PRACTICEBRIEF

US Financial Regulatory/
Economic Sanctions Practice

11/ 2005

US Legal Issues for Certain Companies Listed in the Volcker Report on the UN/Iraq Oil-For-Food Program

The Oil-For-Food Program (Iraq)

On October 27, 2005, the UN's Independent Inquiry Committee led by Paul Volcker issued its fifth and final report with respect to the UN's Iraq Oil-For-Food Program (the "OFFP") (iic.offp.org).

The OFFP was an exception to the comprehensive multilateral economic sanctions against Iraq which froze Iraqi assets and prohibited trade with Iraq. Under the auspices and control of the UN and its member countries, the OFFP permitted certain oil purchases from and certain sales and deliveries of humanitarian goods to Iraq.

The Volcker report found that the OFFP was abused and manipulated and that some companies participating in the OFFP engaged in illegal activities and transactions in the course of their dealings with Iraq. The Volcker report lists hundreds of companies considered to have made illegal payments to the Saddam Hussein regime.

Potential Legal Consequences of Being Listed in the Volcker Report

It is expected that the Volcker report will lead to investigation and law enforcement action by authorities in the United States and in other countries against many of the companies listed in the Volcker report. The Volcker committee has stated that it will make information regarding its findings to law enforcement authorities. As has been widely reported, the U.S. Department of Justice already has taken action against Bayoil, a U.S. oil company, and its accomplices around the world. U.S. federal prosecutors have accused Bayoil and its accomplices of making illegal payments to the Saddam regime in connection with purchases of oil from Iraq.

In the course of their investigations and prosecutions of illegality under the OFFP, U.S. law enforcement agencies will seek to find liability and obtain criminal convictions entailing imprisonment and/or significant fines as well as civil penalties for violations of, among others, the following laws and regulations:

U.S. economic sanctions against Iraq administered by the U.S. Treasury's Office of Foreign Assets Control (OFAC). Presidential Executive Orders, the International Emergency Economic Powers Act, the Iraqi Sanctions Act, and other statutes, and the Iraqi Sanctions Regulations. (*All prohibiting unauthorized trade and financial transactions involving Iraq*).

The U.S. Foreign Corrupt Practices Act (the "FCPA), enforced by the U.S. Justice Department, the U.S. Securities and Exchange Commission (SEC), and the Internal Revenue Service. (*Prohibits payment of bribes to foreign government officials*).

U.S. Anti-Money Laundering laws, including the Bank Secrecy Act, the USA PATRIOT ACT and relevant regulations, and the predicate offenses for money laundering – generally the proceeds of crime, which may include the crimes under the laws mentioned above. (*Prohibit money laundering and punish financial institutions that have lax measures to detect, deter and combat money laundering*).

U.S. Anti-Money Laundering Measures. Under the USA PATRIOT ACT, the United States may impose sanctions and other measures against foreign banks as well as foreign jurisdictions that have engaged in money laundering or banks and/or jurisdictions that have lax anti-money laundering controls. Certain banks named in the Volcker report that were recipients of payments for the Saddam Hussein regime (and the countries in which such banks are located) face a risk of US measures and sanctions against them.

U.S. and Non-U.S. Companies may be Investigated and Prosecuted by the U.S.

All of the laws and measures mentioned above apply to but are not necessarily limited to U.S. persons. U.S. persons are generally defined to include U.S.-organized companies and their foreign branches, persons (individuals and entities) in the United States, U.S. citizens and U.S. permanent residents. However, charges predicated on conspiracy, the absence legal separation between a U.S. parent company and its foreign subsidiary, and the FCPA's coverage which includes foreign issuers of securities in the United States all serve to encompass non-U.S. persons.

The FCPA potentially applies to any individual, firm, officer, director, employee, or agent of a company and any stockholder acting on behalf of a company. Individuals and companies may also be penalized if they order, authorize, or assist someone else to violate the anti-bribery provisions or if they conspire to violate those provisions.

Under the FCPA, U.S. jurisdiction over corrupt payments to foreign officials depends upon whether the violator is an "issuer," a "domestic concern," or a foreign national or business. An "issuer" is a corporation that has issued a security that have been registered in the United States or who is required to file periodic reports with the SEC. A "domestic concern" is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole

proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States, or a territory, possession, or commonwealth of the United States.

The FCPA also applies to foreign companies and individuals if they cause an act in furtherance of a prohibited payment to take place within the United States. Additionally, under vicarious liability principles, U.S. corporations may be held liable for the acts of foreign subsidiaries or there agents where they authorized, directed, or controlled the activity in question, as can U.S. citizens or residents who are employed by or acting on behalf of a U.S. company's foreign subsidiary.

Penalties for Violations of US Law

The civil and criminal penalties for violations of the foregoing laws entail significant monetary fines and/or imprisonment for companies and could also entail personal liability for individuals.

Penalties for Violations of OFAC-administered Economic Sanctions

With respect to the sanctions against Iraq administered by OFAC, criminal violations of relevant statutes could entail the following penalties:

The International Emergency Economic Powers Act provides for ten years imprisonment, and a $50,000 fine for corporations and individuals violations [In addition, 18 U.S.C. § 3571 provides that organizations or individuals convicted of violating a criminal statute may be fined the greater of the amount specified in the statute, or twice the pecuniary gain or loss from the violation and that individuals may be fined $250,000 for felonies].

Iraqi Sanctions Act, provides for twelve years imprisonment and a $1,000,000 corporate or personal fine violations [In addition, 18 U.S.C. § 3571 provides that organizations or individuals convicted of violating a criminal statute may be fined the greater of the amount specified in the statute, or twice the pecuniary gain or loss from the violation and that individuals may be fined $250,000 for felonies].

United Nations Participation Act provides for ten years imprisonment, a $10,000 criminal fine for corporations and individuals, and criminal forfeiture of funds or other property involved in violations [In addition, 18 U.S.C. § 3571 provides that organizations or individuals convicted of violating a criminal statute may be fined the greater of the amount specified in the statute, or twice the pecuniary gain or loss from the violation and that individuals may be fined $250,000 for felonies].

Enforcement of and Penalties for Violations of the FCPA

The U.S. Department of Justice is responsible for all criminal enforcement and for civil enforcement of the FCPA's anti-bribery provisions with respect to U.S. citizens, U.S.-based companies, and foreign companies. The U.S. Securities and Exchange Commission ("SEC") is responsible for civil enforcement of the anti-bribery provisions with respect to corporations that have issued securities registered in the United States or that are required to file periodic reports with the SEC.

Criminal Penalties

The following criminal penalties may be imposed for knowing, willful and deliberate violations of the FCPA's antibribery provisions: corporations and other business entities are subject to a fine of up to $2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to $100,000 and imprisonment for up to five years. Moreover, under the Alternative Fines Act, these fines may be actually quite higher -- the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. Fines imposed on individuals may not be paid by their employer or principal.

Civil Penalties

The U.S. Department of Justice or the SEC, as appropriate, may bring a civil action for a fine of up to $10,000 per violation against any firm as well as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the FCPA's anti-bribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $5,000 to $100,000 for a natural person and $50,000 to $500,000 for any other person.

The U.S. Department of Justice or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the anti-bribery provisions.

Other Penalties/Sanctions

A person or firm found in violation of the FCPA may be barred from doing business with the Federal government. Indictment alone can lead to suspension of the right to do business with the government. The President has directed that no executive agency shall allow any party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or nonprocurement activity.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; and the Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violations of the FCPA. And, payments that are unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

Other Adverse Consequences

Other consequences flowing from investigation and/or prosecution for violations of various U.S. laws implicated by activities and transactions under the OFFP include, adverse media attention and damage to reputation/brand; disgorgement of profits; exclusion from participation in or issuing securities in U.S. capital markets; and exclusion from U.S. Government sponsored programs (*e.g.*, U.S. Eximbank loans, OPIC programs, TDA programs); from World Bank, IFC, IBRD programs. Additionally, as noted above, the United

States may impose sanctions and other measures against foreign banks as well as foreign jurisdictions that have engaged in money laundering or banks and/or jurisdictions that have lax anti-money laundering controls. Also investigations and prosecutions in the United States can spawn investigations and prosecutions in other countries.

Expertise & capabilities – The Eren Law Firm

The Eren Law Firm is a leading boutique firm that specializes in the areas of economic sanctions, export controls, anti-money laundering, bank and financial regulation and supervision, and related governmental enforcement defense. The Eren Law Firm also represents clients in connection with disputes involving banking, finance and investment matters.

The Eren Law Firm is comprised of lawyers who have served in senior positions at the US Treasury (OFAC), State, and Justice Departments. Our lawyers practicing in the area of economic sanctions, anti-money laundering and trade regulations collectively have more than 60 years of unrivalled full time experience in dealing with international trade and financial issues.

Mr. Eren and Mr. Pinter both served at the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). Prior to joining the firm, Mr. Comras served at the U.S. Department of State and the United Nations, where he oversaw and dealt with many sanctions and trade issues, including those involving Iraq. Mr. Comras is a leading expert on the larger, big-picture aspects international trade embargoes and economic sanctions, and the global effort to combat terrorism financing and money laundering.

Mr. Pinter and Mr. Eren of the firm were at the US Treasury's OFAC and Mr. Comras served at the US State Department during the economic sanctions against Iraq. Mr. Pinter was Chief of Licensing at OFAC from 1987 to 2000 and was in charge of, among other things, decisions regarding the issuance of licenses to U.S. companies under the Iraq sanctions program. While at OFAC, Mr. Eren was involved in, among other matters related to Iraq, the authorization of BNP Paribas (New York) to serve as the escrow bank under the OFFP. Messrs. Pinter, Comras and Eren are thoroughly familiar with the mechanics of the OFFP and all the prohibitions and provisions of the US economic sanctions that were in place against Iraq.

For more information on our practice, the Volcker report on the OFFP, or to learn how we may assist your company with respect to matters involving Iraq and the OFFP, please contact:

Hal Eren	Washington	+ 1 202 429 9883	hal.eren@erenlaw.com
Steven Pinter	Washington	+ 1202 429 1881	steven.pinter@erenlaw.com

The Eren Law Firm's select and diverse group of clients includes U.S. and non-U.S. financial institutions, U.S. and non-U.S. companies, and sovereign governments. More information about The Eren Law Firm and its lawyers can be found at: www.erenlaw.com.