

BHP Billiton Pays \$25 Million to Settle FCPA Allegations Relating to the Sponsorship of Officials at the 2008 Olympic Games

May 27, 2015

Anti-Corruption

On May 20, 2015, BHP Billiton agreed to pay \$25 million to settle [allegations](#) brought by the US Securities and Exchange Commission (“SEC”) that the global resources company violated the US Foreign Corrupt Practices Act (“FCPA”) by sponsoring the attendance of foreign government officials and employees of state-owned enterprises at the 2008 Summer Olympic Games in Beijing. The settlement, announced in a [press release](#) by the SEC, resolves allegations that, leading up to the 2008 Olympic Games, BHP Billiton failed to devise and maintain sufficient internal controls with regard to its global hospitality program—an initiative connected to its sponsorship of the Games—and that the company’s books and records did not accurately reflect BHP’s pending negotiations or business dealings with a government official at the time the official was invited to the Games. To settle the allegations, BHP Billiton agreed to pay a \$25 million civil penalty.

Alleged Misconduct

BHP Billiton is a leading producer of various commodities, including iron ore, coal, copper, aluminum, uranium, oil and gas. BHP Billiton’s shares are traded on the New York Stock Exchange.

The statements of facts in the [SEC Order](#) allege a range of conduct by BHP Billiton, including:

- inviting 176 government officials and representatives of state-owned enterprises and spouses, many from African and Asian countries with known histories of corruption, to attend the 2008 Olympics on three and four day “hospitality packages,” which included meals, hotel accommodations, sightseeing trips and event passes—costing \$12,000 to \$16,000 per package;
- approving business class plane tickets for 51 government officials, and for 35 officials, their spouses or guests;
- failing to require independent legal or compliance review of hospitality applications—forms completed by BHP’s business managers prior to extending invitations to the Games—and neglecting to inform employees that the Ethics Panel or an independent body was not approving each invitation;
- absence of a process to periodically update hospitality applications and reevaluate the appropriateness of invitations to government officials as conditions changed;
- failing to train employees on how to complete the hospitality applications or evaluate potential risks, ultimately resulting in a number of inaccurate and incomplete applications; and
- failing to ensure that internal forms prepared to invite government officials to the Games “did not, in reasonable detail, accurately and fully reflect [BHP Billiton’s] pending negotiations or business dealings” with invited officials.

Consequences

To settle the SEC claims, BHP Billiton entered into a settlement agreement under which BHP agreed to pay a civil penalty of \$25 million and report to the SEC on the operation of its FCPA and anti-corruption compliance program for one year. The \$25 million penalty appears to be the largest-ever civil penalty.

A [press release](#) issued by BHP Billiton noted that the U.S. Department of Justice completed its investigation without taking any action. The Australian Federal Police continue to investigate.

Implications

This settlement is relatively unusual in focusing exclusively on travel and hospitality issues. No allegations of the FCPA's anti-bribery provisions were brought, nor was there any allegations that the travel and hospitality was improper *per se*. Rather, the SEC allegations focused on BHP Billiton's allegedly "insufficient" internal controls to address the risk posed by inviting government officials who were in a position to affect BHP Billiton's business interests.

This settlement reinforces lessons learned from other anti-corruption cases, including the need to:

- ensure that internal approval forms for travel and hospitality address corruption risks, including pending business interests;
- provide adequate anti-corruption training to employees to ensure they understand corruption risks inherent in corporate sponsorships;
- establish and ensure compliance department review of company actions;
- establish and ensure compliance with approval processes for nonemployee travel.

If you have any questions concerning the material discussed in this client alert, please contact the following China-focused members of our [Global Anti-Corruption Practice Group](#):

Eric Carlson	+86 10 5910 0503	ecarlson@cov.com
Hui Xu	+86 21 6036 2508	hxu@cov.com
Chaohui Liang	+86 10 5910 0510	cliang@cov.com
Victor Wu	+86 10 5910 0507	vwu@cov.com

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