

# Corporate Bribery: Successful Prosecutions in the UK

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## 1. THE DPA

On November 30, 2015, the Serious Fraud Office (SFO), the UK's anti-bribery prosecutor, announced that it had agreed to a deferred prosecution agreement (DPA) with ICBC Standard Bank plc in relation to US\$6m in bribes paid by its Tanzanian subsidiaries in 2012 and 2013 to companies owned by Tanzanian public officials, to obtain work from the government of Tanzania that ultimately generated \$8.4m in transaction fees for the bank.

Having self-reported to the SFO in April 2013, the bank faced charges under Section 7 of the UKBA for failing to prevent the corrupt activity of its staff and subsidiaries in Tanzania. Section 7 establishes a strict liability offence under which an entity will be held liable for the illegal conduct of its employees or representatives without the need for prosecutors to establish that the entity was aware of the bribe. The DPA, as approved by a senior judge, requires the bank to disgorge its \$8.4m profit, compensate the Tanzanian government to the tune of \$6m and pay a fine of \$16.8m (and the SFO's costs). The bank has already paid a \$4.2m fine to the US authorities, as the SFO has been working closely with both the US Department of Justice (DOJ) and Securities and Exchange Commission (SEC) in pursuing this case.

The agreement of a DPA gives corporations somewhat clearer guidance as to how the self-reporting regime in the UK works in practice, which may encourage early engagement with the SFO when corrupt activity is discovered in an organisation. However, it remains to be seen to what extent the size of the fine, the substantial ongoing burden of supervision of the bank by the SFO and the blanket cooperation to which the bank had to agree to secure the DPA may counterbalance those benefits and discourage other corporations from going forward with voluntary disclosure of such concerns in the future. Certainly, there is now little doubt that the bar has been set high in terms of the level of cooperation that a self-reporting entity will be expected to provide, given that Standard Bank self-reported early, allowed the SFO broad access to its internal documents and has also agreed to continue fully cooperating with ongoing monitoring activities by the regulator.

## 2. THE UKBA GUILTY PLEA

On December 2, 2015, the SFO announced that the UK-listed Sweett Group, a construction industry project management company with operations across Europe, North America and the MENA region, had admitted offences under Section 7 of the UKBA, following an investigation that was opened in July 2014 in relation to Sweett Group's activities in the Middle East. The case marks the first guilty admission by a corporation in a Section 7 prosecution.

The SFO investigation followed reports in the US financial press that a former Sweett employee had attempted to induce a New York-based architecture firm to bribe a United Arab Emirates public official to obtain work for both the architect and Sweett on a \$100m healthcare project in North Africa. In the course of conducting an internal investigation following the press reports, Sweett uncovered other potential offences, which it self-reported to the SFO. It is also understood that Sweett entered discussions with the DOJ in 2014, but, to date, there appears to have been no substantive enforcement action taken in the United States.

The penalties to be imposed will be determined at a future court hearing, which has yet to be scheduled, but Sweett has conceded that it faces a potentially unlimited fine. Its shares fell 10 percent following the announcement, and are now worth less than a third of the price at which they traded before the bribery allegations first came to light.

## 3. POTENTIAL IMPACT OF THE SFO'S SUCCESS

After the UKBA came into force in 2011, the SFO was widely criticised for taking little post-implementation enforcement action under the UKBA, but these enforcement actions may revive debate on whether the UKBA's provisions for prosecution of a "failure to prevent" offence should be extended to other financial crimes. This is a position that has been long-espoused by the SFO (and advocated for by David Green QC, the SFO's director), but it appears to have been deprioritised by the current government after some initial displays of enthusiasm. With the wind in its sails, the SFO may reactivate its attempts to broaden its enforcement authority. Press reports indicate that Green, whose four-year term was due to expire in April 2016, is to be offered a two-year contract extension.

More broadly, the SFO's action in these cases sends a signal to the international business community that the UKBA does indeed have real teeth and cannot be ignored. In practical terms, these actions furnish concrete evidence that global companies that carry on business in the UK must be mindful of the UKBA in their conduct of business anywhere in the world. As a benchmark of business best practices, these enforcement actions are a sharp reminder that the UKBA sets forth standards that establish essential points of reference for the anti-corruption compliance policies and practices of global companies.

## 4. AUTHORS' DETAILS



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