

UK Deferred Prosecution Agreements: Sign of Things to Come?

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Corporate Governance & Securities Regulation

In a landmark decision, the first ***Deferred Prosecution Agreement (“DPA”)*** was approved on Monday at the Royal Courts of Justice, by Lord Justice Leveson. The DPA was introduced as a means of alternative disposal following a criminal investigation into a corporate organisation back in February 2014, under the Crime and Courts Act 2013^[1]. It is only available to the Directors of the Crown Prosecution Service and the Serious Fraud Office (“SFO”).

Under a DPA, proceedings are automatically suspended following charge, on the agreement that negotiated terms (which must be approved by the court) will be performed by the company. If the conditions are not complied with, then prosecution proceedings may be commenced. In order to enter a DPA the prosecutor must be satisfied that both the evidential test and the public interest test, as set out in the SFO [DPA Code of Practice](#) has been met.

The SFO have [reported](#) that the DPA approved yesterday related to an SFO prosecution against Standard Bank Plc in relation to the alleged bribery of Tanzanian Government Members. Standard Bank Plc were indicted under section 7 of the Bribery Act 2010, for alleged failures to prevent bribery. This was the first use of section 7 by any prosecutor and pursuant to an application by the SFO to defer the prosecution in the interests of justice, the indictment was suspended on 30 November 2015.

As part of the DPA, Standard Bank will pay US\$25.2 million in financial orders and US\$7 million in compensation to the Government of Tanzania. The bank has also agreed to pay the SFO’s reasonable costs of £330,000 in relation to the investigation and subsequent resolution of the DPA. The bank’s fines were reduced by a third, because it brought the matter to regulators, and the agreement requires the continued cooperation of Standard Bank Plc with the SFO. They will be subject to an independent review of its existing anti-bribery and corruption controls, policies and procedures regarding compliance with the Bribery Act 2010 and other applicable anti-corruption laws.

“This landmark DPA will serve as a template for future agreements,” said SFO director David Green. The SFO contends that this was not a private plea “deal” or “bargain” between the prosecutor and the defendant company. The agreement offers a way in which a company can account for its alleged criminality to a criminal court. It has no effect until a judge confirms in open court that the DPA is in

the interests of justice and that its terms are fair, reasonable and proportionate. DPA's are intended only to be used in exceptional circumstances and allow investigators and prosecutors to focus resources on those cases where a prosecution is required.

David Green confirmed the transparent approach of Standard Bank Plc had likely garnered the favourable outcome in seeking the DPA rather than prosecution, "*I applaud Standard Bank for their frankness with the SFO and their prompt and early engagement with us.*"

The Bank's solicitors reported Standard Bank Plc to the Serious and Organised Crime agency on 18 April 2013 and the SFO on 24 April 2013.

The Bribery Act requires adequate procedures to be put in place to mitigate the risks of bribery. All companies should be aware of the implications of the Act and what steps they need to take. If you require advice on the steps required for your business, or have any specific queries, please free to contact a member of our team.

[1] Crime and Courts Act 2013, section 45 and Schedule 17.

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