

Weatherford International Reaches \$253M Settlement with the DOJ, SEC, OFAC, and BIS

I. Introduction

On November 26, 2013, Weatherford International (“Weatherford” or “the Company”), an oil-field services company that trades on the New York Stock Exchange, agreed to pay \$253 million in criminal and civil penalties as part of a global settlement with the U.S. government to resolve claims that the Company and its subsidiaries violated the Foreign Corrupt Practices Act (“FCPA”) and various export control and sanctions laws. This case is important for several reasons. First, it involves a combination of FCPA, sanctions and export controls violations, illustrating a continuing trend of cooperation among the SEC’s and the DOJ’s FCPA Units with the Treasury’s Office of Foreign Asset Control (“OFAC”) and Commerce’s Bureau of Industry and Security (“BIS”). Second, the settlement represents the largest ever BIS fine, at \$50 million, and is the eighth largest FCPA resolution. Finally, the case is the first time that the SEC has alleged books and records charges based on a public company mischaracterizing transactions to hide the fact that it violated export control and sanctions laws. The SEC has for several years been aggressive in using its explicit authority in this area to level charges for accounting entries that mischaracterized bribes in public companies’ books, but now appears to be expanding its use of the non-scienter based charge to capture export control and sanctions law violations.

II. Global Settlement Details

The relevant allegations and details related to each settlement agreement are described in greater detail below.

A. DOJ

1. FCPA—*Internal Controls and Anti-Bribery*

The DOJ charged Weatherford with violating the internal controls provision of the FCPA for knowingly failing to establish an effective system of internal accounting controls to detect and prevent FCPA violations. According to the DOJ, the lack of sufficient internal controls created a corporate environment at Weatherford where illegal bribery was deemed to be acceptable. The DOJ asserted that Weatherford and its subsidiaries:

- Made hundreds of thousands of dollars of improper payments to government officials through a joint venture in order to secure sensitive information about its competitors pricing and obtain valuable contracts;
- Paid bribes to a foreign government official through a freight forwarder in order to ensure that the government would renew a contract;
- Awarded \$15 million in funds to a distributor through improper volume discounts that were used to create a slush fund to bribe decision-makers at a national oil company;
- Paid \$1.5 million in kickbacks to the Iraqi government in order to obtain contracts related to the United Nations’ Oil for Food Program.

According to the government’s allegations, Weatherford obtained approximately \$54 million in profits as a result of these improper payments.

To resolve this charge, Weatherford entered into a deferred prosecution agreement, pursuant to which it agreed to pay \$87.2 million in criminal penalties. Weatherford is also obligated to institute a corporate compliance program, conduct a review of its internal accounting procedures, disclose any information relating to corrupt payments, and hire an independent monitor under the terms of the agreement.

A Weatherford subsidiary whose employees were involved with paying bribes to foreign government officials was also charged with one count of violating the FCPA's anti-bribery provision. The subsidiary pled guilty to this charge and agreed to pay a criminal penalty of \$420,000 to resolve the matter.

2. Export Control Violations

Weatherford and two of its subsidiaries were also charged with violating the International Emergency Economic Powers Act ("IEEPA") and the Trading with the Enemy Act ("TWEA") for doing business with countries subject to comprehensive economic sanctions without obtaining licenses from the appropriate government agencies. In total, Weatherford and its subsidiaries generated approximately \$110 million in revenue from its business in Cuba, Iran, Sudan and Syria. Weatherford employees located in the United States also played a role in a portion of the violative shipments by supporting, approving, or otherwise facilitating the transactions.

To resolve the IEEPA and TWEA-related charges, the Company entered into a deferred prosecution agreement with the United States Attorney's Office for the Southern District of Texas. In accordance with the terms of the agreement, Weatherford agreed to pay a total of \$98 million to the government. That amount included a criminal penalty of \$48 million to be paid to the United States Attorney's Office for the Southern District of Texas.

In addition, one Weatherford subsidiary pled guilty to violating the IEEPA and another Weatherford subsidiary pled guilty to violating the TWEA. Each subsidiary agreed to pay \$1 million in criminal penalties in connection with their plea agreements.

B. BIS

BIS charged Weatherford and its subsidiaries with exporting oil and gas equipment from the United States to Cuba, Iran, and Syria between 2004 and 2007 in contravention of the Export Administration Regulations and the Iran Transactions and Sanctions Regulations. BIS also charged Weatherford with exporting products that were controlled for reasons of nuclear non-proliferation to Venezuela and Mexico between 2002 and 2007 without the requisite licenses.

Weatherford agreed to pay an administrative civil penalty of \$50 million to resolve these charges. The \$50 million settlement is the largest civil administrative penalty that BIS has ever levied. In addition to civil penalty, Weatherford also agreed to engage an independent third party that will audit the Company's records to assess its compliance with U.S. export control and sanctions laws for the 2012, 2013 and 2014 calendar years.

C. OFAC

OFAC alleged that Weatherford and its subsidiaries' dealings with embargoed countries also violated the Cuban Assets Control Regulations, the Iranian Transactions and Sanctions Regulations, and the Sudanese

Sanctions Regulations. Weatherford came to terms with OFAC on a \$91 million civil liability settlement to resolve these matters. The Company, however, will be deemed to have satisfied its obligations to Treasury by paying the criminal penalties to the United States Attorney’s Office for the Southern District of Texas and the administrative civil penalty to BIS.

D. SEC

1. *Alleged Misconduct*

The SEC filed a complaint against Weatherford claiming that the Company had violated the anti-bribery, books and records, and internal controls provisions of the Securities Exchange Act of 1934 (“Exchange Act”).

(a) Exchange Act—Anti-Bribery Provision

Between 2002 and 2011, the SEC alleged that Weatherford and its subsidiaries authorized improper bribes and other benefits to foreign government officials in a number of countries throughout the world to obtain or retain business. Based on the SEC’s complaint, Weatherford and its subsidiaries:

- Paid bribes through an agent to a government official in Angola to induce him to approve the renewal of an oil services contract;
- Made improper payments to government officials through a joint venture in order to secure sensitive information about its competitors pricing and obtain valuable contracts;
- Paid \$500,000 in bribes through an agent to government officials in order to obtain business in the Congo;
- Awarded millions of dollars in improper volume discounts to a distributor that was used to create a slush fund to bribe decision-makers at a national oil company;
- Provided improper travel and entertainment benefits to officials of an Algerian state-owned company that were not justified by a business purpose;
- Made improper cash payments and gifts to Albanian tax auditors in exchange for favorable treatment; and
- Paid kickbacks to the Iraq government in order to obtain contracts related to the United Nations’ Oil for Food Program.

(b) Exchange Act—Books and Records & Internal Controls Provisions

The SEC also claimed that Weatherford violated the books and records and internal controls provisions of the Exchange Act. The SEC’s complaint alleged that Weatherford and its subsidiaries did not properly characterize the bribes and improper payments described above, which constituted a violation of the books and records provision. In addition, the SEC asserted that Weatherford ran afoul of the books and records provision by falsifying its books and inventory records to hide transactions related to embargoed countries.

The SEC claimed that Weatherford’s internal controls were insufficient because the Company did not train employees on the FCPA or export control laws or review responses that employees filled out in a yearly ethics questionnaire. The SEC also asserted that Weatherford had engaged in illegal activities—and upper-level management was aware of this problematic conduct—for many years. Finally, the SEC alleged that Weatherford had violated the internal controls provision because the Company did not have sufficient

internal controls for transactions involving embargoed countries and various records were altered or falsified to conceal Weatherford's dealing with these countries.

2. SEC Settlement

Weatherford reached an agreement with the SEC to resolve these claims. Pursuant to the agreement, Weatherford will pay approximately \$65 million in civil penalties, which includes a \$1.875 million penalty that was imposed in part because the Company failed to cooperate with the SEC during the initial stages of the agency's investigation. Weatherford also agreed to retain an independent compliance monitor for 18 months and self-report any additional violations during that time period.

III. Conclusion

The Weatherford settlement highlights a number of important points relevant to individuals and companies engaged in international business. First, and foremost, FCPA enforcement remains a priority for the DOJ and SEC. Over the last few years, both the DOJ and SEC have extracted large penalties and other concessions from international companies for alleged violations of the FCPA. This trend is likely to continue in the future.

Another notable aspect of the Weatherford settlement is the importance that the government attached to the Company's purported violations of economic sanctions and export control laws. As a general matter, there has been a significant increase in the U.S. government's enforcement of these laws over the last five years. But the majority of those cases have been administrative actions involving civil penalties brought by OFAC or BIS. While the DOJ has brought a fair number of criminal cases for violations of IEEPA and TWEA, the SEC has generally not concerned itself with improper conduct involving embargoed countries. But the SEC's complaint here suggests that the agency takes the position that inaccurate accounting of transactions with embargoed countries can result in violations of the books and records and internal controls provisions of the Exchange Act. If the SEC continues to hold this position in the future, then it is likely that violations of economic sanctions and export control laws will be enforced by yet another government agency.

The settlement is also important because it shows the complicated web that a company can find itself in as the often related matters involving the FCPA, sanctions and export controls arise. Weatherford was investigated starting in 2007 by the DOJ in Washington, D.C., the SEC, the United States Attorney's Office for the Southern District of Texas, OFAC and BIS, and likely some civil DOJ unit. It has been reported that the company incurred \$125 million for legal and professional fees through the end of 2012, and an additional \$44 million from 2007 through 2009 in costs for ceasing operations in certain sanctioned countries. In addition to the government investigation and sanctions, there are ongoing class action and derivative lawsuits.

If you have questions about these recent enforcement trends, please contact the Ropes & Gray attorneys with whom you regularly work.