IN THE CROWN COURT AT SOUTHWARK

BETWEEN

SERIOUS FRAUD OFFICE

-V-

AMEC FOSTER WHEELER ENERGY LIMITED

(PREVIOUSLY KNOWN AS FOSTER WHEELER ENERGY LIMITED)

STATEMENT OF FACTS TO A DEFERRED PROSECUTION AGREEMENT PURSUANT TO PARAGRAPH 5(1) OF SCHEDULE 17 TO THE CRIME AND COURTS ACT 2013

INTRODUCTION

1. This is an agreed Statement of Facts in relation to a Deferred Prosecution Agreement ("**DPA**") about the alleged commission by Foster Wheeler Energy Limited (incorporated in England and Wales under registered number 01361134) ("**FWEL**") of offences of conspiracy to corrupt and failure to prevent bribery. It relates to the Indictment referred to in the DPA and numbered T20210867.

2. Concurrent investigations into the offending described herein taking place in Brazil are being conducted by:

   i. the US Department of Justice (the "**DOJ**");

   ii. the US Securities and Exchange Commission (the "**SEC**");

   iii. the Brazilian Ministério Público Federal (the "**MPF**");

   iv. the Brazilian Advocacia-Geral da União (the "**AGU**"); and

   v. the Brazilian Controladoria-Geral da União (the "**CGU**").

THE INDICTED ENTITY

3. For the entire period of the alleged offending (between 1996 and 2014), FWEL was a UK-incorporated, wholly-owned subsidiary of Foster Wheeler Corporation until 2001, FW Ltd (as defined in paragraph 169 below) from 2001 until 2009, and Foster Wheeler AG (formerly Foster Wheeler Inc.) from 2009 onwards ("**FW**" and together with its subsidiaries, the "**Foster Wheeler**

Group"). It remains a subsidiary of FW (which as described below is itself now a subsidiary of Wood).

4. The Foster Wheeler Group was a global engineering conglomerate. FWEL acted as the Foster Wheeler Group's principal UK operating entity. For the period of the alleged offending, FWEL's registered office was located in Reading, UK. The Reading office also served as the Foster Wheeler Group's UK headquarters. FWEL was a contractor that designed, engineered and constructed onshore and offshore upstream oil and gas processing facilities, oil refining, chemical, and petrochemical facilities. FWEL operated internationally and entered into contracts worth hundreds of millions of Pound Sterling, often with state-owned energy companies, for the supply of services. The alleged offending relates to FWEL's activities in furtherance of this business.

5. For almost the entire period of the alleged offending (and certainly until 2013) the Foster Wheeler Group consisted of five business units, the largest of which was the United Kingdom Business Unit (the "**UKBU**"). The UKBU was managed by FWEL's leadership team. The UKBU managed and administered a broad scope of global entities, including Foster Wheeler Group subsidiaries who operated in some of the jurisdictions specified in the Indictment.

6. On 13 November 2014, Amec plc, a multinational engineering, project management and consultancy company operating in the oil and gas sector, acquired the Foster Wheeler Group, including FWEL. Amec plc, was listed on the London Stock Exchange and was headquartered in London, UK. On the acquisition of the Foster Wheeler Group, Amec plc changed its name to Amec Foster Wheeler plc.

7. On 16 January 2015, FWEL changed its name to Amec Foster Wheeler Energy Limited ("**AFWEL**").

8. On 9 October 2017, John Wood Group PLC ("**Wood**"), a multinational energy services and consultancy company with headquarters in Aberdeen, Scotland, acquired AFW and its subsidiaries, including AFWEL. Wood is listed on the London Stock Exchange and is a constituent of the FTSE 250 Index. Wood, through its subsidiaries, owns 100% of the shares in AFWEL.

9. For the entire period of the alleged offending, the indicted entity's name was FWEL. In this agreed Statement of Facts, we therefore refer to "FWEL" when describing the alleged offending.

THE INVESTIGATION

10. In early 2016, the Serious Fraud Office (the "**SFO**") opened a criminal investigation into the activities of Unaoil Monaco SAM ("**Unaoil**"), its officers, its employees and its agents in connection with suspected offences of bribery, corruption and money laundering. In April 2017, as part of its criminal investigation into the activities of Unaoil, the SFO sought information from AFW in respect of its concerns regarding the use by FWEL of agents to obtain a contract to provide design and engineering services on a gas-to-chemical complex in Brazil from 2011. In the months that followed, AFW provided the SFO with a large volume of material and information, both pursuant to notices issued under section 2 of the Criminal Justice Act 1987and on a voluntary basis.

11. On 11 July 2017, the SFO announced its investigation into the activities of AFW and any other predecessor companies owning or controlling the Foster Wheeler Group in connection with suspected offences of bribery, corruption and money laundering.

12. In the course of the investigation, the SFO has identified evidence which demonstrates that FWEL used agents to assist it in obtaining or retaining business, or an advantage in the conduct of business. The SFO alleges that FWEL's employees and directors conspired with others (most notably agents) to make corrupt payments to public officials in connection with contracts obtained by it and other entities within the Foster Wheeler Group in the oil, gas and petrochemicals industries. In addition, in the period after July 2011 when the Bribery Act 2010 came into force, FWEL failed to prevent those associated with it from committing bribery in Brazil and did not have in place adequate procedures to prevent those associated with it from bribing.

13. On at least four occasions between 2007 and 2010, senior employees and directors within the Foster Wheeler Group instructed an external law firm to conduct internal investigations into suspicions that employees within FWEL (including senior employees and directors) had engaged in corrupt activities and in some instances had concealed these activities. Despite these investigations uncovering evidence that FWEL senior employees and directors may have violated applicable laws relating to bribery and appropriate record keeping, the Foster Wheeler Group did not report the outcome of these investigations to authorities in any jurisdiction, including the UK, at the time.

14. The SFO's extensive and wide-ranging investigation has involved the examination and analysis of a large volume of material. This includes (but is not limited to):

    i. Reports of internal investigations commissioned by the Foster Wheeler Group into FWEL's activities during the period of the alleged offending;

    ii. Key documents identified during the above referenced internal investigations;

    iii. Complete digital repositories relevant to projects and agents of interest to the SFO;

    iv. Email containers belonging to Foster Wheeler Group employees of relevance to the investigation; and

    v. Relevant financial and personnel records.

15. The SFO has conducted a significant number of interviews with former employees of the Foster Wheeler Group and AFW, as well as current and former employees of agent companies used by FWEL.

16. Since the date of completing its acquisition of AFW in October 2017, Wood has cooperated extensively with the SFO's investigation. This cooperation has included:

    i. Agreeing to a limited waiver of legal professional privilege for the purposes of the SFO

investigation over advice received by the Foster Wheeler Group during the period of the alleged offending with respect to FWEL's dealings with agents, and public and quasi-public officials in the oil and gas sector;

ii. Assisting the SFO by identifying potentially relevant material and matters of potential interest;

iii. Providing extensive and detailed presentations with supporting documentation of internal investigations conducted by Wood into legacy Foster Wheeler Group agents, including providing previously unseen documentation on a voluntary basis;

iv. Conducting an extensive remediation programme, designed to terminate all relationships with legacy sales agents, unless such sales agents are required by the law of that jurisdiction; and

v. Maintaining legacy Foster Wheeler entities and their data.

17. Following Wood's acquisition of AFW in October 2017, AFW (and its subsidiaries, including AFWEL) have been incorporated into Wood's Ethics & Compliance ("**E&C**") Programme. The E&C Programme applies uniformly across the group (including to the absorbed AFW entities), and comprises:

i. Wood's Code of Conduct and underlying suite of E&C policies;

ii. Robust governance by and support from Board members via the Safety, Assurance and Business Ethics Forum;

iii. The requirement that all of Wood's employees must adhere to the E&C Programme and Wood's Code of Conduct (including an annual Code certification process);

iv. A risk-based multi-layered E&C training and communications programme;

v. Encouragement for senior employees to demonstrate explicitly the right tone from the top and encourage an ethical culture, including through the use of "Ethics Moments" at the start of meetings;

vi. The requirement that all Wood employees must "Speak Up" and report breaches of the E&C Programme and the Code of Conduct – if necessary anonymously through Wood's Ethics Reporting Hotline; and

vii. Adherence to Wood's anti-retaliation policy; senior management must have zero tolerance for retaliatory measures towards staff who speak out on compliance issues.

18. The SFO's investigation into the conduct of individuals implicated in the alleged criminality continues.

THE INDICTMENT

19. The Indictment reflects the following alleged offending by FWEL:

    i. A conspiracy to make corrupt payments to officials in Nigeria to ensure payment of invoices submitted under a contract for services in petrochemicals between 1996 and 2004 (Count 1);

    ii. A conspiracy to make corrupt payments to public officials to settle allegations of tax evasion in Nigeria between 2003 and 2004 (Count 2);

    iii. Conspiracies to make corrupt payments to public officials to ensure that a Foster Wheeler Group entity had the necessary labour law authorisations for projects in Saudi Arabia, and was granted the necessary visas for the work force to complete projects on which it was contracted between 2004 and 2007 (Counts 3 and 4);

    iv. Conspiracies to make corrupt payments to public officials in Malaysia in connection with the award of contracts for services in gas-based petrochemicals between 1997 and 2010 (Counts 5 to 8);

    v. A conspiracy to make corrupt payments to public officials in India in connection with the award of a contract on an oil refinery project in India between 2005 and 2012 (Count 9); and

    vi. Failing to prevent bribery in connection with a contract for services in gas-based petrochemicals in Brazil between 2011 and 2014 (Count 10).

20. The SFO's investigation also focused on FWEL's dealings with agents, and public or quasi-public officials in jurisdictions other than those specified in the Indictment. However, the investigation into FWEL's dealings in those other jurisdictions was either considered incapable of giving rise to or did not result in there being sufficient evidence to meet either of the two evidential thresholds specified in the DPA Code of Practice.

APPLICABLE STANDARDS AND COMPLIANCE POLICIES AND PROCEDURES AT FWEL

21. During much of the period of the alleged offending, the Foster Wheeler Group and FWEL had in place compliance policies and procedures that governed the use of sales representatives, agents and others acting in a similar capacity (together "**Agents**") and prohibited employees from engaging in bribery. Despite these policies and procedures, senior employees and directors of FWEL engaged in corrupt activities, and, on a number of occasions, senior employees and directors within the Foster Wheeler Group were made aware of suspicions relating to this activity.

THE CODE OF ETHICS AND THE CODE OF BUSINESS CONDUCT & ETHICS

22. In August 2001, FWEL issued an 'Employee Handbook' (the "**Handbook**"). From that date until

November 2004, the Handbook contained a section entitled "Corporate Code of Ethics" which included the following wording:

> "*Payments intended for government officials disguised as compensation to agents, consultant fees and the like violate the law as much as direct payments and are not to be made. The United States and all civilised countries have laws prohibiting commercial bribery in any form, some of which provide for penalties as severe as life imprisonment or death. No employee of Foster Wheeler is authorised to pay, direct or permit payments of a bribe or kickback, however labelled, regardless of any benefit that may derive to the company from the making of such payment*".

23. The Handbook contained procedures designed to ensure that the use of Agents should be properly documented and those Agents subject to due diligence.

24. In November 2004, the Foster Wheeler Group issued a Code of Business Conduct & Ethics (the "**Ethics Code**"). It remained in use from 2004 until the Foster Wheeler Group was acquired by AFW in November 2014. The Ethics Code contained ethical principles applicable to all Foster Wheeler Group employees, including FWEL employees. It contained the following relevant ethical principles:

    i. That Foster Wheeler Group employees should comply with all laws, rules and regulations applicable to the Foster Wheeler Group's operations, including those relating to bribery and corruption.

    ii. That the Foster Wheeler Group did not condone or tolerate fraudulent behaviour or activity of any type, regardless of the nature or materiality thereof or whether constituting financial fraud or any other fraudulent business activity or behaviour.

    iii. That facilitation payments (i.e. payments to any foreign official to facilitate or expedite the performance of a routine governmental action by a foreign official) constituted fraudulent behaviour for the purposes of the Ethics Code.

    iv. That Foster Wheeler Group employees should not offer or exchange any gifts, gratuities or favours with, or pay for meals, entertainment, travel or other similar expenses for, employees of governments or governmental entities.

POLICIES APPLICABLE TO THE USE OF AGENTS BY FWEL BETWEEN APRIL 1995 AND SEPTEMBER 2008

25. From April 1995 to June 2006, the engagement of Agents was carried out under the terms of the Foster Wheeler Group Corporate Policy Letter 21: Appointments of Sales Representatives, Agents and Consultants ("**CPL 21**"). This applied to FWEL. CPL 21 provided that due diligence should be conducted on all prospective Agents, and that agreements with Agents should include a representation to the effect that the Agent would

not engage in bribery or corruption with respect to the business of the Foster Wheeler Group.

26. This was supplemented in November 2003 by the issuance of the "Procedure for Managing the Appointment of Sales Representatives, Agents and Consultants" which applied to FWEL. This provided that there must be in place a written agreement between FWEL and any engaged Agent.

27. From June 2006, the engagement of Agents by FWEL was carried out under Global E&C Group Policy Letter 005 *Engagement of Sales Agents/Representatives*. Under this procedure, agency agreements were to be approved by FWEL's Legal Department to ensure compliance with Foster Wheeler Group policies, the Ethics Code and applicable laws. This was supplemented by a procedure entitled "*E&C-PROC-002 regarding Agent Agreements*" in international territories, which provided that due diligence should be conducted on a prospective Agent of FWEL, and that such an Agent should sign a consultancy agreement containing a representation to the effect that the Agent would not engage in bribery or corruption in furtherance of the Foster Wheeler Group's business.

SIGNIFICANT BREACH OF POLICY IN 2007

28. In 2007, a significant breach of the Ethics Code was identified during an audit of activities in Saudi Arabia. The conduct identified in that audit related to the activities underlying counts 3 and 4 of the Indictment. This significant breach resulted in an internal investigation being carried out by an external law firm, and the production of a report dated 1 October 2007. That report concluded that several senior employees and directors at FWEL had engaged in activities which were likely to be a breach of certain applicable anti-bribery legislation.

CP 1.11

29. The resulting corporate review led to the introduction in September 2008 of Company Corporate Procedure 1.11 ("**CP 1.11**") in relation to the engagement of Agents. CP 1.11 applied to FWEL.

30. CP 1.11 required that Agents provide detailed information in a questionnaire and then should be subject to due diligence by an independent verification provider. It also required that written approval to engage an Agent be provided by three persons at FWEL: the Chief Executive Officer, the Chief Legal Officer and either the Head of Global Sales Management or the relevant commercial unit engaging the Agent.

31. Pursuant to CP 1.11, the Chief Legal Officer of the applicable Operating Unit was to retain the relevant documentation relating to relationships with Agents.

32. From April 2011, Certificates of Compliance were introduced as a requirement. These were to be signed by the Agent and the Regional Vice President of the Global Sales and Marketing Division of the Foster Wheeler Group, certifying that the Agent would not commit to any work

on FWEL's behalf, nor receive any monies, until necessary due diligence was passed and the agency agreement was in place.

33. Despite the policies and procedures in place, in the course of its investigation, the SFO became aware of a practice within FWEL of using Agents without informing FWEL's compliance department., This was described by a FWEL employee who was interviewed by the SFO about matters relating to compliance and culture at FWEL as a "*try before you buy"* culture.

34. The SFO's investigation identified multiple occasions on which the above policies and procedures were circumvented and breached, leading the SFO to conclude that there existed within FWEL a culture of disregard for compliance policies and procedures.

COUNT 1 (NIGERIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED, (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED), between the 1st day of March 1996 and the 30th day of June 2004, conspired with certain of its employees and others to make corrupt payments to officials in the Nigerian National Petroleum Company, the Eleme Petrochemical Company Limited, and the Central Bank of Nigeria, as an inducement and / or reward to ensure that payments were made to FW Management Operations (U.K.) Limited (incorporated in England and Wales under registered number 01628475) for invoices submitted under contracts for services in Nigeria.

SUMMARY

35. Between 1996 and 2004, FWEL conspired with others to make corrupt payments to officials at the Nigerian National Petroleum Corporation ("**NNPC**"), the Eleme Petrochemical Company Limited ("**EPCL**") and the Central Bank of Nigeria (the "**CBN**"). This was to ensure the release of delayed payments legitimately due to a Foster Wheeler Group subsidiary, FW Management Operations (U.K.) Limited (now dissolved) ("**FWMOL**"), under invoices for work carried out in respect of a contract for technical back-up services with EPCL. Senior employees and directors at FWEL used an agent, **CA1**, as a conduit and facilitator to make such corrupt payments.

FACTS

36. Foster Wheeler Group projects in Nigeria were executed by FWMOL and overseen by the

UKBU, which in turn was managed by the executive leadership of FWEL. On 16 June 1995, FWMOL signed a contract with EPCL to operate and maintain the EPCL Complex Olefins Plant at Eleme, Port Harcourt, Nigeria (the "**Eleme Contract**"). The Eleme Contract was administered, and receivables managed, from the FWEL headquarters in Reading. EPCL was, at the time, a subsidiary of NNPC.

37. For the purpose of this agreed Statement of Facts, there were two significant terms within the Eleme Contract; first, that FWMOL should present NNPC with monthly invoices, with payment to be made within 30 days of presentation of the invoice, and second, that FWMOL undertook not to engage in any form of bribery with respect to any servant, agent or employee of NNPC.

38. In fact, FWMOL repeatedly faced delays in receiving payment of its invoices and, with director-level sanction within FWEL, engaged in arranging corrupt payments to be made to officials within NNPC in order to ensure payments due were made under those invoices.

39. By March 1996, FWMOL was experiencing significant delays in payment of its invoices, despite fulfilling its obligations under the Eleme Contract. FWMOL engaged an agent, **CA1**, to assist in securing the payment of FWMOL's invoices through **CA1**'s access to officials in NNPC, EPCL management, and within the Nigerian government.

40. **CA1** was engaged pursuant to a consultancy agreement dated 27 March 1996 with FWMOL. The primary reason for **CA1**'s engagement was to facilitate the release of monies owed by NNPC and EPCL to FWMOL under the Eleme Contract, in return for 10% of the value of the payments made to FWMOL by NNPC and EPCL. FWMOL estimated that it was at that time invoicing NNPC and EPCL at a rate of around US Dollars (US$) 500,000 per month. **IA1** was the proprietor and Chief Executive of **CA1**.

41. The main points of contact between the parties were **FWE1**, a senior employee of FWMOL and **FWE2**, and **IA1** and **IA2** for **CA1**. **FWE1** would report back to **FWE2** to give him updates on the receivables due to FWMOL under the Eleme Contract.

42. **CA1** was also used by FWMOL and FWEL as a vehicle to deliver bribes to end recipients in Nigeria. In August 1997, **IA1** requested in a fax to **FWE1** that the sum of US$121,950 be remitted to a Citi Bank Account in New York in the name of "*OM Oil Industries Ltd*". The remitter was to be "*Montgomery Ventures*". **IA1** indicated that following this he would ensure a bank draft for encashment would be available in Lagos, Nigeria. The evidence indicates that the purpose of this bank draft was to ensure that cash was available to pay bribes in Nigeria and to shield FWMOL's practices in case of detailed scrutiny of its records.

43. By 1998, the situation regarding outstanding payments due to FWMOL under the Eleme Contract was becoming more pressing for the business. In May 1998, **FWE1** set out in an email to **FWE2** and others his relationship with **SO1**. **FWE1** confirmed he had agreed with **SO1** that, in the event that a remittance of US$3,719,197 was received (part of the receivables

due to FWMOL) by 29 May 1998, FW would pay a sum of US$10,000 to a bank account nominated by **SO1** within 72 hours of the receipt of the receivables.

44. The contact between **SO1** and **FWE1** continued, as **FWE1** attempted to use **SO1** to expedite the payment of the amounts due to FWMOL. However, despite **SO1** saying the payment should be made by 29 May 1998, it failed to materialise. On 31 May 1998, **FWE1** notified **FWE2** of his intention to engage **CA1** "*to use their influence to expedite payments from this source*" (i.e. from EPCL).

45. **CA1** appears to have been engaged to make cash available in Nigeria. The evidence indicates that the purpose of this cash being made available in-country was so as to enable corrupt payments to be made to officials. In late August 1998, **CA1** provided a bank draft for Nigerian Naira (NGN) 4,000,000 in cash to **FWE3** of Foster Wheeler (Nigeria) Limited ("**FWNL**") (a subsidiary of the Foster Wheeler Group based in Nigeria) in exchange for payment from FW of US$48,745. In early September 1998, **CA1** provided US$28,000 to **FWE1** while on a trip to Nigeria, following **CA1** having invoiced FW for US$28,400.

46. Throughout 1998 and 1999, FWMOL's and **CA1**'s efforts to secure payment of FWMOL's invoices under the Eleme Contract continued with limited success. By June 1999, FWMOL's receivables under the Eleme Contract were US$7 million in arrears.

47. By late 1999, it was acknowledged in email correspondence, including by **FWE2** that improper incentives were being given to those in the NNPC and EPCL in order for payment of invoices under the Eleme Contract to be made to FWMOL. **FWE1** wrote to **FWE2** in November 1999, asking for his opinion on gifts to be made to NNPC and EPCL officials, stating "*As many of our Nigerian friends were expecting a visit from Santa Claus during October, do you have any suggestion as to what we can use to fill their Christmas stockings during my forthcoming trip*". He then listed various officials to whom he thought gifts should be given. These officials included **SO2**, **SO3**, **SO4**, and **SO5**. The intention was stated to be for **FWE1** himself to pay those individuals on a forthcoming trip to Nigeria, whereas other employees would be "*rewarded once the outstanding receivables have been cleared*". There is no evidence to show whether or not such bribes were subsequently paid in 1999.

48. In March 2000, **FWE1** and **FWE2** openly discussed in emails previous bribes paid to NNPC EPCL, and CBN officials, with **FWE1** noting in an email to **FWE2** "*Re our discussion, previous payments made to* **SO5** *when he was* [in his previous role]". **FWE1** then made suggestions in respect of proposed payments to be made by him on a forthcoming trip to Nigeria, including details of the amounts proposed in relation to each official (amounting to US$28,000 in total), with **FWE1** to "*organise funds via* **[IA1]** *as before*" if **FWE2** agreed to the proposal. Correspondence between **FWE1** and **FWE2** in December 2000 states that £3,000 was paid to EPCL officials in March 2000. There is evidence from which it can be properly inferred that the purpose of these payments was so as to corrupt the actions of such officials.

49. In September 2000, following concerns having been raised at director level regarding the effectiveness of **CA1**, **IA1** wrote to **FWE2** confirming that **CA1** was actively involved in securing FWMOL's payments by "*working with the Nigerian Ministers and at each management level within NNPC as appropriate*". **IA1** said that to that end, he had met with the officials responsible for the project to express concerns over the deteriorating situation with operational and payment difficulties and that they had "*expressed their personal concern and willingness to intervene to bring the project back on line and to expedite late payment*".

50. In late October 2000, **FWE1** met with **SO3** in the UK. **FWE1** gave **FWE2** and **FWE4** details of the meeting, including the discussion of outstanding payments. **FWE1**'s email then suggested that, in a forthcoming trip to Nigeria in December (which ultimately did not go ahead in 2000), he should make payments to individuals in the EPCL "*to 'thank' the relevant EPCL personnel for the 'efforts / support'*", justifying the amounts he proposed to pay and highlighting the efficacy of previous payments in releasing outstanding payments.

51. In December 2000, **FWE2** also asked **FWE1** how much money they had "*paid away to 'third parties'*" during their association with **CA1**. **FWE1** replied with a detailed breakdown of sums paid to NNPC, EPCL, and CBN officials, between June 1997 and June 2000 (totalling £79,700).

52. On 12 December 2000, **FWE1** wrote to **IA1**, providing details of further proposed payments to EPCL personnel. **IA2** agreed, on 20 December 2000, that **CA1** would contribute 50% of the total of the list of payments, to be deducted from **CA1**'s next invoice and, for future payments, **CA1** would contribute 100% of payments up to £5,000 and 50% of payments above £5,000.

53. **FWE1** wrote to **FWE2**, copying **FWE4** regarding when payments ought to be paid to individuals, saying that previous payments had been determined by the amount received from NNPC / EPCL. **FWE1** went on to say that he would "*not recommend any form of 'appreciation' for amounts less than US$1.5m*". **FWE1** also outlined the method by which previous payments were made: "*On the previous two occasions we have disbursed significant payments,* **[CA1]** *has made the funds available locally and billed for us for the relevant amount plus an arrangement fee of approximately 5%".*

54. In March 2001, it was confirmed that the proposed bribes to individuals discussed in December 2000 had been made with the assistance of **CA1**. **CA1** subsequently submitted their invoice for £20,750 to enable "*the total amount of GBP £39,600 to be made available locally for disbursement to the individuals named*".

55. By late April 2001, the Foster Wheeler Group decided to scale down its relationship with EPCL. Large amounts of money owed to FWMOL under the Eleme Contract remained outstanding. Between 2001 and 2004, FWMOL attempted to reach a final settlement on the sums owed with the continued assistance of **CA1** and their contacts in NNPC, EPCL, and the

Nigerian government.

56. In trying to secure final settlement of the monies owed to it, FWMOL encountered lengthy delays. Again, the payment of bribes to secure payment of the monies owed was discussed. In December 2001, having not made any progress, **FWE1** told **FWE2** and **FWE5** that he "*may well need to do the usual 'rounds' in Port Harcourt and Abuja*".

57. In November 2002, **FWE1** and **IA1** again discussed by email a proposal to make payments to NNPC and EPCL officials, specifically for the purpose of securing the final monies owed to FWMOL. The proposal listed 27 payments, as follows:

    i. a total of US$13,200 to five officials within NNPC Refining & Petrochemicals;

    ii. a total of US$27,800 to 15 officials within NNPC Financial & Accounting; and

    iii. a total of US$20,000 to officials in EPCL Management, Financial & Accounting.

58. The evidence demonstrates that all of these listed payments were intended to be paid to Nigerian officials with the hope that they would induce the expediting of relevant payments due to FWEL.

59. **FWE1** referred to the efficacy of the last "*disbursement of funds*" in June 2000, which secured over US$7m in payments due to FWMOL, and to promises made to certain NNPC, EPCL and CBN officials involved with the payment of FWMOL's invoices to "*secure their assistance*", noting that while some of those individuals would "*not take any action to delay our final payment, unfortunately the same cannot be said for some of the others*". **FWE1** noted that "*third party payments to date amount to US 120,050 for receipts of US 23,269,959.32*". **IA1** agreed that the proposal represented the worst case scenario which he hoped would be "*unnecessary but nevertheless may still have to be exercised*". It appears these specific payments were not eventually made.

60. In March 2003, **FWE1** reported back to **FWE2** in respect of the ongoing issues with settlement of the monies due to FWMOL under the Eleme Contract. **FWE2** and **FWE1** went on to discuss how individuals in EPCL may have been causing difficulties and appeared to be "*playing their usual games*". In this respect, **FWE1** noted that EPCL management did not appear to be unaware of or discourage this practice as the "*modus operandi*" of the lower level EPCL personnel. **FWE2** asked whether "*we have a game plan to thank the EPCL individuals for their efforts on our behalf. If yes, how do we 'advertise' this so that they help us with the last payment*". **FWE1** replied by indicating that EPCL officials would be told in advance that **FWE1** would be coming to see them to discuss the outstanding payment situation and that **IA1** would arrange for the "*usual 'local assistance*" to be available on the understanding that he and **CA1** would be remunerated for doing so.

61. The following month, **FWE1**, **IA1** and **FWE2** discussed further the payments to be made to

individuals to secure payments of the outstanding amounts from EPCL and NNPC, with **FWE1** referring to US$61,000 being required for the "*Nigerian Give Me Some Money For Doing My Job Fund*" and saying that "*we may need to increase and / or decrease the individual amounts depending on who is creating the most problems / difficulties*".

62. Whilst the discussions regarding payments to individuals in Nigeria continued, **IA1** proposed an alternative method of securing payment by using his own contact, ("**C1**") on the Board of Directors of EPCL. **IA1** had advised **FWE1** that it may not be necessary for FWE1 to visit Nigeria "*to expedite matters by way of the usual 'hand shaking'*" as **C1** could "*arrange for* [his contact] *to do the business on a more competitive basis*". This became known as the "C1 *initiative*"

63. In an email on 10 April 2003, **IA1** emailed **FWE1** to confirm that they had engaged **C2** "*with the specific tasks of clearing the remaining sums due to FWMOL*". **IA1** said it was difficult to specify a time frame at this stage and anticipated knowing the actual position in early May, at which time **FWE1** could decide to "*keep with this approach or otherwise*". The estimated cost of this was given by **IA1** as US$25,000 – 30,000, "*excluding the ultimate 'thank you' to* [X]v*should* **[FWE2]** *still be of a mind to do that in due course*" (the reference to X is understood to be a reference to **SO3.**

64. In an email dated 22 April 2003, **FWE1** detailed the various initiatives that were being considered to secure the outstanding payments to FWMOL under the Eleme Contract: (i) ongoing efforts by **SO6** to resolve the payment issue, (ii) the **C1** Initiative, and (iii) a proposed trip by **FWE1** to NNPC's offices in Nigeria in order to arrange the distribution of payments to 19 EPCL, 33 NNPC and 14 CBN employees, with a total cost of US$80,000 – 95,000. It was customary at this time for **FWE1** to assist with the distribution of such payments. **FWE1** asked **FWE2** what his preferred course of action would be, and **FWE2** responded by asking for a meeting to discuss the matter, including details of who they had made payments to recently, saying "*I thought we have paid out as recently as six invoices ago. We did a deal with* [**IA1**] *to get these costs knocked off his commission because we were paying twice*".

65. Thereafter FWMOL tried to reclaim money from **CA1** for what they saw as ineffective previous payments, in that the payments had not resulted in FWMOL receiving its outstanding payments under the Eleme Contract. **IA1** eventually offered that **CA1** would pay US$15,000 towards the proposed "*disbursements*" in order to secure the final payment of monies due under the Eleme Contract, and forego its usual arrangement fee. There is evidence from which it can be properly inferred that these monies were paid to those with the ability to influence decision-making on the Eleme project; i.e. Nigerian officials. **IA1** also offered to reduce FWMOL's costs by arranging distribution of money to individuals in Nigeria on FWMOL's behalf in order to save on travel costs. **FWE1** referred this offer to **FWE2** for his approval.

66. In July 2003, **IA1** and **CA1** arranged for US$71,320 to be held for collection by **FWE1** for collection in Nigeria. On 26 August 2003, **FWE2** told **FWE5** that **FWE1** was on a flight to Port Harcourt with "*inducements*" to hopefully secure payments due to FWMOL under the Eleme Contract by the end of September 2003.

67. On 14 September 2003, **FWE1** reported back to **FWE2** that he had met with relevant NNPC, CBN and EPCL officials and was confident that a final payment of US$578,272.54 would be paid to FWMOL by the end of September 2003. However, this was not forthcoming, apparently owing to lack of funds at EPCL who were waiting on the sale of some cargo.

68. **FWE1** thereafter made concerted efforts to resurrect his "*friendship*" with **SO1**, who apparently had a role in generating EPCL funds. He discussed with **FWE2** whether **SO1** would require payment and whether he had been paid previously. After some further discussions over the final reconciliation figure, the EPCL eventually agreed a final amount (US$258,608.63) that was due to FWMOL under the Eleme Contract. This payment was eventually made to FWMOL in June 2004.

COUNT 2 (NIGERIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED), between the 1st day of November 2003 and the 30th day of May 2004, conspired with certain of its employees and others to make corrupt payments to Nigerian police and tax officials as an inducement and / or reward to settle an allegation of tax evasion against Foster Wheeler (Nigeria) Limited (incorporated in Nigeria under registered number 12992).

SUMMARY

69. Between 2003 and 2004, employees of FWEL engaged in a conspiracy to pay cash and provide other benefits to public officials in order to reduce FWNL's tax liabilities in Nigeria by £255,200. The recipients of the bribes were officials from the Nigerian Police and the River State Board of Inland Revenue ("**RSBIR**").

FACTS

70. In November 2003, FWNL, the local Nigerian Foster Wheeler entity, was accused of fraud by the Nigerian Police. **FWE3** was invited to attend Port Harcourt Police Station on 12 December

2003. Despite enquiries made by **FWE3**, the Police would not disclose the basis of the fraud allegation. **FWE3** was told that because the general manager of FWNL had not attended the Port Harcourt Police Station voluntarily on 12 December the police intended to issue a warrant for the general manager's arrest. In internal correspondence, **FWE1** speculated that it related to some form of tax investigation.

71. **FWE3** attended Port Harcourt Police Station on 14 January 2004, along with instructed lawyers and representatives of **ACF1**. During that visit, a petition was read out, making reference to RSBIR, which detailed, among other matters, allegations relating to FWNL having faked government tax receipts, failing to remit tax revenue and making no official payments. **FWE3** was asked to state if FWNL paid taxes or not and responded that FWNL had paid all of its taxes. **FWE3** was then put behind the counter, which meant that **FWE3** would be detained in custody for the evening. Owing to the presence of **FWE3's** lawyers and a few calls '*to people we knew*' **FWE3** eventually released and asked to come back the following day. The following day, **FWE3** returned to Port Harcourt Police Station and was officially bailed and a bail bond of NGN 500,000 was signed by their surety. **FWE3's** surety was asked to produce FWE3 on 10 February 2004 with all the documents proving that FWNL had paid its taxes.

72. As required, **FWE3** visited Port Harcourt Police Station in February 2004, along with instructed lawyers and personnel from **ACF1**. An official from the RSBIR was present and examined the documents provided by **FWE3** as requested, which evidenced that FWNL had paid taxes up to June 2001. The RSBIR official alleged that FWNL had a tax debt from 1999 and there were issues with FW's tax returns between 1998 and 2001. **FWE3** reported back on this visit to **FWE6**. **FWE6** had, since February 2004, been given compliance responsibilities as part of his role. In an email copied to **FWE2** and **FWE1** it was stated that "*He* [the official from RSBIR] *then said we (FWN) have a debt we owe to the Rivers State Government since 1999 and it is for that we are being accused of evading taxes.* [**SO7]** *said the state government served us a demand notice in 1999, in which we were asked to make a payment of about N23,000,000.00 I told him we did not receive this notice…* **[SO7]** *now threatened to leave the case to be a police case if we insist that they did not deliver this letter. He insisted that he personally delivered the letter to our office in EPCL at that time… The issue at stake now is the inadequacy of tax returns made between 1998 and 2001*".

73. **FWE1** forwarded this email to **FWE7**, who in response asked whether anything further was required from Reading to remedy the situation. **FWE1** indicated that a "*financial settlement (brown envelope)*" would have to be made to the petitioner from RSBIR and to the police officer in Port Harcourt, with **FWE2** to approve the final amount.

74. On 23 February 2004, FWNL received a letter dated 11 February 2004 from the RSBIR setting out what was alleged to be FWNL's tax liability between 1998 and 2000 as NGN 61,565,327.41 (an increase of approximately NGN 38 million from the sum the RSBIR official

had told **FWE3** the outstanding amount was). The RSBIR's letter invited payment within seven days.

75. FWNL sought advice on the alleged tax liability from **ACF1**. In March 2004, **ACF1** informed **FWE3** that they had objected to the additional tax which FWNL had been requested to pay and were discussing the matter with RSBIR. **ACF1** advised that an amount of NGN 9,706,876.18 was a more realistic figure for the outstanding tax liability.

76. At a Foster Wheeler Group staff meeting on 10 May 2004, where attendees included **FWE2**, the subject of a police bribe appears to have been openly discussed. The minutes of this meeting refer to "*Nigeria – 1998 – 2000 Assessment*" and go on to state "*Police involved in Port Harcourt.* **[FWE1]/[FWE6]** *spoke 7/5. £100K – half = police bribe*".

77. A deal was eventually reached between **ACF1** and RSBIR for settlement of the tax issue around 18 May 2004, which can be broken down as follows:

    i. Withholding tax. A bank draft for NGN 482,787.80 was to be issued to the Federal Inland Revenue Service and NGN 700,000 was to be supplied in cash.

    ii. PAYE contributions. A bank draft for NGN 9,200,000 was to be issued to the RSBIR. In addition, a cash amount of NGN 1,500,000 and two first class British Airways air tickets were to be supplied.

78. In return, tax clearance certificates up to 31 December 2003 and a letter from the police authorities would be issued, confirming that FWNL had been cleared of fraud. In real terms, **FWE1** estimated that this amounted to payment of £5,000 in respect of the withholding tax, and £46,800 in respect of PAYE. Although this was a "*bitter pill to swallow" for FWNL, this represented "a significant reduction [from] the initial assessment of £190k*".

79. **FWE1** discussed the payments with **FWE8** and other senior staff, indicating that the cash payments were a concern from an internal audit perspective. Accordingly, **CA1** was used to facilitate the disbursement of the payments to Nigeria, before disbursement by FWNL and **ACF1** to the end recipients.

80. In an email of 21 May 2004, it was agreed that all payments to settle the tax issue would be booked and paid through FWNL. **CA1** would be used to raise the cash figures in Nigeria for disbursement, which **FWE1** was to arrange and expedite. **FWE8** gave his permission to proceed with the proposals. It was later noted that the money being used to make the payments was remitted from Reading. **CA1** agreed to the arrangement and to deliver the cash once they had received instructions.

81. It was subsequently stated in an email sent by **FWE3** in June 2004, that, on the advice of **ACF1**, "*the idea of air tickets was only for invoicing purposes and the persons concerned will want cash without any deductions*". The sum of NGN 973,350 was subsequently released in

cash "*to cover two first class air tickets*".

82. In 2008 and 2009, an internal investigation into the conduct in Nigeria was conducted by an international law firm to assess potential liability under US law. Despite finding evidence that payments were made to Nigerian government officials for two separate purposes: in connection with obtaining outstanding payments of invoices on the Eleme Contract, and in connection with the settlement of tax controversies with state and federal authorities in Nigeria, no disclosures were made to relevant law enforcement authorities at the time.

COUNT 3 (SAUDI ARABIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED), between the 1st day of June 2004 and the 30th day of November 2007, conspired with certain of its employees and others to make corrupt payments, namely 403,000 Saudi Arabian Riyals, by their employees, servants or agents to officials in the Saudi Arabian Ministry of Labour Offices, as inducements and / or rewards to ensure that block visas were granted and / or processed more quickly for FOSTER WHEELER ENERGY LIMITED and/or Foster Wheeler Arabia, Ltd (incorporated in Delaware, USA and with the registration number of 2305742) projects in Saudi Arabia.

SUMMARY

83. Between 1 June 2004 and 30 November 2007, certain directors and senior employees at FWEL conspired with others to make payments of SAR 403,000 to public officials in the Saudi Arabian Labour Ministry through an agent in order to secure and / or expedite the granting of work visas for foreign personnel working on FWAL projects in Saudi Arabia. The payments also allowed FWEL and FWAL to circumvent certain labour law requirements relating to the required number of Saudi Arabian nationals that should work on such projects in Saudi Arabia. The corrupt payments were made through a FWAL employee in Saudi Arabia, **FWE9**, and an agent in Riyadh.

FACTS

84. Foster Wheeler Arabia, Ltd ("**FWAL**") was a Delaware incorporated company and a subsidiary within the Foster Wheeler Group. FWAL was set up as a vehicle for operational and procurement activities for Foster Wheeler Group projects in Saudi Arabia. It was placed under

the umbrella of the UKBU, which was managed by the senior leadership of FWEL from its Reading office. FWEL had responsibility for FWAL's operational, administrative and financial functions in conjunction with locally appointed staff in Saudi Arabia.

85. The management and staffing of projects contracted to FWAL in Saudi Arabia was overseen by FWEL from its headquarters in Reading, UK. Non-Saudi Arabian nationals working on these projects were required to obtain a Saudi Arabian work visa under a "block visa" scheme to allow them to work legally in Saudi Arabia. These visas were known as "Block Visas". The Block Visa scheme enabled a company to apply for permits for groups of foreign workers under a single employment authorisation. Under Saudi Arabian labour laws, it was also required that a certain percentage, up to 30% depending on the circumstances, of the workforce on relevant projects should be Saudi Arabian nationals. This requirement was known as "Saudisation", and a "Saudisation Certificate" was issued to demonstrate compliance with the requirement. The Saudisation rate applicable to FWAL for the entire period of the alleged offending was at least 10% and may have been as much as 30%. Failure to comply with the Saudisation requirement meant that a company would not have a Saudisation Certificate, which was a requirement when bidding for certain operating contracts on projects in Saudi Arabia, and a company should not be issued with further Block Visas.

86. Applications for Block Visas were submitted to a local Labour Ministry Office (the "**LMO**"). The LMO would then take steps to ascertain a company's compliance with labour law requirements, including the Saudisation requirement.

87. Thereafter, the applications would be sent to the Ministry of Labour in Riyadh for approval before finally being forwarded to the Ministry of Foreign Affairs, which would issue an identification number for each Block Visa, with details of the occupation and nationality of the relevant worker. A fee of SAR 2,000 was payable to the **LMO** for each person listed on the Block Visa application.

88. Non-Saudi Arabian nationals could enter Saudi Arabia under temporary business visas (lasting between three to six months). However, these visas were permitted for use on short-term business trips only. There is evidence to suggest that, under Saudi Arabian law, it was illegal for expatriate workers to use temporary business visas when undertaking long-term engineering and construction work within Saudi Arabia.

89. By mid-2004, FWAL was unable to obtain the requisite number of Block Visas for staff working on projects contracted to FWAL in Saudi Arabia. Certain senior employees within FWEL and FWAL responsible for running and staffing the projects were facing pressure to resolve the issue, as personnel were needed to ensure that projects were properly staffed and executed. Delays to the project would have inevitable cost implications for FWEL and FWAL. Staff working on the operating contracts were using temporary business visas which was extremely expensive and in any event not in compliance with Saudi Arabian labour laws in the

circumstances. Over time, FW group employees, including a senior employee within FWAL, would come to understand that failure to resolve this Block Visa shortage would exposeFWAL to significant risk of being unable to fulfil its contractual obligations with respect to several projects in Saudi Arabia; and directors of FWEL would become aware of the potential impact of failure to comply with the Saudisation requirement.

90. By November 2004, **FWE10** was put under direct pressure to obtain Block Visas for project staff, to allow FWAL's expatriate workers to obtain the appropriate Saudi Arabian work authorisations. A manager working on a FWAL project in Saudi Arabia emailed a senior co-ordinator at FWEL on 8 November 2004 in order to complain about FWAL's failure to secure an appropriate work visa for him. **FWE10** responded on the same day and initially tried to pacify the manager, stating, with respect to the manager's suggestion of obtaining help from FWAL's client or FWAL purchasing a "*black market*" visa, that "*black market or bribery is totally out of the question*". The manager emailed **FWE10** and others on 29 November 2004 (copying in a FWEL board member), stating:

> "*I have NO INTENTION of staying in Saudi any longer without a work visa. This has gone on far to [sic.] long… our client tells me that if the application has gone to Riyadh it will just not move unless it is progressed by the company and the wheels greased or an agent is appointed to process it… I have now been detained 4 times by the Saudis at customs and again this morning by the security police, as you know I am on my own in this area, if they put me in prison then nobody will ever know. I am also having to give my passport to every official… these people have guns and don't mess about… Visas are the only thing I ask for help with and can not [sic.] do on my own*…".

91. **FWE10** replied to the manager, saying that: "…*We, as FWAL, have a practice not to grease wheel* [sic*.], if you know what I mean……. Unethical and dangerous. However, something can be done through agent* [sic.], *but has a cost… So far, we have never engaged agents, as the delays were usually acceptable. This was a decision made by my predecessor, and followed up to now, including for my case. Similar decisions canot* [sic.] *be qualified as amateurial. Your case must be really special, it is the first time that a visa delay causes such a strong reaction by the employee. Therefore, I have instructed* **[FWE9]** *to go to Riyadh and engage an agent to this respect… you should be aware that there is still a certain degree of risk, as the agent could do wrong things, and our name could be affected*".

92. **FWE10**'s email was forwarded by **FWE11** to **FWE12** on 30 November 2004. **FWE11** and **FWE12** did not intervene to stop **FWE10** engaging the agent, nor were concerns raised, despite the clear reference to the risk of bribery in the email.

93. By mid-December 2004, it was agreed that an agent should be appointed to expedite the issuance of Block Visas. This agent was known as the "**Riyadh Agent**". By 19 December 2004, the Riyadh Agent had been engaged for this purpose. It was noted by **FWE10** in an

email of the same date that the engagement of the Riyadh Agent would be managed exclusively by FWAL and the details would remain "*very confidential*". Although the Riyadh Agent was managed by FWAL, FWAL was, at all relevant times, managed by the senior leadership of FWEL from its Reading office.

94. The cost of using the Riyadh Agent to expedite the Block Visas was between SAR 1,000 and SAR 2,000 per individual Block Visa, on top of the fees usually due to the Saudi Arabian authorities for the issuance of each individual Block Visa. Both the Riyadh Agent and the **LMO** were paid in cash, with personal cheques being issued by FWAL to **FWE9** to cash in Saudi Arabia for onward distribution to the Riyadh Agent and the **LMO** as required.

95. The Riyadh Agent was not subject to any due diligence within either FWEL or FWAL, and no written contract existed between the Riyadh Agent and either FWAL or FWEL. The SFO found no evidence of any legitimate services being provided by the Riyadh Agent for the period of his use by FWAL.

96. It can be properly inferred that an official or officials within the **[LMO]** assisted FWAL in circumventing the Saudisation requirement. On 9 June 2007, **FWE13** sent an email to **FWE14**, stating, "*Regardless of what we have been told in the past, the* **[LMO]** *is looking for at least 10% Saudisation on our books although that becomes 15% when I quiz* **[FWE15**]*. During the processing of the last block visa when our Saudi numbers did not match the requirement it seems that some Saudis were 'added' to our books (only* **[FWE9]** *and* **[FWE15]** *knew about this) and they will 'disappear' again once we actually employ Saudis. Without adding these names we would not have got the BV* [Block Visa] *issued*." Although FWAL held Saudisation Certificates for the period of the offending, it can properly be inferred that one or more of these Saudisation Certificates was obtained due to the fabrication of employment records by the **[LMO]**, and the false attribution of Saudi Arabian nationals as FWAL employees.

97. In June 2005, FWAL was informed that Block Visas had been withheld by Saudi Arabian authorities due to FWAL's failure to comply with the Saudisation requirement. It was acknowledged within FWAL that failure to comply with the Saudisation requirement would lead to issues receiving Block Visas and consequently fulfilling duties under the projects contracted to FWAL ongoing in Saudi Arabia.

98. By 2005, it had become standard practice within FWAL to use the Riyadh Agent to secure and / or expedite Block Visas. FWAL staff used the Riyadh Agent to expedite Block Visa applications on various projects, with authorisation being granted by certain senior employees of FWAL and FWEL and with the knowledge of certain directors of FWEL. The method for paying the Riyadh Agent remained the same; **FWE9** was issued with cheques, which he then cashed. He then distributed the cash to the Riyadh Agent and to the **LMO**. For example, on 19 April 2005, **FWE6** approved a payment of SAR 4,000 each for 18 Block Visas (a total of SAR 72,000). The eventual payment made to the Riyadh Agent in relation to these 18 Block

Visas amounted to SAR 18,000, in addition to the SAR 36,000 paid to the **LMO**.

99. It is to be inferred that the use of the Riyadh Agent to make corrupt payments to public officials to secure and / or expedite Block Visas continued into 2006. In May 2006, SAR 90,000 in agent fees was recorded as being incurred by FWAL for 90 Block Visas, payable to **FWE9**. In August 2006, **FWE16**, having been made aware of prior payments to - and the arrangements surrounding the use of - the Riyadh Agent, voiced concerns about the arrangement with the Riyadh Agent in an email to **FWE17** and **FWE6**, indicating that there was no contract in place with the Riyadh Agent and no valid paper trail for the money being paid to him. **FWE17** thanked **FWE16** for "*highlighting this situation*" and advised that: "*Under no circumstances should we be using/paying a FW employee to facilitate the processing of visas and this practice should stop*". Notwithstanding these concerns, the practice of paying the Riyadh Agent in order that he would make corrupt payments to secure and / or expedite the issuance of Block Visas continued.

100. It can properly be inferred that, in August 2006, the illicit payments to the Riyadh Agent to expedite FWAL's Block Visa applications also assisted FWAL with circumventing the Saudisation requirement. **FWE13** informed numerous staff that FWAL had been awarded a total of 70 Block Visas across three projects, and that there was no Saudisation requirement associated with the Block Visas (which there should legally have been). Furthermore, **FWE13** thanked "*our* […]*team for their work in overcoming the many obstacles encountered during the application process*." The Riyadh Agent was paid SAR 99,000 for the 70 Block Visas.

101. In November 2006, five payments totalling SAR 20,000 were recorded by **FWE14** in an expense report in relation to the processing of Block Visas under an entry titled "*unreceipted miscellaneous expenses in connection with the processing of block visas*". Furthermore, in December 2006, **FWE13** emailed **FWE14** to say that he and **FWE16** had met with **FWE9** to agree payment for the Riyadh Agent according to his performance in getting their next tranche of Block Visas.

102. In total, between June 2004 and November 2007, FWEL through its Saudi Arabian operating entity made illicit payments of SAR 403,000 to the Riyadh Agent in order to secure and / or expedite Block Visas.

103. On 18 December 2006, documents were generated showing that a payment request for SAR 132,000 was submitted for agent fees for Block Visas. **FWE13** approved the request and a cheque was issued to **FWE9** for that amount. Also on 18 December 2006, documents were generated showing that a payment request for SAR 528,000 was submitted for government fees for "*264 visa positions*". The amount of SAR 132,000 was the Riyadh Agent's fee for these Block Visas. **FWE16** approved the request for SAR 528,000 and a cheque was issued for that amount. Later, this particular visa application was aborted as it failed for being "*too old*". This left FWAL in "*credit*" with the Riyadh Agent for SAR 132,000.

COUNT 4 (SAUDI ARABIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED), between the 1st day of April 2007 and the 31st day of May 2007, other than as set out in Count 3, conspired with certain of its employees and others to make corrupt payments, namely 400,000 Saudi Arabian Riyals by their employees, servants or agents to officials in the Saudi Arabian Ministry of Labour Offices, as an inducement and / or reward to ensure that block visas were granted Foster Wheeler Energy Limited and / or Foster Wheeler Arabia, Ltd (incorporated in Delaware, USA and with the registration number of 2305742) projects in Saudi Arabia.

SUMMARY

104. Between April and May 2007, FWEL authorised a payment of SAR 400,000 in order to secure the granting of Block Visas for non-Saudi Arabian nationals working on projects in Saudi Arabia. A payment was made directly by a FWAL employee in Saudi Arabia to a Saudi Arabian Labour Ministry Official, with the direction and oversight of certain FWEL directors and senior employees.

FACTS

105. In April 2007, it became apparent to certain directors and senior employees within FWEL that a manager at the **LMO** appeared to be seeking a bribe from FWAL. In the course of that month, **FWE15** visited officials in the **LMO** responsible for dealing with FWAL's Block Visas application.

106. During a meeting on or around 11 April 2007, **FWE15** was told by "*the local Manager of the Ministry of Labour*" (the "**Labour Ministry Office Manager**") that FWAL did not meet the Saudisation requirement.

107. On 16 April 2007, **FWE14** emailed **FWE18** to discuss making a payment to the Labour Ministry Office Manager, with **FWE14** saying that "*We need to consider whether we need to make a 'consideration' to resolve the 'problem individual' in the Labour Office*". Some consideration was given to FWAL making a formal complaint about the Labour Ministry Office Manager. However, this was dismissed by **FWE14** "*as this could be a sensitive action which could cause further problems down the line*". Instead of making a formal complaint, FWEL

management set about making arrangements to pay the bribe.

108. A meeting was held on 16 April 2007 between **FWE15** and "*the person responsible for processing the block visa applications for non Saudi organisations*" (the "**Block Visa Application Manager**"). The meeting began in the morning, was interrupted and then resumed in the afternoon. It was at this meeting that explicit discussion as to the payment of a bribe occurred. **FWE14** reported back on the meeting to **FWE18** and **FWE13** in an email of the same date, writing "*It seems* **[FWE15]** *was told that there are a number of people in the Visa Management organisation , upstream from him- with whom he has influence – and who can influence the passage of the Block Visa application*". It was arranged at the meeting that **FWE15** and the Block Visa Application Manager would visit the Labour Ministry Office Manager to get a determination of the number of individuals that would be allocated against FWAL's Block Visas application. **FWE15** was informed during that meeting that the allocation of numbers for Block Visas, which had previously taken place in Riyadh, was now taking place locally. There was also a further implicit threat made about the number of Block Visas that FWAL could obtain. It was concluded by **FWE15** that the Block Visa Application Manager and the Labour Ministry Office Manager may be operating together as a team to secure bribes by FWAL.

109. The next day, on 17 April 2007, **FWE14** sent another email to **FWE18**. **FWE14** noted that **FWE15** was to return to the **LMO** "*to get a determination on the numbers for the block visa and indications of what might be required to make/allow it move on!!*". **FWE14** sent a further email on the same date to **FWE18**, copying in **FWE13**, in which **FWE14** referred to **FWE15**'s suggestion that "*a sum of SAR 150,000, £20,000, would be the right number to get things moving*".

110. What transpired over the next few days was the discussion and endorsement of a decision, taken along with a number of FWEL directors, to pay the bribe sought by officials within the **LMO**.

111. On 17 April 2007, a "*FWEL Contract Review Committee*" meeting took place at FWEL headquarters in Reading. **FWE19** chaired the meeting, with **FWE20**, **FWE18**, **FWE12**, **FWE21** and **FWE11** all present. The notes of the meeting were sent to **FWE8** and **FWE22**. The meeting addressed the issue of Block Visas, with the minutes declaring that it was "*still a big problem*".

112. On the same day that these discussions, involving certain directors, were taking place in Reading, **FWE18**, **FWE14**, and **FWE13** exchanged a number of emails, attempting to sort out this issue "*on the ground*" in Saudi Arabia. **FWE15** had been sent, once again, to see the Block Visa Application Manager, this time on 18 April 2007, in order to see what might be required to move the issue forward.

113. Over the next few days, there continued to be discussions regarding the measures required

to deal with the Block Visa issue, with pressure being exerted by **FWE12** onto certain FWEL directors at an Executive Committee meeting held on 19 April 2007 to resolve matters. **FWE14** commented in a weekly report emailed to **FWE18** on 20 April 2007 that "*much of this is seen as some form of gamesmanship / screw turning with ulterior personal motive*", in other words that the issues were being caused by people seeking a bribe.

114. The talk of bribes to foreign officials to solve the Block Visa issue was explicit in an email from **FWE23** to **FWE22** on 20 April 2007, during which he stated that "*the current block visa application is currently sitting with a Saudi Government official in* **[the LMO]** *who is finding every reason not to sign it off and forward it to Riyadh for final approval. The view of our people in* **[the local area]***, expressed by* **[FWE13]** *who is currently visiting Shinfield Park, is that the official will be seeking a 'pay off' from FW before he will authorise and forward the necessary documentation.* **[FWE9 or FWE15]** *in* **[the local area]** *will advise when he considers it appropriate to pay the official*". **FWE23** went on to say that FWAL had, in the past, been "*perhaps too honest and above board*" and that **FWE13** had shared this information with **FWE18** and **FWE19** when they had met earlier that day to review the Block Visa issue. **FWE22** himself forwarded **FWE23**'s email to **FWE12**, **FWE19** and **FWE11**. **FWE19** forwarded it to **FWE18** and **FWE21**. **FWE18** forwarded it to **FWE14**. **FWE23**'s email left no doubt that bribes were to be paid to local government officials in Saudi Arabia to solve the Block Visa issue. It is to be inferred that FWEL directors and FWEL senior managers were fully informed. There was no objection or resistance raised by any party to the arrangements, including by FWEL's directors.

115. On 21 April 2007, it was confirmed that **FWE9** had met with the Block Visa Application Manager, who had intimated that FWAL could have the 200 Block Visas required (as they had applied for), without having to meet the Saudisation requirement, if a bribe of SAR 400,000 was paid. The illegitimacy of the demand (and the payment) was made clear when the opportunity of using **FWE9**'s police contacts to trace the money and make a formal complaint against the Block Visa Application Manager was dismissed as it could give rise to "*major problems in the longer term*". In his report of **FWE9**'s meeting, **FWE14** stated:

> "*It seems that this is a common practice / demand and requirement and it seems that there is a lot of $ being exchanged. I have told* **[FWE9]** *that I need to discuss it with higher authority and in any event if we do pay anything it would have to be with some assurances of a prompt clearance of our Block visa. He feels that if we make the payment we could get a three-day turnaround from Riyadh*".

116. Also on 21 April 2007, **FWE23** forwarded the email to **FWE22**, setting it out in terms: "*this mail from* **[FWE14]** *provides more details on the bribe I referred to yesterday to the Govt Official in* **[the LMO]**". It was clear, also, from the emails that the authorisation to pay the bribe would be coming from certain FWEL directors / senior employees.

117. Subsequently, on 22 April 2007, **FWE16** emailed **FWE17** asking for sign-off on **FWE14**'s proposed payment, and there were discussions between **FWE9** and the "Manager" (followed by internal discussions) about the exact amount of money to be paid to satisfy the requested bribe – taking into account money already paid for a previous visa application that had been unsuccessful. On 23 April 2007, **FWE14** confirmed the amount:

> "*a cheque for 268,000 [SAR] has been issued to* **[FWE9]***, in his name, for him to obtain cash to complete the transaction this morning. The balance, 132,000, will be paid after we have received the refund / return of the 50% YANSAB application which the 'Riyadh Agent' has been instructed to return – by the Ministry man! We are assured that the block visa will be cleared within one week*".

118. Also on 23 April 2007, **FWE16** expressed his discomfort about making such payments, but his concerns were dismissed by **FWE17**, stating: "**[FWE16],** *I understand that as clearly these types of payments go against all our rules. However sometimes we have to be flexible, usually we make use of agents to act as middlemen to ensure FW has a paper trail and frankly we then don't care what happens to the money*[.]". Although **FWE16** raised the cheque that was used to pay the bribe, it is apparent from correspondence that the payment of the bribe itself had been arranged and authorised by certain FWEL directors and senior employees.

119. The discussions leading to the payment of the bribe had left a paper trail of activity, which was made apparent when **FWE10** wrote an email on 2 May 2007:

> "*I had initially considered to sent [sic.] this report as a hard copy in order not to leave any trace in the email, but then I found out that a large traffic of email had been already exchanged. I came to know that a large expenditure has been authorised last week by somebody in Reading, to pay money to an officer of the* **[LMO]***, in relation with the approval of a block visa. The money had been allegedly requested by the Officer himself* to our **[FWE9]** […] The considerable amount – 400,000 SAR, i.e. over 100,000 US$, has been already partly paid by cheque to FW's **[FWE9]**, who will give it cash to the officer, of course without receipt."

120. On 3 May 2007, **FWE10** noted in emails that **FWE9** had cashed the cheque on 23 April 2007 and that, according to **FWE9**, "*the money ha*[d*] been paid to the final recipient*", which it is to be inferred from the evidence was the Block Visa Application Manager, on 23 or 24 April.

121. A law firm was instructed to undertake an internal investigation into the payment of SAR 268,000, and to reach independent conclusions as to the lawfulness of the payment under US, UK and Saudi Arabian law, the circumstances under which the payment was made, and the identity of all persons who had approved or had knowledge of the payment, and the existence of any similar payments by FWAL. Despite a finding that FWEL had acted corruptly under UK law, and that the conduct may have given rise to breaches of Saudi Arabian and US laws, no disclosure was made at that time of the internal investigation or its findings to either Saudi

Arabian, UK or US authorities. The internal investigation led to the dismissal of **FWE11** on 13 November 2007.

COUNT 5 (MALAYSIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED) between the 1st day of March 1997 and the 31st day of January 2005, conspired with certain of its employees and others to make corrupt payments by their employees, servants or agents to one or more officials in the Malaysian state oil company Petronas, as inducements and / or rewards to ensure that Petronas would award Foster Wheeler (Malaysia) Sdn. Bhd. a contract for services under the Central Utility Facility project.

COUNT 6 (MALAYSIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED) between the 1st day of October 1997 and the 31st day of January 2005, conspired with certain of its employees and others to make corrupt payments by their employees, servants or agents to one or more officials in the Malaysia state oil company Petronas, as inducements and / or rewards to ensure that Petronas would award to Foster Wheeler (Malaysia) Sdn. Bhd. a contract for services under the MLNG Tiga Plant project.

SUMMARY

122. Between 1997 and 2005, Foster Wheeler (Malaysia) Sdn. Bhd. ("**FWM**"), a Malaysian-incorporated subsidiary of the Foster Wheeler Group, bid for and won contracts for services in gas-based petrochemicals on projects operated by Petronas, the Malaysian state-owned oil and gas company. The UKBU was managed by FWEL's senior leadership team. The UKBU managed and administered certain of the activities of Foster Wheeler Group subsidiaries (including FWM). This included the management of FWM's use of agents in Malaysia.

123. In order to assist FWM in obtaining certain contracts from Petronas, FWEL engaged the agents **CA2** and **CA3**. These agents were engaged by FWEL under various consultancy agreements relating to gas-based petrochemical contracts on projects administered by Petronas.

124. Although these agents were ostensibly instructed to provide consultancy services to FWEL, there is evidence that the consultancy agreements in respect of the two projects were sham vehicles for the payment of bribes through the agents to one or more Petronas officials.

125. Whilst there is no direct evidence identifying who precisely these officials within Petronas were or the size or method of such payments, there is evidence from which it can be properly inferred that nevertheless payments had been or were being made to one or more of those officials for this purpose. It can also be inferred that the officials to whom payment was intended to be made were likely to be in a position to assist with or influence the award of the two relevant contracts.

126. There is also evidence that some of those payments, intended as bribes, were not getting through to their intended recipients and that directors and senior employees of FWEL subsequently arranged for an alternative method via a different agent to seek to ensure that payments continued to get through. There is evidence that directors and senior employees of FWEL were knowingly involved in keeping a payment hidden by generating false paperwork for a fictional "lessons learned" report to disguise the subsequent payment (see Count 7 below).

127. In relation to an Engineering, Procurement and Construction Management ("**EPCm**") services contract for a Petronas Gas Berhad project known as the Central Utility Facility ("CUF") (the "**CUF EPCm Contract**") (Count 5), FWEL's agent **CA3** (and its owner **IA3**, a Malaysian national) was paid a total of £2,822,898 in relation to the project. There is evidence indicating that it was intended by senior employees of FWEL that some or all of the money would be paid as bribes to Petronas officials; in the event, it appears that some or all the monies were not in fact paid over as intended.

128. In relation to a Project Management Consultancy ("**PMC**") services contract for the MLNG Tiga Plant project (the "**MLNG Tiga Plant PMC Contract**") (Count 6), **CA2** (and its owner **IA3**) was due to be paid an amount of £819,338.00. The evidence indicates that some or all of the money was intended to be passed on to officials within Petronas as a bribe. However, this money was not, in fact, paid to **CA2** and **IA3** and therefore not paid on to Petronas officials. The payment of £819,338.00 due to **CA2** was withheld by directors and senior employees in FWEL after **IA3** had retained certain monies paid by FWEL to **CA3** in connection with the CUF EPCm Contract as set out above, rather than pay them on as bribes as intended. This was due to a financial dispute that had arisen between **IA3** and FWEL.

FACTS

129. Both **CA2** and **CA3** were owned by **IA3**. **IA3** was also, at the relevant time, **[REDACTED]** at FWM. FWM was the entity that entered into the contracts for services with Petronas under the CUF project and MLNG Tiga Plant project, but as mentioned above, FWEL oversaw certain aspects of and was involved in managing Foster Wheeler Group's use of agents in Malaysia.

130. As well as being **[REDACTED]** at FWM, there is evidence from which it can properly be inferred that **IA3** was engaged by FWEL to pass on bribes to officials in Petronas in order to secure the CUF EPCm Contract and the MLNG Tiga Plant PMC Contract. **CA2** and **CA3** were essentially the vehicles by which **IA3** would pass this money on.

THE CUF CONSULTANCY AGREEMENT

131. On 26 March 1997, **FWE24** signed a consultancy agreement on behalf of FWEL with **CA3** whereby, amongst other duties, **CA3** was to assist FWEL and FWM with the negotiation of, and provision of services in relation to the CUF EPCm Contract (the "**CUF Consultancy Agreement**"). Under the terms of the CUF Consultancy Agreement, **CA3** was to receive 5.5% of monies received under the contract by FWM (subject to certain specified and limited exceptions), as and when Petronas paid FWM. The payments were due on receipt of payment from Petronas to FWM on the CUF EPCm Contract.

132. **CA3** was paid £2,822,898 by FWEL in relation to the CUF EPCm Contract with the final payment of £1,500,000 made on 13 March 2002.

133. Between 1993 and 1997, FWEL entered into three consultancy agreements with **CA3** (including the CUF Consultancy Agreement).

THE TIGA CONSULTANCY AGREEMENT

134. On 7 October 1997, FWEL and **CA2** entered into a consultancy agreement (signed by **FWE24** on behalf of FWEL) in relation to the proposed MLNG Tiga Plant PMC Contract (the "**Tiga Consultancy Agreement**"). Under the terms of the Tiga Consultancy Agreement, **CA2** was to receive 5.5% of monies received under the contract by FWM (subject to certain specified and limited exceptions), as and when Petronas paid FWM.

135. The payment due to **CA2** under the Tiga Consultancy Agreement was £819,338.00. However, no monies were ever paid to **CA2** under this consultancy agreement. The MLNG Tiga Plant PMC Contract concluded in 2004.

136. Between 1991 and 1998, FWEL entered into five consultancy agreements with **CA2** (including the Tiga Consultancy Agreement).

THE CONSULTANCY RELATIONSHIPS FROM 2002

137. From at least 18 November 2002, directors and senior employees within FWEL realised that **IA3** had failed to pass on certain monies that FWEL had paid to **CA3** under the CUF

Consultancy Agreement. There is evidence from which it can properly be inferred that this money was intended as a bribe for Petronas officials in relation to the CUF EPCm Contract. Instead, **IA3** had kept the money for himself.

138. There followed a protracted series of negotiations and discussions, initially attempting to persuade **IA3** to pass on the intended bribes, then latterly attempting to extricate **IA3** from FW's operations in Malaysia completely. This process was complicated by **IA3**'s **[REDACTED]** status at FWM.

139. On 18 November 2002, **FWE25** emailed **FWE7**, **FWE2** and **FWE11**, saying "*I had my meeting with* **[IA3]** *in his office on 7th November. With the background of the problem we have with* **[IA3]** *[…] I took the approach to meet his needs and unblock the pipeline*".

140. This reference to "*unblocking the pipeline*" was an oblique reference to efforts to persuade **IA3** to pass on the money received under the CUF Consultancy Agreement (which it can properly be inferred as being intended for bribes) and that he had retained for himself. **[REDACTED].**

141. Around the same time, internal emails discussed the money due to **CA2** under the Tiga Consultancy Agreement. At the start of December 2002, there had been no payments to date made to **CA2** under the Tiga Consultancy Agreement. **FWE25** stated in an email dated 2 December 2002 to **FWE2** and other Foster Wheeler Group personnel that "*We are obligated to pay these monies at some time. For now we are holding back making any payments*".

142. On 13 December 2002, **FWE25** reported to **FWE7**, **FWE2** and **FWE11** on his meeting with **IA3** held on the previous day, saying "*we did get to the subject of the current concerns re CUF fees*" and **IA3** had also "*raised the point that he has not seen any fees yet on Tiga*". **FWE25**'s report went on to say that **IA3** had "*confirmed that he had the CUF funds and does not wish not to do the right thing BUT in his view we need a plan to use the softness available to repair the damage. This, of course, means that we have to have much more specific knowledge of the flow… which again is something no one admits to having*…".

143. The conversations regarding **IA3** and the retention of monies paid under the CUF Consultancy Agreement continued into 2003. In February 2003, an internal memo referred to a meeting between **FWE7** and **IA3** and the fact that **IA3** was "*Still keeping money he shouldn't*" and that "*Tiga payments* [were] *blocked*".

144. On 18 March 2003 internal emails discussed a meeting with **IA3** in the same month, in which dividend payments to **IA3** and the payments to **CA2** and **CA3** relating to the CUF EPCm Contract and MLNG Tiga Plant PMC Contract were again discussed, with **FWE25** writing that "*we need to ensure current blockage is cleared before feeding in small bites at a time*".

145. An internal email dated 18 March 2003 from **FWE26** stated in respect of contract changes on the MLNG Tiga Plant PMC Contract "*I'm not sure if the agent* [**CA2**] *should be paid anything*

on our Contract Changes. There are loads of things in the agreement that the Agent should do for us – and I know that's just words. However, [**CA2**] *Investments certainly did nothing at all to help us to get Contract Changes submitted or approved – so I believe the 5.5% should only apply to our original lump sum*".

146. Despite some indication from **IA3** in the March 2003 meeting that "*the blockage in the flow will be lifted*", the position had seemingly still not been resolved by August 2003. On 28 August 2003, **FWE7** sent **FWE25** and **FWE11** a memo entitled "[**IA3**] *and cash*". **FWE7** wrote that "*The FWEL Management Council would like to know where you got to in freeing up the flow of money which was being frustrated by* [**IA3]***?*" It was apparent from this that directors and senior employees of FWEL were aware that **IA3** was retaining money intended for bribes for Petronas officials.

147. On or around 28 August 2003, **IA3** suggested entering into a further consultancy agreement with FWEL with regard to the Melaka PPMSB Co-Generation ("**Melaka Co-Generation**") project in Malaysia. FWEL was anticipating installing another agent, **CA4**, as the agent for this project, because of the difficulties being encountered with **IA3**.

148. There followed a standoff between directors and senior employees within FWEL and **IA3**, with FWEL refusing to make payments under the Tiga Consultancy Agreement with **CA2** until after **IA3** had facilitated "*unblock*[ing] *the pipeline*" of payments that he was expected to have made:

    i. On 18 September 2003, **FWE2** emailed **FWE7**, **FWE11** and **FWE5**, indicating that FWM was finalising its accounts for 2002, and that event would inevitably cause **IA3** to ask about dividends as he had done so previously. In that email, **FWE2** asked where FWEL stood "*on clearing up the commercial 'roadblock' with our shareholder*?"

    ii. On 26 September 2003, **FWE25** gave more feedback from a telecon with **IA3** and continuing efforts to release the money retained by him, with **FWE25** telling **FWE2** by email (with a copy to **FWE5, FWE11** and **FWE7**) that "*He has asked me for payment on Tiga and having a new agreement for cogen. I have said all is possible but only after the current pipeline is unblocked*".

149. There is evidence from which it can properly be inferred that directors and senior employees within FWEL knew that the money paid to **CA3** under the CUF Consultancy Agreement had been intended for officials in Petronas in order to influence the award of that contract. In an email exchange dated 1 October 2003 between **FWE2** and **FWE25** (copying **FWE5**, **FWE7**, **FWE11**), in which **FWE25** said that he had "*Asked* [**IA3**] *to clear the problem of the backlog as it was causing business winning problems and also other issues… agreements, other payments due, etc as we were unable to move on any of these without his positive action*".

150. Notwithstanding the disagreement with **IA3**, at least one director and senior employees within FWEL were aware of the need for the Global Sales & Marketing ("**GSM**") team to keep

payments to agents hidden in certain documentation. In an email dated 8 January 2004 from **FWE27** to **FWE28**, **FWE27** stated that "*Local Consultants*" would be known in certain communications regarding project costings as "*Additional Services*", and that he would maintain a single confidential file of all advice received (possibly referring to advice received from such agents), with such information no longer being kept in the "*private files*". **FWE27** stated that, "*The reason we get confused is highlighted by the example below (Bold blue) - no actual % and we do not have nor do we want sight of individual agreements. Too many of the sales staff don't communicate this in a sensible and understandable manner. I will then keep a single confidential file*…".

151. This email demonstrates a deliberate effort by at least one director and senior employees at FWEL to keep payments to agents hidden in certain documentation. The evidence suggests that the costs of the engagement of agents were to be communicated by GSM, but that the agreements with the agents were to be kept out of sight of the bidding / projects team and the monies paid to agents were to be described as "*additional services*", disguising their true nature.

152. By the end of March 2004, some progress had been made with **IA3**. On 26 March 2004, **FWE2** informed **FWE11**, **FWE5** and **FWE25** that **IA3** had returned **FWE2**'s call and that they had arranged to meet in Italy. **FWE25** responded to **FWE2** on the same day, warning **FWE2** about **IA3**'s anticipated diversion tactics and saying that "*it is now 24 months since he has NOT done what he should have with the transaction*".

153. **FWE2** met with **IA3** on 15 April 2004 and reported back to **FWE11** and **FWE5** in an email dated 16 April 2004 that "*Regarding the money trapped with him… he does not deny this but says that there are mitigating circumstances which I won't go into print […] My guess is that we are unlikely to see any of this money but that the people who might be due it are now off the scene*".

154. **FWE25** and **FWE2** had a separate email exchange on 26 April 2004 regarding **FWE2**'s meeting with **IA3**. In that email chain, **FWE25** requested an update about "the crunch point of passing on the goods he has got which do not belong there" and **FWE2** said that **IA3** "*knows he is holding funds (that's a surprise!!)*"

155. Negotiations with **IA3** continued later in 2004, both regarding the monies he had retained and to his position in relation to FWM and FWEL. In an internal email on 14 September 2004, **FWE2** expressed his preference to "*Keep* **[IA3]** *as* **[REDACTED]** [at FWM] *but make sure he has no dealings with any Agents… get him to agree to assign the proceeds* **[CA3]** [sic.] *would have received under Tiga to* [**CA4**]".

156. On 2 November 2004, **FWE29** wrote to **FWE30** copying in **FWE8**, **FWE12** and **FWE19** regarding agent fees for the MLNG Tiga Plant PMC Contract, saying "*The MLNG Tiga project has reached completion but we are currently operating under an extension to the contract*

which runs to May 2005. To date, no payment of the agent's fee has been made and the money remains on the cost report as future expenditure […] When the final calculation is made the actual percentage comes out at 3.8%... The agent is therefore due for a payment of £819,338".

157. FWEL eventually terminated its agreements with **IA3**'s companies (**CA2** and **CA3**). By 4 January 2005, the Foster Wheeler Group had come to a resolution of its issues with **IA3** by way of settlement and termination agreements. On 4 January 2005, **FWE30** informed others within the Foster Wheeler Group of the conclusion of the relationship with **IA3** by way of the following:

    i. A settlement agreement with **IA3** providing **[REDACTED]**

    ii. A termination agreement with **CA2** and **CA3**, pursuant to which all extant consultancy agreements between **CA2**, **CA3** and FWEL were terminated.

158. FWEL then arranged for the payments made in relation to the MLNG Tiga Plant PMC Contract to be delivered through **CA4** under a separate consultancy agreement subsequently entered into for the same project (Count 7). The payment was for £819,338.00, the exact same amount which was due under the Tiga Consultancy Agreement. Directors, senior employees and other employees of FWEL disguised the payments in the form of a fictitious "lessons learned" report (details of which are set out further below).

159. On 18 April 2005, a new entity named Foster Wheeler E&C (Malaysia) Sdn. Bhd. ("**FW (E&C) M**") was incorporated in Malaysia to replace FWM.

COUNT 7 (MALAYSIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED) between the 1st day of September 2002 and the 31st day of March 2005, conspired with certain of its employees and others to make a corrupt payment, namely GBP £819,338, to one or more officials in the Malaysia state oil company Petronas, as a reward for Petronas awarding to Foster Wheeler (Malaysia) Sdn. Bhd. a contract for services under the MLNG Tiga Plant project.

SUMMARY

160. Following the termination of the Tiga Consultancy Agreement between FWEL and **CA2**, there is evidence that FWEL looked for an alternative vehicle by which to pay the outstanding amount under the agreement of GBP £819,338 some or all of which, the evidence indicates, was intended to be passed on to officials at Petronas as a bribe. As previously noted, FWEL had previously intended to pay this through **CA2** and **IA3**.

161. FWEL engaged **CA4** as a replacement agent, specifically to pay the outstanding amount of £819,338 to officials in Petronas. This exact payment was made to **CA4** under a sham consultancy agreement between FWEL and **CA4** dated 17 January 2005, ostensibly for the provision of a "Lessons Learned Report" in relation to the MLNG Tiga Plant PMC Contract (the "**Lessons Learned Agreement**"). There is no evidence that **CA4** was involved in FWEL and FWM's work on the MLNG Tiga Plant PMC Contract. The evidence indicates that the Lessons Learned Report was never produced nor provided to FWEL by **CA4**, nor was it ever intended to be provided. The Lessons Learned Agreement was a scheme to pay the exact amount of money intended as a bribe to Petronas officials using a new agent.

FACTS

162. The evidence indicates that when FWEL terminated its relationship with **IA3** and his companies on 4 January 2005, a sum of £819,338.00 due to be paid under the Tiga Consultancy Agreement, some or all of which was intended to be passed on to officials within Petronas as a bribe, remained unpaid. There is evidence from which it can properly be inferred that FWEL had withheld the amount of £819,338.00 that had been intended to be paid to **IA3** / **CA2** under the Tiga Consultancy Agreement, because **IA3** had refused to pass on money that was intended as a bribe for Petronas officials in relation to the CUF EPCm Contract**.**

163. On the same day that **FWE30** had announced the termination of the relationship between FWEL and **IA3** (4 January 2005), **FWE31** emailed **FWE30** stating *"On the subject of* [**CA4**]*, I believe that the best approach would be to put in place an agreement between* **[CA4]** *and FWEL for them to provide a post project report as to the effectiveness of FW's relationship management with its client on the MLNG Tiga project (a kind of lessons learned from the sales perspective). I understand that the company is '***[CA4]** […] *I also believe that the contract price will be a lump sum of £819,338 to be paid within 30 days of their commercial invoice"*.

164. **FWE31**'s idea was put into effect on 17 January 2005, when FWEL and **CA4** entered into the 'Lessons Learned Agreement. The evidence indicates that this agreement created the need for a sham "Lessons Learned Report" as a ruse to provide **CA4** with the £819,338, some or all of which was intended as bribes that had gone unpaid under the Tiga Consultancy Agreement.

165. There is no evidence that the Lessons Learned Report was produced by **CA4**. On the same day the Lessons Learned Agreement was executed, **CA4** invoiced FWEL for the sum of

£819,338 for *"professional services with respect to Malaysia LNG TIGA Project"*. Thus, the evidence indicates that the "Lessons Learned Report" was a sham. The invoice was received by FWEL on 18 January 2005, and approved on 28 February 2005 by **FWE8**. It was paid on 22 March 2005.

166. The evidence indicates that some or all of the payment of the £819,338.00 was intended to be passed on to officials within Petronas as a bribe, which had earlier gone unpaid, in respect of the MLNG Tiga Plant PMC Contract following the collapse of the relationship between FWEL and **IA3**.

167. **CA4** entered into a total of six consultancy agreements with Foster Wheeler group entities, which were all dated between 2004 and 2006. These agreements comprised the Lessons Learned Agreement relating to the MLNG Tiga Plant PMC Contract and five consultancy agreements between FWM / FW(E&C)M and **CA4** in relation to various projects in Malaysia (three of these consultancy agreements post-dated the Lessons Learned Agreement, with the final one dated 27 April 2006).

SUBSEQUENT EVENTS AND THE END OF THE RELATIONSHIP WITH CA4

168. As explained in the draft application for a deferred prosecution agreement, the following section is included for completeness. The SFO does not allege any further criminality against FWEL arising from the facts set out below.

169. As noted above, in 2007, an internal investigation into the procurement of work visas in Saudi Arabia was conducted by an external law firm. This investigation found that employees of the Foster Wheeler Group were involved in the making of improper payments to public officials in order to procure Saudi Arabian block visas. Further to that investigation, the law firm recommended conducting a risk assessment on the operations of Foster Wheeler Ltd ("**FW Ltd**") (a formerly publicly quoted company incorporated in Bermuda which, until 2009, was the ultimate parent company of the Foster Wheeler Group and is currently a subsidiary of Amec Foster Wheeler Limited which itself is a subsidiary of Wood) in Malaysia, Nigeria, South Africa and Thailand.

170. The law firm issued a risk assessment report dated 1 July 2008 regarding the Foster Wheeler Group's operations in Malaysia and risks arising under the US Foreign and Corrupt Practices Act 1977 (the "**FCPA**"). The law firm's report stated that "*pending the findings concerning* [**CA4**]*'s conduct under the "lessons learned" agreement, it may be difficult or impossible for FW to continue working with* **[CA4]** *under these other consulting agreements*". Accordingly, on 30 July 2008, the law firm was instructed to conduct an independent investigation into the circumstances of the Lessons Learned Agreement.

171. On 13 October 2008, the law firm issued a report which set out the key findings of its investigations into the relationship with **IA3** and **CA4**. That report included the following:

i. "*FWEL has likely made improper payments to Petronas officials through various Malaysian sales agents, dating from at least October 1995 through March 2005*", although the identities of the Petronas officials remain unknown.

ii. These payments appear to have been made with the knowledge of senior FWEL executives (including **FWE2** and **FWE25**). The report noted that "*based on the payments made to these agents and forecasted payments due under existing sales agreements, the cumulative total of these payments may exceed US$20 million*".

iii. "*FWEL has been concealing agent fees in its books and records since at least January 2004, by referring to them as "additional services" and "corporate expenses". This decision was known to senior FW personnel*".

172. In its report dated 13 October 2008, the law firm expressed concerns regarding potential anti-bribery violations, in particular around the relationship between **IA3** and Petronas and in respect of the Lessons Learned Agreement. In respect of the wider **CA4** relationship (i.e. apart from the Lessons Learned Agreement), the law firm stated that they were "*unable to identify any services provided by* **[CA4]** *to FW under any of the five (5) other consultancy agreements* [with FWM and FW(E&C)M], even though **CA4** had been *paid £314,415 (approx. $622,697) to date excluding the MLNG Tiga Project, and has an additional £3,127,903* (*approx. $5,490,439) forecast as due",* and that even if there were evidence of services provided by **CA4**, "*there remain FCPA red flags concerning* **[CA4]**".

173. The law firm produced a memorandum dated 16 December 2008, in which it was stated that the law firm:

i. had "*identified no direct evidence that* [**CA4]** *has used, or intends to use, any commission payments from the Company for any improper purpose under the FCPA*";

ii. had "*not uncovered evidence to suggest that making further payments to* [**CA4**]*, without more, would result in an FCPA anti-bribery violation"* and was *"aware of no direct evidence that* **[CA4]** *intends to use such funds for an improper purpose under the FCPA*";

iii. did "*not believe there is sufficient evidence at present for the government to establish a violation of the FCPA's anti-bribery provisions for any of the six consultancy agreements with* **[CA4]***. There is no direct evidence of any improper payments having been made by* **[CA4]***, and we do not believe that the one piece of circumstantial evidence appearing to connect* **[CA4]** *with* **[IA3]** *– namely, the £819,338 – would by itself support the finding of an FCPA anti-bribery violation involving* **[CA4]**"; and

iv. considered that "*assessing the risk of further payments to* **[CA4]** *is a business decision for the Company*" and that the law firm does "*not believe that continuing to make payments to* **[CA4]***, without more, would constitute a violation of the FCPA's anti-bribery provisions*".

174. In light of the law firm's findings and advice in 2008, FW Ltd decided to put on hold any payment to **CA4**. The law firm's investigation and reports were not disclosed to the SFO by the Foster Wheeler Group.

175. Following the decision by FW Ltd to withhold payment, **CA4** issued a series of demands to FW(E&C)M (dated November 2009, February 2010, April 2010 and May 2010) for payment and threatened legal action for failure to pay. As payment by FW(E&C)M was not made, in June 2010 **CA4** began legal proceedings in Malaysia against FW(E&C)M. The law firm advised Foster Wheeler AG ("**FWAG**", which replaced FW Ltd as the ultimate parent company of Foster Wheeler Group in 2009) in dealing with **CA4**'s demands and the legal proceedings. As part of that advice, the law firm sought to ascertain whether **CA4** had provided legitimate services, including by meeting with **CA4** and **CA4**'s lawyers, obtaining evidence from **CA4** and interviewing employees of Foster Wheeler group. In the law firm's report dated 26 October 2010, the law firm advised FWAG in favour of settlement by stating that:

    i. "*there is still no evidence of a bribe or an offer or intent to pay a bribe in connection with this project* [the PSR2 Debottlenecking & Site Clean Fuels project] *by* **[CA4]** *or any other entity*"; and

    ii. *"settling the case now for its litigation value before an arbitration proceeding is initiated is the best litigation strategy for the company to pursue*".

176. Following the law firm's advice in favour of settling the litigation, a settlement agreement dated 5 November 2010 was entered into between FW(E&C)M and **CA4**, under which FW(E&C)M paid an amount of RM 22,426,832 (around £4,500,000) to **CA4** on 23 November 2010. The settlement agreement included the termination of all extant agreements between Foster Wheeler group entities and **CA4** and all outstanding claims between the parties.

177. The settlement of £4,500,000 was the subject of an anonymous whistle-blower complaint in 2015. AFW received two anonymous reports through its Global Compliance Alert Line on 14 and 26 April 2015, respectively:

    i. A report received on 14 April 2015, alleging that the 2010 settlement payment to **CA4** was a "*bribe*[ ] *paid… to get government project from Petronas in 2010"*

    ii. A report received on 26 April 2015, alleging that "*the legal heads of both Singapore and Reading were very involved in the negotiation with* **[CA4]** *on the settlement agreement. They knew the payment was a bribe!"*

178. The circumstances giving rise to the allegations were investigated by external lawyers in 2015 who considered it to be unsubstantiated.

COUNT 8 (MALAYSIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED) between the 1st day of September 2002 and the 30th day of November 2010, FWEL conspired with certain of its employees and others to make corrupt payments by their employees, servants or agents to one or more officials in the Malaysia state oil company Petronas, as inducements and / or rewards to ensure that Petronas would award to Foster Wheeler (Malaysia) Sdn. Bhd. a contract for services under the Melaka Co-Generation project.

SUMMARY

179. Following the breakdown of the relationship between FWEL and **IA3**, the Foster Wheeler Group engaged an alternative agent, **CA4**, (via another consultancy agreement with FWM dated 20 April 2004 (the "**Co-Gen Consultancy Agreement**")). There is evidence from which it can be properly inferred that **CA4** was engaged to act as a replacement vehicle to bribe one or more officials at Petronas for awarding the Basic Engineering Design & PMC contract for the Petronas Melaka Co-Generation project (the "**Melaka Co-Generation Contract**") to the Foster Wheeler Group.

FACTS

180. The first documentation evidencing a plan to engage the agent **CA4** appears in the form of a draft consultancy agreement between FWM and **CA4** with regard to the Melaka Co-Generation Contract, prepared in October 2002. Although this agreement was prepared with an effective date of 1 June 2003, the agency agreement was not signed until a later date, in April 2004 (to which, see below).

181. On 11 November 2003, **FWE25** emailed **FWE20**, copying **FWE32** and **FWE28** on the subject of the Melaka Co-Generation Contract. The email made clear that FWM had already been awarded the Melaka Co-Generation Contract and that instead of engaging **IA3** as an agent on this project, **CA4** would be engaged. **FWE25** wrote: *"we have been awarded this work for Melaka already and the work has started, There is an agreement in principle for a consultant which I need to implement. The name of the consultant in this case will be different from the one that has been in the past for reasons of difficulties with* **[IA3].** *Could you please send me a consultant agreement for the usual scope and then I will get this reviewed, completed and returned to you… Company details:* **[CA4]***".*

182. One aspect of the *"usual scope"* of agent agreements referred to by **FWE25** in the email above would have been for **CA4** to assist FWM in winning the award of the Melaka Co-Generation Contract. However, as noted above, the email indicates that FWM had been awarded the Melaka Co-Generation Contract by November 2003, prior to the Co-Gen Consultancy Agreement of April 2004. It is therefore clear that this would not be within the scope of the Co-Gen Consultancy Agreement between **CA4** and FWM.

183. The Co-Gen Consultancy Agreement was duly prepared, and nevertheless referred to the engagement of **CA4** to assist FWM in winning a contract to provide unspecified "*Technical Services"* for the Melaka Co-Generation project. The Co-Gen Consultancy Agreement was signed on 20 April 2004. The Melaka Co-Generation Contract (which had already been awarded) was dated 1 June 2004 with an effective date of 1 September 2003. Under the terms of the Co-Gen Consultancy Agreement, **CA4** was to receive 5% of monies received by FWM under the Melaka Co-Generation Contract (subject to certain specified and limited exceptions), as and when Petronas paid FWM.

184. There is no evidence that **CA4** provided any services to FWEL or FWM pursuant to the Co-Gen Consultancy Agreement. As explained above, one aspect of the services **CA4** purported to provide under the Co-Gen Consultancy Agreement (to assist in the award of the Melaka Co-Generation Contract) was impossible by the date that the Co-Gen Consultancy Agreement was signed. It can therefore be properly inferred that the Co-Gen Consultancy Agreement with **CA4** was a vehicle intended to pay bribes to officials in Malaysia for the award of the Melaka Co-Generation Contract to FWEL.

Count 9 (INDIA)

STATEMENT OF OFFENCE

Conspiracy to make corrupt payments, contrary to section 1(1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED), between the 27th day of December 2005 and the 30th day of November 2012, conspired with certain of its employees and others, to make corrupt payments by their employees, servants or agents to officials in the Indian Oil Corporation Limited as inducements and / or rewards in order that the Indian Oil Corporation Limited would award to Foster Wheeler Energy Limited, and assist them in retaining, a contract for the provision of Front End Engineering and Design services on the Paradip Refinery Project.

SUMMARY

185. Between 2005 and 2012, Foster Wheeler Limited, a subsidiary incorporated in England and Wales that formed part of the Foster Wheeler Group ("**FW Ltd (UK)**"), engaged the agents **CA5** and **CA6** pursuant to consultancy agreements. Despite the consultancy agreements being executed by FW Ltd (UK), **CA5** and **CA6** were engaged for the purpose of securing a contract for the provision of Front End Engineering and Design ("**FEED**") services on the Paradip Refinery Project (the "**Paradip FEED Contract**") for FWEL, and were operationally administered from FWEL's registered office in Reading, UK, which also served as the Foster Wheeler Group's UK headquarters.

186. Despite **CA5** and **CA6** being paid £1,449,975 with respect to the Paradip FEED Contract, the SFO's investigation found no evidence to suggest that **CA5** and **CA6** provided legitimate services to FWEL. Their engagement by the Foster Wheeler Group was hidden from the Indian Oil Corporation Limited (the "**IOCL**") on a corporate level. It is alleged that **CA5** and **CA6** were engaged by the Foster Wheeler Group to pay bribes to IOCL officials in order that FWEL would win the Paradip FEED Contract.

187. In August 2006, during the bidding process for the Paradip FEED Contract, the IOCL required that FWEL certify that it had not "*engaged/involved*" agents in relation to the bid for the Paradip FEED Contract. A declaration to this effect, known as a "*certificate for non-involvement of an agent*", was signed by **FWE11** and sent to the IOCL, at a time when the Foster Wheeler Group had not only begun the process of engaging both **CA5** and **CA6** under consultancy agreements in relation to the Paradip FEED Contract, but even after the effective date of the consultancy agreement with **CA5**. FWEL made the declarations contained in the certificate at a time when senior employees within FWEL were aware that an agent was involved in the bid.

188. The Paradip FEED Contract was subsequently split into two contracts: the offshore element of the Paradip FEED Contract, which was contracted to FWEL, and the onshore work which was known as the Paradip Project Management Consultancy contract (the "**Paradip FEED PMC Contract**"), which was contracted to a subsidiary of the Foster Wheeler Group set up for the purposes of tax efficiency, called Foster Wheeler India (Private) Limited ("**FWIPL**").

189. FWEL won the Paradip FEED Contract and was responsible for its, and the Paradip FEED PMC Contract's, operation and management.

FACTS

190. Towards the end of 2005, the Foster Wheeler Group was actively trying to secure contracts across various projects in India and was enjoying some success in bidding for certain contracts on oil and gas projects. In particular, FWEL was trying to secure the Paradip FEED Contract which was to be awarded by the IOCL.

191. Typically, when dealing with large scale oil and gas construction projects, the commissioning party (in this case, the IOCL) invites engineering and project management companies such as

FWEL to submit tenders for contracts to undertake work on (or to provide equipment, workforce, or materials for) the projects. The first major contract on such a project, following a feasibility study, would usually be the FEED.

192. The engagement of **CA5** and **CA6** in relation to the Paradip FEED Contract was arranged by FW's Global & Sales Marketing team, in particular the senior executives **FWE33** and **FWE32**, with the approval of senior employees and directors of FWEL, in particular **FWE11**, **FWE34**, **FWE35** and **FWE20**.

193. Prior to the engagement of **CA5** and **CA6**, there is documentary evidence to suggest that other agents being involved in potentially corrupt conduct on behalf of Foster Wheeler Group entities in India. In particular, in a June 2006 email exchange between **FWE33** and another FWEL employee in respect of the effectiveness of another agent in India, **FWE33** stated: *"…the "singer" with influence has had his vocal cords lubricated by another".* To which the other employee responded, *"The original Lubricator might have spent a lot of oil already… retribution could be dirty!".* Shortly after this, **CA6** and **CA5** commenced work on behalf of FWEL.

194. On 19 July 2006, **FWE33** emailed **FWE32**, requesting approval for FWEL to engage **CA5** as a consultant for use on two proposed contracts on the Paradip Refinery Project, noting the proposed fees as *"3% for the FEED phase; 1.5% for the EPC phase"*. **FWE33** went on to state: *"note that I may have to employ a further consultant to ensure that we have the necessary client coverage Reading have now confirmed their intent to bid – I think we have a good chance to win – FEED booking would be this year with EPCm early 2008"*.

195. A "Request for Approval" document dated 18 July 2006 confirmed **CA5**'s proposed fee as 3% of FW's revenue arising from the Paradip FEED Contract. The request for approval indicated that FWEL would engage **CA5** and that the assigned office for the engagement would be FWEL's registered office, and the Foster Wheeler Group's UK headquarters, in Reading.

196. **FWE32** approved the request by email on 20 July 2006, and then formally in writing on 27 July 2006. By August 2006, when the consultancy agreement was being finalised, it was apparent that **CA6** had also been engaged, with the total fee for both agents for the Paradip FEED Contract agreed to be 3.5% of FW's revenue arising from the Paradip FEED Contract, apportioned at *"3% for* **[CA5]** *and 0.5% for* **[CA6]***"*.

197. In the course of bidding for the Paradip FEED Contract, on 16 August 2006 and at the request of the IOCL, FWEL provided a certificate to the IOCL known as a "*certificate for non-involvement of an agent*" declaring that FWEL had not "*engaged/involved*" agents in relation to the Paradip FEED Contract bid. The certification, which was signed by **FWE11**, was provided on FW letter-headed paper with a FWEL footer, and stated: *"This is to certify that we have not engaged / involved any Agent / Representative / Consultant / Retainer / Associate who is not an employee of Foster Wheeler Energy Ltd. On payment of any remuneration in India or abroad for this Project. Therefore, no agent's / Representative's / Consultant's /* [sic]

Associates' commission is payable in India or abroad against this Contract". A printed copy of the certificate located as part of the SFO's investigation included a manuscript note indicating that the letter had been *"submitted as part of bid"*.

198. As at the date that the certificate for non-involvement of an agent was signed, internal approval had been sought and given for FWEL to use **CA5** on the Paradip FEED Contract. Neither consultancy agreement with **CA5** or **CA6** had been signed. However, a consultancy agreement between FW Ltd (UK) and **CA5** was subsequently entered into by an agreement signed on or around 22 November 2006, on terms that it had effect from 27 July 2006. **FWE11** signed the consultancy agreement with **CA5** on behalf of FW Ltd (UK). It was acknowledged by **FWE35** in an email dated 26 January 2007 that "*Neither FWEL nor FW India have any agreement with any agent for the IOCL project, nor will either company do so*. *All matters regarding the role of* **[CA5]** *must be treated as strictly confidential and handled only in the UK. Payment to* **[CA5]** *will be made by Foster Wheeler Limited, not by the project (and if back-charged to the project, should be shown as 'corporate support costs', without naming* **[CA5]**)".

199. In August and September 2006, a decision was made within FWEL to split the onshore and offshore portions of the Paradip FEED Contract. This decision was made for reasons of tax efficiency in India. The onshore portion, known as the Paradip FEED PMC Contract, was contracted to FWIPL. The offshore portion, the Paradip FEED Contract, was contracted to FWEL. FWEL was responsible for the operation and management of both the Paradip FEED Contract and the Paradip FEED PMC Contract.

200. Internal emails from 13 September 2006, suggested that, by then, FWEL's bid for the Paradip FEED Contract had been accepted (at least in principle) by the IOCL. FWEL was informed that the IOCL board had formally approved the award of the Paradip FEED Contract to FWEL on 29 November 2006.

201. By a contract dated December 2006, FWEL entered into the Paradip FEED Contract with the IOCL. By this time, the consultancy agreement with **CA5** had been signed. The Paradip FEED Contract contained a clause in the following terms:

> "*12.10 Conflicts of Interest; Commission Payments: CONSULTANT represents and agrees that it has not paid any commission, fee, or other compensation, incentive, bribe or gratification for procuring this contract and that no person or entity has been retained or employed to solicit this Contract upon any arrangement or understanding for the payment of any commission, fee or other compensation of any kind, except for payments to bona fide employees of CONSULTANT or bona fide commercial agencies maintained by CONSULTANT in connection with CONSULTANT's business. CONSULTANT further represents that neither it nor any of its Affiliates nor any of its Subcontractors nor any of their Affiliates nor any of their respective officers, directors, employees, Consultants or agents have made, received, provided or offered any such*

commission, fee or compensation. CONSULTANT agrees that neither it nor any such other entity or person shall make, receive, provide or offer, any gift, entertainment, payment, loan or other consideration for the purpose of influencing the procurement of any contract or otherwise for the purpose of influencing any individual or organization to any course of conduct in any way relating to or affecting this Contract or any other contract contemplated within the Scope of Work, except for incentive payments by CONSULTANT to Subcontractors in connection with the performance of the Work…".

202. These representations were made by FWEL in the knowledge that FW Ltd (UK) had by that time engaged an agent to assist in securing the award of the Paradip FEED Contract to FWEL. The declarations were in breach of the IOCL's anti-corruption measures and to hide the use of agents on the Paradip FEED Contract from the IOCL on a corporate level. **FWE20** was aware when the declarations were made that agents were in use or contemplated with respect to the Paradip FEED Contract.

203. The consultancy agreement with **CA6**, also signed by **FWE11** on behalf of FW Ltd (UK), was stated to be effective from 12 December 2006 but was not signed until 16 April 2007. The Request for Approval form for the engagement of **CA6** was also approved by **FWE32** on 19 February 2007. The consultancy agreement, based on the Request for Approval form, was also administered out of Reading.

204. **CA5** and **CA6** were engaged under the guise of consultancy agreements, but these consultancy agreements did not fully reflect the nature of the services provided by the agents on behalf of FWEL. Although these consultancy agreements were made between the agents and FW Ltd (UK) as contracting parties, they were made for the ultimate benefit of securing the Paradip FEED Contract for FWEL.

205. **CA5** and **CA6** were both engaged to perform the same contractual services, which included assisting FWEL to win the bid for the Paradip FEED Contract, with a fee of 3% for **CA5** and 0.5% for **CA6**. Both consultancy agreements were signed after FWEL had already been awarded the Paradip FEED Contract in principle (in September 2006). The consultancy agreement between **CA6** and FWEL was not only signed after the Paradip FEED Contract had been officially confirmed (in November 2006), but also had an effective date after that confirmation.

206. It is alleged that the fact that **CA6** and **CA5** were engaged to assist FWEL in securing a contract after that same contract had already been secured is demonstrative of the sham nature of the consultancy agreements. It is further alleged that the true purpose of the consultancy agreements was to ensure the payment of bribes to officials at the IOCL in return for the award of the Paradip FEED Contract to FWEL.

207. No due diligence was conducted on **CA5** by FWEL at or before the time that the consultancy agreement in relation to the Paradip FEED Contract was signed. Due diligence was carried

out but only approximately three years later, when FWEL sought to engage **CA5** under a further consultancy agreement. The SFO's investigation found no evidence to suggest that **CA5** provided legitimate services to FWEL.

208. No due diligence of any kind was conducted on **CA6** by FWEL at any stage. **CA6** had no stated basis for their engagement by FW at the time and there was no apparent reason why they should have been engaged as a "consultant" in relation to the Paradip FEED Contract, as the date of the consultancy agreement post-dated the award of the contract.

209. The SFO's investigation found that the only monies received into **CA6**'s bank account were from FW, with those funds being transferred onwards to a Swiss bank account. **CA6** appears to have had no other source of income.

210. Senior employees and directors of FWEL were aware that the use of agents could be a breach of the terms of the Paradip FEED Contract and the IOCL's anti-corruption policies. A series of internal emails amongst directors and senior employees at FWEL including **FWE20**, **FWE8**, **FWE36** and **FWE37**, starting from January 2007 onward, made it clear that payments to **CA6** and **CA5** should not be disclosed to the IOCL; rather, the payments should be described as *"corporate support costs"* and routed through FW Ltd (UK), and *"all information should be kept within the Reading office"*. These discussions relating to the concealment of payments to the agents continued into June 2007, following an audit conducted into the Paradip FEED Contract that resulted in the hidden agent fees coming under some scrutiny. This was despite many of these individuals also being involved in communications advising that overdue invoices should be sent to **FWE33** to pass onto the agent who could arrange for their payment to be expedited within the IOCL.

211. One or both of the engaged agents had senior contacts within the IOCL. On 23 February 2007, **FWE33** emailed **FWE36**, **FWE27**, **FWE25**, **FWE28** and **FWE12**, noting "**[FWE36]***, am in discussion with the agent and hope to revert early next week as to IOCL top management objectives*".

212. **CA5** and **CA6** were paid a total amount of £1,449,975 under the consultancy agreements relating to the Paradip FEED Contract. **CA5** received £1,280,274.76. There is limited evidence of legitimate services having been provided to FWEL by either **CA5** or **CA6** in relation to the Paradip FEED Contract, and certainly nothing commensurate with the sums paid to them.

213. **CA5** used a *"marketing"* team – **IA4** and **IA5** – as their people "on the ground" in India. Material sourced from **CA5**'s headquarters in the United Kingdom, in the form of handwritten and typed papers, showed large round cash sums being paid to **IA4** and **IA5** marked as paid against the Paradip project. There is also one reference to *"gifts"*.

COUNT 10 (BRAZIL)

STATEMENT OF OFFENCE

Failure to prevent bribery, contrary to section 7 of the Bribery Act 2010.

PARTICULARS OF OFFENCE

AMEC FOSTER WHEELER ENERGY LIMITED (incorporated in England and Wales under registered number 01361134 and known at the time of the alleged offending as FOSTER WHEELER ENERGY LIMITED) being a relevant commercial organisation, between the 1st day of September 2011 and the 31st day of October 2014, failed to prevent bribery committed by persons with it, namely employees, servants or agents of Petróleo Brasileiro S.A, intending to obtain and/or retain business for FOSTER WHEELER ENERGY LIMITED, namely the award and/or retention of a contract to design a gas-to-chemicals complex in Brazil called Complexo Gás Químico UFN-IV, including a contract for the provision of Front End Engineering and Design services.

SUMMARY

214. Between 2011 and 2014, persons associated with FWEL made corrupt payments to officials employed by the Brazilian multinational petroleum corporation, Petróleo Brasileiro S.A., ("**Petrobras**"). Petrobras was, at the relevant time, controlled by the Brazilian government. The corrupt payments were made with the intention of obtaining and retaining for FWEL a contract for the provision of Front End Engineering and Design ("**FEED**") services for Petrobras on the Complexo Gás Químico UFN-IV ("**UFN-IV**"), (the "**UFN-IV Contract**").

215. FWEL engaged agents who, in turn, made corrupt payments. Initially, **IA6** was engaged by FWEL pursuant to an interim engagement letter, before FWEL's compliance department had approved him. **IA6** had known connections to **CA8** and suggested to FWEL employees that his services could be provided under an agency agreement between FWEL and CA8. However, **CA8** had, prior to **IA6**'s suggestion, already failed FWEL's compliance checks. **IA6** himself was subsequently also rejected by FWEL for use in connection with the UFN-IV Contract bid due to compliance concerns. FWEL subsequently engaged a Brazilian agent intermediary company, **CA7**, whose principals at that time included a former employee of Petrobras. **CA7** acted with **IA6** to pay bribes to obtain an advantage in the conduct of business for FWEL, namely the award of the UFN-IV Contract for the benefit of FWEL.

216. In exchange for making the bribe payments, FWEL won the UFN-IV Contract from Petrobras, after obtaining confidential documents, inside information and secret assistance from **SO8**.

217. Concurrent investigations into FWEL's conduct in Brazil have been undertaken in the United States by the DOJ and the SEC, and in Brazil by the MPF, the AGU and the CGU. AFWEL has made the following relevant admissions in the context of those investigations:

"[FWEL's]… *employees, entered into a sham agency agreement with* [**CA7**] *for the purpose of funding and paying bribes to decision-makers at Petrobras to win the UFN-IV contract. In*

exchange for making the bribe payments, [FWEL] *won the contract from Petrobras, after obtaining confidential documents, inside information and secret assistance…"*

218. AFWEL will simultaneously enter into a DPA with the DOJ in respect of the substantive corruption of the UFN-IV Contract for conspiracy to commit an offence against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the US Foreign and Corrupt Practices Act 1977 (the "**FCPA**"), as amended, Title 15, United States Code, Section 78dd-3. If an associated person of AFWEL were to be prosecuted for such corruption in England and Wales it, would amount to an offence under section 1 of the Bribery Act 2010. It corresponds directly to the predicate corrupt behaviour that it is alleged FWEL failed to prevent. A corporate's failure to prevent one of its associated persons from engaging in bribery contrary to section 1 is an offence under section 7 of the Bribery Act 2010.

FACTS

219. In early 2011, the Foster Wheeler Group decided to establish a business presence in Brazil's oil and gas industry. In early September 2011, Petrobras announced a public tender for the UFN-IV Contract. FWEL was one of several companies interested in bidding for the contract.

220. On 15 September 2011, **FWE38** was given power of attorney to act for FWEL in relation to the submission of FWEL's bid for the UFN-IV Contract.

221. In September 2011, **IA6** began to make attempts to get himself engaged as an agent for FWEL in connection with the upcoming bid on the UFN-IV Contract. **IA6** was eventually successful in gaining an introduction to **FWE39** in or about October 2011. **IA6** was introduced to **FWE39** by a mutual acquaintance, **INT1**, who was a clothing store manager in New York.

222. **IA6** had, by this time, begun to cooperate with **CA7**, an agent in Brazil, with the intention of pitching to work for FWEL as agents on the bid for the UFN-IV Contract. **CA7**'s principals at that time were **IA7**, a former employee of Petrobras, and **IA8**, who had previously worked on projects for Petrobras. **IA8** had a close connection with an individual at Petrobras, and it is clear from the evidence that FWEL representatives should have been aware from their review of a third party due diligence report on **CA7** that **IA7** had contacts from his time at Petrobras which were fundamental to **CA7** obtaining work.

223. **IA6**, **IA7** and **IA8** met in New York in September 2011. On 14 September 2011, **IA8** sent **IA6** confidential Petrobras documents concerning the UFN-IV project. **IA6** then shared these confidential documents with **INT1**, in an effort to get **INT1** to convince **FWE39** that **IA6** should act as agent in connection with the UFN-IV Contract.

224. On 14 September 2011, **IA6** explained to **INT1** that **CA7** "*certainly will have the support of at least three* [Petrobras] *executives*" for FWEL to win the UFN-IV Contract. At this time, Petrobras had not yet solicited a bid for the UFN-IV Contract from FWEL.

225. Throughout September and October 2011, **IA6** continued in his attempts to persuade **FWE39** (through **INT1**) of his abilities as an agent. Between 16 September 2011 and 21 September 2011, **IA6** forwarded at least six emails to **INT1**, which originated from a **CA7** email address and which contained internal Petrobras documentation relating to the UFN-IV project.

226. On 11 October 2011, **IA8** emailed **IA6** to tell him that only three companies, one of which was FWEL, remained in the competition to bid for the UFN-IV Contract. **IA6** forwarded the email to **INT1**, saying "*if we convince your friend, we have one third of the possibilies* [*sic*]". The reference to "*your friend*" is believed to be a reference to **FWE39**.

227. On 28 October 2011, **IA6** contacted **FWE39** by email offering his services on the bid for the UFN-IV Contract, and providing initial intelligence on Petrobras. **FWE39** passed this email on to **FWE40**, with a message stating "*this person was introduced to me by a mutual friend. I obviously have no idea of his legitimacy. Would you be interested in speaking with him?*" **FWE40** in turn passed **IA6**'s details to **FWE38**.

228. **FWE38** initially firmly rejected the notion that FWEL should engage with **IA6**, stating in an email to **FWE40** on 31 October 2011 that "*knowing his background I said no – especially because we do not need his "help"… this is a price bid and we have already all the info he outlined… my suggestion is not to use that at all".*

229. Despite these reservations, on 7 November 2011, **FWE38** emailed **IA6**, stating that he had been informed that **IA6** would like to explore the possibility of assisting FWEL "*in a current sales opportunity*". Also on 7 November 2011, **IA6** informed **IA7** and **IA8** that he had told **FWE39** that **IA6** had "*privileged relations with certain people in the client* [Petrobras] *that (by chance and by luck) are now in charge of the new UFN IV plus senior people that are not in the Client* [Petrobras] *anymore but are the Godfathers of the entire system. They accepted my explanation and they are eager to meet*".

230. **FWE38** met with **IA6** in Geneva on 30 November 2011. On 1 December 2011, **IA6** then emailed **FWE39** about the meeting, relaying "*…we spoke about the project and about compliance, etc… From our side we have a structure that permits well identified services and eventually man hours to be supplied: this can be a solution*". It is inferred that **IA6** was proposing to circumvent FWEL's compliance procedures by inventing fictitious services and that he made this proposal known to **FWE39**. **FWE39** had, by this time, very recently retired from very senior roles in the Foster Wheeler Group, and was no longer formally connected with the Foster Wheeler Group.

231. In an effort to convince FWEL to hire **IA6** to help with the UFN-IV Contract bid, on 27 December 2011, **IA6** suggested to **FWE38** that FWEL enter into an agency agreement with **CA8**, who he said had passed FWEL's compliance checks. In fact, FWEL had been provided with a risk assessment report on **CA8** from a third party advisory group that raised compliance red flags on 7 November 2011, resulting in **CA8** being rejected for use as an agent by FWEL's compliance department. Despite this, **IA6** continued to liaise closely with **CA8** on details of his pitch to work for FWEL.

232. In early 2012, senior FWEL employees met with representatives from **CA8** in London. **CA8** pitched to work with FWEL as its agent in various markets, including on a project in Brazil. At this stage, **CA8** had already failed FWEL's due diligence checks. Despite this, senior FWEL employees considered **CA8**'s pitch to work as an agent for FWEL in various markets. However, the senior FWEL employees rejected **CA8**'s pitch in respect of Brazil during the meeting on the basis that **IA6** and **CA8** did not have a "*proper set up*" in Brazil.

233. Following **IA6**'s continued efforts to persuade **FWE38** to engage him as agent, on 21 January 2012 **FWE38** forwarded one such email to **FWE40** querying **IA6**'s suggestion, in that email, that he had recently been approved by FW's due diligence and that this would take care of **FWE38**'s reservations about compliance. At the suggestion of **FWE40**, on 22 January 2012, **FWE38** emailed other FW staff to confirm whether **IA6**'s "group" had passed FW's due diligence and expressed compliance-related concerns about **IA6**, noting "*I do not want him at all (my perception is that there might be a compliance risk)*". Having conferred with his FW colleagues, **FWE38** responded to **IA6** that same day to explain that he thought the bid for the UFN-IV Contract was "*too advanced for any possible co-operation*". On 24 January 2012, **FWE38** emailed **FWE40** to tell him that he would meet **IA6** once more, expressing, once again, scepticism about engaging **IA6**.

234. Following that meeting, between 26 and 29 January 2012, the position appears to have changed, with **FWE38** noting by email on 29 January 2012 to **FWE41** that, following a meeting at FWEL's headquarters in Reading with **FWE42**, it had been communicated to **IA6** that FWEL would be interested in **IA6**'s support for the whole life of the UFN-IV project if "*we* [FWEL] *do not win the project on Tuesday AND if the customer* [Petrobras] *then starts a direct negotiation process (or any other process where he believes there is value in his market intelligence) after Tuesday AND if his company passes our DD AND if we can reach a commercial agreement with him (2% excluding taxes…)*". The terms of the deal were that, in circumstances where FWEL would have to directly negotiate with Petrobras and **IA6** passed FWEL's compliance checks, [**IA6]** would provide support in such negotiations in exchange for a fee of up to 2% of the net value of the UFN-IV Contract.

235. On 29 January 2012, **IA6** emailed **IA9**, Chief Operating Officer of **CA8**, indicating that it was important for a legitimate-seeming sales intermediary company to sign any agreement with FWEL, stating that FWE38 "*need[s] a Company that passed due diligence*", that an agency "*agreement must be signed with a Company . . . that does not and should not interfere but only sign agreement*".

236. **IA6** further stated that **FWE38** "*suspects who are the friends of my friends and he wants a full screen from them and from my friends too*," to minimise the chance that **FWE38** would be implicated in corruption. In this communication, **IA6**'s "*friends*" were **IA7** and **IA8** and the "*friends*" of **CA7** were corrupt Petrobras officials. **FWE38** then sent an email to **IA6** on 22 March 2012, saying that FWEL was not in a position to establish a cooperation agreement but, depending on the development of the bid for the UFN-IV Contract, "*we might be interested in evaluating a cooperation with a Brazilian company that you have that could add value to our sales effort*". **IA6** replied that he had "*the alternative soluttion* [sic] *to fit the preference of your people back in the UK*". It is

inferred from this exchange that FWEL would not engage with **CA8** but would be open to using **IA6**'s services if he could successfully affiliate himself with a Brazilian company that could be cleared to work as an agent by FWEL's compliance department.

237. On 10 April 2012, **FWE38** sought permission from **FWE40** and **FWE42** to engage **IA6**, saying "*If we give him a verbal green light he can start helping now and we will move with the necessary bureaucratic procedures in parallel*". In the absence of a response, **FWE38** followed up later that same day saying "*Unless I hear from you otherwise until later today I will give the guy a verbal green light since he claims now that he should start working with his team… We will have time to implement the due process; he is only asking for a verbal agreement*". **FWE42** confirmed that this was "*ok*" to him. **FWE40** responded by asking **FWE38** to check the compliance procedure and stated that "*any commitment shall be subject to a positive outcome of the due diligence and this potential agent shall be made aware of it*".

238. At the request of FWEL's legal team and pursuant to its compliance procedures, on 11 April 2012 **FWE38** forwarded FWEL's due diligence questionnaire to **IA6**. On 12 April 2012, **IA10** of **CA8** sent an email to **FWE38** with **IA6**'s completed due diligence questionnaire. No mention was made in the completed due diligence questionnaire of **IA6**'s connection to either **CA8** or **CA7**. The due diligence questionairre provided minimal information and key questions were left unanswered. No references were provided. **IA6** also left sections of his due diligence questionnaire blank for **FWE38** to complete on his behalf, with the following responses included by way of example: "*YOU CAN DECIDE IF BETTER TO SELECT (i) Individual or (iii) PARTNERSHIP with the RIO COMPANY"*.

239. Compliance records retained by FWEL show knowledge on the part of FWEL senior employees, including a director, that **IA6** had links to **CA8**, with a handwritten note from 11 April 2012 on one of the due diligence documents stating "[**FWE38**] *cfms that* [**IA6**] […] *he also has links to* **[CA8]**"

240. Despite these clear red flags, and in circumstances where FWEL's due diligence checks on **IA6** were incomplete at the time, FWEL entered into an interim letter of engagement with **IA6** (signed by **FWE42** and **IA6** on 13 and 14 April 2012 respectively), which contained the terms of **IA6**'s interim engagement in connection with the bid for the UFN-IV Contract pending the execution of a formal contract and the completion of FWEL's due diligence checks.

241. That interim letter of engagement with **IA6** contained a clause stating that **IA6** would "*indemnify Foster Wheeler with regard to any government or third party investigations related to or arising out of your violation of your undertakings and warranties in this letter, the FCPA, or similar anti-bribery laws including, without limitation, the UK Bribery Act (2010) and the OECD convention*". The interim letter of engagement stated that **IA6** would assist FWEL "*in securing the Project by making available your considerable professional know-how of Petrobras' systems, procedures, techniques and requirements*".

242. On 17 April 2012, shortly after the letter of interim engagement was entered into, in email correspondence relating to the third party due diligence to be conducted on **IA6**, a senior FWEL

proposal manager, stated: "*I appreciate the need for an agent in Brazil, however at this stage in the Petrobras UFN-IV bid (we are submitting tomorrow) he will be of no use to us*". No legitimate explanation has been found as to why the FWEL employees circumvented FWEL's compliance procedure to urgently appoint **IA6** to provide assistance before compliance checks had been conducted and on a bid which had already been prepared. There is evidence that individuals within FWEL questioned what value **IA6** could add. The compliance procedures of FWEL at the time specified that the appointment of an agent was only to be undertaken after that agent had passed FWEL's due diligence checks and that no work was to be conducted by an agent until they had passed those due diligence checks and the agent had been engaged under a formal contract.

243. Some four to five days after FWEL engaged **IA6** as agent to assist on the bid, on 18 April 2012, the submitted bid envelopes were opened by Petrobras, with FWEL and one other oil and gas services company being the only bidders. FWEL's bid was the lower. It appears that **IA6** did not provide any assistance to FWEL in preparing the bid documentation. Given the timing of the submission of the bid documentation and the timing of **IA6**'s interim engagement, **IA6** could not have provided any meaningful assistance. There is no evidence of any legitimate services ever having been provided by **IA6** to FWEL.

244. On the same day the bid envelopes were opened by Petrobras, **IA6** reported back their contents to **CA8**, noting that FWEL's bid, was "*200m USD and cheaper by 18%.* **[FWE38]** *called me to underline that now it's the moment they need my wisdom mostly?!?*"

245. On 26 April 2012, Petrobras emailed **FWE38** and requested that FWEL supply the second element of its bid in advance of the formal deadline, in order to "*speed* [sic] *the internal process of bidding validations*". No evidence has been found of any legitimate services being provided by **IA6** in relation to the second element of the bid that was provided to Petrobras informally in April 2012.

246. On 27 April 2012, **IA6** introduced **CA7** to **FWE38** as a local agent in Brazil. On 30 April 2012, **FWE38** emailed **CA7**'s completed due diligence questionnaire to FWEL's compliance department in Reading. The due diligence questionnaire had a post-it note on it suggesting that **CA7** might use **IA6** as a sub-contractor (and therefore make monies available to him). Next to a question requesting confirmation of FCPA compliance, **CA7** had included a handwritten question mark. The due diligence questionnaire was signed by **IA7** and dated 26 April 2012.

247. On 30 April 2012, Petrobras informed FW that FWEL was the only remaining qualified bidder for the UFN-IV Contract. After learning this information, that same day, **FWE41** emailed **FWE38** that they should "*chat re: need for agent on this matter*."

248. A third party due diligence report was commissioned on **IA6** by FWEL in mid-April 2012. On 26 April 2012, the third party risk assessor informed FWEL's compliance department that, despite the extensive enquiries it had made in relation to **IA6**, it still had yet to identify any third parties that could corroborate the information provided by him or to vouch for his good character. **IA6** had also not yet provided any references as he was requested to by FWEL's due diligence questionnaire.

When asked by **FWE38** to provide references to fill this gap, **IA6** responded "*All my Consultancy contracts carry a clause of Privacy. Maybe if I can meet in person somebody could be easier to share references instead of writing. The last comment is on the nature and discretion of our business… If you order me to do so, I will supply a couple of significant names but I am puzzled by this*". When this was queried by **FWE38**, **IA6** responded, "*What I meant that there is a great deal of Diplomacy in what WE are doing and always to be able to find the right "chemistry" to fulfil our duties… Diplomacy being what it is, requires confidentiality and discretion*".

249. At the end of April and start of May 2012, a number of concerns were raised regarding **IA6**, by **FWE27** and **FWE43**.

250. On 1 May 2012, **FWE42** requested that FWEL's compliance department prepare a letter of interim engagement letter for **CA7** with regard to the UFN-IV Contract. On 2 May 2012, **FWE27** emailed **FWE42**, copying in, among others, **FWE38**, saying: "*The due diligence is continuing, but I feel we need to revisit the merits of the proposed individual and company* [**IA6** and **CA7**] *in light of the information we have obtained so far*."

251. On 4 May 2012, FWEL received the third party due diligence report it had commissioned on **IA6**. This cast further doubt on **IA6**'s professional history claims, his experience in general, and his connections to Brazil. The report stated that the third party risk assessor "[had] *not been able to verify any of the information that* **[IA6]** *presents in his CV*," and found it "*surprising*" that "*none of the dozen or so contacts [they] spoke to had ever heard of* **[IA6]** *... includ[ing] senior executives ... who have worked on projects ... that* **[IA6]** *claims to have consulted on*". It also confirmed that **IA6** was connected to **CA8**, who had by then failed FWEL's due diligence.

252. On 24 May 2012, **FWE38**, using his personal email account, wrote to **IA6**, noting that "*we are analyzing* [**CA7**'s] *application* [for an agency agreement] *as there is already a decision not to hire you yourself as individual services*." **IA6** expressed no concern as long as he was permitted to proceed with his job behind the scenes, as an unofficial agent, and responded, "*I don't feel as uncomfortable as long as you are convinced that me and all the others are and will be acting throughout of the life of project the way you expect*."

253. The interim engagement between **IA6** and FWEL is understood to have been terminated in August 2012 on the basis of this failed due diligence. It appears **IA6** did not put up any argument to FWEL for remuneration in respect of any services he had already rendered. The SFO's position is that this was because it was apparent to senior executives within FWEL that he would continue to operate, and be paid, through **CA7**.

254. Despite FWEL employees' and directors' knowledge that **CA7** was acting with **IA6**, FWEL engaged **CA7** as an agent. **CA7** had passed FWEL's due diligence procedure (despite the red flags raised by its connections to **IA6**, particularly by its completed due diligence questionnaire and the nature of its introduction to FWEL). FWEL employees continued to engage with **CA7** in relation to the

UFN-IV Contract bid, despite their knowledge that **CA7** was acting with **IA6** (as **CA7**'s due diligence questionnaire had made clear).

255. To help FWEL win the UFN-IV Contract, **CA7** and **IA6** obtained confidential documents, inside information and secret assistance from **SO8**. For example, on 1 June 2012, **IA8** informed **IA6** that "*my friend*" (believed to be **SO8**, who had a management role on the UFN-IV project for Petrobras), would secretly help FWEL resolve a contracting dispute with Petrobras at an 8:00 a.m. meeting later that day.

256. **IA6** then emailed **FWE38**, "*I understand that you are now very busy for the important early [8:00 a.m.] meeting this morning*," and added that "*If you can, in a spare moment, get the green light from* **[X]**. *it will help us greatly to work more relaxed and efficent* [sic]". The reference to "X" is believed to be a reference to FWE40. It is to be inferred that **FWE40**, **FWE38** and **IA6** all worked together to get **CA7** engaged as a front for **IA6**.

257. That same morning, in advance of the 8:00 a.m. meeting, **FWE38** informed **IA6** that FWEL had approved **CA7** as an agent to help FWEL win the UFN-IV Contract. Later that day, after the 8:00 a.m. meeting, **IA6** wrote to **FWE38**, stating "*Perhaps some help is now materializing in a more convincing way: keep struggling*[,] *you are not alone*." **SO8** had secretly helped to resolve the contracting dispute in a manner favourable to FWEL. At the time, **SO8** personally owed **IA8** approximately US$200,000.

258. The corrupt purpose of the monies was highlighted in an email from **IA6** to **IA7** on 20 July 2012, in which **IA6** complained about how long it was taking for FWEL to sign the agency agreement with **CA7** and said *"I have obligations for two more groups, you and* [IA8] *have obligations, we have done everything we were supposed to do, etc."*. The reference to "obligations" is understood to refer to the promise of bribes made by **IA6**, **IA7** and **IA8** to Petrobras officials

259. On 21 August 2012, **IA6** emailed **FWE38** about the proposed wording of the draft agent agreement between FWEL and **CA7**, saying "*having seen the copy of your proposed contract with* [**CA7**]*, myself and the other parties that I represent, we are satisfied with the text.*"

260. Despite this, and the fact that **CA7** was used to enable the engagement of **IA6**, FWEL failed to act on such indications of corruption and failed to prevent the consequent corrupt behaviour by **IA6** and **CA7**. Compliance procedures were deliberately circumvented or suppressed, with weaknesses exploited by senior employees of FWEL who exercised considerable influence. Red flags were either ignored or dismissed with little or no probing.

261. The UFN-IV Contract was signed between FWEL and Petrobras in August 2012. There were some protracted negotiations involving the technology licences between FWEL, the licensors and Petrobras which could have had a serious impact on the execution of the contract. Neither **CA7** nor **IA6** played any formal role in those negotiations yet correspondence makes it clear that they had a high level of insider knowledge of how those negotiations proceeded. On 27 August 2012,

IA7 sent **IA6** "*confidential emails*" between "*people from Gas & Energy Department*" at Petrobras, including **SO8**, and noted that "*our friend"* would send a copy of the contract between FWEL and Petrobras to **IA8**.

262. The agency agreement between FWEL and **CA7** was not signed until 5 November 2012, close to three months after the UFN-IV Contract with Petrobras was signed by FWEL. The agency agreement was signed by **FWE42** on behalf of FWEL in Reading. **CA7**'s fee was 2% of the UFN-IV Contract value (contingent upon the award of the UFN-IV Contract, albeit the UFN-IV Contract had, by the time the agency agreement was executed, already been awarded to FWEL). Pursuant to the agency agreement, **CA7** agreed to provide services "*to assist FW to be selected by the client as the provider of the work*", even though the UFN-IV Contract had already been awarded. The agency agreement expressly acknowledged that some of the services from **CA7** had been rendered before the agency agreement had been executed. This did not accord with the compliance procedures of FWEL, which required that no agent should undertake work until it had passed due diligence and were under contract. This agency agreement also contained a clause stating that **CA7** "*will indemnify FW with regard to any government or third party investigations related to or arising out of the AGENT'S alleged violation of this AGREEMENT, the FCPA, or similar anti-bribery law including, without limitation, the OECD Convention*". This agency agreement was a mechanism to allow for money to be paid to **CA7** by FWEL and was used in part to satisfy the bribes promised to decision-makers at Petrobras in return for the award of the UFN-IV Contract to FWEL.

263. Between February 2013 and July 2014, **CA7** submitted four quarterly reports to FWEL accompanied by invoices for payment. None of these reports documented or evidenced any meaningful work conducted by **CA7** (on the UFN-IV Contract or at all) to justify the 2% fee paid to them. Between 25 June 2013 and 19 October 2014, FWEL made four payments to **CA7** totaling approximately US$1.1 million through a correspondent account at JPMorgan Chase Bank in New York. The payments were credited to **CA7**'s bank account in Brazil.

264. In July 2013, **IA6** and **IA7** discussed how to split 80% of the commission funds received by **CA7** from FWEL, which left a 20% share available for bribe payments.

265. In February 2014, **IA7** arranged with **IA6** to use a "*doleiro*" (a money launderer in Brazil) to transfer **IA6**'s share of the second fee payment from FWEL. In March 2014, **IA7** explained that he would give Brazilian reais in cash to "*the man*" (the doleiro), who would convert it to U.S. dollars and then onward deposit the money into an account in Europe designated by **IA6**. Afterward, **IA7** communicated that he planned to make at least three withdrawals of Brazilian Reais from a Brazilian bank on different days to avoid detection.

266. In correspondence between **IA6** and **IA7** there is also a reference by **IA6** to the payment of a share to "*the man that made the effort to convince FW*", which is likely to be a reference to the payment of monies to **INT1**.