

FCPA Violation Costs Hewlett-Packard More than \$100 Million

Written by Nick Sanders

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Hewlett-Packard recently landed in a world of hurt. The U.S. Department of Justice [announced](#) that ZAO Hewlett-Packard A.O. (aka HP Russia), a Russian subsidiary of the U.S. Corporation, “pleaded guilty today to felony violations of the Foreign Corrupt Practices Act (FCPA) and was then sentenced for bribing Russian government officials to secure a large technology contract with the Office of the Prosecutor General of the Russian Federation.”

The DOJ announcement reported—

According to the plea agreement, HP Russia executives created a multimillion dollar secret slush fund, at least part of which was used to bribe Russian government officials who awarded the company a contract valued at more than €35 million. ...

According to the statement of facts filed with the plea agreement, HP Russia created excess profit margins to finance the slush fund through an elaborate buy-back deal scheme. HP subsidiaries first sold the computer hardware and other technology products called for under the contract to a Russian channel partner, then bought the same products back from an intermediary at a nearly €8 million mark-up and an additional €4.2 million in purported services, then sold the same products to the Office of the Prosecutor General of the Russian Federation at the increased price. The payments to the intermediary were then largely transferred through multiple layers of shell companies, some of which were directly associated with government officials. Proceeds from the slush fund were spent on travel services, luxury automobiles, expensive jewelry, clothing, furniture and various other items.

To keep track of and conceal these corrupt payments, the conspirators inside HP Russia kept two sets of books: secret spreadsheets that detailed the categories of bribe recipients, and sanitized versions that hid the bribes from others outside of HP Russia. They also entered into off-the-books side agreements to further mask the bribes. As one example, an HP Russia executive executed a letter agreement to pay €2.8 million in purported “commission” fees to a U.K.-registered shell company, which was linked to a director of the Russian government agency responsible for managing the Office of the Prosecutor General of the Russian Federation project. HP Russia never disclosed the existence of the agreement to internal or external auditors or management outside of HP Russia.

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The court sentenced HP Russia to pay a \$58,772,250 fine.

But that's not all the pain HP has been feeling. The DOJ announcement also reported—

On April 9, 2014, the government also announced criminal resolutions with HP subsidiaries in Poland and Mexico which violated the FCPA in connection with contracts with Poland's national police agency and Mexico's state-owned petroleum company, respectively. Pursuant to a deferred prosecution agreement, the department filed a criminal information charging Hewlett-Packard Polska, Sp. Z o.o. with violating the accounting provisions of the FCPA. Hewlett-Packard Mexico, S. de R.L. de C.V. entered into a non-prosecution agreement with the government pursuant to which it has agreed to forfeit proceeds and has admitted and accepted responsibility for its misconduct. In total, the three HP entities will pay \$76,760,224 in criminal penalties and forfeiture.

In a related FCPA matter, the U.S. Securities and Exchange Commission (SEC) filed a proposed final judgment in April 2014 to which HP Co. consented. Under the terms of the proposed final judgment, HP Co. has paid \$31,472,250 in disgorgement, prejudgment interest and civil penalties, bringing the total amount of U.S. criminal and regulatory penalties against HP Co. and its subsidiaries to more than \$108 million.

So Hewlett-Packard has paid roughly \$108 million for FCPA violations. That's gotta hurt. But it could have been worse. In the words of the DOJ:

Court filings acknowledge HP Co.'s extensive cooperation with the department, including conducting a robust internal investigation, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, and organizing voluminous evidence for the department. Court filings also acknowledge the extensive anti-corruption remedial efforts undertaken by HP Co., including taking appropriate disciplinary action against culpable employees, and enhancing HP Co.'s internal accounting, reporting, and compliance functions.

No doubt HP's cooperation and "remedial efforts" helped to keep the situation in the civil litigation realm, thus avoiding criminal prosecution.

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And so another U.S. Corporation learns that failed controls can be costly.