSJ article also noted that one of the firms related to the Olden Group was named in the US Department of Justice’s (DOJ) bribery and corruption case against Daimler. This allegation involved one of the 2,762 companies which Mr. Mathias had incorporated in Oregon, United Petrol Group. It was alleged by the DOJ to be a part of Daimler’s corrupt acts to bribe certain Latvian government officials to obtain contracts. Lastly another entity formed by Mr. Mathias, Ronberg Gruppe, was placed on the World Bank blacklist in September 2010 for having “engaged in fraudulent practices relating to a [World Bank] project in Afghanistan.

I have set out this rather detailed description of the WSJ article to illustrate, once again, the need for continued vigilance throughout the due diligence process. Simply because your

agent/vendor/business relationship is located in the United States, does not mean that you can automatically limit your due diligence inquiry to a Level One search. You must also be vigilant in obtaining related party information on the entity with which you are doing business with and obtain a list of the principles and check on them as well. The experience of the Ukraine government and the information from the Wall Street Journal article clearly demonstrates the pitfalls of failing to do so.

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