

**BAE REACHES GLOBAL SETTLEMENT WITH U.S. AND U.K. AUTHORITIES,
AGREEING TO PAY \$447 MILLION IN FINES AND ENDING FIVE YEARS OF
BRIBERY INVESTIGATIONS**

On February 5, 2010, BAE Systems plc (“BAE”) agreed to plead guilty to charges stemming from foreign bribery allegations investigated by the U.S. Department of Justice (the “DOJ”) and the U.K. Serious Fraud Office (the “SFO”). The BAE settlement represents the first global settlement between the two agencies. In settling charges arising from conduct in Saudi Arabia, the British Virgin Islands, Hungary, the Czech Republic, and Tanzania, the U.K. defense contractor agreed to pay a \$400 million fine to U.S. authorities for conspiring to make false statements and £30 million (approximately \$47 million) to U.K. authorities for failing to keep reasonably accurate accounting records. BAE also agreed to appoint a DOJ-approved “ethics monitor” to serve on its marketing advisor panel. The global settlement brings to an end more than five years of investigations by U.K. and U.S. enforcement authorities into allegations of overseas bribery and corruption at BAE.

The Investigations

The investigations into BAE began after allegations arose in the press in 2003 regarding the use of “slush funds” by BAE to bribe Saudi officials with gifts, holidays, and cash payments in connection with the “Al Yamamah” deal (Arabic for “*The Dove*”), BAE’s largest weapons contract. In November 2004, the SFO, the U.K. agency charged with prosecuting allegations of foreign bribery, began investigating BAE’s conduct relating to the Al Yamamah deal. The SFO soon expanded its investigation into BAE’s business activities in the Czech Republic, Romania, South Africa, Tanzania, Chile, and Qatar. Further, the SFO’s investigation of the Saudi conduct uncovered evidence of large payments made by BAE into bank accounts controlled by Saudi Prince Bandar bin Sultan, former ambassador to the U.S. In 2006, however, the SFO halted its investigation into the Al Yamamah contracts following warnings from Prime Minister Tony Blair and the U.K.’s ambassador to Saudi Arabia that the inquiry risked causing “serious damage” to national security and antiterrorism cooperation with the Saudi government. The SFO continued to investigate BAE’s business activities in Africa and Eastern Europe.

The SFO’s decision to discontinue its investigation into the Saudi payments was widely criticized. In 2008, the Organisation for Economic Co-operation and Development (the “OECD”) publicly expressed “serious concerns” as to whether the decision to close the BAE inquiry was consistent with the U.K.’s obligations under the OECD Convention on Combating Bribery of Foreign Public Officials. Further, it raised concerns about the SFO’s ability to investigate and prosecute cases effectively. In response to the SFO’s action and public disclosures about certain BAE payments to Prince Bandar and others that were made in the U.S., the DOJ opened its own investigation into BAE in June 2007. In response to a “severe lack of cooperation by BAE,” U.S. officials detained BAE’s then-CEO, Mike Turner, and other top BAE executives at U.S. airports for questioning in May 2008.

The Global Settlement

As part of the global settlement, BAE has agreed to plead guilty in the U.K. to an offense under section 221 of the Companies Act of 1985 for failing to keep reasonably accurate accounting records in connection with its activities in Tanzania. According to press accounts, the charges stem from allegations that BAE made corrupt payments to a marketing advisor in Tanzania in connection with a 1999 contract for a military air traffic control system valued at £28 million. The payments to the marketing advisor were made into a Swiss bank account and totaled approximately a third of the value of the contract. In a press release regarding the settlement, BAE Chairman Dick Olver stated that BAE had failed to record accurately the payments to the marketing advisor, failed to scrutinize its records adequately to ensure that they were reasonably accurate, and permitted those records to remain inaccurate. As a result of having reached this settlement, the SFO announced that it would bring no further prosecutions against BAE in relation to the matters that have been under investigation to date.

In the U.S., BAE has agreed to plead guilty to one count of conspiracy to make false statements to the U.S. Department of Defense and the U.S. Department of State in violation of the Arms Export Control Act (the "AECA") and the International Traffic in Arms Regulations (the "ITAR") and to pay a fine of \$400 million. According to a criminal information filed against BAE in federal court in Washington, D.C. (the "Information"), BAE made false, inaccurate, and incomplete statements to the U.S. Department of Defense in a November 18, 2000 letter addressed to then-Secretary of Defense William Cohen regarding the adequacy of BAE's anticorruption compliance measures. In the November 18 letter, BAE CEO John Weston committed to "use best efforts to adopt within six months, and in any event within twelve months, compliance programs to ensure that [non-U.S.] BAE Affiliates" comply with the antibribery provisions of the U.S. Foreign Corrupt Practices Act (the "FCPA"), as if those provisions applied to them. The DOJ also cites a follow-up letter from BAE to the Under Secretary of Defense, dated May 28, 2002, in which BAE stated that it had complied with the spirit and the letter of the November 18, 2000 letter. Finally, the DOJ alleged that BAE had failed to disclose commissions paid to third parties in the applications made to the U.S. Department of State for export licenses in violation of the AECA and the ITAR.

The DOJ's charges against BAE stem from alleged improper payments in Saudi Arabia, the British Virgin Islands, Hungary, and the Czech Republic. According to the Information, BAE served as the prime contractor to the U.K. government in connection with the Al Yamamah deal with Saudi Arabia. In connection with that transaction, BAE provided substantial benefits, including travel accommodations, security services, real estate, automobiles, and personal items, to an unnamed Saudi "public official" who "was in a position of influence regarding the [Saudi] Fighter Deals." BAE also provided benefits to the Saudi public official's "associates." These benefits were allegedly provided through various payment mechanisms in the U.S. and elsewhere, including through travel agents retained by an unnamed BAE employee, who was a "trusted confidant" of the Saudi public official.

In the Information, the DOJ alleges that BAE failed to review and scrutinize the payments and benefits provided to the Saudi public official and his associates according to the standards outlined in the November 2000 and May 2002 letters to the Department of Defense. In particular, from May 2001 to early 2002, BAE (1) failed to review adequately over \$5 million in invoices submitted by the unnamed BAE employee; (2) improperly used intermediaries and shell entities to conceal payments to advisors who were helping BAE secure sales to Saudi Arabia; and (3) agreed to transfer over \$25 million to a bank account in Switzerland controlled by an intermediary, despite knowing of the “high probability” that the “intermediary would transfer part of these payments” to the Saudi public official. The DOJ further alleged that even after the six- and twelve-month periods following the November 2000 letter from BAE to the Department of Defense had expired, BAE continued to engage and make payments to “marketing advisors” without conducting an appropriate anticorruption review of those payments. According to the DOJ, in many instances, BAE possessed no adequate evidence that its advisors were performing legitimate services or activities that justified their fees, but it nonetheless continued to work with them. Moreover, according to the DOJ, BAE took steps to conceal its relationships with certain marketing advisors by paying them through offshore shell entities, including an entity in the British Virgin Islands (the “Offshore Entity”), even though, in certain situations, BAE was aware of a high probability that part of the payments would be used in order to ensure that BAE was favored in foreign government decisions regarding the purchase of BAE products. According to the DOJ, BAE paid over \$230 million to marketing advisors through the Offshore Entity, during the relevant time period. In addition to the allegations relating to Saudi Arabia and to BAE’s marketing advisors, the Information alleges that BAE made improper payments totaling more than \$30 million in connection with leases of Gripen fighter jets to the Czech Republic and Hungary.

As part of the settlement with the DOJ, BAE has agreed to appoint an “ethics monitor” to sit on its marketing advisor compliance panel. Since 2007, BAE’s marketing advisor compliance panel has helped examine in detail every proposal to hire marketing or sales agents. Although the monitor will be a British national (likely a lawyer), his or her appointment will have to be approved by the DOJ — an unprecedented concession for one of Britain’s largest companies.

Significance of Global Settlement

As noted above, this global settlement is the product of the SFO’s highly publicized five-year investigation into the conduct of BAE. In the context of U.K. anticorruption enforcement efforts, the BAE investigation and settlement illustrate both the deficiencies of past enforcement efforts and the trend toward more vigorous investigation and prosecution of acts of overseas corruption by U.K. companies.¹ Although the U.K. portion of the global settlement is relatively small, it represents the largest fine paid to U.K. authorities to date in connection with allegations of overseas bribery.

¹ This trend is discussed more fully in our January 5, 2010, Client Memorandum, “Recent Enforcement Actions by U.K. Serious Fraud Office and Introduction of New U.K. Bribery Bill in Parliament Demonstrate Increased Focus on Corruption.”

Moreover, the global settlement highlights several important trends in anticorruption enforcement. First, the settlement is one of an increasing number of multi-jurisdictional anticorruption enforcement actions. Second, the \$447 million settlement illustrates the extent to which anticorruption penalties have increased in recent years. In particular, companies that are perceived not to have cooperated fully with U.S. regulators may face elevated penalties in settlements with the DOJ. Third, the case illustrates the DOJ's ability to craft charges that may be used to assert jurisdiction over foreign companies — in this case, by prosecuting alleged overseas bribery through allegations of criminal false statements under the AECA and other statutes and regulations. Finally, the global settlement demonstrates the willingness of U.S. and foreign enforcement authorities to structure a settlement in a way that will serve as a deterrent for future improper conduct, but does not threaten the corporate defendant's core business. In this case, the fact that the DOJ and the SFO alleged criminal false statement and accounting charges, respectively, rather than criminal bribery charges, allowed BAE to avoid a conviction that could have led to debarment from future government contracts in Europe or the U.S.

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