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FCPA Accounting Provisions Have Teeth: Halliburton to Pay $29.2 Million to Settle FCPA Charges

Article By:

Joseph D. Barton

Jennifer N. Le

Along with the anti-bribery provisions, the U.S. Foreign Corrupt Practices Act ("FCPA") contains accounting provisions that apply to publicly traded companies. These provisions require that companies maintain and adhere to internal policies that manage risk and ensure that accurate financial records are maintained. There is no bribery requirement for there to be a violation of these provisions. There is also no foreign conduct requirement. All that is required is that a company have a policy in-place and circumvent that policy to obtain some business advantage (no matter how small). The Securities and Exchange Commission ("SEC") often initiates investigations based on allegations of foreign bribery, but resorts to the accounting provisions when the alleged bribe cannot be proven (because an internal policy violation can almost always be found and the SEC does not want a company to get off scot-free).

A good example is the recent Halliburton settlement on July 27, 2017, concerning Halliburton's awarding of subcontracts to an Angolan company to win oilfield service contracts with Angola's state oil company, Sonangol. The matter began in 2008 when Sonangol told Halliburton that it had to partner with local Angolan-owned businesses to continue receiving oilfield service contracts. Halliburton directed its then vice president, Jeannot Lorenz, to spearhead these efforts. Lorenz retained an Angolan company owned by a former Halliburton employee who was a friend and neighbor to the Sonangol official responsible for approving Halliburton's contracts. In doing so, Lorenz circumvented various internal accounting controls at Halliburton to get the deal done as quickly and quietly as possible. Specifically, Lorenz:

1. Selected the company first and then backed into the services to be provided instead of assessing the services needed and then selecting the appropriate company;

2. Failed to conduct competitive bidding; and

3. Failed to obtain required internal approvals.

Halliburton was charged with violating the FCPA's accounting provisions and agreed to pay $29.2 million in the settlement. The SEC's Enforcement Division Associate Director, Antonia Chion, emphasized, "Companies and executives must comply with internal accounting controls that help ensure the integrity of corporate transactions." This case serves as a cautionary tale because Halliburton was fined for violating its own internal policies without proof that any bribery ever occurred. It stresses the need for companies to conduct rigorous training and monitoring to ensure compliance with their polices.

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