

JOHN WOOD GROUP PLC ACHIEVES GLOBAL SETTLEMENT AGREEMENTS//

Slaughter and May advised client John Wood Group plc (Wood) in securing a global resolution in respect of bribery and corruption investigations concerning legacy Foster Wheeler AG, acquired by Amec plc in 2014 with the resulting group, Amec Foster Wheeler plc (AFW) then acquired by Wood in October 2017. Wood [announced](#) on 25 June that Amec Foster Wheeler Energy Limited (AFWEL), a subsidiary of AFW, had received preliminary Court approval for a deferred prosecution agreement (DPA) with the UK Serious Fraud Office (SFO) and that AFW and AFWEL had also reached agreements with the US Department of Justice (DOJ), the US Securities and Exchange Commission (SEC), and Brazil's Ministério Público Federal (MPF), Comptroller General's Office (CGU), and Solicitor General (AGU). The UK DPA was subsequently given final Court approval on 1 July. Under the various agreements, AFW and AFWEL will pay a total penalty of \$177 million over the next three years and will be subject to ongoing cooperation and compliance obligations.

UK DPA

The [settlement reached with the SFO](#) is its 10th deferred prosecution agreement. Through the [DPA](#), AFWEL accepted responsibility for bribery and corruption across five jurisdictions: Brazil, India, Malaysia, Nigeria, and Saudi Arabia. The offending conduct occurred between 1996 and 2014. (The Foster Wheeler group (of which AFWEL formed part) was acquired by Amec plc in 2014 to form AFW.)

The UK DPA only relates to the potential criminal liability of AFWEL and does not address whether liability of any sort attaches to any employee, agent, former employee or former agent of AFWEL.

The terms of the three-year agreement include payment of compensation to the Nigerian government and disgorgement and a financial penalty totalling just under £100m. AFWEL was also required to pay the SFO's costs of approximately £3.3m and to continue to cooperate with the SFO and other agencies as required.

Through an [undertaking](#) appended to the DPA, Wood - as AFWEL's ultimate parent - agreed to guarantee AFWEL's performance of the DPA's financial conditions. Wood also undertook to cooperate with the SFO, and other agencies as required, and continue to enhance, and report annually to the SFO on, its group-wide ethics and compliance programme.

In approving the DPA, the Court recognised that Wood was, in effect, twice removed from the offending conduct by reason not only of Wood’s acquisition of AFW in October 2017 but also the acquisition of the legacy Foster Wheeler group by Amec plc in 2014. All the offending conduct pre-dated both the Wood and Amec takeovers. The fact that Wood was an “innocent party” was relevant not only to the public interest analysis the Court was required to conduct in assessing whether a DPA, rather than a prosecution, was in the interests of justice, but also justified a further discount to the financial penalty that AFWEL was required to pay.

Lord Justice Edis, in approving the DPA, ordered that publication of the Statement of Facts (the document agreed between the SFO and the DPA subject as to the facts of the relevant offending) should be postponed pending a decision from the SFO as to whether individuals will be charged.

DOJ & SEC resolution

The US investigations, conducted by the DOJ and SEC, were narrower in scope than the SFO’s investigation. They concerned allegations relating to the payment of bribes to Brazilian officials in exchange for being granted a contract worth \$190 million, to design a gas-to-chemicals complex. AFWEL agreed a three-year deferred prosecution agreement with the DOJ for conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act 1977 (FCPA) with AFWL agreeing a civil resolution again in respect of breaches of the FCPA. The total penalty levied in the US was \$41 million, half of which consisted of disgorgement of profits, and reflected a 25% reduction for full cooperation and remediation. However, AFWL and AFWEL will pay the agencies directly around \$18 million, with the DOJ and SEC crediting a portion of the fines being paid in Brazil and the UK. Further details of the DOJ’s DPA are available [here](#) and [here](#), and the SEC cease-and-desist order is available [here](#).

Brazil resolution

The agreements between Amec Foster Wheeler entities and Brazil’s MPF, CGU, and AGU relate to the same misconduct identified in the US agreements. The Brazilian authorities issued a fine amounting to 86.2 million reais (\$17.5 million) as part of the joint leniency agreement. Of this amount 67 million reais will be returned to Petrobras, the Brazilian state-owned oil company that issued the contract at the centre of the allegations.

Slaughter and May Team

The Slaughter and May team advising Wood comprised lead partners Ewan Brown and Holly Ware, together with Richard Swallow and Tim Blanchard, and associates Kathryn Hernandez, Nicholas Querée, Ying-Peng Chin, Catriona Jardine, Phyllis Guven, William Burrow and Michael Craig.

RECENT NEWS //

SFO roundup: Osofsky editorial in The Times; £402k confiscation order secured; £248k account forfeiture secured

The Serious Fraud Office (SFO) has published a comment piece by Director of Lisa Osofsky in which she argues that, without legal reform, company directors in the UK are able to engage in “bad behaviour,” since the law fails to punish individuals who “can distance themselves from the actions of their company.” The article, first appearing in The Times on 30 June (and reproduced on the [SFO website](#)), criticised the “controlling mind” test required to prove the liability of companies in breaches of criminal law: “Seniority is relevant but not decisive. Other factors include how the company is legally

structured and how authority and decision-making are delegated.” Osofsky also highlighted the impact of the introduction of deferred prosecution agreements (DPAs): “As companies learn the lessons from DPAs, compliance and behaviour improves. And, in the four years to 2020, the SFO’s financial impact has tripled. Through fines and other penalties the agency has contributed more than £1.3 billion to the Treasury.”

The SFO [announced](#) on 17 June that, following a hearing at Southwark Crown Court before HHJ Beddoe, it secured a £402,465.65 confiscation order by consent against former Unaoil executive Basil Al Jarah. In October 2020, Al Jarah was sentenced to three years and four months’ imprisonment after an SFO investigation showed he paid over \$17m in bribes to dishonestly secure approximately \$1.7bn worth of contracts in post-occupation Iraq. Al Jarah was found to have personally profited by more than £3 million from the long-running scheme.

The SFO has also [seized](#) £248k by way of account forfeiture against an account linked to the criminal gains of Virendra Rastogi, one of the architects of a \$700m global tax fraud. As part of the fraud, Rastogi and others ran a web of over 300 fake customers supposedly based throughout the world, who they used to create fictitious metal trades to secure cash advances from banks. Virendra and his associates were sentenced in April 2008. Head of the Proceeds of Crime and International Assistance Division Emma Luxton said, “This case shows that the SFO will use every tool available to us to seek out and seize dirty money held on these shores and return it to victims or the UK taxpayer.”

FCA roundup: Dear CEO letter; climate reporting requirements announced

The UK’s Financial Conduct Authority (FCA) has said that UK retail banks should take action to rectify “several common weaknesses” in anti-money laundering frameworks. In a “Dear CEO” letter [published](#) on 29 June, the FCA said it was “very disappointed” to see retail lenders continuing to fall short in requirements relating to AML & CTF measures. The letter reported the findings after recent assessments of multiple banks found similar issues. The FCA has said it expects firms to complete a gap analysis against each of the common weaknesses by 17 September.

The FCA has [outlined plans](#) to extend climate reporting requirements to most UK listed companies as well as domestic asset managers, in an attempt to meet growing investor demand for disclosure. The FCA said it wanted the reporting requirements, which ask companies to disclose the risks they face from climate change, to eventually cover “98 per cent” of both assets under management in the UK market and those held by domestic money managers. It wants them to apply to standard as well as premium UK-listed companies. The FCA has already asked all premium-listed companies to report their climate-related risks in line with the Task Force on Climate-related Financial Disclosures, a project spearheaded by former Bank of England governor Mark Carney, from this year. The FCA is inviting feedback to the consultations by 10 September 2021 and intends to confirm its final policy on climate-related disclosures before the end of 2021.

Law Commission consultation on corporate criminal liability opens

On 9 June 2021, the Law Commission published a [discussion paper](#) and [launched a consultation](#) on the possible reform of corporate criminal liability. It is seeking views on whether, and how, the law relating to corporate criminal liability can be improved so that it appropriately captures and punishes criminal offences committed by corporations and their directors or senior management. The discussion paper sets down the current framework, including the general law on corporate criminal liability and specific legislation, procedural rules, recent developments and some discussion of alternative options, and ends with 13 questions for discussion. Among the issues that the Law Commission is seeking views are: whether the identification principle provided a satisfactory basis for attributing criminal responsibility

to non-natural persons; whether there should be "failure to prevent" offences akin to those covering bribery and facilitation of tax evasion in respect of fraud and other economic crimes; the principles that should govern the individual criminal liability of directors for the actions of corporate bodies; and the principles that should govern the attribution of criminal liability to non-natural persons. The Law Commission is hosting a [series of events](#) open to the public to discuss proposals. Details of the consultation are available on the [Law Commission website](#), and the consultation closes 31 August 2021.

OFSI releases series of guidance webinars

The Office of Financial Sanctions Implementation (OFSI) has published a series of webinars on topics relating to financial sanctions, available on a time-limited basis, to complement a [guidance](#) document published in December 2020. The webinars cover topics including how to complete a licence application, the rules on humanitarian licencing, and licensing reporting obligations, and will be available to view until 16 August 2021 (23 August for the licensing reporting obligations webinar). The webinars and supporting materials are available [here](#).

International peer reviews of anti-corruption programs often murky, could be more useful, report says

Formal international reviews of national anti-corruption policies are often too technical for non-experts to understand, which leads to "lost opportunities to make progress against corruption," a report funded by the US State Department and two think tanks said. The report, entitled "[Piercing the veil: Using Peer Reviews in the Fight Against Corruption](#)," said that reviews should be summarized in readily understood language that explains the most effective and feasible anti-corruption measures recommended. Interested parties should then focus on advancing those measures and monitor commitments that governments have made to implement them, the report concluded.

UN calls on nations to pass laws fully implementing UN Convention Against Corruption (UNCAC) by 2030

On 2 June 2021, the UN General Assembly special session against corruption [adopted a declaration](#) in which its members committed to outlaw the solicitation and acceptance of bribes by officials and to otherwise fully implement, via legislation and enforcement, the provisions of the UN Convention Against Corruption by 2030. On the first day of the session, the General Assembly adopted the declaration that had been approved in May by the Conference of State Parties to the UNCAC treaty. The commitment is the first time the UN has stated a timeframe for nations to pass laws implementing the provisions of [UNCAC](#), a treaty that entered into force in 2005 and now has 140 signatories and an additional 47 parties engaged with UNCAC as observers or applicants. Most of the declaration was couched in diplomatic tones reaffirming a broad list of anti-corruption measures found in UNCAC, such as protection for whistleblowers, improved auditing of government finances and international cooperation among law enforcement. But towards the end the declaration specifically called for action by 2030. The declaration contains no formal penalty for missing its deadline, but the 2030 target is a date by which the UN and the public can measure the progress of national legislative and enforcement efforts to fight corruption. The session also welcomed the [launch of a new global network](#) to "develop a quick, agile and efficient tool for combatting cross-border corruption offences." The network, dubbed the GlobE Network is a "swift and efficient" platform for law enforcement to pursue corruption cases in real time, said Ghada Fathi Waly, executive director of UNODC. She anticipates 30 countries will soon join and hopes all UN members will participate in the long term.

Treasury Committee established to examine AML measures and impacts of economic crime

The Treasury Committee of Parliament [announced](#) that it will assess the UK's anti-money laundering (AML) measures and the sanctions regime, and how economic crime impacts consumers. A virtual meeting was scheduled to take 14 June. More information on the committee is available [here](#).

New EU fraud prosecutor EPPO, OLAF enter cooperation agreement in corruption fight

The EU's dedicated fraud prosecutor, the European Public Prosecutor's Office (EPPO), has entered into a cooperation and information-exchange agreement with the European Anti-Fraud Office (OLAF). OLAF conducts administrative investigations, while the EPPO conducts criminal investigations and prosecutes cases falling under its competence in front of national courts. The common aim is to increase fraud detection at the EU level, to avoid duplication, to protect the integrity and efficiency of criminal investigations, and to maximise the recovery of damages. Read the press release [here](#).

UK accounting watchdog launches probe into Greensill audit

The Financial Reporting Council has launched a probe into the audit of Greensill Capital, opening a new front in the investigation of the supply chain finance group that collapsed in a political and financial scandal. The FRC [said on 28 June](#) that it had begun an investigation into accountant Saffery Champness over its audit of the financial statements of Greensill Capital for 2019. Alongside Saffery Champness, the watchdog said it was also investigating PwC over its 2019 audit of Wyelands Bank, owned by UK industrialist Sanjeev Gupta, and one of Greensill's largest clients. The FRC did not give details of the Greensill and Wyelands probes. It will have two years to deliver its initial findings if it takes the investigation forward.

ICO given power to conduct their own financial investigations

The Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021 has now entered into force. It expands the list of organisations whose staff can exercise accredited financial investigator (AFI) powers for the purposes of POCA to include the Information Commissioner's Office (alongside other bodies including the London Fire Commissioner). The ICO applied for direct powers under POCA in November 2019, opening a [consultation](#) into the proposal. It said at the time it had previously relied on help from partner agencies to exercise powers under POCA, but this help was no longer available. As set out in the [explanatory memorandum](#) to the Order, AFIs may exercise a number of powers under POCA, including: to apply for restraint orders, to search for, seize and detain property to effect its later realisation, to search for, seize, detain and seek the forfeiture of cash suspected of being obtained through the proceeds of crime or intended for use in unlawful conduct, to apply to the court for investigation orders and warrants in respect of certain financial investigations, and to apply for and execute search warrants in financial investigations.

EU enforcer announces first dawn raid since COVID-19

The European Commission has raided a clothing manufacturer in Germany on suspicions of anti-competitive practices, marking its first publically-announced surprise inspection in over two years. The commission jointly inspected the premises of a garment manufacturing and distribution company alongside Germany's Federal Cartel Office, over concerns that the company may have violated EU antitrust laws. The announcement of such action is rare; usually the office confirms that a raid had taken place after a company announced an inspection. Read more in on the EC's website [here](#).

FATF reports on opportunities and challenges of AML and CTF

The Financial Action Task Force (FATF) published a report on the opportunities and challenges of new technologies for anti-money laundering (AML) and counter-terrorist financing (CTF) on 1 July. In the report, FATF identifies new and emerging technology based solutions for transaction monitoring, highlighting the necessary conditions, policies and practices that should be in place to use such technologies to improve AML and CTF monitoring. Read the report [here](#).

European Commission adopts UK adequacy decisions

On 28 June 2021, the European Commission adopted the two UK adequacy decisions under the General Data Protection Regulation (EU 2016/679) and the Law Enforcement Directive. As a result, personal data can now flow freely from the EU to the UK as the UK offers an equivalent level of protection to personal data under EU law. The Department for Digital, Media and Sport has updated its [guidance](#) to confirm the decisions. Information Commissioner Elizabeth Denham [welcomed](#) the decision as a positive result: “adequacy is the best outcome as it means organisations can carry on with data protection as usual.”

Treasury Committee report on FCA regulation of LC&F makes further recommendations to FCA and HM Treasury

On 24 June 2021, the House of Commons Treasury Committee published a [report](#) following its inquiry into the FCA's regulation of London Capital & Finance plc (LC&F). The committee launched the inquiry in February 2021 to consider Dame Elizabeth Gloster's [independent review findings](#), examine the changes the FCA has made since the publication of her report in December 2020, and make further recommendations to the FCA and HM Treasury. In the report, the committee welcomed the FCA's ongoing transformation programme, but said the FCA board should set an end date and create and publish milestones to review changes in culture. It points out that it is not readily justifiable for the FCA to require the firms it regulates to adhere to the principles of the Senior Managers Regime (SMR), but seemingly not to apply similar principles internally when there are failings of practice and culture. The committee believes there are doubts as to whether the FCA has, in the LC&F case, met the standards it seeks to impose on others. The report states that the FCA should require authorised firms to make clear the risks to customers associated with their unregulated activities. In the future, the FCA should be more interventionist and make more frequent use of its powers regarding financial promotion breaches rather than maintaining a culture of risk aversion.

CPS publishes guidance on “failure to disclose” offences in POCA

The Crown Prosecution Service (CPS) has updated its guidance on prosecuting standalone “failure to disclose” cases under section 330 of the Proceeds of Crime Act 2002 (POCA). The guidance now makes it possible to prosecute a section 330 offence regardless of whether an offence of money laundering has been substantiated, with a view to encouraging professionals working in the regulated sector to disclose any suspicion of money laundering to law enforcement. The updated guidance notes that: “... where individuals in the regulated sector receive information giving rise to a suspicion, or provid[ing] reasonable grounds for suspecting, that another is engaged in money laundering, an offence is committed by failing to make a report under section 330, regardless of whether it subsequently transpires that the money laundering cannot be proven, or that it did not occur.” The guidance is available [here](#).

EC fines investment banks for taking part in a European Governments Bonds trading cartel

On 20 May 2021 the European Commission [announced](#) it had fined investment banks Nomura, UBS and UniCredit a total of c. €371 million for their participation in a cartel involving a total of seven banks. The other banks in breach of EU antitrust rules, but not fined, were Bank of America, Natixis, RBS (now

NatWest) and WestLB (now Portigon). The conduct involved the exchange of commercially sensitive information between the banks in relation to the primary and secondary markets for European Government Bonds (EGBs). This decision comes less than a month after the Commission announced on 28 April 2021 that it had fined three banks (Bank of America Merrill Lynch, Credit Suisse, and Crédit Agricole) for a breach of antitrust rules involving their participation in a cartel relating to the market for US Supra-sovereign, Sovereign and Agency (SSA) bonds. The Commission noted in its press release that this decision, alongside previous cases, demonstrated their determination to address anti-competitive behaviour in all business sectors, including the finance sector. Executive Vice-President of the Commission Margrethe Vestager was particularly critical of the banks' "unacceptable" behaviour in light of the background that the behaviour occurred in "the middle of the financial crisis, when many financial institutions had to be rescued by public funding."

Update on HMRC's "failure to prevent facilitation of tax evasion" investigations

On 26 May 2021, HMRC reported that it had 28 investigations underway concerning the offence of failing to prevent the criminal facilitation of tax evasion offence. This comprised 14 live investigations, and 14 potential opportunities currently under review (to date HMRC has reviewed and rejected an additional 40 opportunities). These investigations and opportunities span 10 different business sectors, including the financial service. Read more from HMRC [here](#).

Horizon Scanning

Look out for:

31 August: Closure of Law Commission consultation on corporate criminal liability. Views may be submitted [here](#).