

SFO agrees first UK DPA with Standard Bank

30 November 2015

The Serious Fraud Office's first application for a Deferred Prosecution Agreement was today approved by Lord Justice Leveson at Southwark Crown Court, sitting at the Royal Courts of Justice.

The counterparty to the DPA, Standard Bank Plc (now known as ICBC Standard Bank Plc) ("Standard Bank"), was the subject of an indictment alleging failure to prevent bribery contrary to section 7 of the Bribery Act 2010. This indictment, pursuant to DPA proceedings, was immediately suspended. This was also the first use of section 7 of the Bribery Act 2010 by any prosecutor.

As a result of the DPA, Standard Bank will pay financial orders of US\$25.2 million and will be required to pay the Government of Tanzania a further US\$7 million in compensation. 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.

In addition to the financial penalty that has been imposed, Standard Bank has agreed to continue to cooperate fully with the SFO and to 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. It is required to implement recommendations of the independent reviewer (Price Waterhouse Coopers LLP).

Commenting on the DPA, Director of the SFO David Green CB QC said:

"This landmark DPA will serve as a template for future agreements. The judgment from Lord Justice Leveson provides very helpful guidance to those advising corporates. It also endorses the SFO's contention that the DPA in this case was in the interests of justice and its terms fair, reasonable and proportionate. I applaud Standard Bank for their frankness with the SFO and their prompt and early engagement with us."

The suspended charge related to a US\$6 million payment by a former sister company of Standard Bank, Stanbic Bank Tanzania, in March 2013 to a local partner in Tanzania, Enterprise Growth Market Advisors (EGMA). The SFO alleges that the payment was intended to induce members of the Government of Tanzania, to show favour to Stanbic Tanzania and Standard Bank's proposal for a US\$600 million private placement to be carried out on behalf of the Government of Tanzania. The placement generated transaction fees of US\$8.4 million, shared by Stanbic Tanzania and Standard Bank.

On 18 April 2013, Standard Bank's solicitors Jones Day reported the matter to the Serious and Organised Crime Agency and on 24 April to the SFO. It also instructed Jones Day to begin an investigation and to disclose its findings to the SFO. The resulting

report was sent to the SFO on 21 July 2014.

The SFO reviewed the material obtained and conducted its own interviews. Subsequently, the Director of the SFO considered that the public interest would likely be met by a DPA with Standard Bank and negotiations were commenced accordingly.

The SFO has worked with the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC) throughout this process. A penalty of \$4.2m has been agreed between Standard Bank and the SEC in respect of separate related conduct.

We are very grateful to the DoJ, the SEC, the Foreign and Commonwealth Office, the Financial Conduct Authority for their assistance in resolving this investigation and deferred prosecution.

Notes for editors:

Please see the Deferred Prosecution Agreement , the Statement of Facts , the preliminary judgment and full judgment regarding the agreement.

The charge against Standard Bank has been suspended for three years, after which, subject to the bank's compliance with the terms of the DPA, the SFO will discontinue the proceedings.

Standard Bank's US\$25.2 million total financial penalty, which is payable to HM Treasury, consists of a US\$16.8 million financial penalty and a US\$8.4 million disgorgement of profits. The compensation due to the Government of Tanzania consists of US\$6 million, plus interest of US\$1,046,196.58.

Standard Bank is required to pay the compensation, disgorgement of profits, financial penalty and costs within seven days of today's judgment. The money due to the Government of Tanzania will be returned in line with advice being received from the Department for International Development.

A DPA is not a private plea "deal" or "bargain" between the prosecutor and the defendant company. It is a way in which a company accounts for its alleged criminality to a criminal court, and can have 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. Further information on the history of DPAs and how they are intended to be used can be found

here .