

SFO secures second DPA

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The Serious Fraud Office's second application for a Deferred Prosecution Agreement was today approved by Lord Justice Leveson at Southwark Crown Court, sitting at the Royal Courts of Justice.

The counterparty to the DPA is a UK SME that cannot currently be named due to ongoing, related legal proceedings.

The SME was the subject of an indictment alleging conspiracy to corrupt, contrary to section 1 of the Criminal Law Act 1977, conspiracy to bribe, contrary to section 1 of the same Act, and failure to prevent bribery, contrary to section 7 of the Bribery Act 2010, all in connection with contracts to supply its products to customers in a number of foreign jurisdictions.

This indictment, pursuant to DPA proceedings, was immediately suspended.

As a result of the DPA, the company will pay financial orders of £6,553,085, comprised of a £6,201,085 disgorgement of gross profits and a £352,000 financial penalty. £1,953,085 of the disgorgement will be paid by the SME's US registered parent company as repayment of a significant proportion of the dividends that it received from the SME over the indictment period.

In addition to the financial terms of the agreement, the company has agreed to continue to cooperate fully with the SFO and to provide a report addressing all third party intermediary transactions, and the completion and effectiveness of its existing anti-bribery and corruption controls, policies and procedures within twelve months of the DPA and every twelve months for its duration.

In passing the judgment, Lord Justice Leveson said:

"[This conclusion] provides an example of the value of self-report and co-operation along with the introduction of appropriate compliance mechanisms, all of which can only improve corporate attitudes to bribery and corruption."

SFO Director David Green CB QC said:

“This case raised the issue about how the interests of justice are served in circumstances where the company accused of criminality has limited financial means with which to fulfill the terms of a DPA but demonstrates exemplary co-operation.

“The decision as to whether to force a company into insolvency must be balanced with the level and nature of co-operation and this case provides a clear example to corporates. The judgment sets out the considerations in detail and endorses the approach we took. As with the first DPA with Standard Bank, the judgment provides clear and helpful guidance.”

The suspended charges relate to the period of June 2004 to June 2012, in which a number of the company’s employees and agents was involved in the systematic offer and/or payment of bribes to secure contracts in foreign jurisdictions. The SFO undertook an independent investigation over a period of two years, concluding that of the 74 contracts examined 28 were found to have been procured as a result of bribes.

The SME’s parent company implemented a global compliance programme in late 2011. In August 2012, this compliance programme resulted in concerns being raised within the SME about the way in which a number of contracts had been secured. The SME took immediate action, retaining a law firm that undertook an independent internal investigation. The law firm delivered a report to the SFO on 31 January 2013, after which the SFO conducted its own investigation.

The SFO would like to thank HM Treasury, HM Revenue & Customs and the Department for Business, Innovation & Skills for their assistance in this investigation.