

## CLIENT ALERT

### UK's Serious Fraud Office (SFO) Secures First-Ever Deferred Prosecution Agreement (DPA)

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On 30 November, the UK's Serious Fraud Office (SFO) gained approval of its first-ever Deferred Prosecution Agreement (DPA) in the first resolution of a case under section 7 of the UK Bribery Act. The case involved allegations that Standard Bank Plc (now ICBC Standard Bank Plc) (Standard Bank), had failed to prevent bribery in violation of section 7.

Although common in the U.S., the SFO only gained the power to offer companies DPAs in February 2014. However, to do so, SFO must first determine that it is within the public's interest to forgo a criminal prosecution and ultimately have this determination confirmed by the Crown Court. After reviewing the results of an investigation performed by Standard Bank's solicitors, the Director of the SFO concluded a DPA met this criterion; Lord Justice Leveson from the Royal Courts of Justice approved the DPA on November 30.

The Director of the SFO, David Green, commented that this "landmark DPA" will be used as a template for future agreements, putting companies on notice that the SFO's use of DPAs will become more common.

According to the agreed Statement of Facts, the suspended charge involved a Stanbic Bank Tanzania-initiated payment of \$6 million (USD) in March 2013 to a local partner in Tanzania, Enterprise Growth Market Advisors (EGMA). Stanbic Bank Tanzania is owned by the same parent company as Standard Bank, South Africa's Standard Bank Group.

The payment was intended to persuade members of the Government of Tanzania to support Stanbic Tanzania and Standard Bank's proposal for a \$600 million (USD) private placement to be carried out on behalf of the Government of Tanzania. A private placement is the funding of securities through a private offering, rather than a public one. In this case, the placement generated transaction fees of \$8.4 million (USD), which were shared by Stanbic Tanzania and Standard Bank.

Standard Bank voluntarily disclosed the matter to the UK's Serious and Organised Crime Agency on 18 April 2013 and to the SFO on 24 April 2013.

The DPA requires Standard Bank to pay financial orders of \$25.2 million (USD), \$7 million (USD) in compensation to the Government of Tanzania, and the SFO's costs of £330,000 (\$496,000 USD). Further, the Bank must continue to fully cooperate with the SFO, as well as undergo an independent review of its existing anti-bribery and corruption controls, policies and procedures regarding compliance with the Bribery Act of 2010 and other applicable anti-corruption laws, and then to implement any findings.

According to the SFO press release, the SFO worked hand-in-hand with the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC). Standard Bank agreed to a Cease and Desist Order and a related \$4.2 million (USD) penalty to the SEC related to failure to disclose to investors the payments made by Stanbic Bank Tanzania and the existence of EGMA and the fees it was to receive. DOJ issued a declination letter once the DPA was approved, which indicates it will not be pursuing any enforcement action.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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