

Client Alert

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UK's Serious Fraud Office Announces First Deferred Prosecution Agreement for a Violation of the UK Bribery Act

Deferred prosecution agreements (DPAs) have been used by the Department of Justice to hold corporations accountable for a wide range of alleged misconduct. DPAs were a distinctly American construct until 2013, when the United Kingdom enacted a provision of the Crime and Courts Act 2013 (2013 Act) to provide for their use. On November 30, 2015, the Crown Court at Southwark approved the United Kingdom's first-ever DPA, an agreement between Standard Bank PLC and the UK's Serious Fraud Office (SFO).

The DPA arises from a sovereign debt offering managed by Standard Bank and its subsidiary, Stanbic Bank Tanzania (Stanbic). In 2011, Standard Bank and Stanbic submitted a proposal to raise funds for the Tanzanian government via a sovereign note private placement. In March 2013, Stanbic paid \$6 million to a "local partner" of the Tanzanian government, intending to induce the Tanzanian government to use the bank for the transaction. Standard Bank conducted an internal investigation and then self-disclosed the incident in April 2013, admitting that the conduct violated the UK Bribery Act.

Under the terms of the DPA, the SFO will prepare an indictment setting forth the particulars of the offense. The SFO has agreed to defer prosecution for three years in consideration of Standard Bank's agreement to cooperate, conduct an independent review of its anti-corruption controls and pay compensation, consisting of a financial penalty, costs and disgorgement of profit totaling approximately \$32.7 million.

In approving the proposed DPA in the Standard Bank matter, the court lauded the company's forthright self-report and internal investigation. The court also considered that Standard Bank is now under new ownership, having been acquired by the Industrial and Commercial Bank of China, and that there was an agreement providing for independent review of Standard Bank's anti-corruption policies as part of the DPA. The approving judge described the DPA as a "benchmark against which future such applications may fall to be assessed," while the director of the SFO noted it will serve as a ["template for future agreements."](#)

The DPAs resolution for Standard Bank was the result of cross-border cooperation between the SFO and the US Department of Justice in conjunction with the Securities and Exchange Commission. In addition to the penalties and disgorgement to be paid as part of the DPA, Standard Bank agreed to pay \$4.2 million to settle SEC charges for failing to disclose the \$6 million in payments by Stanbic in documents and statements provided to investors in connection with the sovereign debt offering. The SEC did not have jurisdiction for an FCPA action because Stanbic was not an "issuer." However, the SEC noted in its [release](#) that Standard Bank missed red flags that indicated that some of the millions going to the private Tanzanian firm were being used to influence the Tanzanian government to select Standard Bank and Stanbic as managers of the offering. The \$4.2 million equals the amount that Standard received for participating in the transaction.

This landmark agreement shows that the prosecutors in the UK government are poised to take advantage of the 2013 Act and pursue DPAs. Since the first corporate conviction under the UK Bribery Act in January 2015, the SFO is gaining momentum in its enforcement agenda and the use of DPAs will be a significant tool for reaching global resolutions for violations of the Act. The UK's DPA statute requires court approval and the parties must participate in a confidential preliminary hearing where the court will consider whether the proposed DPA is in the interests of fairness, reasonableness and proportionality. Although the UK statute outlines a different process than that utilized by prosecutors in the US, the same factors will likely inform the terms of DPAs on both sides of the Atlantic. Robust internal compliance, effective and objective internal investigations, and forthright self-reporting typically mitigate a company's exposure and prevent outcomes more serious than a DPA.

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