

UK Serious Fraud Office Reaches Agreement with Standard Bank

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The first deferred prosecution agreement in the **UK** was finalised between the Serious Fraud Office and Standard Bank, potentially paving the way for future similar agreements.

On 30 November, **Southwark Crown Court** approved the **Serious Fraud Office's (SFO)** first application for a deferred prosecution agreement (DPA). The DPA is related to an indictment that alleges the ICBC Standard Bank Plc's (formerly the Standard Bank Plc) (Standard Bank's) failure to prevent bribery under section 7 of the Bribery Act 2010.

DPAs

DPAs were introduced in the UK under section 45 and Sch. 17 of the Crime and Courts Act 2013 (the 2013 Act) and represented a new concept in UK legislation. Although technically referred to as a DPA, this agreement is different than the well-known US method of disposing of an investigation that uses the same term.

In essence, a UK DPA is a court-approved plea deal, available for certain types of crimes, under which legal proceedings are suspended in return for a defendant agreeing to satisfy certain conditions. The list of conditions is not limited and may include any number of the following: (i) account of profits, (ii) payment of a fine, (iii) compensation to victims, (iii) payment of reasonable prosecution costs, (iv) participation in any related investigation and/or a compliance programme, and/or (v) donation of money to a charity or other third party. The amount of the financial penalty, agreed on by the parties, shall be "broadly comparable" to the fine, which a court would have imposed after a guilty plea.

DPAs are open to companies, partnerships, and unincorporated associations and are not available to individuals. Furthermore, DPAs are only available to those invited by the SFO to participate. One cannot apply for the process, which requires complete cooperation and a written acceptance that a crime has been committed and what the circumstances of the crime are. A DPA does not replace a prosecution, it merely suspends the operation of that prosecution pending a successful outcome. If the DPA's terms are broken, the prosecution will be revived and will be based on information

provided to the SFO (including the admissions made) during the negotiation process.

A DPA is not a private deal between a prosecutor and defendant; it is a way for a defendant to account for a crime to a criminal court. Therefore, a DPA is a public document, and the court will be widely involved at every stage of the process, including the commencement of negotiations, as well as endorsing, varying, and terminating the DPA. The outcome that the court is required to achieve under the 2013 Act is that the DPA is fair, reasonable, proportionate, and in the interests of justice.

Details of Standard Bank's Conduct

This specific case relates to the alleged failure of Standard Bank to prevent its former sister company, Stanbic Bank Tanzania Ltd (Stanbic), from bribing Tanzanian officials.

In 2012–13, the government of Tanzania wished to raise \$600 million by way of a sovereign note private placement. Stanbic was not licensed to perform this task and involved Standard Bank, which held the relevant licences.

The original proposed fee was 1.4% of the amount to be raised, but the transaction stalled. To facilitate progress, the fee was raised to 2.4%, and Stanbic entered into an agreement with Enterprise Growth Market Advisors Limited (EGMA) for 1% of the funds raised (\$6 million).

A member of the government of Tanzania and the former chief executive officer of Tanzanian Capital Markets and Securities were two of the three directors (and shareholders) of EGMA.

The mandate to raise funds was placed with Stanbic and Standard Bank. EGMA opened a bank account with Stanbic, where it transferred \$6 million. This money was later withdrawn in cash. No evidence was provided that EGMA rendered any services in return for this fee.

It was not alleged that either Standard Bank or its employees knowingly participated in an offence of bribery. The alleged offence was that Standard Bank had failed to place adequate procedures designed to prevent associated persons from committing an offence of bribery.

Terms of the DPA Between SFO and Standard Bank

Under the terms of the DPA, which will remain in effect for three years, Standard Bank will be obliged to (i) make a payment of approximately \$ 32.6 million within seven days of the judgement, (ii) cooperate with the relevant authorities in all matters arising out of the indictment, and (iii) implement the recommendations made as a result of the review of its antibribery policies by an independent contractor.

This amount consists of an account of profits (\$8.4 million), a fine (\$16.8 million), compensation to the government of Tanzania (approximately \$7 million), and the prosecution costs (\$330,000).

Conclusion

The DPA between the SFO and Standard Bank is an important moment for the SFO, which has been repeatedly criticised for lack of meaningful activity in relation to the prosecutorial powers given by the Bribery Act. SFO Director David Green said that the agreement “will serve as a template for future agreements”. However, given the extremely one-sided nature of the UK DPA, whether this will be the first of many is still the subject of huge debate.

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