

## **Ride 'Em Comrade: A Foreign Governmental Entity May Be Coming to Texas**

I wrote, somewhat tongue in cheek, a post entitled "*Take Me Out to the (FCPA) Ballgame*" about an offer to purchase the Los Angeles Dodgers for a cash price of \$1.2bn by a group which included "certain state-owned investment institutions of the People's Republic of China". If such a sale went through, I questioned whether such investment might make the Dodgers a governmental instrumentality, thereof, under the Foreign Corrupt Practices Act (FCPA). However, this question may become more relevant in the United States in another transaction that was announced last week which has come to fruition.

In a September 1, 2011 article in the New York Times, entitled "*Memo to Exxon: Business with Russia Might Involve Guns and Balaclavas*", Andrew E. Kramer reported that Exxon signed a Joint Venture (JV) deal with the Russian state owned oil company Rosneft. Kramer stated that through this JV Exxon would explore for oil in the Russian sector of the Arctic Ocean. While the Wall Street Journal (WSJ), in an August 31, 2011 article, reported that financial terms for the Arctic Ocean JV had not yet been finally negotiated and on August 30, 2011, Newsday reported that Rosneft would own 66.7% of the shares in the JV. Additionally, Rosneft would "gain access to Exxon operations, including oil fields in Texas and the Gulf of Mexico." The WSJ was more specific in noting that "Rosneft will be able to purchase stakes in some Exxon projects in the U.S., including deep-water Gulf of Mexico exploration and onshore oil fields in Texas. That would mark the first time a state-controlled Russian oil company acquired ownership stakes in U.S. oil and gas assets."

I have not been able to find any report of the interest to be owned by Rosneft in the Gulf of Mexico properties or the onshore fields in Texas. Newsday reported that "Rosneft will be offered an equity interest in Exxon exploration projects in North America, including deep-water Gulf of Mexico and fields in Texas, as well as in other countries." All of the above may well lead to some very interesting questions regarding the application of the FCPA.

I do not think that there would be any question that the FCPA would apply to the Arctic Ocean JV between Exxon and Rosneft. Under any analysis currently used, a more governmental ownership of 66.7% would be enough to make clear that the FCPA should apply. This would be true even under the analysis proposed by the US Chamber of Commerce to limit FCPA jurisdiction to any JV which has 50% ownership by a foreign government or foreign governmental entity.

The more interesting, or perhaps more troubling, question may well come from the offshore Gulf of Mexico properties or the onshore properties in the state of Texas. As stated in the Newsday article, Rosneft would be offered "equity interest" in these properties, but stated no amount. There was nothing to indicate whether Rosneft would be a passive investor or the lead developer in these properties. The Newsday article also reported that "The deal thus fulfills a demand for reciprocity often made by Putin, helping Rosneft, which already works with Exxon offshore

Russia's Sakhalin Island, toward its long-term goal of being a global energy major.” Is the fact that the Arctic Ocean deal required a reciprocal US based transaction of any import for an FCPA analysis?

At this point I would advise any energy industry legal or compliance officials in Houston to watch this matter closely. There may be (FCPA) implications from this deal all the way through the industry.

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