

CLIENT ALERT

Record \$44 Million Settlement for FCPA Violations

Apr. 27, 2007

The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) announced yesterday that Baker Hughes, Inc. and its wholly owned subsidiary, Baker Hughes Services International Inc. (BHSI), agreed to pay a record \$44 million in fines, penalties and disgorgement to settle criminal charges and a related civil complaint. The allegations include violations of the anti-bribery and books and records and internal control provisions of the Foreign Corrupt Practices Act (FCPA).

BHSI admitted to making \$4.1 million in illegal payments to a “consulting firm” in exchange for the award of a \$219.9 million contract with KazakhOil, Kazakhstan’s national oil company. At KazakhOil’s demand, BHSI agreed, in exchange for the contract, to pay a “commission” to the “consulting firm” consisting of 2-3 percent of revenue earned on the project and future projects .

BHSI agreed, as part of a deferred prosecution agreement with the DOJ, to pay a criminal fine of \$11 million, serve three years of organizational probation, and adopt a comprehensive anti-bribery compliance program. Baker Hughes further agreed to hire an independent compliance monitor for three years to oversee the establishment and maintenance of a “robust compliance program” and to report regularly to the DOJ. In the related SEC settlement, Baker Hughes agreed to pay \$10 million in civil penalties and more than \$24 million in disgorgement of profits. Baker Hughes already had been the subject of an SEC cease and desist order in 2001 based upon claims that it made payments to a KPMG affiliate in Indonesia knowing that some or all would be passed to an Indonesian tax official for the purpose of influencing him to reduce a tax assessment

In its announcement, the DOJ said that the resolution of the case reflected Baker Hughes’ voluntary cooperation, including self-reporting to the DOJ, conducting a thorough internal investigation, and taking “significant remedial steps.” The SEC also acknowledged Baker Hughes’ cooperation.

This case – and the record \$44 million settlement – is the latest in a series of stark reminders that the DOJ and SEC are prioritizing FCPA enforcement efforts. Companies must be mindful of the significant civil and criminal exposure posed by the government’s multi-pronged approach to FCPA prosecutions. The Baker Hughes settlement reemphasizes the need for companies engaged in international business to exercise appropriate due diligence when retaining foreign intermediaries and to be vigilant in supervising their activities. In particular, companies must ensure that “consultants” serve a legitimate business function, that all payments are proportionate to the value received, and that all payments are accurately recorded on the company’s books. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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