

## UK's first Deferred Prosecution Agreement approved in Court today

**Date :** November 30, 2015

The UK Serious Fraud Office's first Deferred Prosecution Agreement (DPA) was today approved by Lord Justice Leveson.

Cordery attended what was literally a standing-room only event - just before the start the judge had to move the hearing to a larger court once it became clear that the originally assigned courtroom could not accommodate all those who came to attend - and even then it was tight.

This historic hearing lasted all morning, mainly taken up by the SFO setting out its case. The SFO went in detail through the [Statement of Facts](#) in the morning and the beginning of the afternoon with the judge simply approving the DPA. The details can be found in the [Judgment](#) (see here for the [Preliminary Judgment](#)).

### Who is the bank involved?

According to its website ICBC Standard Bank is a leading financial markets and commodities bank with "Chinese and African parentage". It is now a subsidiary of Industrial and Commercial Bank of China Limited.

### What is a DPA?

Since early 2014 the UK has had in place a system for Deferred Prosecution Agreements (DPAs). A DPA is basically a tool for the SFO (and other government crime authorities) to try and reach a form of plea bargain with corporate offenders (but not individuals). The aim is to shortcut trials, time and cost. Additionally the hope was that DPAs would enable prosecutions under the Bribery Act 2010 to reach the courts more quickly and efficiently. In the US, where the procedure is widely used, DPAs are also said to encourage self-reporting. However, this may not be so significant a consideration in the UK as the discount given for entering into a DPA may not be as great. Under a DPA a company is charged with an offence but criminal proceedings are automatically suspended and the company agrees to a number of conditions, such as paying a penalty or co-operating with the prosecution. Not sticking to the agreed conditions would mean the proceedings continuing.

Entering into a DPA in the UK is a transparent and public process, and, crucially, its suitability for resolution and the appropriateness of the terms to the circumstances must be agreed by a judge. After the judge's agreement has been secured the DPA and its terms are announced in open court. This is the hearing which took place today.

### What was this DPA about?

In this case the bank was the subject of criminal proceedings over an alleged failure to prevent bribery contrary to section 7 of the Bribery Act 2010. Section 7 was a new offence created by the Bribery Act 2010. The criminal proceedings have been suspended by the DPA.

The proceedings related to a \$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 view favourably 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 \$8.4 million, shared by Stanbic Tanzania and Standard Bank.

On 2 April 2013 Standard Bank Group began an internal investigation and between 2 and 17 April 2013 Standard Bank in London was informed. Standard Bank instructed their lawyers on 17 April 2013 (before carrying out their own internal investigation) to report the matter immediately. On 18 April 2013, Standard Bank's solicitors reported the matter to the Serious and Organised Crime Agency and on 24 April 2013 to the SFO. The bank also asked its lawyers 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 Stanbic Bank CEO who seems to have agreed to the EGMA "Commission" was dismissed on 19 August 2013 for failing to co-operate with the investigation. Stanbic's acting Head of Corporate and Investment Banking resigned on 3 June 2013. The deal team also involved an un-named employee who was the son of a government Minister who signed the deal off. In addition, Stanbic's Head of Legal Services and Compliance was dismissed on 31 October 2013 for failing to report concerns about EGMA's involvement.

### **What were the terms of the DPA?**

As a result of the DPA, Standard Bank will pay \$25.2 million to the UK authorities and will also be required to pay the Government of Tanzania over \$7 million in compensation and interest. 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. Those costs seem to have been reduced to recognise the bank's co-operation. They will also pay the costs associated with monitoring future compliance.

In addition to the financial penalty imposed, Standard Bank has agreed to continue to co-operate fully with the SFO and to be subject to an independent review of its existing anti-bribery and corruption controls, policies and procedures. It will be required to implement the recommendations of an independent reviewer.

The SFO reviewed the material obtained and conducted its own interviews. Subsequently, the SFO agreed a DPA might be appropriate and began the process to agree its terms and seek approval from the court. In parallel the bank has also agreed terms with the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC). A penalty of \$4.2m has been agreed between the bank and the SEC in respect of separate related conduct.

### **Comments**

In terms of what actually happened in court today this was very much an SFO-dominated process - the judge made only a few interventions and counsel for Standard Bank said very little. The look-and-feel of the hearing was very matter-of-fact and declaratory, which is to be expected considering the nature of this type of proceeding. The judge's conclusions are in effect simply that the entering into the DPA is "in the interests of justice" and that the terms of the DPA are "fair, reasonable and proportionate." Interestingly, the final judgment is actually half the size of the preliminary judgment - the latter must still be read for issues that the judge addresses more fully such as the thorny problem of assessing the appropriate financial penalty.

It was learnt that there had been an earlier non-public hearing (on 4 November 2015), when the SFO made its application for a DPA. At the start of the public hearing the judge stated that had there been problems after that which would have needed to be addressed these would have been undertaken in a further non-public hearing.

It is notable that credit was given to Standard Bank for having quickly brought this matter to the attention of both the SFO and the Serious and Organised Crime Agency. The bank was also given credit for a speedy internal investigation through its lawyers and the bank's full co-operation.

From the facts of the case it seems that there was a major compliance failure ("inadequate systems" as stated in the judgement) with insufficient know your client (KYC) and due diligence (and training) undertaken by the bank. The bank, as the SFO emphasised in court, missed clear red flags. In court some interesting background was also given by the SFO about a previous major compliance failure of the bank as regards anti-money laundering issues where the bank was fined £7.6 million by the [FSA](#). After the FSA fine the bank had undertaken significant anti-money laundering compliance work including due diligence and the tone from the top involvement. At the end of the preliminary judgment the judge also underlined "the enormous importance which is rightly attached to the culture of compliance with the highest ethical standards that is so essential to banking in [the UK]". It should be said that it was made clear that in no way was the bank implicated in the actual bribery.

As regards the 3-year period of the DPA this is perhaps a little higher than what might be expected. By way of comparison, monitorships were popular in the US, but, seem perhaps to be declining in popularity in the US. In 2014 we understand that only one was put in place in the Avon settlement, and then for only 18 months. The US Department of Justice have given 3-year terms, for example in the HP case, but that would seem to be almost the

higher end of what might have been expected.

There was also a moment's hesitation at the start when counsel for the SFO raised the issue of whether tweeting the proceeding was possible which the judge immediately allowed.

Finally, the judge ended the proceedings by stating that this case should create a benchmark against which future DPAs should be judged.

More details on the process to be followed for DPAs are set out in the Deferred Prosecution Agreement Code of Practice, which can be found [here](#).

More details of Cordery's bribery and corruption practice are [here](#). There is a roundup of recent activity by the SFO in writing and on film [here](#) and details of a recent Scottish settlement [here](#).

Jonathan Armstrong and André Bywater are lawyers with Cordery in London where their focus is on compliance issues.

[Jonathan Armstrong](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH

Office: +44 (0)207 075 1784

[jonathan.armstrong@corderycompliance.com](mailto:jonathan.armstrong@corderycompliance.com)



[André Bywater](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH

Office: +44 (0)207 075 1785

[andre.bywater@corderycompliance.com](mailto:andre.bywater@corderycompliance.com)



