

\$4.2 Million Criminal Fine Reinforces Need for Acquiring Companies to be Diligent in Understanding Their Targets' Potential FCPA Liabilities

On November 21, 2008, Aibel Group Ltd., a UK corporation, pleaded guilty to violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and conspiracy to violate the FCPA. The plea agreement requires Aibel to pay a \$4.2 million criminal fine and serve two years on organizational probation. The probation will require, among other things, periodic reporting on Aibel's progress in implementing FCPA compliance measures.

This is the third time since July 2004 that entities affiliated with Aibel Group have pleaded guilty to FCPA violations. Beginning in February 2001, Aibel provided engineering and procurement services and subsea construction equipment for a deepwater oil drilling operation in Nigeria. In 2004, Vetco Gray UK Ltd. pleaded guilty to violating the anti-bribery provisions of the FCPA for paying more than \$1 million in bribes to the Nigerian government agency that approves potential bidders for oil exploration projects. In February 2007 affiliated companies again pleaded guilty to violating the FCPA anti-bribery provisions and agreed to pay a combined fine of \$26 million. Aibel, then wholly-owned by Vetco, was not fined at that time, but was required to enter into a deferred prosecution agreement.

At Friday's hearing in the U.S. District Court for the Southern District of Texas, Aibel admitted that it conspired to make at least 378 corrupt payments to Nigerian officials in an effort to obtain preferential treatment during the customs process. These corrupt payments totaled more than \$2 million. Aibel also admitted that it failed to comply with the 2007 deferred prosecution agreement.

Aibel is now owned by two Norwegian private equity firms, Herkules Private Equity Fund and Ferd Capital. At the time of the Aibel acquisition, the Justice Department required the new Norwegian owners to ensure compliance with the 2007 deferred prosecution agreement. According to the Department of Justice the resolution of these criminal investigations resulted from the companies' voluntary self-disclosure of these violations and the companies' agreement to take significant remedial steps.

Aibel's plea agreement is just one of many recent examples of the DOJ's continued efforts to step up FCPA prosecutions against both foreign and domestic companies. It also serves as a reminder that later-acquirers will not escape penalties for the actions of companies prior to acquisitions. Potential investors must be diligent in understanding their targets' potential liabilities related to FCPA enforcement. Before making an acquisition, investors need to investigate the extent to which their targets are or have been subject to FCPA enforcement proceedings. An acquiring company should also assess their targets' FCPA compliance program before purchase as part of its regular due diligence. Following an acquisition, owners and management must make FCPA compliance a priority so as not to expose their companies to future FCPA enforcement.

Contact Ropes & Gray

Ropes & Gray regularly advises clients on FCPA compliance and potential enforcement actions before and after an acquisition. If you have any questions about the FCPA or its effect on your business activities, please do not hesitate to contact your regular Ropes & Gray attorney.

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