

Strafford

Presenting a live 90-minute webinar with interactive Q&A

Investigations Under the FCPA and Other Anti-Corruption Laws: Navigating Multi-Jurisdictional Complexities

Understanding Scope of Risk, Evaluating Cooperation With the Government, and Maintaining an Effective Defense

TUESDAY, JULY 10, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

James G. Tillen, Member, Miller Chevalier, Washington, D.C.

Timothy L. Dickinson, Partner, Paul Hastings, Washington, D.C.

Aurelien Hamelle, Partner, Metzner Associates, Paris, France

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Strafford Webinar

**Investigations Under the FCPA and
Other Anti-Corruption Laws:
Navigating Multi-Jurisdictional Complexities**

Tuesday, July 10, 2012

Moderator: James G. Tillen, Miller & Chevalier
Panelists: Timothy L. Dickinson, Paul Hastings
Aurélien Hamelle, Metzner Associes



CLIENT OilCo – Oilfield Services Provider

- Designs geological modeling and seismic imaging equipment and provides exploratory drilling services
- Founded in 1950, headquartered in Delaware
- Stock is listed on the New York and London Stock Exchanges
- Operations include sizeable contracts in Nigeria, an area regionally supported by OilCo's French subsidiary
 - Support includes regional Finance, Legal, Commercial and IT support out of Paris as well as computer servers located in France

Allegations of Bribery in Nigeria



- Two weeks ago, OilCo's Regional Compliance Counsel in France received an email from Edo Okafor, a Sales Manager in Nigeria
- Okafor raised allegations against Wes Welker, OilGo's Country Manager in Nigeria. Welker is a U.K. national.
- Okafor alleged that Welker had made illicit payments to NNPC officials (Nigeria's state-owned oil co.) in an effort to secure lucrative contracts.
- Welker reportedly channeled these payments through NoGood, a Nigerian consulting firm Oilco periodically retains to help in the preparation of tender submissions.
- Regional Compliance Counsel elevated the issue to OilCo's General Counsel and the Chair of the Audit Committee



Edo Okafor's Email

From: EOkafor@oilco.com
Sent: Tuesday, June 26, 2012 6:39 PM
To: 'EMEACompliance@oilco.com'
Subject: Re: Compliance Policy Violations

Regional Counsel,

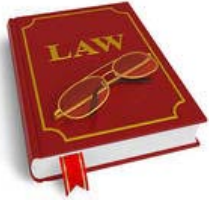
I am writing to notify you about a problem in Nigeria. I am concerned that Wes Welker, our local country manager, has been paying bribes to NNPC officials in Nigeria in an effort to drum up business. He orchestrates these payments through NoGood, a consulting firm OilCo uses in Lagos to help ensure that its tender submissions comply with the tender specifications. I know this is how many of our competitors operate, but it violates OilCo policy and, during our corruption training last week, they mentioned the potential for criminal charges and jail time. Please let me know when you have time to talk. I may be up in Paris next week.

Best,
Edo

First Steps

- Preservation? What, how, when?
- Interim controls? Over what, how, when?
- Retention of external counsel for entity or individuals?
- Determine applicable law?
- Disclosure?
 - To whom? (SFO, DoJ, SEC, French authorities, Nigerian authorities, others?)
 - When?
 - What?
- Investigation Plan?





Challenges: Differing Laws

- Are the relevant countries party to UNCAC, OECD anti-bribery convention, or any other corruption-related treaties?
- How do the laws of each jurisdiction differ?
 - How is corruption defined? Do the elements of bribery differ in significant ways?
 - What constitutes a “government official”
 - What restrictions exist on the provision of gifts, travel, meals and entertainment?
 - Are facilitating payments permitted?
 - Is there corporate criminal liability? Is it dependent on the liability of a company employee or agent?
 - What are the standards of proof?

Challenges: Data Collection/Privacy



- Logistics: How to handle data collection and review?
 - How should they be collected?
 - Use of third party vendors? (e.g., accounting firms)
 - Where should document review take place?
- Data privacy and data protection:
 - What documents are subject to these protections?
 - Is there a blocking statute? How do you deal with this?
 - Do employees need to be notified of the collection?
 - Enforcement expectations as to gathering data?
 - What restrictions would limit production of this data?
 - ❖ How to qualify for data privacy safe harbor?



Challenges: Dealing with Employees

- Works Councils: Panels empowered to work with management on policies directly affecting workers?
- Whistleblowers: Are there differing whistleblower protections to be mindful of?
- Investigative interviews:
 - Who to interview? Where? By whom? How to document?
 - Do interviewees have special rights? (eg, representation)
- Employee discipline:
 - Any applicable laws governing discipline or termination of employees?
 - Employees entitled to special hearings or other rights?

Challenges: Multi-Jurisdictional Investigations

- How will the investigation be impacted by the involvement of multiple jurisdictions?
- Will investigation require cooperation of countries and/or institutions? What complexities does this raise? (e.g., duty to inform)
 - Banking information
- Will evidence (e.g., funds) have to be traced?
- What are the implications of disclosure in one jurisdiction?
 - Are voluntary disclosures permitted in each jurisdiction?
- How does one initiate and conduct settlement negotiations with various jurisdictions?



Challenges: Multi-Jurisdictional Enforcement

- What is the enforcement posture in each country?
- Are authorities in different countries pursuing enforcement? On what grounds?
- Mutual legal assistance among these authorities?
- Differing expectations about how to conduct investigation?
- Double jeopardy? Are the same entities being prosecuted for the same conduct in different jurisdictions?

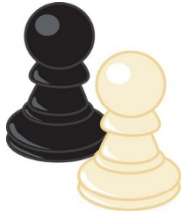


Challenges: Multi-Jurisdictional Enforcement (Cont.)

- How should a company approach resolving allegations when dealing with authorities in different countries?
 - Is a coordinated settlement a possibility?
- When settlement options are available?
 - Plea agreements, DPAs, NPAs, Civil settlements?
- Are company employees being prosecuted?
 - Are there rules governing indemnification of employees?
- How does multi-jurisdictional enforcement impact liability?

Challenges: Attorney-Client Privilege

- What is the scope of legal privilege?
 - Communications with in-house counsel privileged?
 - Communications with outside counsel privileged?
- How do the relevant enforcement agencies view privilege?
- How does a company maintain privilege? Who can waive privilege?



Strategy: Practical Steps

- Establish a process to initially vet allegations
 - Be mindful of place of conduct, nationality of persons or entities involved, location of evidence, etc.
- Identify relevant jurisdictions and assess local laws
 - Consult with local counsel as needed
- Establish work plan that deals with multi-jurisdictional issues such as data collection, data privacy, witness interviews, privilege, and coordination with authorities