



ANTI-CORRUPTION DIGEST

April 2014

Welcome to Dorsey & Whitney's monthly Anti-Corruption Digest. Anti-corruption enforcement crosses boundaries like no other, so keeping up to date is more important than ever. In this digest, we draw together news of enforcement activity throughout the world and aim to reduce your information overload. Our London, Minneapolis, New York and Washington DC offices edit the digest and select the most important material so that you can use this digest as a single source of information.

■ THE USA

Hewlett-Packard

Subsidiaries of Hewlett-Packard Company ("HP") in Russia, Poland, and France have resolved Foreign Corrupt Practices Act ("FCPA") matters with the U.S. Department of Justice ("DOJ"). HP has also reached a resolution with U.S. Securities and Exchange Commission ("SEC") regarding securities laws violations for the same conduct. In total, the HP subsidiaries will pay \$76.8 million to DOJ in criminal penalties and forfeiture, and HP will pay \$31.5 million to SEC in disgorgement, interest and penalties.

HP Russia

ZAO Hewlett-Packard A.O. ("HP Russia") pled guilty to conspiracy, and violations of the FCPA's anti-bribery and accounting provisions. In the plea agreement, HP Russia admitted that between 2000 and 2007, it used a secret slush fund to make improper payments, including to

Russian government officials, to secure, retain, and implement a large government contract.

In January 1999, an agency of the Russian government began a roughly \$100 million project to automate the telecommunications and computing infrastructure of the Office of the Prosecutor General of Russia ("GPO"). According to an internal memorandum, HP Russia viewed this project as the "golden key" to getting \$100-150 million in additional projects for the Russian Ministry of Justice and the Supreme Court.

To secure the contract, HP created a slush fund through a buy-back sales structure: HP Russia sold products to one of its long-time Russian channel partners, who sold the products to an intermediary. HP Russia then repurchased the products from the intermediary at a markup of nearly €8 million, and paid the intermediary an additional €4.2 million for purported services. The intermediary transferred all but €200,000 of the illicit payments through a maze of shell companies and off-shore bank accounts, much of which went to Russian government officials.

The funds ultimately were spent on travel, cars, jewelry, clothing, expensive watches, furniture, and other luxury goods.

HP Poland

Hewlett-Packard Polska, Sp. Z o.o. (“HP Poland”) entered into a deferred prosecution agreement related to violations of the FCPA’s anti-bribery and accounting provisions. From 2006 through at least 2010, HP Poland made and concealed corrupt payments totaling more than \$600,000 to the Director of Information and Communications Technology for the Polish National Police agency, in exchange for technology contracts worth millions of dollars. The payments took the traditional form of bags of cash, but also included HP computers and mobile devices, and a trip to Las Vegas which included a private tour flight over the Grand Canyon. In an attempt to conceal the scheme, HP Poland falsified its books and records, and communicated with the government official through anonymous email accounts and prepaid mobile phones.

HP Mexico

Hewlett-Packard Mexico, S. de R.L. de C.V. (“HP Mexico”) entered into a non-prosecution agreement related to violations of the FCPA’s anti-bribery and accounting provisions. In the agreement, HP Mexico acknowledged that it secured contracts to provide hardware, software and license packages to Mexico’s state-owned petroleum company, Petroleos Mexicanos (Pemex), after retaining a third-party consultant who was closely aligned with Pemex senior executives. HP Mexico paid a \$1.41 million “commission” to the consultant through a long-standing channel partner, in order to circumvent HP’s third-party due diligence processes. The consultant then paid a Pemex official \$125,000.

At all relevant times, HP policies prohibited corruption, self-dealing, and other misconduct, and specifically referenced the FCPA. HP employees in Russia, Poland, and Mexico received mandatory annual training on these policies. HP also had in place third-party due diligence policies to assess the qualifications and financial capabilities of certain third parties, and an extensive review and approval process which applied to all service-related projects valued at greater than \$500,000 anywhere in the world. In the HP Russia plea agreement, HP acknowledged that although these policies were in place, they “were not adequate to detect and prevent the misconduct...and in practice certain HP business divisions and subsidiaries failed to implement and enforce the policies consistently, and on occasion circumvented or disregarded the policies entirely.”

In its press release regarding the resolution (<http://www.justice.gov/opa/pr/2014/April/14-crm-358.html>), the DOJ acknowledged HP’s “extensive cooperation” with its investigation. HP’s reactive measures included conducting a “robust internal investigation” and analyzing “voluminous evidence”; its remedial measures included taking disciplinary action against culpable employees and enhancing its accounting and compliance functions.

The cases were prosecuted by the United States Attorney for the Northern District of California and the Fraud Section of the Criminal Division. In addition to the SEC, the U.S. Attorney’s Office cited the assistance of “law enforcement partners in Germany, Poland and Mexico,” including the Polish Anti-Corruption Bureau, the Polish Appellate Prosecutor’s Office, and the Public Prosecutor’s Office in Dresden, Germany.

Marubeni

Japanese trading company Marubeni Corporation has pled guilty to conspiracy and violations of the FCPA's anti-bribery and accounting provisions. In the plea agreement, Marubeni admitted paying Indonesian officials, including a high-ranking member of the Indonesian parliament, to secure a \$118 million power services contract known as the Tarahan project with Indonesia's state-owned and state-controlled electricity company, Perusahaan Listrik Negara ("PLN"). Marubeni agreed to pay \$88 million in fines and penalties.

In 2002, Marubeni retained a "consultant" to pay bribes to Indonesian officials, while claiming that he was retained to provide legitimate consulting services. A year later, Marubeni and its co-conspirators determined that the consultant had not been successful in paying bribes to PLN officials. Accordingly, Marubeni reduced his commission from three percent to one percent of the total contract value (to continue to pay the parliament official), and paid the remaining two percent to a second consultant who Marubeni believed would have more success bribing the PLN officials. After the contract was awarded to Marubeni, it paid the commissions to the consultants, including into the first consultant's Maryland bank account, which funds were then sent to an Indonesian bank account belonging to the parliament official.

In its press release announcing the guilty plea (<http://www.justice.gov/opa/pr/2014/March/14-crm-290.html>), DOJ officials rebuked Marubeni for failing to cooperate in the investigation: "The company refused to play by the rules, then refused to cooperate with the government's investigation. Now Marubeni faces the consequences for its crooked business practices in Indonesia." In stark contrast to the conciliatory tone DOJ used to describe HP's

conduct during the investigation, DOJ also described Marubeni's lack of voluntary disclosure of the conduct; its decision not to cooperate in the government's investigation; its lack of an effective compliance and ethics program at the time of the offense; and its failure to properly remediate as factors in the way this matter was resolved.

In 2012, Marubeni paid \$54.6 million to resolve allegations that it bribed Nigerian government officials to win contracts.

Six Indicted on Charges of Corruption, Conspiracy, and Racketeering

An indictment of six foreign nationals on charges of conspiracy and racketeering related to an Indian mining project has been unsealed by the U.S. District Court for the District of Northern Illinois. All of the defendants other than K.V. P. Ramachandra Rao, a member of Parliament in India, have also been charged with a single count of conspiring to violate the FCPA.

Ukrainian oligarch Dmitry Firtash, allegedly spearheaded a conspiracy to pay more than \$18.5 million in bribes to secure mining licenses in the Indian state of Andhra Pradesh. According to the indictment, Firtash controls Group DF, a conglomerate of companies, several of which were allegedly involved in this conspiracy. One of those companies, Bothli Trade, in 2006 entered into a joint venture agreement with the state government of Andhra Pradesh to mine various minerals to be processed into various titanium-based products. In order to obtain necessary licenses for the project, the defendants allegedly transmitted millions of dollars to Indian public officials. Expected annual revenue from the mining project was more than \$500 million. Included in that expected revenue was the sale of 5 million to 12 million pounds of titanium sponge to "Company A" in Chicago.

Five others were indicted for their alleged involvement in the conspiracy:

- Hungarian businessman Andras Knopp, who allegedly supervised the conspiracy and met with Indian government officials and Company A officials;
- Ukranian Suren Gevorgyan, who allegedly traveled to Seattle to meet with Company A representatives, and monitored and coordinated bribe payments;
- Indian national and U.S. permanent resident Gajendra Lal, allegedly coordinated bribes;
- Sri Lankan Periyasamy Sunderalingam, who allegedly met with Rao to determine the amount of bribes to be paid, and to identify foreign bank account outside of India to use to funnel bribes to Rao; and
- Indian member of Parliament K.V. P. Ramachandra Rao, who allegedly solicited bribes for himself and others in exchange for license approval, and warned other defendants that the government may investigate the project.

Firtash is a longtime ally of ousted Ukranian leader Viktor Yanukovych. He was arrested in Austria in March, on an American warrant. He was released on €125 million bail, and on the condition that he will remain in Austria throughout proceedings to extradite him to the United States. The government seeks forfeiture of Firtash's interests in Group DF Limited and its assets, including 159 companies (including Bothli) and all funds in 41 bank accounts. Following Firtash's arrest, Boeing Co., said in a statement that in 2006 it entered into a memorandum of understanding with Bothli to conduct a feasibility study on supplying it with titanium products, but never followed through on it: "We have never done business with Bothli other than the activities associated with the MOU."

■ THE UNITED KINGDOM

Financial Conduct Authority ("FCA") fines Besso Limited £315,000

The FCA reported in a press release that it fined Besso Limited ("Besso"), a general insurance broker owned by the Lloyd's Broking group which claims to have been operating in the London Market for 40 years, £315,000 "for a failure to take reasonable care to establish and maintain effective systems and controls for countering the risks of bribery and corruption". The FCA discovered that Besso had weak systems and controls in place regarding sharing of commissions with third parties.

Reportedly, the FCA visited Besso twice and both times, the company failed to meet the requirements of the FCA. Besso's rule breaches occurred between January 2005 and August 2011 and included: (i) limited bribery and corruption policies; (ii) failure to conduct adequate risk assessment of third parties prior to entering into business arrangements; (iii) failure to conduct adequate due diligence to evaluate risks connected to engaging in business with third parties; (iv) failure to record sufficient commercial reasoning behind payments to third parties; and (v) failure to monitor its staff when conducting due diligence, review third party relationships and maintain adequate records of anti-bribery and corruption measures adopted on its third party account files.

A director of the FCA was quoted saying, "Firms must play their part in preserving the integrity of the UK financial system, including taking all steps necessary to prevent financial crime. Where we find firms failing to do so, we will take action". Following two visits from the FCA and many general and specific industry warnings, Besso agreed an early settlement with the FCA in the initial phase of the investigation and therefore Besso benefited from a £135,000

reduction (30%) of the financial penalty imposed by the FCA.

GlaxoSmithKline faces allegations of corrupt payments to Polish doctors

GlaxoSmithKline (“GSK”), a UK drug company, is being investigated in Poland for purportedly bribing doctors, as reported by BBC Panorama. In connection with this investigation, eleven doctors and a GSK regional manager are reported to have been charged over alleged corruption which occurred between 2010 and 2012.

Examples of the kinds of activity that are alleged to have taken place were described by former sales representatives of GSK who explained that doctors were paid to promote GSK's asthma drug Seretide and other drugs. The sales representatives were reported saying that they “pay doctors in return for prescriptions” for the drugs they seek to sell. The process included preparing contracts whereby the doctors agreed to talk to patients about the particular GSK drug in consideration for cash. The representative reportedly explained that if he pays £100 then he expects more than 100 prescriptions to be written for the said drug.

Mr Wisniewski, a former sales representative was recorded as expressing the payments as “a bribe”, confirming that although on paper the payments were described as for educational purposes, the doctors understood clearly that they were to favour the GSK product and produce several prescriptions in return for the financial gains.

According to reports, the public prosecutor in Poland found evidence in documents given to doctors by GSK to support claims of corrupt payments in several healthcare centres and one doctor has admitted accepting payment of £100

for a lecture he did not give. The doctor incurred a fine and was handed a suspended sentence.

GSK explained that, during the period when the alleged corrupt payments took place it supported a training programme to help improve diagnostic standards and medical training in respiratory diseases which was operated by doctors in Poland. The healthcare professionals who were involved in the training programme signed contracts with GSK, which provided for payments to the professionals appropriate to the scope of work as well as their level of knowledge and experience. It was reported that the provision of lectures under the programme was agreed with the Polish healthcare centres.

GSK has disciplined one employee in connection with the allegations and states that it is assisting with investigations and co-operating with Poland's Central Anticorruption Office. GSK, it was claimed, intends to terminate direct payments to doctors and other healthcare professionals for promotional talks and to stop setting individual targets for its sales representatives as part of a wider effort to improve transparency.

Footballers arrested for alleged bribery and money-laundering

Seven footballers who play for Football League clubs based in the north west of England have been arrested in connection with alleged bribery and money laundering in relation to continuing investigations into corruption in the football industry.

According to reports, these arrests follow on from the arrests of six footballers which occurred in December 2013 as part of the inquiry, prompted by information passed on by the Sun on Sunday, who were released on bail to return on 8 April 2014.

It was reported that the Football Association (“FA”) released a statement following the latest arrests explaining that the FA has been made aware of developments in relation to an ongoing National Crime Agency investigation. The FA are reported to be liaising with the authorities in relation to these allegations.

THE REST OF THE WORLD

China

Claims have been published that employees of the Chongqing plant of Ford Motor Company (“Ford”) may have paid bribes in order to obtain employment with the corporate.

In a statement issued by Ford, it explained that the company takes the allegations very seriously and has initiated an investigation. In the statement, the Ford representative was quoted saying: “any behaviour that violates Ford’s policies, such as the alleged behaviour, would result in immediate dismissals of employees”.

It was suggested in the report that the making of corrupt payments may be an attractive option for those seeking employment in a large corporation in an attempt to secure a higher salaried job, as there are increasingly fewer opportunities to get a desirable job with an attractive salary in large corporations; most positions are outsourced to employment agencies. Wages in Chongqing are significantly lower than in other major cities, such as Shanghai. In a city where the minimum wage is just 1,250 yuan per month, a job at Ford is reported to pay 60,000 yuan per year, in addition to overtime and bonuses.

Hong Kong

According to reports, a former licensed representative and a client of the Hong Kong securities firm, Phillip Securities (Hong Kong) Limited (“PSL”) have been charged by the Independent Commission Against Corruption (“ICAC”) with accepting and offering a total of over \$365,000 in illegal commissions respectively in relation to trading in securities.

It has been reported that Ching Yim-har, a former licensed representative of PSL, faces two counts of accepting an advantage, contrary to section 9(1)(a) of the Prevention of Bribery Ordinance (“POBO”). Yip Ying-lai, the PSL client, has been charged with two counts of offering an advantage to an agent, in contravention of section 9(2)(a) of the POBO.

It was alleged that during 2007 and 2008, Ching, accepted \$99,688 and \$265,688 in illegal commissions from Yip as a reward for providing services as a licensed representative in respect of the investment account of Yip held with PSL. The investigation and hearing resulted from a corruption complaint referred by the Securities and Futures Commission (“SFC”).

It is said, the remaining two charges assert Yip offered \$99,688 and \$265,688 by way of illegal commissions to Ching for the same purpose.

The SFC and the PSL have offered their full assistance to the ICAC during its investigation.

Indonesia

Further to March’s Corruption digest which discussed alleged corrupt practices conducted by the French company Alstom and Japan’s Marubeni, it was reported that Indonesia’s anti-corruption court sentenced a lawmaker to a three year jail sentence on 14 April 2014 for

accepting bribes from Alstom and Marubeni in connection with a multimillion-dollar contract.

Izedrik Emir Moeis was found guilty of accepting \$357,000 from the companies to help them secure a \$118 million joint contract in 2004 to supply and install boilers at a power plant on the island of Sumatra.

In a statement, Judge Sofialdi said, “The court has found that the consortium did indeed hire a consultant.. Who promised the accused he would pay him ‘fees or a commission”.

Moeis is the latest in several lawmakers who were jailed for corruption in Indonesia. Moeis is a member of the Indonesian Democratic Party of Struggle which won the most votes in the latest legislative polls.

Reports state that the companies are also facing a US court because Alstom's US subsidiary was part of the consortium. Two other Alstom executives face charges but have not yet entered pleas.

See the US section of this Digest for a report of the disposal there of charges against Marubeni.

India

Since the polls were announced, India's election commission seized over \$32.5 million in cash and 2.7 million liters of liquor allegedly intended to bribe voters. Reports suggest that, influencing voters through unlawful liquor, cash, sewing machines, spice mixers and gold is an age-old tactic employed across the country, despite large penalties imposed by the Election Commission against unlawful ‘vote-buying’.

It was reported that past elections have seen alcohol being covertly transported in water tankers and cash being hidden in ambulances. Seventy kilograms of heroin has also been seized by election officials since March.

Iraq

In addition to corruption accusations in Poland and China, GSK is said to be investigating bribery allegations in Iraq.

Similar to the inquest in Poland, this inquiry is reported to centre on claims that GSK hired government-employed physicians and pharmacists in Iraq as paid sales representatives to unlawfully enhance use of its products.

GSK has been reported to reiterate its zero tolerance for unethical or illegal behaviour. The investigations are ongoing.

According to reports, the company announced, last December, that it was making major changes to its incentive schemes after a damaging corruption scandal in China. GSK was accused by Chinese authorities of directing up to 3 billion yuan (£291 million) to doctors and officials to encourage them to use its drugs.

Japan

A senior Japanese politician announced his resignation as party leader over an \$8 million loan scandal. Yoshimi Watanabe, claimed that he spent the \$8 million loan on personal items, such as a decorative kumade (a bamboo rake believed to confer luck on its holder) and not in connection with his political role, according to reports.

It is alleged that Watanabe accepted 800 million yen (\$8 million) from the chairman of a prominent cosmetics company. Japanese law requires that all political donations be made public.

It was reported that Your Party plans to hold an election to choose Watanabe’s successor, while prosecutors are allegedly looking into the cash transfer to see if charges should be made.

Reports indicate that Watanabe intends to remain in parliament as a lawmaker.

Kazakhstan

It has been reported that KazAtomProm's (Kazakhstan's national nuclear company) executive director, Valery Shevelyov has been arrested on corruption charges. The allegations are said to be suspected embezzlement of \$710 million. The construction of KazAtomProm's new premises prompted the investigation into the alleged corruption.

Sweden

It has been reported by Swedish radio that Swedish mobile telecoms equipment maker, Ericsson, paid 116 million Swedish crowns (\$18 million) to a commercial agent, which was subsequently used to bribe Greek officials to secure a deal for Ericsson in 1999.

Ericsson claim that they have zero tolerance for bribes and corruption. According to reports, at the time of the purported bribery, Ericsson's former commercial operations involved employing local commercial agents in many countries in a bid to increase the company's sales. A former Ericsson employee, Liss-Olof Nenzell told Swedish radio in an interview that politicians, generals and high-ranking state officials had received the Ericsson money. The Swedish company stated that it no longer employs agents due to the lack of transparency in the system and the difficulty in monitoring the use of money.

Alf Johansson, chief public prosecutor at the National Anti-Corruption unit of the Swedish Prosecution Authority, is reportedly "investigating the corruption" and has asked Greek investigators for information. Due to limitations, only crimes committed after 1 July 2004 are capable of prosecution.

Antonis Kantas, who was appointed as deputy armaments chief at the Greek Defense Ministry between 1997 and 2002, admitted accepting bribes totaling \$16 million in relation to arms deals with foreign companies. Kantas reportedly mentioned Ericsson in connection with bribes in his court testimony.

It was suggested that Nenzell was responsible for setting up and handling a payment system used for agents at Ericsson. In a separate action, Ericsson has accused Nenzell of embezzlement and sued him to recover the money.

Towards the end of 1999, Ericsson completed a deal with the Greek state whereby Greece agreed to buy Ericsson's military radar system Erieye. The transaction was worth over 400 million euros. It was suggested that bribes totalling \$13.8 million, were made to secure the contract which involved passing the bribes to the Greek policymakers.

According to reports, a major corruption investigation is underway in Greece.

Corruption issues are also addressed in the Anti-Fraud Network's newsletters: see www.antifraudnetwork.com for current and archived material; see also the Computer Fraud website at <http://computerfraud.us> and www.secactions.com.

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