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U.K. Serious Fraud Office Enters First Deferred Prosecution Pact, With ICBC Standard Bank

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ICBC Standard Bank on Monday agreed to pay \$36.9 million in a global settlement with the U.S. and U.K. governments over a bribe paid to secure business with the Tanzanian government.

The settlement marked the first time that the U.K.'s Serious Fraud Office (SFO) used a deferred prosecution agreement against a company. And the outcome showed that the U.S. Department of Justice, which declined to prosecute, can show mercy when a corporation self-reports wrongdoing and cooperates with government investigations, as Standard (now ICBC Standard Bank) had.

Because of the historical importance of using a deferred prosecution agreement in the U.K., the SFO spelled out its reasons in lengthy documents that included a detailed statement of facts that named every employee involved in the transaction and their roles.

When the bank discovered the crime, it reported itself to the SFO and hired lawyers at Jones Day to conduct an internal investigation, which it shared with the government. Hank Walther, the lead Jones Day lawyer, declined comment for this story. Herbert Smith Freehills represented the bank in London.

In a statement announcing the settlement Monday, Standard said it “is confident that the circumstances giving rise to the DPA were an isolated incident relating to one transaction” to which it had responded appropriately.

In its statement the bank said because of its prompt self-disclosures and its cooperation with the investigation, DOJ “has confirmed that it has closed its related inquiry into the transaction.”

David Green, director of the SFO, called the DPA settlement a landmark and said in a statement that it “will serve as a template for future agreements.” The agreement was required to be approved by a judge, Lord Justice Sir Brian Leveson.

Green said that Leveson’s final approval statement “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 SFO worked with the U.S. Securities and Exchange Commission and the DOJ during the investigation. The settlement includes payment of \$25.2 million in penalties to the U.K., \$7 million to Tanzania, and \$4.2 million to the SEC plus investigation costs.

The SEC also required the company to admit that it failed to disclose so-called “influence” payments made by two executives of an affiliate bank to a Tanzanian firm that did no work. The executives no longer work for the bank.

Gerald Hodgkins, associate director of the SEC’s Division of Enforcement, said in a statement, “This action against Standard demonstrates that when suspicious payments made anywhere in the world result in tainted securities offerings in the United States, the SEC is fully committed to taking action against the responsible parties.”

The SEC said it did not bring Foreign Corrupt Practices Act charges because the bank’s transaction did not make it an “issuer” as defined by the act. It remains to be seen if the SEC, DOJ or the SFO will go after the individuals involved.

The three-year DPA accuses the bank of failing to keep its executives from committing bribery. It requires Standard to enact various compliance reforms as well as to hire an independent review of its anti-corruption and bribery controls, in this case by Price Waterhouse Coopers.

In reaction to the DPA, attorney Satindar Dogra in London said, “This case illustrates that for a company seeking a DPA the bar is likely to be set very high in terms of cooperation.” Dogra, Linklaters’ London head of dispute resolution, was not involved in the case.

The matter began in March 2013 when the bank affiliate paid \$6 million to an advisory firm in order to win \$600 million in a transaction with Tanzania. Two directors and shareholders of the advisory firm were Tanzanian government finance officials, according to court documents.

The \$600 million transaction generated fees of \$8.4 million for Standard and its affiliate, which no longer exists. Standard reported the \$6 million payment to the advisory firm a month later.

In February 2015 the Industrial and Commercial Bank of China Limited (ICBC) acquired a 60 percent majority share in the bank, resulting in the name change to ICBC Standard Bank. “ICBC had no direct interest in Standard at the time the relevant events took place, and no involvement in this incident in any way,” according to Standard’s statement.