



# ForensicFocus

## Circumventing compliance

Corruption reaches top firms in the oil and gas industry

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## Today's reality

- Unaoil went from a little-known entity to one of the most commented upon corporations in the compliance community today due to an elaborate bribery scheme.
- Implicated companies should consider taking action to determine what, if anything, illegal was done on their behalf.
- Compliance practices applied to ordinary third parties are often not enough to prevent corruption in the riskiest countries. Companies that enter those countries should place anti-bribery and corruption at the center of their business strategy.
- True “tone at the top” requires more than just a good code of conduct. It requires the commitment of resources toward follow-through at every phase of third-party risk management.
- Robust up-front reputational and integrity due diligence is essential, but companies operating in these countries should strongly consider regular compliance audits and business structures that give them full visibility into how third-party intermediaries spend funds on their behalf.

## The Unaoil bribery allegations

Unaoil Monaco SAM (Unaoil) faces allegations of bribery related to its representation of some of the most significant oil and gas services and engineering, procurement, and construction (EPC) firms doing business in the Middle East, Central Asia, and Africa.<sup>1</sup> The company is alleged to have paid bribes to senior government officials while lobbying to secure lucrative contracts on behalf of its clients in places like Syria, Iraq, and Libya. Notably, Unaoil is possibly involved in another scandal, as it is also alleged to have used Mossack Fonseca, the law firm at the center of the so-called Panama Papers controversy, to route funds through shell corporations.<sup>2</sup>

These allegations against Unaoil will be met with intense interest by U.S. and foreign regulators due to the breadth of the alleged corruption and the apparent treasure-trove of leaked evidence. Perhaps most significant to U.S. officials is the possible involvement of major corporate interests in a bribery scheme that impacts significant foreign policy interests, including efforts to counter violent extremism and promote transparency in government.

<sup>1</sup> “The Bribe Factory,” *The Age*, <http://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/the-company-that-bribed-the-world.html>.

<sup>2</sup> Richard Baker and Nick McKenzie, “Unaoil scandal and the Panama Papers,” *The Sydney Morning Herald*, <http://www.smh.com.au/business/unaoil-scandal-and-the-panama-papers-20160409-go2jr7.html>



## Many of the companies involved had sophisticated anti-bribery functions

Many of the Unaoil clients named in the Huffington Post article are very well respected global companies. A few had even gone through the crucible of U.S. Department of Justice investigations related to the Foreign Corrupt Practices Act (FCPA) and were required to revamp their compliance programs under the supervision of outside compliance monitors. These companies have made significant compliance investments to meet regulatory expectations and are fully aware at the corporate level of the stakes involved in violating the FCPA. Nonetheless, their presumptively sophisticated compliance programs did not prevent these companies from being implicated.

The most unsettling aspect of this new scandal is whether, and to what extent, Unaoil was able to either mislead its clients' compliance departments or circumvent compliance controls altogether. For example, TRACE International, a firm that provides anti-bribery due diligence and other services, evaluated and certified certain Unaoil entities.<sup>3</sup> A top Washington DC law firm conducted an integrity and reputational due diligence review of the company and advised that it was compliant with anti-bribery and corruption laws.<sup>4</sup>

## Traditional compliance practices might not be enough

In-house compliance professionals face pressure from their business counterparts to get deals done in an abbreviated time frame. This can result in the vetting of third-party sales agents and consultants with limited information. That pressure has never been greater for compliance practitioners in the oil and gas and EPC industries than it is today in this challenging environment of declining commodity prices.

<sup>3</sup>Alexandra Wrage, "The importance—and limitations—of due diligence," *The FCPA Blog*, April 12, 2016, <http://www.fcpablog.com/blog/2016/4/12/alexandra-wrage-on-unaoil-the-importance-and-limitations-of.html>

<sup>4</sup>Jessica Schulberg, Paul Blumenthal, and Zach Carter, "Top Washington Lawyer Cleared Unaoil In Anti-Corruption Report," *The Huffington Post*, [http://www.huffingtonpost.com/entry/unaoil-lawyer-anti-corruption-report\\_us\\_57043a07e4b0a506064d7f96](http://www.huffingtonpost.com/entry/unaoil-lawyer-anti-corruption-report_us_57043a07e4b0a506064d7f96)

Unaoil reportedly presented itself to its clients as a third-party intermediary that was committed to anti-corruption compliance. These claims were supported with reports and opinions from respected service providers and lawyers. The failure of these sophisticated services to detect the alleged corruption raises the question of whether the degree of due diligence the service providers conducted, and the compliance measures that the companies instituted, were dynamic enough to detect and prevent another similar scandal.

Traditional anti-corruption compliance practices can be unresponsive to changing circumstances. They typically involve the right “tone at the top”; the right policies and procedures; compliance training; any required third-party certifications; due diligence of third-party intermediaries; the right to audit the accounts of third-party intermediaries; and a commitment to investigating allegations of wrongdoing. All of these measures are essential, but they are mostly reactive, static, and subject to manipulation by an ill-intentioned third party that can mislead sophisticated compliance programs, as Unaoil allegedly did.

Standard due diligence practices, arguably the most dynamic anti-corruption measures, illustrate the point. Many companies pay a due diligence service provider a modest fee to research public databases and some subscriber-only records, and they might repeat this process periodically. Accordingly, this research provides only a snapshot of what the media is reporting about their third-party intermediary. It misses events covered in local news outlets that might not be picked up by the major media outlets, and it does not consider the deep information on business reputation that can be found by accessing the local human sources that a global network of professional services firms can provide.

Many companies will also pay a small, additional fee for “high-risk” due diligence that checks the third party’s business, banking, and audit references. This additional service, which takes the form of brief interviews (often by phone) of the references, often provides little value because the third-party intermediaries themselves identify the references for a one-time vetting. If the third party is trying to circumvent compliance, the truly risky intermediaries would not be discovered with the additional procedures.

Because these traditional measures tend to be static, it is important to consider using more probing and dynamic compliance measures with third parties operating in the riskiest countries. For example, the right to audit a third-party intermediary’s financial accounts is a critical aspect of a quality anti-corruption compliance program that is often unused until a corruption allegation emerges. Assessing third parties from an anti-corruption compliance perspective and conducting periodic audits are essential in identifying wrongdoing before matters escalate. Unfortunately, many “high-risk” third parties are never subjected to these measures, often because of added cost, or corporate executives simply have not integrated this approach into their program.

## **Implicated companies should start investigations and compliance reviews now**

Companies that determine they are exposed to the Unaoil scandal should investigate what illegal activities, if any, were undertaken on their behalf. They should also use this incident to take a more strategic view of how compliance influences their business decisions.

### **Conduct a forensic investigation**

These companies should consider, depending on facts and circumstances, undertaking a full and forensically sound investigation, under the guidance of counsel, into their relationship with Unaoil. Such an investigation could include the following:

- Imaging and preserving all relevant communications and business records, reviewing those communications for indicators of fraud or corruption, interviewing relevant witnesses, conducting inquiries with well-placed sources in the countries in question, and exercising the right to audit Unaoil’s books and records
- Conducting a forensic accounting analysis of any expenses incurred, whether commission or other expense payments, in connection with Unaoil or the clients it targeted
- Pursuing potential investigative leads by monitoring the international news media and the media in the relevant countries.

## Assess how compliance influences business decisions

At a deeper level, the Unaoil situation should cause prudent companies to reevaluate how anti-corruption compliance considerations influence decision making and how the company deploys resources to enter higher-risk countries. More specifically, they should:

- Determine if compliance is a trusted advisor that truly informs how the business will enter a particular country
- Determine if compliance is adequately funded to perform regular targeted and proactive audits and compliance assessments of third-party intermediaries in addition to investigative due diligence
- If the resources are not available to apply compliance best practices to all third-party intermediaries, consider limiting the number of intermediaries to achieve a balance in favor of compliance.

The most successful compliance programs are full partners in determining what countries and intermediaries are worth the compliance risk. True “tone at the top” requires more than a good code of ethics or communications from the CEO. It requires top leadership to build a strategy for entering risky countries on a foundation of compliance that keeps third-party intermediaries balanced against the resources required to manage corruption risks effectively. This approach allows corporate resources to be used for continuous scrutiny of these intermediaries in the form of compliance audits and enhanced media monitoring. Companies that rush into new countries by partnering with a multitude of third parties can lose that focus. They must then fall back on standard compliance practices, which may fail when they encounter a company that is trying to circumvent their compliance efforts. Increasingly, especially after Unaoil, those standard practices are beginning to look like the “check the box” compliance practices regulators uniformly regard as unimpressive and ineffective.

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