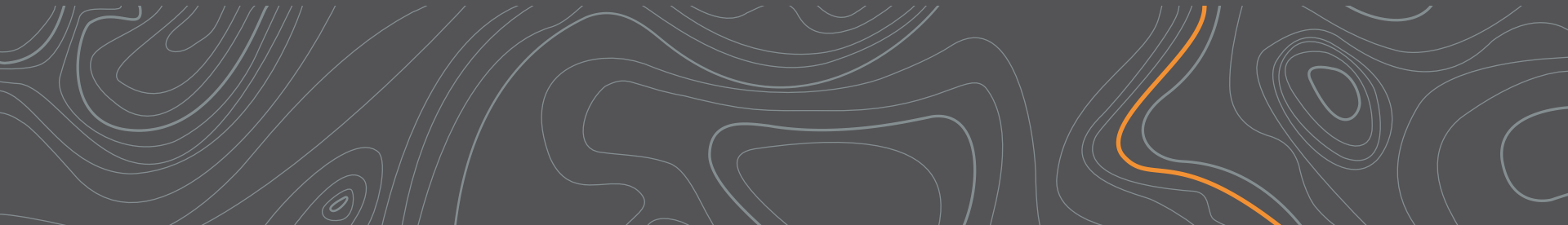


Deferred Prosecution Agreements

Alun Milford



Deferred Prosecution Agreements - Background

Two important reforms to the way the criminal justice system could deal with companies:

- a new basis for corporate criminal liability in bribery cases (section 7 Bribery Act 2010); and
- a new way of dealing with companies facing the risk of prosecution (section 45 and schedule 17, Crime and Courts Act 2013).



Deferred Prosecution Agreements - 1

It is an agreement between a designated prosecutor and an organisation facing prosecution for certain financial offences.

The agreement provides that the prosecutor will institute proceedings which will immediately be deferred for a fixed period of time pending the organisation's compliance with conditions imposed in the agreement.

Typical conditions include payment of a financial penalty, compensation, disgorgement of profit, payment of costs, implementing a reform programme and a continuing duty of co-operation.



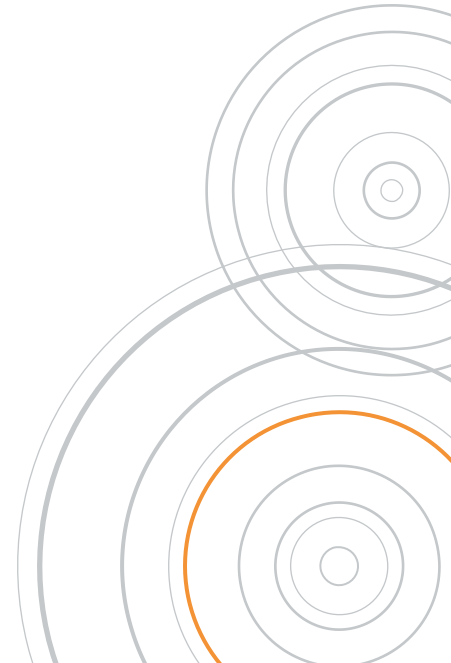
Deferred Prosecution Agreements - 2

If the company complies with the agreement, the prosecution is discontinued.

If the company fails to comply with the agreement, the deferment is lifted and the company is prosecuted.

A deferred prosecution agreement only takes effect after a judge has declared that:

- it is in the interests of justice; and
- its terms are fair reasonable and proportionate.



Deferred Prosecution Agreement – Securing Public Confidence

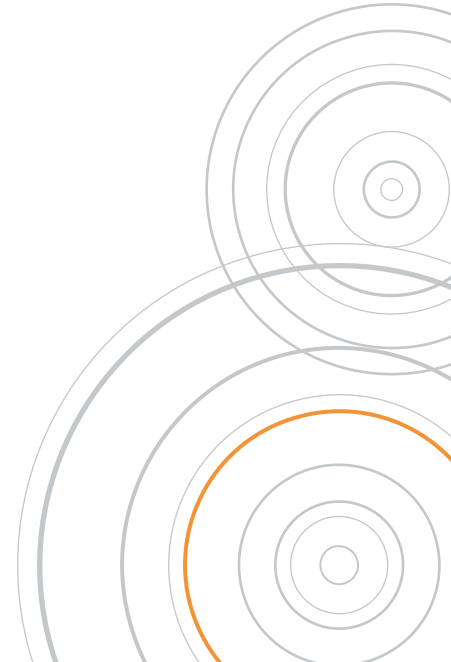
Requirement for judicial approval

Power to enter into deferred prosecution agreement is limited to designated prosecutors – currently only Director of Serious Fraud Office and Director of Public Prosecutions

Any financial penalty must be broadly comparable to a fine the court would have imposed on a guilty plea

Code of Practice setting out the general principles to be applied in deciding whether a DPA is likely to be appropriate

Public hearing and duty to publish information



Deferred Prosecution Agreements – Key Considerations in Securing Approval

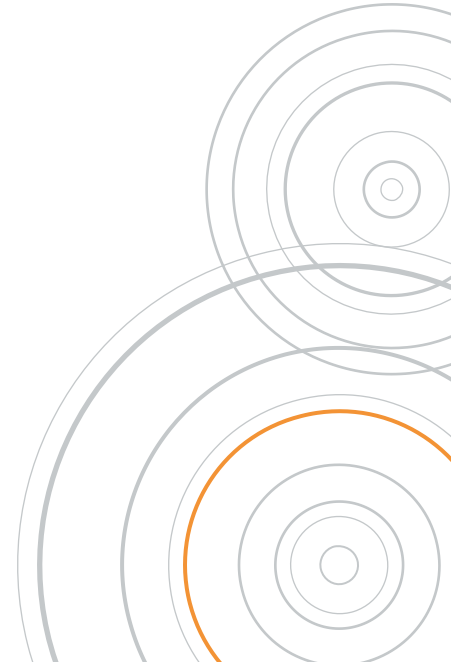
Seriousness

Co-operation

- SFO Guidance on Co-operation
 - Nature and tone of engagement
 - Supply of documents
 - Supply of witness accounts

Corporate Reform

- Monitors?



Deferred Prosecution Agreements

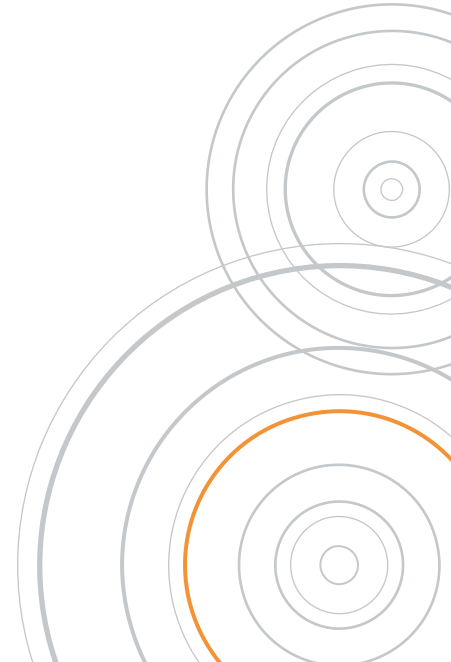
SFO v Standard Bank PLC

SFO v Sarclad Limited

SFO v Rolls-Royce PLC and Rolls-Royce Energy Systems Inc

SFO v Tesco Stores Limited

SFO v Serco Geografix Limited



SFO v Standard Bank

Tanzania wanted to borrow \$600,000,000 from the money markets.

Standard Bank wanted to raise the money for Tanzania, using subsidiaries in Tanzania and the United Kingdom, for a fee of 1.4%.

Tanzania did not agree to the bank's offer until an agent, EGMA, was introduced to the transaction.

EGMA did no work on the transaction

Two men associated with EGMA had close ties to the Tanzanian government

EGMA's fee was 1% - \$6,000,000.

It was paid to a bank account in Tanzania and withdrawn in cash.

Standard Bank later accepted that the \$6,000,000 was a bribe.



Interests of Justice

The judge considered:

- the seriousness of the offence;
- the company's co-operation, including its self-report;
- any history of misconduct by the company;
- the company's compliance programme at the time of the offence;
- the company's actions to improve its compliance programme; and
- changes in the company's shareholding – “relevant but by no means a necessary requirement”



Fair, Reasonable and Proportionate

Payment of compensation - \$6,000,000 plus interest

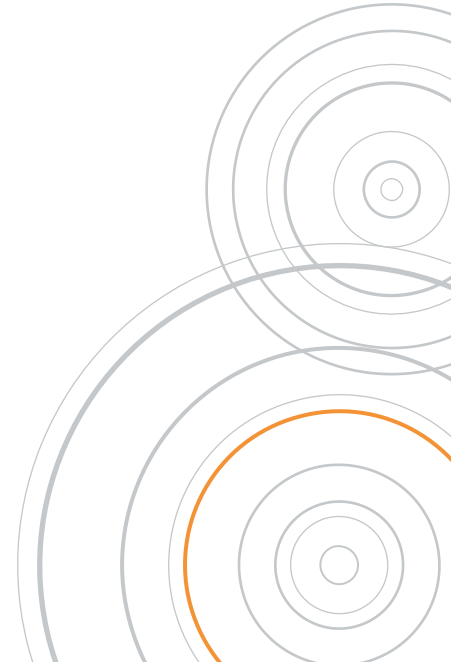
Disgorgement of profit on the transaction - \$8,400,000

Payment of a financial penalty - \$16,800,000

Continued co-operation with the authorities, here and overseas

Commission an independent review of compliance policies, controls and procedures.

Payment of the SFO's costs of investigation and resolution.



Co-operation between Legal Systems

Means of Co-operation

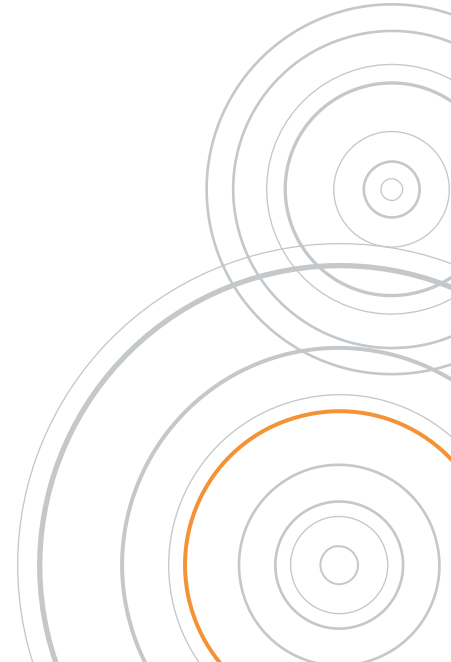
- sharing intelligence
- supply of evidence and recovering assets
- extradition

Principles of Co-ordination

- DPP's Guidance and Eurojust Principles

Recognition of Remedies Obtained

- double jeopardy
- abuse of process
- trust



Questions?

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