

M and A Due Diligence Failures: FCPA and Goodyear

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On Feb. 24, 2015, the **SEC** announced charges against **Goodyear Tire & Rubber Company** for violating **the Foreign Corrupt Practices Act (FCPA)**. These charges involve Goodyear subsidiaries in **Kenya** and **Angola** paying bribes to government and private-sector workers in exchange for sales in each country. As a result, Goodyear was sanctioned \$16.2 million by the SEC. The heart of the SEC's investigation found that Goodyear violated books and records rules when officials of its African subsidiaries falsely recorded \$3.2 million in bribes as legitimate expenses over a four (4) year period.

In charging and sanctioning Goodyear, the SEC found that Goodyear “did not prevent or detect these improper payments because it failed to implement adequate FCPA compliance controls at its subsidiaries in sub-Saharan Africa.”

The sanctions against Goodyear consist of \$14.1 million of disgorgement and \$2.1 million in pre-judgment interest. No civil fine was assessed and Goodyear did not admit or deny wrongdoing in entering into the administrative resolution. Goodyear is also required to report its FCPA remediation efforts to the SEC over the next three (3) years.

The tone of the SEC Order is premised upon Goodyear failing to engage in an appropriate level of due diligence when it purchased a majority stake in its Kenyan subsidiary, Treadsetters Tyres Ltd., in 2006. This theme highlights an enforcement issue the government has been giving increased attention in the FCPA area – “Due diligence in foreign M&A work must be rigorous.” Specifically, the SEC's order found, “Goodyear did not detect or prevent these improper payments because it failed to conduct adequate due diligence when it acquired Treadsetters, and failed to implement adequate FCPA compliance training and controls after the acquisition.”

This case also illustrates that early and significant cooperation can go a long way toward remediating potential penalties for FCPA violations. Indeed, Goodyear suffered no fine as part of sanctions in this investigation. The SEC specifically made note of the early and overwhelming cooperation, together with remedial efforts, which Goodyear undertook as a result of its investigation. Goodyear has divested its ownership interest in Treadsetters and is in the process of divesting all interest in its Angolan subsidiary. It has initiated disciplinary action against employees who had oversight responsibility in the sub-Saharan African region and has implemented improvements to its compliance plan specific to those operations.

This case highlights several aspects of FCPA enforcement for companies doing business abroad: (1) M&A due diligence must be undertaken in a rigorous manner; (2) once a foreign company is acquired, compliance programming specific to the country and region of the acquired company must be instituted immediately. Management personnel overseeing a new acquisition need to be adequately trained and made well aware of their responsibilities for anti-corruption compliance; and (3) early and substantial cooperation with enforcement officials, together with instituting remedial measures, can be persuasive in mitigating penalties for FCPA violations.

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