

Clients & Friends Memo

UK Settlement Highlights International Enforcement Linked to “Car Wash” Investigation

16 November 2020

The UK Serious Fraud Office (the “**SFO**”) has reached a £1.2 million civil recovery settlement with Julio Faerman, a Brazilian national linked to the sprawling “Operation Car Wash” investigation involving the Brazilian state-owned oil company, Petrobras.

During its investigation into Faerman, the SFO obtained a freezing order and a disclosure order and was successful in resisting an application to set these aside despite some fairly significant procedural failings.

The settlement is a tangible demonstration of the SFO’s ongoing cooperation with Brazilian and other international law-enforcement counterparts. It also highlights the continued prominence of Brazil and Latin America in international anti-corruption enforcement.

Operation Car Wash (Lava Jato)

Operation Car Wash began in March 2014 and revealed that Petrobras officials, acting in concert with Brazil’s largest construction companies, engaged in a massive bribery scheme which facilitated the payment of hundreds of millions of dollars in bribes to Brazilian politicians through elaborate kickback schemes with contractors and suppliers. To date, the investigation has resulted in prison sentences for nearly 300 individuals and billions of dollars in fines and financial settlements with companies involved.¹

Faerman acted as the Brazilian agent for the Dutch oil services company SBM Offshore NV. As part of a 2016 settlement with the Brazilian Public Prosecutor (**MPF**), Faerman admitted paying bribes to win lucrative Petrobras contracts. The Brazilian Authorities and media sources have suggested

¹ <http://www.mpf.mp.br/grandes-casos/lava-jato/resultados>

that Faerman also acted for other foreign companies implicated in Operation Car Wash, including Rolls-Royce, General Electric and the Norwegian company, Vertech.²

Faerman continues to be subject to a cooperation agreement with the Brazilian Authorities and paid a financial settlement of USD 54 million in 2016. Faerman is a Brazilian resident and is believed to be in custody there.

UK Civil Recovery Proceedings

Following the Brazilian settlement, the SFO opened its own civil recovery investigation into Faerman's UK assets, which it suspected had been acquired with the proceeds of crime. The SFO investigation focused on a £4.25 million apartment located in Kensington, London as well as Swiss bank accounts and offshore vehicles, which it believed funded the purchase.

On 29 January 2019, following an oral hearing conducted in private and without notice, the SFO obtained a freezing order on the Kensington property, to prevent it being sold while the investigation proceeded. The SFO also obtained a Disclosure Order under the Proceeds of Crime Act 2002 (the "**Order**") to enable the tracing of bribe-linked commissions paid to Faerman and to demonstrate that he used these sums to part-fund the purchase of the property. On 29 March, after a further application made without notice, both orders were amended to allow service on Faerman's English and Brazilian lawyers in circumstances where personal service was possible but considered impractical.³

By letter to Faerman's lawyers dated 3 May, the SFO served the Order, which contained a penal notice addressed to "*Julio Faerman or any person served with a notice under this order*" which set out potential criminal sanctions for failure to comply. On 25 July, the SFO served the Order again requesting the origin of certain funds. The copy of the Order attached to the second letter had the entire penal notice redacted. It was otherwise in the same mandatory terms.⁴

On 25 September 2019, Faerman's solicitors objected on the basis that the SFO are not authorised to issue an information notice to someone outside the jurisdiction. On 5 November, the SFO responded, clarifying that they were aware that they could not force compliance and were requesting the information on a voluntary basis.

Faerman refused to provide the information requested and made an application to discharge the Order as unauthorised and defective, as the SFO could not properly serve an enforceable

² <https://globalinvestigationsreview.com/rolls-royce-caught-in-cgu-petrobras-investigation>

³ [2020] EWHC 1849 (Admin) - <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1849.html>

⁴ *Ibid.*

information notice on him or any other persons overseas citing the judgment of the UK Supreme Court in *Perry*.⁵ Further, Faerman argued that the SFO's failure to bring the Supreme Court's decision in *Perry* to the attention of the judge in the *ex parte* hearing constituted material non-disclosure and an abuse of the disclosure order procedure.

Despite acknowledging procedural failings by the SFO, Mrs Justice Cutts CDE dismissed Faerman's application to discharge the Order on 10 July 2020. The Judge took the view that even if the judgment in *Perry* had been disclosed, the SFO's application would nonetheless have been granted, albeit with a clarification that no information notice could be served on Faerman outside the jurisdiction. She considered that the SFO had not acted in bad faith, that Faerman had suffered no prejudice (because he had not supplied any information) and that there was a clear and compelling public interest in maintaining the Order.⁶

On 29 October 2020, the SFO signed a settlement agreement with Faerman. Under the terms of the settlement, the property freezing order and disclosure order will remain in place until Faerman pays the settlement amount of £1.2 million and £57,000 in SFO costs.⁷

International Corporation

In announcing the Faerman settlement, the SFO recognised assistance received from Office of the Attorney General of Switzerland (**OAG**) and the Dutch Investigation Service (**FIOD**). The SFO also has a strong working relationship with the Brazilian Authorities, as demonstrated by the £497 million Rolls Royce Deferred Prosecution Agreement from January 2017, which was accompanied by parallel settlements with the Brazilian MPF and the US Department of Justice (**DOJ**).⁸

International cooperation has been a critical feature of Operation Car Wash and looks set to continue. The Brazilian Authorities have communicated with law enforcement authorities in 61 jurisdictions. The Brazilian MPF has requested for assistance from the SFO on 16 occasions as part of the Car Wash Investigation alone. It has also received three requests for cooperation from the SFO as it continues to pursue its own investigations relating to that case. The MPF's cooperation with the US DOJ is even more active with 58 requests made and 21 received to date.⁹

⁵ [2012] UKSC 35

⁶ [2020] EWHC 1849 (Admin) - <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1849.html>

⁷ <https://www.sfo.gov.uk/download/sfo-v-faerman-signed-order/>

⁸ <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc>

⁹ <http://www.mpf.mp.br/grandes-casos/lava-jato/efeitos-no-exterior>

Looking Forward

It has been reported that Operation Car Wash is now encountering greater domestic resistance due to opposition from the Brazilian Congress, Supreme Court and officials close to President Jair Bolsonaro¹⁰. It is important to recognise, however, that the investigation has already been extraordinarily successful, continues to enjoy widespread popular support and has made Brazilian anti-corruption enforcement relevant on the international stage. Due to the enormous international scope of the investigation, the volume of information obtained through cooperating witnesses and the number of implicated companies and individuals, domestic and international enforcement will continue for the foreseeable future.

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Cadwalader's White Collar Defense and Investigations group has extensive experience in advising clients on investigations in Latin America. Mark Beardsworth has represented numerous clients in cross-border investigations involving Latin America and Brazil. Duncan Grieve speaks fluent Portuguese and spent two years in Brazil working with a Brazilian law firm where he advised corporate and individual clients in investigations stemming from Operation Car Wash, including the negotiation of leniency agreements with Brazilian prosecuting authorities and regulatory agencies (MPF, CADE, CGU, TCU).

If you have any questions, please feel free to contact either of the following Cadwalader attorneys:

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¹⁰ <https://www.ft.com/content/8f79871f-9dc4-4a97-9b26-79a7a9c2bf32>