

March 18, 2015



**Radha D. S.
Kulkarni, Esq.**

Questions
on this topic?
[CLICK HERE](#)

Subsidiaries and the Foreign Corrupt Practices Act: What You Do Not Know Can Hurt You

By **Radha D. S. Kulkarni**

The recent Foreign Corrupt Practices Act ("FCPA") settlement entered into by Goodyear with the Security and Exchange Commission ("SEC") contains some valuable lessons for employers seeking to do business in foreign countries by acquiring foreign subsidiaries. In 2006, Goodyear acquired a majority interest in Treadsetters, a retail tire distributor in Kenya. According to the SEC's investigation, from 2007 to 2011, Treadsetters' management routinely authorized bribes to employees of government-owned or -affiliated entities and private companies to obtain business. The bribes, paid in cash, were falsely recorded on Treadsetters' books as expenses for promotional products. The scheme was allegedly engineered by Treadsetters' general manager and finance director and executed and carried out by the finance assistant and staff, who cashed checks to make improper payments to employees of customers. In total, over \$1.5 million in bribes were paid out to government-owned or -affiliated entities and private companies.

Similarly, Trentyre, another wholly owned subsidiary of Goodyear that is a retail tire distributor located in Angola, was found in the SEC's investigation to have paid over \$1.6 million in bribes to employees of government-owned or -affiliated entities, police and tax authorities, and private companies in exchange for tire sales from 2007 to 2011. The Trentyre scheme was created by its former general manager, who hid the scheme by falsely marking up the

costs of tires with fake freight and customs clearing costs on the invoices. The bribes were made in cash and through wire transfers.

The SEC alleged that Goodyear violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act because of the subsidiaries' falsely recorded business expenses and Goodyear's failure to prevent and detect the bribes due to insufficient accounting controls. As a result, Goodyear was ordered to cease and desist from committing or causing any current or future violations and to pay disgorgement in the amount of about of \$14 million plus prejudgment interest. Goodyear was also required to cooperate and submit to periodic reviews and reports to track FCPA compliance and lack of violations.

There were no civil penalties in the settlement. The SEC cited Goodyear's prompt remedial acts (specifically, Goodyear divested its interests in the two subsidiaries) and cooperation with the investigation as reasons for accepting the settlement. Additionally, the SEC noted that Goodyear promptly halted the improper payments, reported the matter to the Commission staff after discovering the bribes, responded to SEC requests for information and documents, and voluntarily turned over documents, reports, and other information from its own investigation to the SEC. Also, Goodyear bolstered its compliance programs globally, including in sub-Saharan Africa. Some of the improvements to the compliance program were:

- Expanded online and in-person anti-corruption training for subsidiary personnel;
- Regular audits, including audits specifically focused on corruption risks;
- Quarterly self-assessment questionnaires for each subsidiary regarding business with government-affiliated customers;
- Quarterly management certifications from every subsidiary that cover areas such as controls over financial reporting;
- Annual testing of internal controls at each subsidiary;
- A new regional management structure and new compliance, accounting, and audit positions;
- Electronically linking subsidiaries in sub-Saharan Africa to its global network where possible;
- A new senior position at Goodyear to elevate the compliance function in the company; and
- A new anticorruption and ethics hotline to allow anonymous reports

In addition to providing another example of what companies are doing to strengthen their FCPA compliance, the settlement serves as a reminder for steps that a company can take with respect to FCPA due diligence at the time of acquiring subsidiaries. For example, some of the steps a company should consider taking when acquiring

a new foreign company include:

- Conducting a thorough and well-documented due diligence process with a specific focus on potential anti-corruption violations;
- Taking steps after closing to ensure that the acquired company promptly adopts the acquirer's code of conduct and compliance policies;
- Quickly conducting an FCPA-focused audit after the acquisition;
- Training the directors, officers, agents, business partners, and employees of the acquired company on the FCPA and other anticorruption laws; and
- Disclosing any potential FCPA violations and cooperating with any subsequent investigation of FCPA violations

Acquiring a foreign subsidiary or company can certainly be an exciting new business venture, but employers should be mindful of the employees - and those employees' actions - that they also acquire in the transaction, as parent companies can face liability for actions of their subsidiaries' employees, officers, and agents.

The 60-Second Memo® is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm.



[Forward this issue](#)

Copyright 2015 Gonzalez Saggio & Harlan LLP. All rights reserved.

Arizona | California | Florida | Georgia | Illinois | Indiana | Iowa | Massachusetts
New Jersey | New York | Ohio | Tennessee | Washington, D.C. | Wisconsin

www.gshllp.com