

# CORRUPTION WATCH

IN BRIEF: The UK's First  
Deferred Prosecution  
Agreement

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Good News for the SFO But Worrying News for Tanzania and the Fight  
Against Bribery

# IN BRIEF: The UK's First Deferred Prosecution Agreement

The UK's first Deferred Prosecution Agreement (DPA), approved by a senior judge on 30<sup>th</sup> November and involving Standard Bank's alleged failure to prevent its Tanzanian subsidiary and its executives from paying bribes, has changed the UK's legal landscape for fighting bribery and economic crime.

DPAs were introduced in the US to give the most vulnerable in society a second chance by allowing them to prove good behaviour rather than be prosecuted. They have been increasingly used in the US over the past decade to give that second chance to the most powerful in society: corporations. It is for this latter purpose that they have been introduced into the UK. Given that they represent a form of justice reserved for society's most powerful actors and the potential for public perception that corporations are as a result above the law, accountability in how DPAs are used is essential.

The UK's first DPA is likely to set the tone both of future DPAs and for how enforcement of the UK's Bribery Act will develop over the next few years. While the Serious Fraud Office (SFO) clearly sought to allay some of the criticisms of DPAs, namely by ensuring there is no tax deductibility for the financial penalties, no immunity from prosecution clauses, and by providing extensive detail of the alleged wrongdoing, the UK's first DPA has set some worryingly low standards in other key areas, namely:

- **Individual accountability** – no single individual in the UK has been held to account either by Standard Bank or the SFO for their failure to prevent the alleged bribery. This is particularly surprising given the high level of control and approval by UK individuals for the transaction. These individuals still operate at senior levels within the financial industry. At the very least, those UK individuals involved in the failing to prevent the alleged wrongdoing should be investigated by the Financial Conduct Authority with a view to removing their 'approved person' status.
- **Reliance on a company's internal investigation** – almost complete reliance on the internal investigation of the company by the SFO means that neither the court nor the public will ever truly know whether the full extent of the wrongdoing was unearthed, or whether there were systemic problems within the Bank rather than this being an isolated incident.
- **Relatively low financial penalties that do not reflect adequate compensation or disgorgement of profits** – Standard Bank agreed to pay \$6 million compensation to Tanzania based on the calculated harm to the country. But compensation may have been well over ten times higher - possibly as high as \$80 million - if the full harm to Tanzania had been taken into account. Meanwhile, profits to be disgorged by the Bank which were set at \$8.4 million did not take into account revenue streams made by the Bank on the transaction (which could have been up to \$10 million) nor the market advantage achieved by the Bank as a result of the wrongdoing.

**If DPAs are to act as a serious deterrent to bribery and economic crime, and to garner public confidence, they cannot be a means for individuals to be let off accountability for their actions or for companies to escape the full harm of their wrongdoing. Corruption Watch calls on the SFO and the judiciary to consider seriously if the precedents set in this DPA will genuinely deter wrongdoing and let the real victims of corruption, in this case the Tanzanian people, see justice.**