

UK's Serious Fraud Office secures second deferred prosecution agreement – this time with the UK Subsidiary of US Corporate

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Lord Justice Leveson [has approved](#) the Serious Fraud Office's ("SFO's") second application for a Deferred Prosecution Agreement ("DPA"). The Agreement is with a company which cannot be named because of continuing related legal proceedings. The [first DPA](#) was with ICBC Standard Bank in **December 2015**. Further agreements under the DPA system have been keenly awaited, and this second DPA sends a strong message to UK Plc and international companies that the DPA model is here to stay.

The DPA involved a small to medium sized ("SME") UK company and allegations of overseas bribery in a number of countries with bribes paid through third parties in Asia. The agreement encompasses financial orders totalling £6.5m, and continuing co-operation by way of an annual report to the SFO on third party intermediary transactions, and the company's anti-bribery controls, policies and procedures. Charges laid under both pre Bribery Act and Bribery Act law have been suspended and will be discontinued within 5 years as long as the company is compliant with the DPA.

The judgment is interesting to companies from all sectors, including financial services, in a number of respects:

- The SME company is of limited means and the question of sentencing and the potential consequence of a company insolvency is addressed. SFO Director David Green has stated, "*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 fulfil the terms of a DPA but demonstrates exemplary co-operation.*" The fine was lower than the recommended guideline amount because of the risk of insolvency.
- The bribery was discovered as a result of the SME's US parent company implementing a global compliance programme.
- The fine will be paid by the UK company but £2m of the disgorgement payment will be met by the US parent which is not accused of any misconduct, as a repayment of a significant proportion of the dividends that it received from the SME over the indictment period.
- The judgment gives useful commentary on the meaning of co-operation, including the company providing comprehensive information on the initial self-report, and oral summaries of first accounts of interviewees. It also facilitated interviews, and responded promptly and completely to SFO requests for information.

UK and international corporates will follow this decision with interest. The entity and the amount involved may be modest, in this case but the guidance on several important DPA issues given by Lord Justice Leveson is crucial to any company which has any jurisdictional nexus with the UK, discovers it is affected by criminal conduct, and considers availing itself of the UK self-reporting regime.

[Louise Delahunty](#), a partner in our [White Collar Crime & Regulatory Defense](#) practice, can provide more information if you need it.

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