

Oilfield Services Seminar Series

Oilfield Services Companies: FCPA, OFS and Value Destruction

Panelists:

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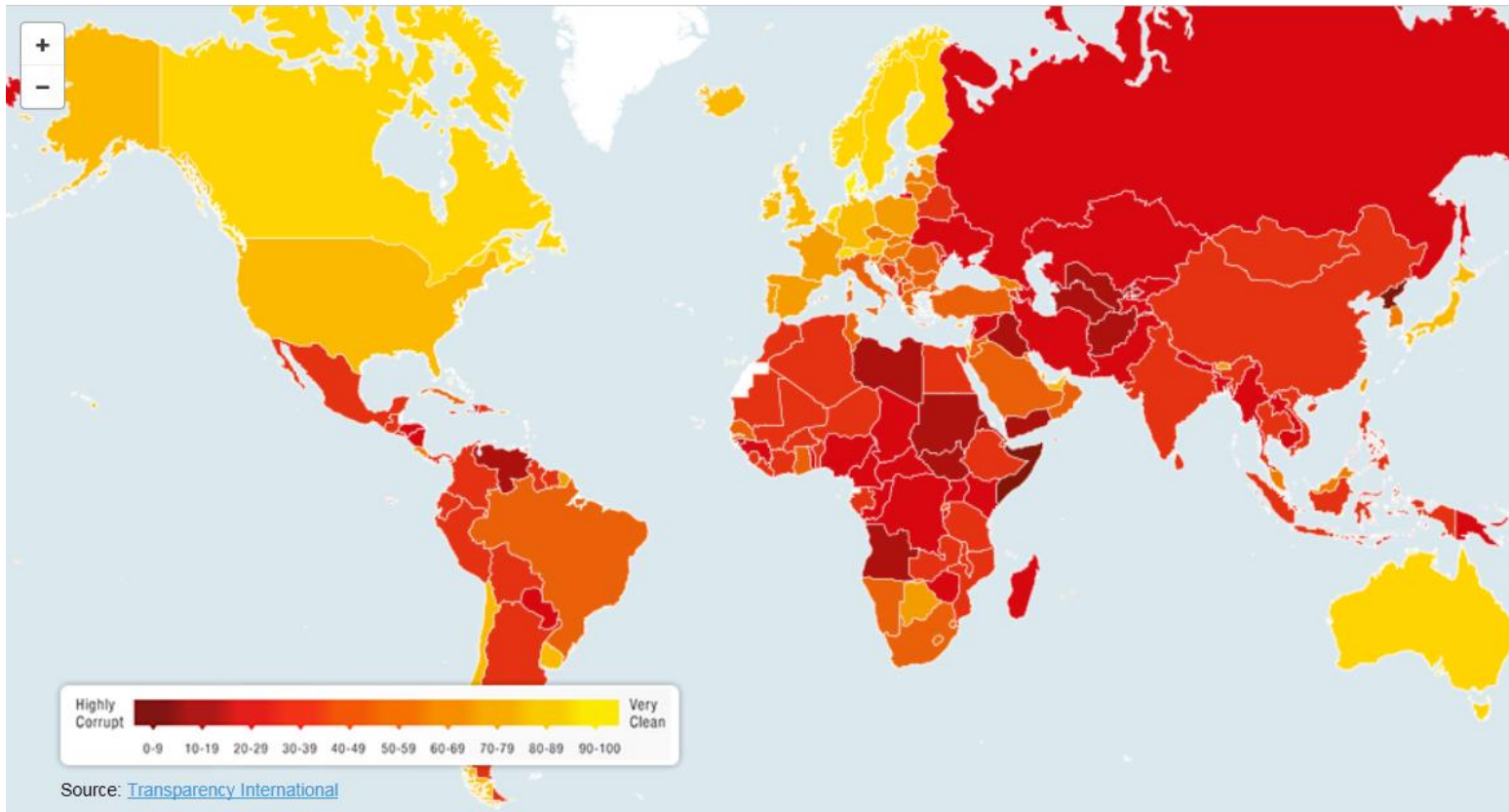
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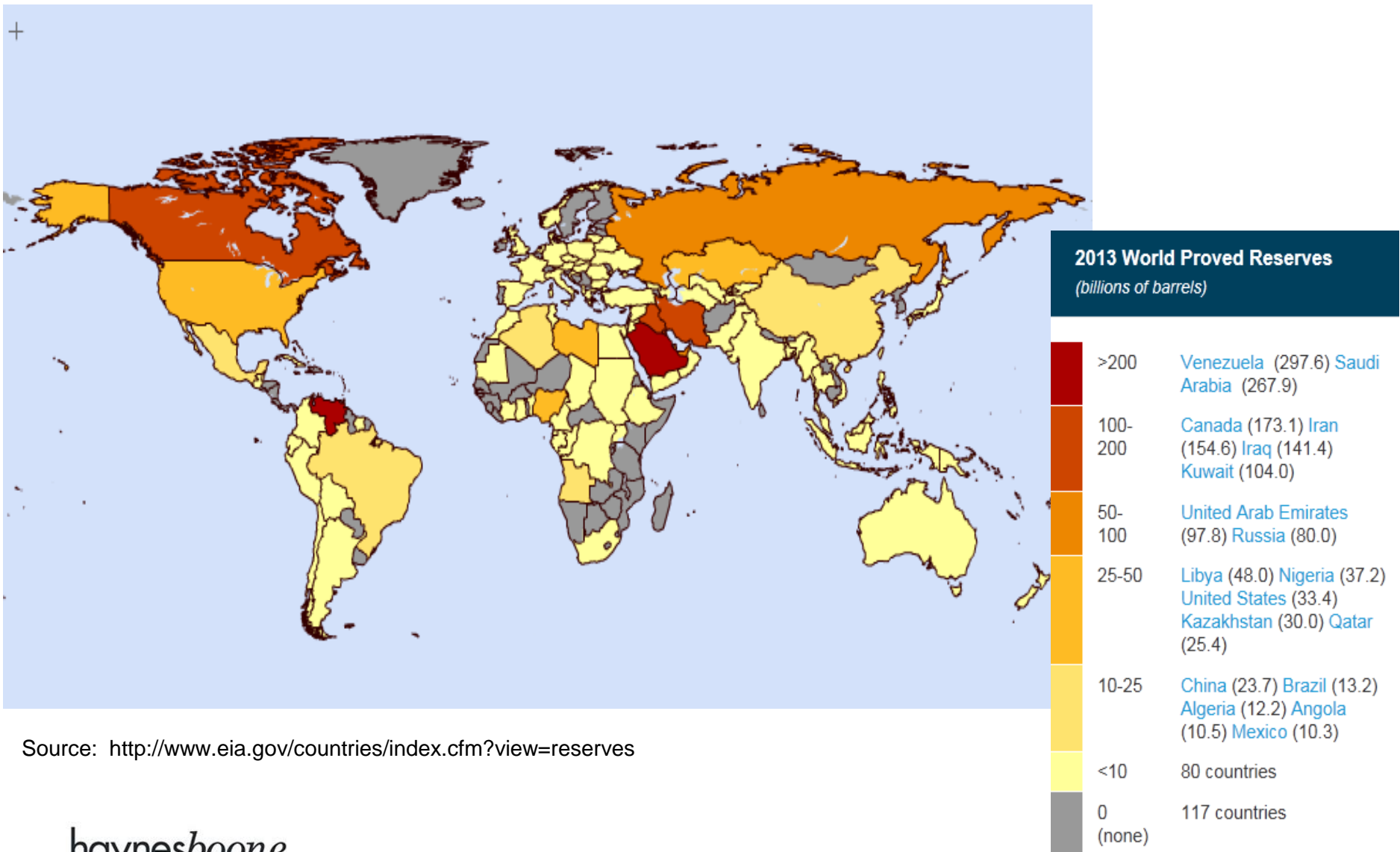
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TI'S CORRUPTION PERCEPTION INDEX 2015



Source: http://en.wikipedia.org/wiki/Corruption_Perceptions_Index#/media/File:Transparency_international_2014.png

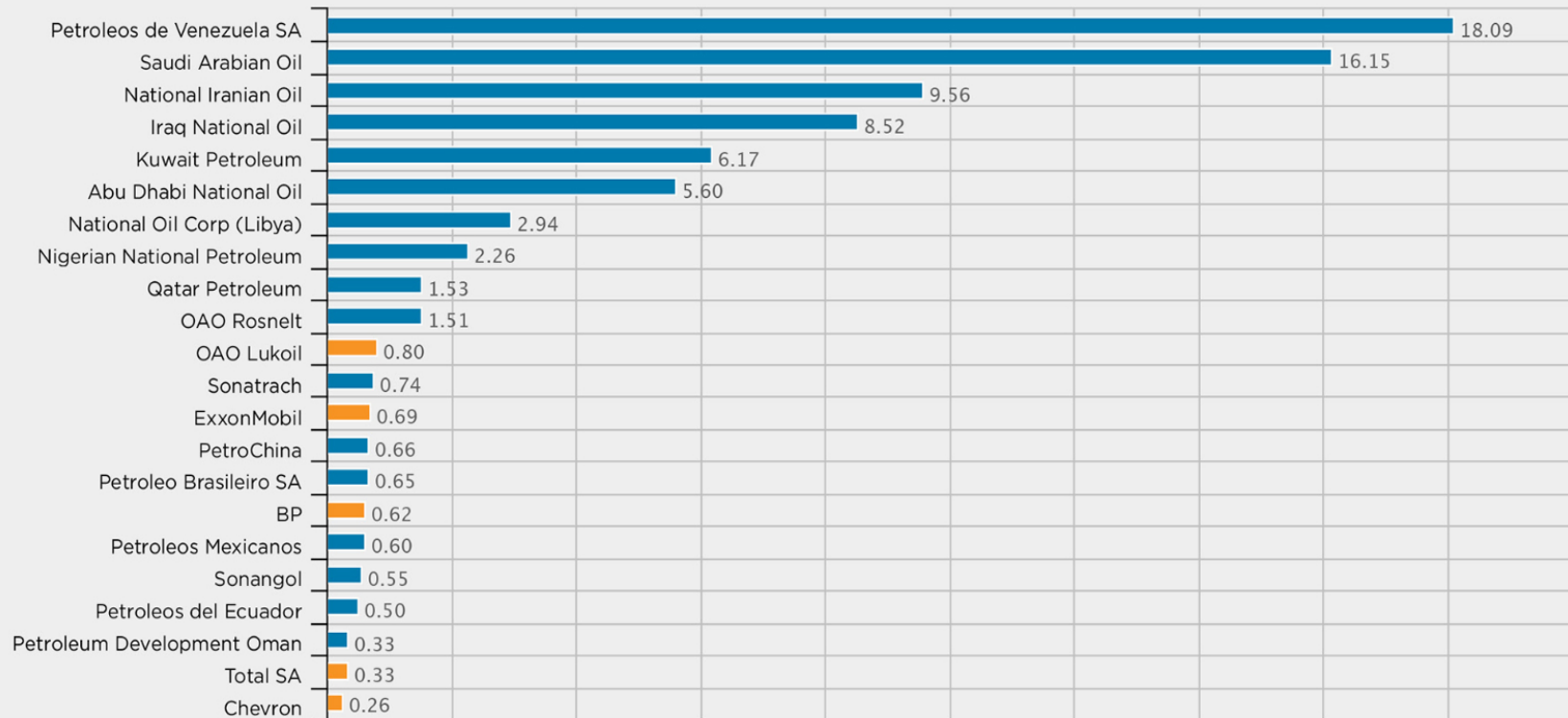
EIA'S WORLD OIL RESERVES



Source: <http://www.eia.gov/countries/index.cfm?view=reserves>

WORLDWIDE OIL COMPARISON

2013 Largest Oil Companies (percent of worldwide proved reserves)

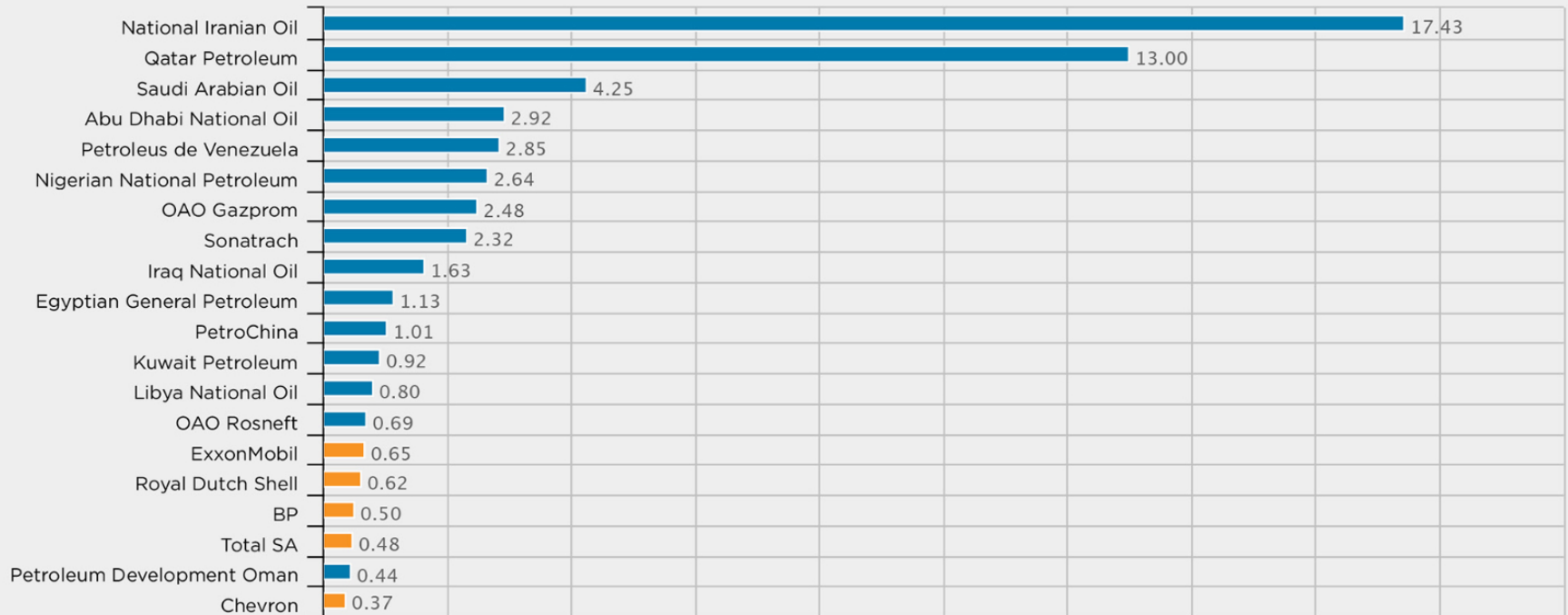


Source: Calculated from EIA estimated world total of 1.6 trillion barrels in 2013 and Oil & Gas Journal, September 1, 2014.

Source: <http://www.api.org/~media/primer-images/high-res/2013-largest-oil-companies.jpg?la=en>

WORLDWIDE NATURAL GAS COMPARISON

2013 Largest Natural Gas Companies (percent of worldwide proved reserves)



Source: Calculated from EIA estimated world total of 6,846 trillion cubic feet in 2013 and Oil & Gas Journal, September 1, 2014.

Source: <http://www.api.org/~media/primer-images/high-res/2013-largest-natural-gas-companies.jpg?la=en>

MAJOR RISK AREAS

- Global risk: compliance with foreign anti-corruption laws



- Intermediaries & third parties
- Gifts, meals, and entertainment
- M&A transactions – successor liability
- Insufficient internal controls

QUESTION 1:

- The EVP in charge of South American operations contacts you about retaining a consultant on the ground in Venezuela (ranked 158 of 168 on the TI corruption index). The consultant would provide assistance in negotiating with the state-owned oil company.
 - What do you want to know?
 - What due diligence is required?
- You discover in the due diligence inquiry that the consulting company in Venezuela is owned by a senior executive at the state-owned oil company.
 - Can the consultant be retained?



WHO IS A “FOREIGN OFFICIAL”?

- Any officer or employee of, or person acting in an official capacity for or on behalf of, a foreign government or ANY department, agency, or instrumentality thereof, or of a public international organization.
 - “Foreign” means non-U.S.

The SEC and DOJ interpret “instrumentality” very broadly.

- It includes state-owned or partially state-owned companies and companies that are controlled by the government.
- Even low level employees of “instrumentalities” are “foreign officials.”

BUSINESS WITH FOREIGN OFFICIALS

Companies can do business with foreign officials (including government entities) if it is:

- Transparent,
- Arms-length,
- Priced at fair market value, and
- Not done for an improper purpose (*i.e.*, not a bribe).

Business transactions with foreign officials are high risk under the FCPA.



QUESTION 2:

Following a routine audit, your audit team reports that some periodic payments in certain countries are not backed by supporting documents. One type of the undocumented payments involved monthly payments described as “Expert Consulting on Country Regulations and Relationships.” There were no signed consulting agreements and the auditors have not been able to get information on these payments.

- What are the policies and procedures around contracts and payments to third parties?
- What is the response of management and legal?
- What circumstances or facts might cause you to start an internal investigation?



THIRD PARTY DUE DILIGENCE

Before hiring a third party:

- Conduct thorough anti-corruption diligence (including a Third Party Questionnaire);
- Make sure they understand the FCPA and the company's anti-corruption policy (and understand that it applies to them); and,
- Obtain written assurances that they will comply.

After hiring a third party:

- Monitor the relationship on an ongoing basis and investigate red flags;
- Regularly refresh anti-corruption due diligence; and
- Refuse payments to agents if you *suspect* any impropriety.
- Willful blindness is no excuse.



KEY ENERGY AND NOBLE CORP.

- Key Energy Services, Inc.
 - \$5 million in disgorgement to SEC on August 11, 2016
 - Mexican subsidiary made improper payments to Pemex employee through a consulting firm hired to advise it on Pemex contracts
 - Violated books and records and internal controls provisions
 - DOJ declined prosecution
- Noble Corporation
 - Over \$8 million in criminal and civil penalties to DOJ and SEC in 2010
 - Nigerian subsidiary used a customs agent to pay bribes to government officials to process false paperwork purporting to show that offshore oil rigs were exported from Nigerian waters and reimported when they had not
 - Three Noble executives settled SEC allegations concerning books and records violations
 - DOJ entered into a Non-Prosecution Agreement (NPA)

TOTAL S.A.

SEC and DOJ both brought actions alleging that Total paid \$60 million in bribes to intermediaries of an Iranian official who assisted the company obtain valuable contracts to develop significant oil and gas fields in Iran.

- More than \$150 million in profits made through the bribery scheme
- Attempted to cover up the payments by entering into sham consulting agreements with the intermediaries of the Iranian government official
- Mischaracterized bribes as legitimate “business development expenses”
- Had inadequate systems to review the consulting agreements and lacked sufficient internal controls to comply with federal laws prohibiting bribery
- SEC ordered disgorgement of \$153 million and undertaking to retain an independent consultant.
- DOJ imposed a \$245.2 million penalty as part of a deferred prosecution agreement.
- Charges also were brought by the prosecutor of Paris (François Molins, Procureur de la République) of the Tribunal de Grande Instance de Paris for violations of French laws.

QUESTION 3:

- Prior to the summer Olympics in Rio this year, you were asked to approve entertainment expenses for tickets to a number of the events to give to customers and vendors of the company, among others.
 - How do you control the recipients of the tickets? What if they are to be given to officials at the state-owned oil company or to government officials directly?
 - Under what circumstances do you approve of entertainment expenses for foreign officials.



PROMOTIONAL EXPENSES AND GIFTS

Companies can provide *reasonable* and *modest* travel and hospitality to foreign officials, if the expense is:

- The promotion, demonstration, or explanation of the company's products or services, or
- The execution or performance of a government contract.

It is viewed as unreasonable for a company to:

- Pay for official's companions;
- Pay for side-trips; or
- Provide anything unreasonably extravagant.



BHP BILLITON AND FLIR SYSTEMS

- BHP Billiton
 - Invited around 176 government officials + guests to attend the 2008 Beijing Summer Olympics at BHPB's expense
 - 3-to-4-day hospitality packages: event tickets, luxury hotel accommodations, meals, and, in many instances, business-class airfares
- FLIR Systems
 - Provided travel and gifts to Saudi Arabia Ministry of Interior officials
 - “World Tour”: Before and after Factory Acceptance Test, officials traveled to Casablanca, Paris, Dubai, and Beirut at FLIR Systems' expense
 - Watches: Third-party agent purchased 5 watches for \$7,000 for FLIR Systems to give to officials

WEATHERFORD INTERNATIONAL

- Weatherford International
 - Multiple violations, including providing improper travel and entertainment to officials of an Algerian state-owned company
 - 2006 World Cup soccer tournament in Germany
 - Honeymoon trip for an official's daughter
 - Family trip to Saudi Arabia
 - Cash advanced to officials traveling to Houston



FCPA ACCOUNTING PROVISIONS

Issuers must:

- Make and keep books and records which accurately and fairly reflect the issuer's transactions in reasonable detail
- Maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are:
 - Authorized by management, and
 - Recorded in accordance with GAAP



INTERNAL CONTROLS EXPANSION

- The FCPA require issuers to adopt accounting controls that “provide **reasonable assurances** that . . . transactions are executed in accordance with management’s authorization.”
- Enforcement agencies interpret this to require companies to adopt robust anti-corruption compliance programs.
- Recent enforcement actions by the SEC have focused on the requirement that companies adopt internal controls sufficient to “**prevent and detect**” violations of the books and records provisions of the FCPA.
 - Archer Daniels Midland Co. \$54 million settlement
 - Goodyear \$16 million settlement



M&A TRANSACTIONS

- Successor inherits FCPA liability of the acquired company
- In a recent advisory opinion, the DOJ affirmed no successor liability if the target company's pre-acquisition conduct had no nexus to the U.S. ("Successor liability does not create liability where none existed before.")
- Additional focus on post-acquisition continuation of unlawful conduct
- Recommended action to acquiring companies:
 - Due diligence and disclosure of irregularities
 - Integrate acquired company in compliance program



GOODYEAR TIRE & RUBBER CO.

The SEC alleged that Goodyear failed to prevent or detect more than \$3.2 million in bribes during a four-year period due to inadequate FCPA compliance controls at its subsidiaries in sub-Saharan Africa.

- The subsidiaries had all been acquired by Goodyear.
- Bribes were paid in cash to employees government-owned entities and local authorities such as police or city council officials in order to obtain tire sales.
- The SEC stated that Goodyear failed to detect or prevent the violations because it failed to do sufficient due diligence when it acquired the subsidiaries and failed to implement adequate compliance training and controls after the companies were acquired.



EMPLOYEE TRAINING AND CERTIFICATION

After due diligence supports the decision to move forward with the acquisition, the post-merger conduct becomes important.

- What actions are being taken to educate the “new” employees?
- Are existing policies and procedures updated to include the new locations?
- Is training provided to the individuals associated with the newly acquired entity?
- How is the “tone of compliance” communicated?



INDIVIDUAL CHARGES

- Jun Ping Zhang, former chairman and CEO of Harris Corporation's Chinese subsidiary
- Lars Frost, subsidiary CFO of Analogic Corp.
- Mikhail Gourevitch, engineer at Nordion
- Vincente Garcia, executive at SAP SE
- Walid Hatoum, former officer at PBSJ Corporation
- Stephen Timms and Yasser Ramahi, executives at FLIR Systems
- Mark A. Jackson and James J. Ruehlen, CEO of Noble Corp. and Division Manager of Noble's subsidiary in Nigeria, respectively



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