

BETWEEN

SERIOUS FRAUD OFFICE

-v-

STANDARD BANK PLC
(NOW KNOWN AS ICBC STANDARD BANK PLC)

STATEMENT OF FACTS

PREPARED PURSUANT TO

PARAGRAPH 6(1) OF SCHEDULE 17 TO THE CRIME AND COURTS ACT 2013

1. This document is an agreed Statement of Facts in respect of a Deferred Prosecution Agreement in relation to the alleged commission by Standard Bank plc [SB], now called ICBC Standard Bank plc, of an offence of failing to prevent bribery by its former sister company Stanbic Bank Tanzania Limited [ST] by the actions of ST's then Chief Executive Officer (Bashir Awale) [BA] and/or Head of Corporate and Investment Banking (Shose Sinare) [SS] contrary to section 7 of the Bribery Act 2010. A draft charge is enclosed.
2. On 1 February 2015, the Industrial and Commercial Bank of China Limited [ICBC] acquired a 60% controlling interest in SB from Standard Bank Group Limited [SBG]. SBG retains a 40% interest in SB. ICBC did not own shares in SB at the time of the events described in this Statement of Facts and ICBC had no involvement in these facts in any way.
3. A list of the initials and / or abbreviations used for various individuals and companies appears as **Appendix 1**.
4. SB and SBG took the significant step of assisting by self-disclosing to the SFO in April 2013 the conduct that is summarised in this Statement of Facts within days of it coming to its attention. Jones Day (solicitors acting for SB's then sole ultimate parent SBG) conducted an internal investigation and reported to the SFO. As part of their investigation, Jones Day reviewed and made available to the SFO electronic and documentary evidence collected from the following:
 - a. e-mail servers held in Africa;
 - b. inboxes and/or hard drives of team members working on the transaction
 - c. the contents of the relevant shared drive used as a central IT repository for documents by deal team members;
 - d. paper files;
 - e. documents held electronically and requested from other individuals within the group;

- f. CCTV images recovered from Africa; and
 - g. recordings of telephone conversations made and received by team members working on the transaction for the relevant period.
5. Search terms were applied to the data recovered by Jones Day.
 6. Jones Day have also responded to specific requests for material made by the SFO, including permitting the SFO to have access to relevant transaction material.
 7. The SFO has reviewed the material obtained by the internal investigation and conducted its own interviews including of UK based employees involved in the transaction or on its peripheries.
 8. The agreed facts are set out under the following headings:
 - a. Summary
 - b. Companies and People
 - c. Background and Early Negotiations
 - d. The Transaction May-November 2012
 - e. The Signed Mandate, Fee letter and Collaboration Agreement
 - f. Checks & Approvals
 - g. Closing the Deal and Payment
 - h. Withdrawal of the EGMA Monies
 - i. Applicable Policies

A. SUMMARY

9. This case concerns a financing transaction undertaken on behalf of the Government of Tanzania [GOT] by SB (a UK company) and SB's then sister company ST (a Tanzanian company).
10. The GOT needed to raise public funds in order to support Tanzania's ongoing "Five Year Development Plan" and to meet key infrastructure requirements within the country (including energy, transport, water and sanitation). The GOT was permitted to raise commercial finance in levels agreed by the IMF to fund pre-determined key infrastructure projects.
11. SB and ST put forward a proposal by which they would be mandated to raise those funds for the GOT by way of a sovereign note private placement. Negotiations began in February 2012 and the transaction was completed in March 2013.
12. The transaction was a significant one in terms of revenue for SB and ST, and also in terms of reputation and future business opportunities in Tanzania.
13. SB and ST acted jointly on the mandate. Their initial proposal in February 2012 quoted a combined fee of 1.4% of the gross proceeds raised. However by August 2012 the deal had lost momentum.

14. By September 2012 the proposed fee to be paid by the GOT had increased to 2.4% on the basis that an additional 1% (ultimately US \$6 million) would now be paid to a "local partner", a Tanzanian company called Enterprise Growth Markets Advisors Limited [EGMA]. The proposed involvement of a local partner and the increased fee were disclosed to SB by ST sometime after they had been included in a proposal given by ST to the GOT.
15. EGMA's chairman and one of its three shareholders and directors, Mr. Harry Kitilya, was at all relevant times Commissioner of the Tanzania Revenue Authority and as such a serving member of the GOT. The Tanzania Revenue Authority is the fiscal authority in Tanzania being a centre of government revenue and central advisor in case of Government financing needs.
16. ST's regulator subsequently opined that this transaction was within Kitilya's jurisdiction and that he should have inhibited himself from taking part as external consultant.
17. During April 2012 SS, attended a Spring IMF meeting as part of the GOT's delegation. There she met Harry Kitilya in his GOT capacity as "Commissioner for Tax". In reporting back to colleagues she explained that Mr Kitilya had introduced her to two governors of other African Central Banks (who had both been tax commissioners) "proclaiming that we [the bank] specialize in raising funds for Governments and how good the Bank was".
18. EGMA's Managing Director, Dr. Fratern Mboya had been Chief Executive Officer of the Tanzanian Capital Markets and Securities Authority (a government agency established to promote and regulate securities business in the country) [CSMA] between 1995-2011. One of Dr Mboya's curriculum vitae referees was the then Deputy to the most senior Civil Servant (Treasury), MOF and one of the GOT officials involved in this transaction herein referred to as "Public Official E".
19. Both ST's CEO (BA) and SS intended this 1% fee promised to EGMA to induce a senior representative or senior representatives of the GOT to perform a relevant function improperly, namely by that representative(s) showing favour to SB and ST in their bid to secure their joint role and fees on the financing transaction.
20. The deal had earlier failed to progress. Then in November 2012 about 2 months after an indication that a local partner would be engaged and paid the 1 %, the GOT formally granted SB and ST the mandate to raise the sum of US \$550 million. By the time of the completion of the financing in March 2013, the amount to be raised for the GOT increased to US \$600 million.
21. By agreement between the GOT, SB and ST, ST alone contracted with EGMA and ST alone made the payment to EGMA. No local partner was mentioned in the Mandate Letter signed by the GOT. However the Lead Manager Fee Letter¹ issued by the GOT did state that ST and SB were acting "in collaboration with its partner" but did not name EGMA. The structure allowed US \$6 million of Tanzanian public funds to be paid to EGMA, via ST without that payment having to be made directly by the GOT.
22. The key transactional documents created included:

Document Title	Comment	Signed
The Letter of Proposal		Signed by SB and ST
The Mandate Letter		Signed by SB, ST and GOT

¹ For additional detail see paragraphs 114-116 below.

Document Title	Comment	Signed
The Fee Letter	Referred to also as Lead Manager Fee letter	Signed by SB, ST and GOT
The Collaboration Agreement	Referred to also in various guises as third party fee letter, side letter, fee sharing agreement	Signed by ST and EGMA

Although these documents and their drafts were referred to in a variety of ways, for ease of reference this document will use the title in the first column above.

23. No contemporaneous document has been located that shows at whose instigation EGMA became involved in the transaction². No document has been located which indicates that EGMA submitted or won any tender to secure the payment of this US \$6 million fee. No document has been located which records instructions to EGMA about the details of the transaction.
24. No contemporaneous document has been located which indicates that the GOT, SB or ST queried why EGMA's services were needed. No document has been located which suggests that any of EGMA, the GOT, SB or ST sought to negotiate or ask questions about EGMA's fee.
25. Aside from EGMA's Collaboration Agreement with ST, no contemporaneous document which predates internal bank investigations has been found which records any work actually done or service to be performed by EGMA in respect of this deal.
26. There were bribery risks inherent in the arrival of a third party in a transaction with a government department. No document has been located which indicates that SB or ST raised concerns or questions about EGMA or those behind the company. There were bribery risks given that EGMA's directors included a serving member of the GOT and the former head of a GOT agency. ST did not make SB aware of these connections and there is no evidence that SB asked any questions about who was behind EGMA.
27. The transaction was announced to the market in February 2013. A few days after this announcement, Mr Kitilya in his capacity as Head of the Tanzanian Tax Authority was part of the GOT team (together with the Minister of Finance known herein as "Minister B" and other government officials) participating in investor calls about this intended sovereign note placement.
28. In March 2013 EGMA's 1% fee of US \$6 million was paid by ST into the account of EGMA, a company of which Mr Kitilya, a serving public official, was Chairman, director and one third shareholder. There is no evidence that the payment to EGMA represented reasonable consideration for services rendered on this transaction.
29. Within 10 days of the US \$6 million being paid into EGMA's bank account by ST, the vast majority had been withdrawn in large cash amounts, with the consent and assistance of both ST's Chief Executive Officer (BA) and Acting Head of Corporate and Investment Banking (SS).

² Throughout this statement of facts, any reference to the absence of a document refers to its absence from ST and SB's records made available to their solicitors. No documentation has been requested or obtained from EGMA or the GOT.

30. The cash withdrawals prevent any further tracing of the US \$6 million.
31. Despite the payment of the US \$6 million being made as part and parcel of a deal in which SB and ST acted jointly, SB's policies did not clearly require it to conduct any enquiry into EGMA. Despite a number of indicators of significant bribery risk nor did anyone within SB raise any questions or concerns about EGMA, its role or fees. The SB deal team relied on ST to conduct Know Your Customer [KYC] and to raise any concerns as regards EGMA.
32. SB's Head of Global Debt Capital Markets, Florian von Hartig [FVH], led the SB deal team that participated in the mandate. At some point after ST had already included such in a proposal to the GOT, he was made aware by ST of a proposal to involve a local partner and the related fee increase of 1%. In interview he stated that although SB had been willing to perform Know Your Customer checks on the third party, in the end he believed they were not obliged to do so, but that ST were so obliged and did carry out the KYC. He said that he had relied upon the checks of SB's sister company, ST, to alert him to any concerns, that it was proper to do so and that he did not suspect anything untoward. He stated that SB had no contact with EGMA and accepted that SB had not made any enquiries about EGMA or its role. The available evidence does not prove that FVH or any other member of the SB team was complicit in any section 1 or section 6 Bribery Act 2010 offence.

B. COMPANIES & PEOPLE

(i) Relevant Standard Bank Companies

33. Standard Bank Group Limited [SBG] is a publicly owned company registered in South Africa. Standard Bank South Africa [SBSA] is a South African company registered as a bank which is wholly owned by SBG. SBSA provides most of SBG's centralised functions such as monitoring group wide policies and standards.
34. In all countries in which it does business, SBG operates a local subsidiary company. ST is one such subsidiary, a Tanzanian company 99% owned by a UK company Stanbic Africa Holdings Limited but with SBG as its ultimate parent company.
35. At the relevant time, SB was also a subsidiary of SBG. SB is a UK regulated bank and public limited company. At the time, SB was owned by Standard Bank London Holdings Limited but with SBG as its ultimate parent company.
36. Hence at the relevant time SB and ST were both subsidiary companies within the SBG structure and sister companies to one another.

(ii) Relevant Standard Bank personnel

37. The mandate granted by the GOT was jointly executed by a United Kingdom SB deal team based in London and a Tanzanian ST deal team based in Dar es Salaam.
38. Whenever a member of the Standard Bank Group was mandated to arrange funding in a debt capital market [DCM] transaction that required sales to international investors, SB would likely be asked to assist with such sales by the relevant Standard Bank entity originating the transaction since the other subsidiaries are typically not licensed to deal with non-local investors and SB had the expertise to arrange such sales on international markets.
39. SB and ST performed different but complementary roles within the mandate and the sovereign note placement. ST bore the primary responsibility for dealing with the GOT in Dar es Salaam; SB were largely responsible for creating the documents that were raised in support of the

sovereign note placement including the mandate and for bringing the placement to the market. There was a degree of overlap in their respective functions and the two teams regularly liaised with each other about the progress of the deal.

40. The fee for executing the mandate was split between SB and ST 50/50. This was not specific to this transaction but was part of the "established fee sharing arrangements" between members of the Standard Bank Group participating in the same transaction.

ST Deal Team

41. **Bashir Awale** [BA] was the Chief Executive Officer of ST and held the official title of Managing Director. He had held that position since he joined ST in late 2005/early 2006. BA was a member of ST's Board of Directors. BA was dismissed by ST on 19 August 2013 for failing to co-operate in SBG's investigation of EGMA's role and fee.
42. **Shose Sinare** [SS] was at the relevant time acting Head of Corporate and Investment Banking at ST. She joined ST in 2003 and as at August 2011 was a member of ST's management team. SS reported directly to BA. In respect of this transaction she kept BA regularly updated. SS resigned from ST on 3 June 2013 and thereby avoided co-operation in SBG's investigation of EGMA's role and fee.
43. The ST deal team also included "**ST Employee Z**", a graduate trainee and son of Minister B who ultimately signed off on this transaction.
44. "**ST Employee K**" was the Head of Legal Services and Compliance. Although not part of the deal team per se, he was involved in the transaction. He was dismissed by ST on 31 October 2013 for not complying with board instructions relative to regulatory reporting on EGMA's role and fee.

SB Deal Team

45. The relevant SB personnel were all based in the London Debt Capital Markets [DCM] team.
46. **Florian Von Hartig** [FVH] was SB's Head of Global Debt Capital Markets based in London. He led the SB deal team on this transaction. He had worked for SB since 2005 and resigned from SB in December 2014.
47. The rest of the SB deal team all reported to FVH and were as follows:

"**SB Employee H**" was responsible for the origination and execution of DCM transactions and offshore currency products, mainly in East and Southern Africa. He had previous DCM experience.

"**SB Employee I**" was a qualified solicitor and Head of the Transaction Execution Group within the SB DCM team. She had worked for SB since 2006. SB Employee I was on maternity leave during a significant part of the relevant transaction.

"**SB Seconded J**" is a lawyer on secondment from a solicitors firm who was covering SB Employee I's maternity leave.

"**SB Employee G**" was Head of SB's sub-Saharan Africa debt capital markets group until February 2012. SB Employee G was the person initially responsible for this transaction within the SB deal team but his employment with SB ended before the transaction made any progress.

(iii) EGMA

48. EGMA was incorporated as a Tanzanian company in August 2011. According to its brochure, it started operations in January 2012.
49. EGMA's Memorandum of Association list the company's many objects which included acting as stock brokers, investment advisers, business consultants and to "act as intermediaries in the introduction of sellers, purchasers, partners and employees".
50. The following three individuals were EGMA's founding members and shareholders and the directors of the company at the time of this transaction:
- a. **Harry Kitilya** (Chairman)
- Serving member of the GOT throughout the currency of this transaction as Commissioner of the Tanzania Revenue Authority³. The Tanzania Revenue Authority is the fiscal authority in Tanzania being a centre of government revenue and central advisor in case of Government financing needs.
- He resigned his GOT role in December 2013.
- b. **Dr Fratern Mboya** (Managing Director) (died July 2013)
- Former Chief Executive Officer of the Tanzanian Capital Markets and Securities Authority (a government agency established to promote and regulate securities business in the country) [CMSA) between 1995-2011.
- According to the EGMA brochure, he was a "seasoned expert" in capital markets.
- c. **Peter Nyabuti**
- The documents available to the SFO do not reveal further information about Mr Nyabuti other than that he is a Kenyan national.
51. EGMA opened a bank account at ST at the end of September 2012, its Board having apparently resolved to do so in February 2012. The KYC checks performed by ST in order to open that account clearly revealed the identities of EGMA's shareholders and directors as set out above.
52. BA and SS knew the identity of serving and recently departed members of the GOT connected with the securities market and government's financing needs including both Harry Kitilya and Dr Fratern Mboya, and the respective roles of each (present and former).
53. The identification of Harry Kitilya and Fratern Mboya as shareholders of EGMA and current and former representatives within GOT are readily available on the internet⁴.
54. By September 2012 at the latest, EGMA was licensed by the CMSA as a Nominated Advisor. The relevant Tanzanian Act defines a nominated advisor to mean "a company licensed by the CMSA to undertake responsibility of nurturing and assisting an issuer for a public offer of securities, listing of those securities in the Enterprise Growth Market (EGM) Segment of the

³ Described by SS as Head of the Tanzania Tax Authority.

⁴ See for example-a July 2012 online news article <http://dailynews.co.tz/archive/index.php/biz/7063-dsealternative-market-for-opening-soon>

stock exchange and advising the issuer listed on the EGM segment of stock exchange". EGMA's role in this transaction was not related to a listing on the EGM.

(iv) GOT representatives

55. When the Letter of Proposal for the transaction was first submitted in February 2012, "Minister A" was the GOT Minister of Finance. In May 2012 Minister A was among a number of ministers dismissed from the government in respect of corruption allegations.

56. The following other GOT representatives played a relevant part in this transaction⁵:

a. **"Minister B"** (Minister A's replacement) The new Minister of Finance from May 2012 (died January 2014)

Signed the documents authorising the sovereign note placement to be launched, the Global Loan Note Certificate and other formal documents.

b. **"Public Official X"** The most senior Civil Servant (Treasury) , MOF and member of the National Debt Management Committee [NDMC].

Signed the Mandate Letter and Fee Letter.

c. **"Public Official E"** Deputy to Public Official X, MOF

Recipient of the draft Letter of Proposal and mandate documentation from ST and described by SS in July 2012 as "the key person on this transaction".

Also involved in the proposal when it was being considered by Minister A.

d. **"Public Official M"** Assistant Commissioner and Policy advisor, MOF.

Recipient of draft Letter of Proposal and Mandate Letter from ST.

e. **"Public Official N"**

Recipient of the draft Mandate and Fee Letters and Chairman of the Technical Debt Management Committee [TDMC]

57. Minister B , Public Official X and Public Official E attended along with other GOT officials including Harry Kitilya (in his GOT capacity) as part of the Tanzanian delegation which participated in the February 2013 investor calls aimed at marketing the placement, hosted by Standard Bank. These calls were led by FVH and BA also participated.

(v) Relevant Connections

58. Harry Kitilya had been known to BA since at least 2008. In February 2008 Kitilya requested a reference from BA in respect of a Harvard University course that the former was due to undertake. BA also had a number for the name "Kitilya" stored in his computer/phone's electronic contact list.

⁵ The Attorney-General also submitted drafting comments on the mandate letter and the fee letter see paragraph 119-120

59. In February 2012 Dr. Mboya in his EGMA role approached another Standard Bank subsidiary about a possible business opportunity.
60. A bank employee commented internally in March 2012 that EGMA was "a one-man show but in the process of hiring. I believe that his [Mboya's] hires will need extensive training and so he was going to rely on our expertise almost exclusively".
61. During April 2012 SS attended a Spring IMF meeting as part of the GOT's delegation. There she met Harry Kitilya in his GOT capacity as "Commissioner for Tax". In reporting back to colleagues she explained that Mr Kitilya had introduced her to two Governors of other African central banks (both ex-commissioners themselves) "proclaiming that we [i.e. the bank] specialize in raising funds for Governments and how good the Bank was".
62. On the 21st August 2012 BA entered Dr Mboya's telephone number as an outlook contact file on his computer. The following day an EGMA staff member emailed BA with the EGMA "company profile" and Dr Mboya's curriculum vitae.
63. The CV listed one of Dr Mboya's references as Public Official E.

C. BACKGROUND and EARLY NEGOTIATIONS

64. In 2011 SBSA and ST had been involved in another, earlier, deal with the GOT, leading a consortium which provided a US-\$250 million sovereign loan to the GOT. This earlier transaction had also involved Public Official X, who at the relevant time in question still held, the same position within the MOF.
65. The transaction fee on that deal was 1.4%. SB was not involved in this earlier deal but SB Employee G explained in interview that this was the reason that he suggested a 1.4% fee in SB and ST's 2012 proposal.
66. After the 2011 loan, it appears that there remained a need for further GOT funding. SB Employee G said in his SFO interview that SB had been considering how this could be provided and decided upon a form of private placement.
67. The first Letter of Proposal for this transaction was submitted to the GOT in October 2011. The Letter of Proposal was signed by BA and SB Employee G and set out a US \$300 million sovereign private placement with a fee of 1.4% of funds raised.
68. According to SB Employee G in his SFO interview, at the outset it was the SB DCM team (i.e. SB) driving the transaction and acting as the "main protagonist". According to SB Employee G, SB was responsible for "originating ... structuring ... executing" the transaction but it relied upon ST on the ground for direct communication with the GOT.
69. FVH stated in his SFO interview that ST were responsible for the client relationship part of the deal whilst SB were responsible for structuring (including legal documentation), marketing, distributing and pricing the transaction. FVH stated that although SB Employee G was the originator of the deal in London, SS was the originator in ST and ST was responsible for the "creation of the opportunity".
70. It is the case from the documents available to the SFO that ST held the client relationship whilst the SB team provided technical and legal expertise.
71. In November 2011 SB Employee G travelled to Tanzania to meet with the MOF in order to discuss and present that proposal. SS also attended this meeting.

72. SB Employee G ceased to work for SB on or around the 22nd February 2012. When interviewed, he told the SFO that, since the November 2011 meeting there had been little progress in any negotiations which he described as in a "holding pattern". SB Employee G had not submitted any further written proposals. His understanding before he left was that ST were going to seek a further meeting with the MOF to try and advance matters.
73. SB Employee G stated in his SFO interview that the involvement of a third party was never mentioned during his time on the proposal. He also stated:
- "In my work with Tanzania, there was never any contemplation of including a third party... from my experience, there was no reason to because we had the direct relationship with the government already through the local office if someone were saying we need to include a third party, my first question would be for what purpose?".
- After SB Employee G's departure, FVH took over as the SB lead on the transaction. FVH said in interview that it was a significant transaction and that the resources devoted to the deal were "unheard of".
74. A further Letter of Proposal dated 20th February 2012 was sent to the MOF. This joint SB and ST proposal ("collectively Standard Bank") outlined a now \$550 million sovereign private placement but the bank fee remained as per the October 2011 proposal at 1.4%.
75. A 25th February 2012 reply to BA from Minister A indicated that the GOT were "willing to participate in the deal". The letter invited BA to immediate discussions with the MOF technical staff with a hope of concluding the deal by April 2012.
76. By email on the same day, SS announced to FVH and others that the proposal had been "accepted" by Minister A and continued:
- "Both Bashir and I have been lobbying both yesterday ... and full day today to win this Mandate. Please note that in this proposal SBG will not be putting any balance sheet nor are we taking any risk...
- ...we pocket 1.4% arrangement fees being USD 7,700,000...
- Big word of thanks and congratulations to the London team involved (Florian and [SB Employee G]) and [an employee of another SBG entity] for putting this together.
- We now MUST deliver!"
77. In April 2012 members of ST and SB worked on drafting the necessary Mandate Letter. By this letter the GOT would formally grant a mandate to SB and ST to proceed to arrange the financing and set out the relevant terms, conditions and fees.
78. In April SS attended meetings with technical staff at the MOF and at the IMF meeting referred to above. SS kept BA, SB and others updated via email reports about those meetings. In addition to meeting Harry Kitilya in his capacity as Commissioner for Tax (see paragraph 61 above) and Minister A, she discussed the latest proposal with Public Official E. He apparently raised with SS some objections raised by the technical MOF staff which SS agreed to address in writing. SS reported that Minister A was keen to see a draft Mandate Letter and close the deal quickly. During the same month SS also "cleared the air" with Minister A, Public Official E and others about some issues which had arisen on the 2011 transaction.

79. Minister A was dismissed as Minister of Finance in early May and Minister B, was appointed in his place.
80. SS reassured FVH (copied to BA and others) that despite no Mandate Letter having been signed "our deal is intact" and that "[The GOT] needs the funds and we have a good deal with support from the technical team and civil servants".

D. THE TRANSACTION MAY - NOVEMBER 2012

81. A meeting took place between SB, ST and the new Minister of Finance, on the 28th May 2012 to brief him on the \$550 million proposal. BA and SS attended from ST and SB Employee H from SB. A few days earlier BA had sent a letter to the MOF referring to the February 2012 Letter of Proposal (now said to be a "loan note proposal"), and seeking to clarify some aspects of the deal and suggesting some changes. In this letter BA explained that if the MOF proceeded with the financing the loan agreement and legal documentations would be entered into by Standard Bank plc and the MOF on behalf of the GOT and no other entity.
82. A few weeks after the May meeting Minister B sent his son ST Employee Z to ST with a letter of introduction. BA said he would interview him personally, met him in July and then approved his recruitment as a graduate trainee within SS's team. In due course, ST Employee Z played a minor part in this deal.
83. On 22nd June 2012 SS sent BA's earlier May letter and draft deal documentation to Public Official E at the MOF. This included two draft Mandate Letters for two distinct tranches of the \$550 million which described SB and ST as "together the "Lead Manager"" on the deal.
84. By July 2012 the Letter of Proposal had reverted back to one amount being raised rather than two. Both SB and ST were involved in the changes. The SB deal team had restructured the deal to meet various objections from the GOT and redrafted accordingly. SS and BA were responsible for presenting to the GOT. The joint SB/ST role and the fee remained unchanged.
85. By the end of July SS was further updating FVH (copied to BA) that following meetings with the MOF, the revised structure meant that the deal would have to be approved again by the GOT technical committee and that ST were currently having further meetings with the "senior technical guys".
86. On 8th August 2012 SB Employee H emailed SS (cc FVH) setting out the state of play as had been discussed on a recent call between them. This recorded that the MOF was very keen and SS "was in constant dialogue with the office of [Minister B] and the technocrats at the Ministry" about the deal but that delay was arising because the main decision makers were occupied by the parliamentary session. It was hoped that after the next meeting with the "technocrats", a decision would come post 21st August when the session ended. SB Employee H indicated that he and FVH wanted to come to Dar es Salaam in the week of the 10th September to meet the MOF and Central Bank Governor.
87. On 21st August BA added a contact file on his computer for Dr Mboya (Managing Director of EGMA). The next day EGMA emailed BA their company profile and Dr Mboya's CV. The EGMA company profile listed its "key staff members" but made no mention of the company's ownership structure or board composition, and as such no mention of Harry Kitilya or Peter Nyabuti.
88. On 29th August 2012 SS reported back to FVH (cc BA) that her and BA's meeting with Minister B and his key technical team that day had gone very well and that "they are now generally in agreement with the combined proposal for the \$550m". SS stated that "they are now happy to

start looking at the Mandate Agreement" and hence she had re-forwarded this to the MOF. She confirmed that she had arranged FVH's meeting with Minister B for the 18th September.

89. In fact the documents reveal that by the end of August at the latest the structure of the deal had changed to include the involvement of a local partner who was to be paid a fee of 1 %, which ultimately amounted to US \$6 million. ST did not make SB aware of the change at the time FVH was made aware of the change at the latest by the 18th September and the SB team at the latest by the 20th September.
90. The SFO have not been provided with any document directly recording what was sent to the MOF on the 29th August. However a Letter of Proposal and Mandate Letter entitled "29 August 2012" (albeit enclosing a Mandate Letter showing "July 2012" on its face) was attached to a 10th September 2012 SS email to Public Official M at the GOT (cc BA but not any member of the SB deal team). This email refers to the proposal "already submitted". A 4th September 2012 SS email to BA also stated that the "client has the proposal dated 29th August".
91. Assuming that the Mandate Letter and the Letter of Proposal ought both to be dated 29th August 2012, these are the first documents which reveal an increased fee and the involvement of a third party. They record the following:
 - a. That the bank had taken on board feedback from the GOT
 - b. SB and ST were now submitting an amended Letter of Proposal "in collaboration with our partners"
 - c. A "one off all in fee" of 2.4%
 - d. The Letter of Proposal contained the electronic signature of BA and FVH
 - e. A Mandate Letter defining the lead manager as SB and ST "in collaboration with its local partner"
92. The Letter of Proposal and Mandate Letter entitled 29th August 2012 are both word documents in native format. The signatures of FVH and BA on the former are electronic and as such can both be cut and pasted. In his SFO interview FVH stated that he never saw these documents and suggested that his signature had been transposed onto the document without his authority. He pointed out a number of grammatical and other inaccuracies in the documents which he said supported this fact as the SB deal team would never have allowed a document to go out in this form. FVH also stated that he was on holiday during that week.
93. If a deal entailing these fundamental changes had been discussed or agreed between ST and the GOT at the 29th August meeting, SS's email of the same day to FVH did not reveal these changes. There is no available evidence which shows these "29 August 2012" documents being sent to or discussed with the SB deal team.
94. In the 4th September 2012 email to BA, copied to ST Employee Z, SS enclosed a slightly different set of mandate and proposal documents which were to be used 'to guide discussions on the 10th'. These were delivered by ST Employee Z to the MOF the following day. Although there are some minor amendments, these documents are broadly similar to the versions of 29th August and again bear the electronic signature of FVH. Again, there is no available evidence that these were sent to FVH or anyone at SB.
95. A computer calendar entry in BA's electronic calendar recorded an event on the morning of 7/9/12 entitled "Dr Mboya" with BA named as the "Organizer".

96. On 11th September 2012 BA reported to FVH that "informal" meetings had been taking place between himself, SS and MOF/Bank of Tanzania that morning and the day before with more formal meetings to follow that afternoon. BA requested a call the next day to update FVH. There was no mention of the local partner or the fee increase in BA's emails to FVH. The text messages supplied to the SFO suggest that a call did take place on the 12th September between FVH and SS.
97. On 13th September 2012 SS reported to SB the items discussed at the last meeting with the MOF. These did not include any reference either to an increased fee or to any local partner (albeit that, at the latest, such references had been included in documents that had been sent by ST to the MOF by 10th September). FVH responded to a proposed reduction in yield by requesting that "our "facilitation fee"" be increased from 1.4% to 1.5% ". A redraft of the Letter of Proposal and Mandate Letter produced by SB Seconded J in London the next day shows that she and SB Employee H were still working on drafts which recorded an overall 1.4% fee being increased to 1.5%. The next day SS emailed SB saying that she would be working on a letter to the GOT which addressed points raised at the last meeting, a new draft of the document and acknowledging that the GOT draft had already been slightly amended in any event. She promised to circulate this on Monday 17th September.
98. FVH was in Tanzania on Saturday 15th September 2012. On Monday 17th September SS sent an "amended proposal based upon the feedback received from the technical staff on the 11th Sept." to Public Official M at the MOF (cc BA). The attached proposal referred to the meeting on 11th September and "the key points raised". None of the points referred to the 1 % increase in fees or the introduction of a local partner although they both still appear in this proposal. The letter again bears the electronic signature of FVH. Although SS had indicated she would circulate to all, no email has been located which shows it being sent to SB.
99. FVH was introduced by BA, SS to Minister B on Tuesday the 18th September at about 12pm. Although SB Employee H was also in Tanzania he did not attend the meeting. FVH's text messages indicate that he was not able to meet with BA and SS the night before as planned because BA was unwell. However the messages also indicate that the three instead arranged to meet the next day about an hour before the meeting with Minister B.
100. In his interview FVH stated that the meeting with Minister B lasted only about 10-15 minutes, was "almost a non-event" and there was no mention of any local partner. Minister B wanted to be told about the market, whether the transaction and interest rates were feasible. FVH stated that he recalled Minister B asking him to consider reducing the transaction's loan note interest rate.
101. FVH said that he was told about an hour after this meeting with Minister B about the possibility of a local partner.⁶

"And then Bashir introduced for the first time and I have a very clear recollection of this, very clear, for the first time he introduced the idea of we probably need somebody to help us because Shose alone cannot spend the time needed to get this deal over the finishing line. My initial reaction to this was, first of all I thought it was good, it was a good idea because clearly we have seen up to the point in time about, how much was it from February to September, let's say six or seven months, yeah, where we have tried to make progress. And the deal, we have weekly calls, we were pushing, there was hardly any movement. Admittedly there was a change in Government in May, as I said, yeah, but there was no progress. So I thought actually this is probably a good thing. Shose is a one-man person, was spending, as far as I was aware, a lot of

⁶ FVH thought the meeting took place on 11/9 but wasn't sure. The contemporaneous documents suggest that it took place on 18/9.

time every day on the phone with the Ministry trying to get meetings, then people were travelling. Anyway the long and short of it is I thought it was a good idea, but also potentially ooze extra confidence in, you know, our ability to execute this deal before the end of the year. People on the ground that, you know, have the technical expertise, have the knowledge of our capital markets, they could support. The second thing I said, and I'm very clear please on this, the second thing I said was if we were to do a transaction with a third party all the time the bank, the bank and banks have third parties, but what you need is a proper KYC and a proper contract in place. Only on that basis can you transact. ... That filtered then through into the 20th September. When I returned to London I instructed my team to help, you know, with the various legal documents that are needed in order to, you know, to process this, which is one, the mandate letter, and then secondly with a side letter between, you know, our entities or Stanbic in that case, and the local partner. Please also understand, and I hope this is clear from the correspondence in one of these thing, six or whatever it is, here, we had no idea at the time who the partner was. Why is that? Because in the conversation in the hotel lobby Bashir, I just asked him, I said, 'Do you have somebody particular in mind?' He said, 'No, there are a couple of firms that are the best and we will see who is going to be the one'. So it was entirely in his hands. So we didn't know who the local partner was."

On the subject of the fee he continued:

"Also during this meeting, this aftermath you know in the hotel lobby that of course came up, because we knew we had 1.4% and I said, 'Who is going to pay for this? How much does it cost?' And Bashir said, 'We will try', please, 'Try to get another percent from the Ministry of Finance to pay for this'. Please also understand that our fees, our original fees for this transaction of 1.4% were very low compared to the market standards. I'm led to believe now and I was certainly led to believe at the time as well that there was another transaction which was executed, I always mix this up, was this [names two other banks]?"

Anyway there was another transaction, yeah, by one of the two, forgive me I don't remember, but one of the two that did that maybe in the previous 12 months. And this transaction I was told had the fee of 2.4%, so us coming in originally with a fee of 1.4% was very aggressive So the long and short of it is my understanding was that Bashir thought it is likely that he will manage to get the Ministry's approval to raise the fees from 1.4% to 2.4% because, one, the fee was in line with the previous transaction, and two, Minister B was under pressure to get this transaction closed before the end of the year, which by the way obviously didn't close before the end of the year".

102. In interview FVH said that he didn't recall when he first learned the name EGMA. From the documents he thought it was sometime in December 2012 but also commented that when asked about EGMA as part of the bank's internal investigation in around May 2013 he had responded "Who are they? ...it meant nothing to me".
103. At 06.36am on the day of the meeting with Minister B, BA had arranged for a copy of the EGMA company profile and Dr Mboya CV to be printed off. By 17th and 18th September directors of EGMA (including Harry Kitilya) were signing ST customer consent documents allowing credit checks in respect of EGMA's new ST bank account.
104. By 20th September FVH was back in London and by then the SB deal team were aware of the additional fee of 1 % and the involvement of a local partner. The events on that day can be summarised as follows:
 - a. BA emailed FVH and SS to say that a copy of the Mandate Letter was required that day, "ITS VERY URGENT"

FVH responded (copied to SB Employee H and SB Secondee J):

"Understood. Shose have we got the wording of the [Mandate Letter] of the most recent transaction, as discussed? Secondly have we agreed with our partners that they are on board and also part of our current mandate letter?"

Lastly we are working on the Side letter between us and our Partners, pointing out the fee split and the respective duties under the mandate. We should turn this Side letter around once you have sorted this out from your end and we got the contact details. Let's stay focused"

b. SS emailed back all with "the Mandate letter as per what others have done". She attached an amended version of the Mandate Letter for this transaction. Like the 4th September 2012 draft it showed the local partner, fees of 2.4% and a local partner signature block with details "to be provided".

c. She sent another draft a few minutes later in which the word local was removed and the local partner signature block deleted.

d. SB Secondee J responded saying that the local partner would have to remain as a signatory. SS responded:

"No. Intention is to bring them in through a side agreement between us and the partner. In the other transactions they have done, [another bank named] etc this is how it was done. Government would like to deal with the one party who then brings in and manages/coordinates the other partners ... "

e. SB Secondee J sent an email later on saying:

"we've just discussed with [FVH] and we understand that SB would prefer to have the MOF pay SB the fee of 1.4% and the MOF pay to the local partner the fee of 1.0% directly ... If SB gets the entire 2.4% and then has to turn around and pay the 1% to the local partner, then we have to onboard/KYC the local partner which is pretty onerous and time consuming. For the local partner to be paid the 1 % fee directly from the MOF [it] needs to be party to this mandate letter. Is there some particular reason which you are aware of that the MOF would not want the local partner to be party to the main mandate letter?"

f. There followed a conference call between SB (FVH, SB Employee H , SB Secondee J) and ST (BA, SS). BA explained that the GOT only wanted to deal with Standard Bank and to pay a consolidated fee. ST would then have a fee sharing agreement with the local partner. SB Secondee J explained that, as the licensed entity, the private placement proceeds would ordinarily be paid to SB and that they were considering options "so that we could avoid the situation where SB plc has to turn around and pay 1 % to the local partner". FVH explained on the call that this was because if SB had to KYC the local partner, it would threaten the timing of the sovereign note placement. FVH commented that he assumed from his discussions with BA that "there would no problem whatsoever in KYC-ing these guys" and "I suppose you have done business with them and know these guys".

FVH also seemed to already have understood that the local partner would be paying the legal fees.

From this call, it appears that the SB team did not want SB to sign any side letter because they believed this would trigger an obligation for SB to KYC the local partner, which would take a long time and would be a substantial threat to the timing of the transaction (which was expected to close before the end of the year).

It was agreed that ST would pay the local partner and a reference to the local partner would remain in the Mandate Letter.

- g. SB Seconded J circulated a "final revised version" of the Mandate Letter after the call. The reference to the local partner remained albeit in a redrafted form.

At about 4pm SB Seconded J emailed SS with the final execution version and promised the Fee Letter would follow shortly.

- h. After the conference FVH sent an email only to the SB deal team emphasising:

"we require a completed KYC/client approval process undertaken by [ST] in case we enter into a partnership with them. I don't know what exactly to [sic] requirements for such KYC in Tanzania are, but no short cuts are ever acceptable, stating the obvious. Unless the local partners are an approved counterparty, we shall not consider them being part of the deal"

- 105. According to FVH in his SFO interview, three days prior to the conference call BA had explained that he did not even know who the local partner would be and had yet to agree this or any increased fee with the GOT. Yet by 20th September the presence of the local partner at a fee of 1 % minus legal costs appears to have been known and accepted by all parties without any debate.
- 106. That EGMA was the local partner was certainly known at ST by the morning of 21st September because the Head of Legal Services at ST (ST Employee K) was drafting a fee sharing agreement which named them (referred to hereafter as the Collaboration Agreement). This is the first draft of the Collaboration Agreement seen by the SFO. This document records the 1.4/1 % fee split and states that EGMA have been appointed by "Standard Bank" and ST to act on their behalf "as its coordinator on the terms and conditions set out in the letter of appointment". The draft agreement named BA as the relevant ST contact and Dr Mboya as the relevant EGMA contact. No letter of appointment has been located (see below for more on the Collaboration Agreement).
- 107. Neither SB or ST sought to further understand what role this local partner would be playing for its US \$6 million fee.
- 108. The arrival of a local third party at this stage of the deal for such a substantial fee did not provoke any recorded discussion about the identity of the local partner, those behind the company, its expertise, why it was needed, the size of its fee or anything about the substance of this fundamental change in the transaction. Nor is there any record of any such discussion in the months that followed.
- 109. No contemporaneous record has been located which records which party to the transaction requested that EGMA should become involved.
- 110. A first draft of the Fee Letter was circulated on the afternoon of 20th September but it did not refer to any local partner. At about 11am the next day SB Seconded J emailed SS the revised Mandate Letter and the "fee letter". This draft Fee Letter is a document to be issued by the GOT

to SB and ST. It does record the involvement of a local partner. This is the first draft of the Fee Letter seen by the SFO.

111. SB Seconded J promised the versions of both Mandate Letter and Fee Letter as executed by SB were to follow "shortly". A 24th September email from SS to Public Official M at MOF enclosed copies of the documents signed by FVH and indicated that versions also signed by SS and BA for ST had been delivered to the MOF (copied to Public Official N) on the evening of 21st September. However these were not to be the final versions.
112. On 26th September the GOT responded to SS with its comments on the Mandate and Fee Letters. SS forwarded these to BA for them to discuss. The GOT's points included the following:
 - a. Removal from the Mandate Letter of the reference to the collaboration with a partner (albeit that there was no like request for its removal from the Fee Letter)
 - b. Clear breakdown within the Mandate Letter of all fees mentioned i.e. advisory, arrangement, book runner, legal costs. "It is important to know how the 2.4% is reached by costing each component"
 - c. Removal of the clause which meant that the GOT would have to pay 10% of the 2.4% even if the monies were not raised.
113. There were various calls that day between SB and ST⁷. What appears to be a second call took place at 10.41 when FVH and BA joined the debate alongside SS, SB Employee H and SB Seconded J. BA suggested defining Standard Bank in an Appendix as including the local partner but also raised the possibility of removing the local partner reference altogether. SB Seconded J stated it was a decision for ST but that "We were going to have a side letter between [ST] and the [local partner] where it talked about who is doing what in terms of services. It's probably unnecessary to mention it at all in this letter - the local partner - unless you think for political reasons it would be wise". BA responded that another bank had used a side letter when it had engaged a local partner in a previous financing for the GOT:

"They didn't have this. That's what we are being told ... Let's go with that. I am happy to not mention them altogether. We'll have the side letter to cover this. However, you know, these guys will still want a side letter because they want their interest maintained.

Now, in Point 4 we can break down those fees and we're cool with that, between [SS] and I"

BA described the main point as a discussion about committing to the final \$550m amount and that all other matters are "sort of just minor technical terms". BA stated that ST were due to meet with the GOT that day at about 3pm.

114. After the call SB Seconded J circulated to SB and ST redrafts of the Mandate and Fee Letters and proposed response to the GOT points. The revised Mandate Letter deleted the reference to the partner as agreed above (but it remained within the Fee Letter which now appeared as appendix 3 to the Mandate Letter albeit the Mandate Letter made no reference to any Appendix 3)⁸. The response was silent on the breakdown of fees issue (BA and SS indicated on the call that they could deal with this issue).

⁷ The SFO have not been provided with all of them.

⁸ Nor is there any reference to Appendix 1.

115. There is no record of the GOT meeting with ST but another call followed afterwards at about 4pm between SB and ST (albeit the transcript of the second part of the call is incorrectly dated). BA explained progress on what he had described as the main point above (a commitment to the \$550m amount) and that the GOT "were insisting on this 550 ... because ... [they] are literally going to close the door to everyone". In the context of a discussion about this issue BA went on to say "there's also the element of having that local partner significantly helps" (sic). BA then explained that there had in effect been a compromise on the wording in respect of the \$550m by inserting a "best efforts" to raise clause. BA also made clear that the GOT had effectively said they had already made the decision to award the mandate to the bank. The call continued without FVH to discuss further changes. None is relevant in and of themselves but the rest of the call reveals that BA was very much involved in the detail of the deal process at this stage.
116. On 27th September 2012 SS emailed the GOT with their response and a tracked change Mandate Letter together with a version of the Mandate Letter used in the 2011 deal. The Mandate Letter now also had an expanded explanation of the 2.4% fee to include "coordinator, participation" fees. The Fee Letter with the only reference to the local partner remained as Appendix 3, albeit there was no reference to any such appendix within the Mandate Letter. As to how the fees were to be broken down, the response document simply records "Breakdown was explained". There is however no document explaining when this was done, nor what was said to whom.
117. Later that day SS asked that SB urgently sign and return the Mandate Letter as there was a session of the GOT National Debt Management Committee sitting. SS asked SB Seconded J to add the additional phrases "coordinator, participation" as above to their copy to be executed. SB Seconded J was not in the office so SS amended the Mandate Letter herself. However the GOT did not sign the Mandate Letter that day.
118. On 24th September 2012 ST were making KYC checks on EGMA (see below for details). On 26th September SS emailed BA with the account details for the two new EGMA accounts at ST.
119. FVH held another meeting with Minister B on 12th October 2012 in Tokyo (the arrangements apparently assisted by ST Employee Z, Minister B's son). FVH reported to the SB and ST deal teams that the meeting went well and that Minister B had promised the deal would be signed by 20th October, the Tanzanian Attorney General now being content with the Mandate Letter. BA commented that Minister B had been calling him every evening from Tokyo seeking an assurance that the deal would be executed flawlessly. FVH told BA that only he had attended from the bank and the meeting had been "very open, direct and in full trust of seeing this through together".
120. A series of questions were asked by the Tanzanian Attorney General, who was reviewing the documentation. One of the Attorney General's points repeated the earlier request for a breakdown of the 2.4% fee. SB Seconded J in London made plain that SS should clarify this point. SS responded to the GOT on this and other points on 20/10/12, In a response that was not provided to SB, SS stated that:

"The 2.4% fee includes fees for coordination, arrangement, facilitation, bookrunner and participation fees. Advisory fees were waived. Facilitation and Arrangement fees were estimated at 1 % which included all costs associated with the transaction such as legal and agency costs as well as disbursement costs, etc. Bookrunner fees are 1.4% which also included participation fees which will be paid out/shared with potential lenders"

121. Matters continued to be delayed. BA and FVH communicated about the same and the main issue of the "best efforts to raise" the \$550m. BA apparently had a meeting with Minister B on 25th October 2012. Further meetings took place and amendments were made to the key documents up until 14th November 2012 but nothing of relevance to the local partner or its fee.

E. THE SIGNED MANDATE LETTER, FEE LETTER AND CA

122. The Mandate and Fee letters were apparently signed by 14th November 2012, albeit they are dated the following day. Both documents were scanned in separate emails seconds apart between two junior ST employees in the late morning of 14th November.
123. On 15th November 2012 SS forwarded to SB Seconded J, SB Employee H and ST Employee K the ST KYC checklist for the EGMA bank account opening; (see below for details of KYC).
124. The signed Collaboration Agreement is dated 5th November 2012 but other documents reveal that it was not signed until much later (during January or February 2015) and therefore must have been backdated (see below for details).
125. The signed Mandate and Fee letters dated 15th November 2012 reveal the following:
- a. The Mandate letter is signed by:
 - i. SS and BA for ST
 - ii. FVH and another SB employee for SB
 - iii. Public Official X , acting on behalf of GOT
 - b. SB and ST were jointly the "lead manager" on the Mandate Letter
 - c. The Mandate Letter did not mention any partner or third party
 - d. The Mandate Letter cited a "total facilitation" fee of 2.4% with the explanation that:

"This fee of 2.4 percent constitutes the total advisory, arranging coordinator, participation and bookrunner fees payable by the Borrower under this Mandate Letter. This Fee also includes all legal costs, disbursement costs and agency costs".
 - e. The "Lead Manager's fee letter" appears as Appendix 3 to the signed Mandate Letter but is unsigned⁹. A separate version is signed by those at a. above.
 - f. The Fee Letter acknowledges that the 2.4% fee is paid to ST and SB in consideration for ST and SB agreeing to act as lead manager and sole bookrunner and performing those roles in connection with the financing, "in collaboration with its partner". The same explanation for the fee appears as in the Mandate Letter.
126. The structure of the signed Mandate and Fee Letters were such that if the former alone were seen (absent its appendices some of which were not referred to in the Mandate letter), it would not reveal the involvement of a third party but would simply show the overall fee of 2.4% being due to SB and ST. Albeit that SB and ST were relying on a precedent from another transaction and that the deployment of a side letter is legally permissible, nonetheless the effect of the documents being drafted in this way meant that the involvement of a local partner was not

⁹ Albeit the Mandate Letter does not refer on its face to any Appendix 3

shown in the Mandate Letter and EGMA was not named as the local partner recorded in the Fee Letter.

127. These key documents demonstrate that SB and ST were acting jointly and on behalf of one another in respect of arranging this transaction.
128. In light of all the circumstance of this transaction, the SFO alleges that:
 - a. BA /SS promised or gave a financial advantage to EGMA intending that advantage to induce a representative or representatives of the GOT improperly to show favour to SB and ST in appointing or retaining them for the purposes of the transaction. BA/SS permitted US \$6 million to be paid to EGMA in order to reward those public officials they believed had been induced to act improperly. In acting as they did BA and SS were or would be (ignoring jurisdictional restraints) guilty of bribery contrary to section 1 of the Bribery Act 2010.
 - b. Given the positions of BA and SS within ST, their conduct as individuals can properly prove a section 1 offence against ST as a corporate individual. Hence ST was or would also be guilty of the section 1 Bribery Act offence.
 - c. In the circumstances of this case, BA, SS and ST were all performing services on behalf of SB and hence are all associated persons for the purpose of section 7 of the Bribery Act 2010. As the facts demonstrate, they were all persons connected to SB who might be capable of committing bribery on SB's behalf.
129. The position of ST, BA and SS as associated persons is illustrated by the following factors:
 - a. SB and ST were together the "lead manager" under the Mandate Letter.
 - b. The fee was due to SB and ST directly and jointly as lead manager and was split 50/50 between them.
 - c. SB and ST carried out different but complementary roles within the transaction i.e. SB provided the technical expertise and ST managed the client relationship. SB could not complete the transaction without ST and vice versa.
 - d. Members of both deal teams liaised closely with one another about the transaction.
 - e. SB was responsible for much of the contractual drafting and had a significant level of control over the overall structure of the deal and the terms of the Mandate Letter, Fee Letter and Collaboration Agreement.
 - f. The Fee Letter signed by both SB and ST stated that both SB and ST were acting in collaboration with the local partner.
130. The SFO alleges that, in committing what would have been but for jurisdictional reasons a section 1 Bribery Act 2010 offence, BA and SS and ST (through BA and SS) were intending thereby to obtain or retain business for SB (or an advantage therein), as well as ST.

Collaboration Agreement

131. Although on 20th September 2012 FVH had indicated that SB were working on the "Side Letter between us and our Partners", the first iteration of any Collaboration Agreement made available to the SFO was one sent by ST Employee K to BA on 21st September . This was a "Fee Sharing Agreement" between ST and EGMA.

132. This draft document records the 1.4/1 % fee split and states that EGMA have been appointed by "Standard Bank"¹⁰ and ST to act on their behalf "as its coordinator on the terms and conditions set out in the letter of appointment". The draft named BA as the relevant ST contact and Dr Mboya is the relevant EGMA contact. The draft appeared to indicate that a letter of appointment had yet to be drafted and no such document has been located.
133. On 24th September 2012 SB Seconded J emailed ST Employee K (cc SS and SB Employee H) asking if he were available for a call to discuss the side letter which had been proposed between ST and the local partner. SS responded the next day and requested SB send ST Employee K a copy of the side letter used in a previous SBSA deal involving a third party so that ST Employee K could use this as a precedent with which to draft the Collaboration Agreement for this transaction. It was suggested that this could then be discussed on a call between SB and ST (albeit this call then appears to have been used to discuss other issues - see above). SB Seconded J provided as requested the equivalent agreement used in that other transaction.
134. On 27th September a draft Collaboration Agreement was circulated by ST Employee K to BA and SS for comment and confirmation of the fee. On 1st October ST Employee K circulated a "final" draft to BA and SS which added "Standard Bank" as a party (although not a signatory) and contained a list of EGMA's and ST's role and responsibilities and entitled Collaboration Agreement. Those for EGMA were as follows and ST Employee K asked for comments on the same:

EGMA

- i. To arrange for negotiations and or meetings involving this transaction;
 - ii. To liaise with the Borrower from time to time and provide an updated (sic) of this transaction to the Borrower when required;
 - iii. To edify and support understanding on technicalities of this transaction to the Borrower from a local perspective as and when required;
 - iv. To review finance documents and perspective including advising on CP documentation and the required regulatory approvals as and when required;
 - v. To facilitate the provisions of relevant and necessary documents or approvals that would be required by relevant authorities to allow the Borrower to undertake the transaction as and when required.
135. No documents provided to the SFO record any response. On 16th October 2012 an email between the SB and ST deal teams recorded that the topic had apparently been covered in a call between SB and ST. "Side letter to be finalised shortly, but needs to be reviewed by SB plc first" with ST to send the current draft to SB.
136. This email also recorded that ST were to provide "contact details of local partner to [SB Employee H] for [the working parties list]". ST Employee K responded to SB Seconded J and SB Employee H the next day attaching a Collaboration Agreement draft but one which omitted the roles and responsibilities section referred to above. The draft contained the details of EGMA and is the first document seen by the SFO which records the provision of the name and details of EGMA to SB. The covering email did not include FVH.

¹⁰ Given the other terms of the draft this appears to refer to Standard Bank plc.

137. SB Seconded J responded the same day with various changes including the removal of SB as a party and a request for an addition of "what services the local partner will provide and a discussion the costs and expenses point", SB Seconded J also pointed out that a few weeks ago there had been a discussion about "the fact that it had been agreed that the local partner would bear all costs/expenses of external counsels etc" and hence suggested this be discussed again and the relevant clause redrafted.
138. Notes of a 19th October 2012 call between SB and ST recorded that ST Employee K was to complete amendments to the Collaboration Agreement including the addition of the scope of the local partner's work and re-circulate. On 22nd October ST Employee K sent another draft to BA asking for his comments on the roles and responsibilities of EGMA as set out above. No response has been provided to the SFO but the next day ST Employee K sent SB (now including FVH) a further draft which took on board many of SB's changes and added unchanged EGMA's previously drafted roles and responsibilities.
139. Hence by 23rd October 2012 FVH had been sent a document which provided the name and details of the local partner (other members of his team having received the same on 17th October).
140. SB Seconded J cut and pasted the EGMA roles and responsibilities into an email to SB Employee H that same day with what appeared to be some suggested changes. These changes are matters of style only and there is no record of any inquiry having been made by SB Seconded J (or anyone else) as to the nature of EGMA's role and responsibilities. The next day she sent him a revised list. On the 25th October SB Seconded J sent ST Employee K (copied to FVH) a draft with a further amended list. This version reflects the roles listed in the final signed version (see below). It was also agreed that SB and ST would discuss the costs and expenses clause on their routine call that day. No record has been provided of any such call.
141. Over the next few weeks SB Seconded J requested a call to discuss the costs and expenses issue. On 16th November 2012 SS confirmed that all legal and agency costs would be borne by EGMA. The costs and expenses clause appeared on the agenda for a 4th December routine "internal working group" call about the transaction between the SB and ST teams but no record of this call has been provided.
142. As at 7th December BA and ST Employee K were still exchanging drafts of the Collaboration Agreement (as per the SB version) and on 12/12/12 SB Seconded J (cc FVH and others) was emailing ST Employee K and SS about a recent call concerning the Collaboration Agreement and the expenses clause and enclosing another draft.
143. SB were aware of and involved in the drafting of the Collaboration Agreement. In interview SB Seconded J stated that the agreement had been based on the precedent from an SBSA deal and that the reason SB were involved in drafting the Collaboration Agreement was because those involved at the Tanzanian end had said they didn't know how to draft it and needed help.
144. On 19th December 2012 BA emailed both SB (including FVH) and ST saying that:

"EGMA are pushing to have the [CA] executed. They want this done prior to the execution of documents by GOT".

This is the only document provided to the SFO which indicates any input from EGMA into the Collaboration Agreement (and even this relates only to when it is to be signed); nor is there anything which shows anyone in either the SB or ST deal teams making any inquiry about the nature of EGMA's involvement.

145. On the same day SB Employee H pointed out in response to BA that this agreement was being "executed by [ST] only" and that SB had submitted their comments already. SS then told ST Employee K to execute if it was "good to go". However it appears that by early January 2013 this had not been done. On 8th January 2013 ST Employee K emailed BA a draft which he described as "the final Agreement that was agreed between ourselves and [the SB deal team]". However the attachment appeared to be neither the latest draft nor simply an old draft.
146. BA appears to have had a meeting with EGMA scheduled for 8th February 2013. However an email two days before to ST Employee K from EGMA (forwarded to BA) indicates that at least one Director of EGMA was coming to sign something at ST on 22nd February 2013.
147. A 20th February 2013 email from a ST employee to SB Employee I (cc SS) and forwarded on by SS to BA and FVH attached a signed version of the Collaboration Agreement dated 5/11/12. This signed version of the agreement showed some yet further amendments to that January draft. The key features of the signed agreement were as follows:
- a. It was dated as signed on 5/11/12 by BA and ST Employee K for ST and Mboya and Nyabuti for EGMA
 - b. It was an agreement between ST and EGMA and reflected the establishment of a consortium to collaborate in respect of the proposed deal
 - c. It made no mention of SB but only to ST and certain of its "affiliates" having arranged for the financing
 - d. "The fee in respect of the provision of services pursuant to the award of the Mandate shall be paid from the gross proceeds of the issue of the Financing. and shall be equivalent to 1 % in favour of EGMA"
 - e. EGMA to bear costs and expenses related to local and international counsel fees/travel/disbursements and Agency fees
 - f. Annexure 1 setting out the duties and responsibilities of EGMA (amending that which is set out at paragraph 134) as follows:
 - i. To arrange for negotiations and/or meetings involving the Transaction
 - ii. To facilitate understanding on the technicalities of the Transaction to the Borrower [GOT] from a local perspective as and when required
 - iii. To review finance documents from a local perspective including advising on conditions precedent documentation and the required regulatory approvals as and when required
 - iv. To facilitate the provision of relevant and necessary documents or approvals that would be required by relevant Tanzanian authorities to allow the Borrower to undertake the Transaction as and when required
 - g. Annexure 1 setting out the duties and responsibilities of the "Lead Manager" in like terms to that for SB and ST in the signed Mandate Letter
 - h. Clause 15 stated that:

"Each Party confirms that it has made reasonable enquiries to establish whether a conflict of interest exists in relation to the entering into of this Agreement...to the best

of their knowledge and belief, each Party confirms that no conflict of interest exists that would preclude the said party from performing services"

148. Albeit clause 15.2 injected a slight dilution of the conflict clause, this statement about conflict of interest was not correct. BA and SS knew the identity of the EGMA directors and the role of Mr Kitilya within the GOT. The KYC documents provided to ST revealed the identities of the relevant directors and BA had connections with both Mboya and Kitilya.
149. The SB deal team stated in their interviews that they did not know who was behind EGMA, let alone that they had any GOT connections. They say they never asked this question nor sought to find out. SB Employee H and SB Secondee J knew that EGMA was the third party by 17th October 2012 and FVH had been provided with their name by 23rd October 2012 (albeit in interview FVH stated that he did not recall knowing the name until about December 2012).
150. The information about who was behind the company was readily available from ST and open source material. FVH and SB Employee H stated in interview that if they had known that Kitilya (who attended on the investor call) was connected to EGMA, they would have been concerned.
151. According to their interviews, the SB deal team members did not even share a common understanding about the basis for EGMA's involvement. SB Secondee J and SB Employee H said that the involvement of EGMA was relayed to them by FVH. Both SB Secondee J and SB Employee H stated that they believed EGMA's involvement to have been part of a skills transfer scheme. SB Employee I stated that she had a similar understanding. SB Employee H explained that he understood that the involvement of a local party had been requested by the GOT albeit ST had selected EGMA as the company to take on that role.
152. Yet FVH said in his interview that the involvement of EGMA had been at the insistence of ST not the GOT (see extract from his interview above). Indeed he was categorical that it had nothing to do with skills transfer.

M JACKSON: But can you elaborate on what you believed the role that they would be playing?

F VON HARTIG: Yeah, yeah. I thought, and again as I said, I've got six months of no progress, I thought there is a chance to really get this deal now finally momentum. Shose can be seen in various, you know, evidence that you have kindly provided me and my lawyers with, had very little idea about capital markets. I mean some of the, I'm not wasting your time, but some of the expressions in the letters that seemingly have come from Stanbic were pretty poor in terms of, you know, capital markets knowledge and Shose really had no idea. But we understood that this partner would help explaining the nature of the transaction, explaining legal changes to the documents. I'm very happy, Mike, to elaborate on this as well, what I mean with legal changes to this transaction. But suffice to say, please understand, the Ministry of Finance consisted of junior to mid-level technocrats that had, A, no authority to decide on anything, and B, were scared because every document they saw were new. They did not understand and if you are scared you make mistakes, so rather than making mistakes they decided not to get involved. So I thought by having somebody on the ground who has the knowledge and explains this to them makes all the sense in the world, it's absolutely the right thing to do. If we were, I don't know, having 15 people on the ground in Tanzania that would know this product, well then we could have used them, but we didn't. We had only one person and it was Shose, and clearly she was not capable. So it made sense to me, but then again I would also like to stress the introduction of this third party, the one that suggested this was Bashir please.

M JACKSON: EGMA was not, or did not fall into the category of an introducing broker?

F VON HARTIG: No. No, they were not introducing this business to us, Mike. They were as Bashir told me, they were needed to help executing this transaction. They did not kind of say, oh, we bring you the client, not at all.

M JACKSON: Okay.

F VON HARTIG: Not at all.

M JACKSON: And also they were not there as part of a knowledge transfer requirement?

F VON HARTIG: Definitely not, no. I don't think that is the case in Tanzania.

M JACKSON: Okay.

F VON HARTIG: In fact I don't know any other country other than South Africa where you have to have.

153. As stated above, by the end of August 2012 the deal being proposed to the GOT was altered in a significant way. The GOT was now to pay in fees an extra 1% of whatever sum was raised (in the event, 1% of US \$600 million). Notwithstanding the size of this additional fee (US \$6 million), no document has ever been uncovered which reflects any communication having taken place between either anyone at the GOT and anyone at SB or ST or else internally within SB and/or ST as to:

- why it was necessary to instruct a local partner in the first place;
- who should be chosen as that local partner;
- the personnel of that local partner;
- why the local partner was to be paid such a large fee;
- and, save in respect of the terms of the Collaboration Agreement, what it was that the local partner was supposed to be doing in order to justify such a fee.

154. Despite a number of obvious red flags for bribery risk, FVH and his team appear not to have recognised the possibility of this arrangement being corrupt; had it been otherwise, there would have been some inquiry in the terms outlined above.

F. CHECKS AND APPROVALS

EGMA Know Your Customer [KYC]

155. FVH and his team were aware that, if SB was a direct contractual counterparty to EGMA, SB would have to conduct KYC and due diligence on EGMA as required by SB's Introducers and Consultants policy. However, FVH and his team were of the view that because of the way EGMA's involvement in the deal was structured (EGMA was not a signatory to the Mandate Letter, there was no separate agreement between SB and EGMA, ST would KYC EGMA and no direct payment would be made by SB to EGMA), SB's only obligation was to KYC its client, the GOT.

156. FVH had made plain in his email to the SB team on 20th September 2012 that the KYC of EGMA would fall to ST and that no shortcuts would ever be acceptable as far as the KYC of

EGMA was concerned (see above). The SB deal team was satisfied with confirmation from ST that its KYC on EGMA had been completed and having been provided with a two page checklist from ST of the steps it had taken to KYC EGMA.

157. EGMA opened a bank account at ST at the end of September 2012. The KYC for the account opening appears to have consisted of an account opening form, bank checklist, company search showing the directors, the provision of limited company and personal identification documents and a reference. The documents provided revealed the names of the three directors of EGMA as set out above.
158. After the transaction had completed (in July 2013) the principal regulator of ST reviewed the EGMA account opening documents/KYC and stated that
 - a. The accounts were properly opened
 - b. ST had obtained adequate information from the directors of EGMA
 - c. All mandates had been obtained and a KYC test performed.
159. However the KYC checklist and form completed by ST appears to have acknowledged the account opening as "high risk" (although it is not made plain on what basis). There are no documents made available to the SFO which record or discuss the GOT role of Kitilya or the CMSA role of Mboya and hence any consideration by ST of politically exposed persons [PEPs].
160. The relevant forms also omit certain important information (e .g. EGMA anticipated turnover or its source of funds). The premises verification check is recorded as having been undertaken by EGMA itself. The whole KYC process appears to have been that required for a straightforward application to open a business bank account. Amongst the risk factors listed by ST was net monthly income. Yet the relevant forms had no information about income or about the upcoming transaction. There appears to have been no additional KYC performed on EGMA at the time of the signing of the Mandate Letter or before it was retained as a local partner.
161. SB were told in October 2012 by SS that KYC had been completed on EGMA. On the 25th October 2012 BA emailed SS and ST Employee K asking to discuss KYC but no information has been provided about what if anything was so discussed.
162. On 15th November 2012, the day after the signing of the Mandate Letter, ST emailed the KYC checklist form to SB Secondee J and SB Employee H .This was a pro forma document and contained no details about those behind EGMA although the detail did reveal that the application had been treated as "high risk". SB Employee H said in interview that he did not notice that the KYC form had categorised EGMA as high risk.
163. ST's compliance with KYC procedures were being criticised within ST at the relevant time. A KYC review project had been implemented by SBG across its African operations in around 2009 with a target completion date for ensuring all accounts were KYC compliant and updated onto internal KYC monitoring systems of 31 December 2011. This was then extended to September 2012. The project was monitored by Group Compliance. By the end of September 2012 it was reported to ST's risk management committee that the problems had been rectified. However a visit in November 2012 by SBG's compliance team strongly disagreed. A remediation action plan was implemented in January 2013. Both SS and BA appear to have had visibility of these KYC deficiencies. The SB deal team were not told of the deficiencies with ST's compliance processes at the time.

164. In December 2012 ST's Head of Compliance and MLRO informed BA in an email that ST was at that time 100% non-compliant with the revised AML Regulations (these came into force on 7th September 2012 and required additional KYC checks such as mandatory fingerprints and proof of address). There is no evidence that the SB deal team had any knowledge of this.
165. In December 2012 at the request of ST's Board, ST's internal audit function commenced a specific audit to assess the adequacy and effectiveness of governance, risk management and internal controls supporting the branch network. This report was completed in March 2013 and concluded "the system of internal controls, risk management, and governance mechanisms in branch network operations are inadequate and ineffective, and as a result we are unable to provide reasonable assurance in this respect. Our overall rating of the control environment is therefore Unsatisfactory". There is no evidence that the SB deal team had any knowledge of this.

Standard Bank Group Mandate Approval Committee [MAC]

166. Any corporate investment banking mandate within the Standard Bank Group had to be submitted to the Group MAC. The MAC process was operated by the Corporate Investment Banking business rather than by SB's Compliance and Risk Functions. According to the relevant terms of reference:

"The purpose of the process can be described as seeking to provide an efficient and consistent early stage approval for all mandates entered into by the bank".

The purpose of the committee was to monitor commercial decisions, and ensure communication/visibility within the business. The process also posed questions to the transaction team as to whether it had been through the appropriate compliance checks. The terms of reference leave the decision about the timing of applications to the discretion of the deal team.

167. Applications were submitted on a prescribed template. This was not an individual SB or ST process but a Group process, hence only one application was made in respect of this deal on behalf of both SB and ST. The terms of reference provided no guidance about how the application form should be filled out or the information that was required. At the time the only obligation was to submit that single form and no supporting documents were required.
168. On 25th September 2012 SB Seconded J reminded the SB deal team that the deal would have to undergo the mandate approval process. The first draft of the application was done by an apparently junior member of the SB team and was sent to SB Employee H for his comments. It did not reveal the 2.4% fee but only the 1.4% fee payable to SB and ST. It did not mention the involvement of a local partner.
169. On 14th November 2012 SB Employee H sent SS cc FVH the mandate approval application which he said needed to be sent out internally. The draft was different from the earlier draft but the key parts remained as before. On 21st November and 4th December SB Employee H reminded SS cc FVH that the application needed to be made. SB Employee I chased SS on 14th January 2013.
170. In his SFO interview FVH stated that he had not been able to review the final form MAC application because he couldn't open it on his BlackBerry and had relied upon SB Employee H. However he had been sent earlier versions in similar terms. FVH explained that when he subsequently raised with SB Employee H (once the bank internal investigation was underway) why there was no mention of the local partner or its fee, SB Employee H had explained that technically it was correct that these did not need to appear. SB Employee H's explanation was

based on there being no specific section of the form requiring other third parties (such as agents or lawyers) who were involved in the transaction to be mentioned. In his recent SFO interview, SB Employee H confirmed that this conversation with FVH took place. SB Employee H stated that this was his first MAC application and confirmed that FVH had not been able to review the final form on his BlackBerry and had asked SB Employee H to confirm that it was fine. With the benefit of hindsight, SB Employee H accepted that, had he known at the time what he does now, he would have referred on the form both to the fact of there being a local partner and to the level of the fee.

171. The application was submitted by SS on 7th February 2013 and had the same key aspects outlined above. FVH was a member of the committee that considered and approved the application. The application was approved the same day by round robin emails from FVH and two other members, all three of whom approved the mandate by stating "supported".

G. CLOSING THE DEAL and PAYMENT

172. Although the Mandate Letter was signed in November 2012, external lawyers had then to complete the documents necessary to actually raise the funds.

173. The GOT letter of authorisation and formalities certificate were not completed and sent to ST until 14th February 2013. The relevant formal documents were signed by Minister B.

174. The transaction was announced to the market on 20th February On the 25th February a number of calls to investors took place. These were designed to promote the deal by allowing potential investors to hear from Minister B and GOT. SB Employee H attended in person at the offices of ST in Dar es Salaam. FVH hosted the call but did not attend in Tanzania.

175. The transcript lists those present on the call as including (amongst others):

Minister B

Public Official X

Mr. H. KITILYA - Head of Tanzania Tax Authority

Public Official E

FVH

BA

FVH introduced each of the above GOT officials as being present. BA was also definitely on one of the calls because he spoke at one stage.

176. In interview SB Employee H said that he could not be certain if Harry Kitilya was one of those who also attended in person at ST's office (given that he did not know him). However SB Employee H stated that "Given the fact he's on the list he probably was there." Hence it seems possible that SB Employee H was present in the room with a Director of EGMA, a party due to receive \$6 million on this transaction and yet he was unaware of this fact.

177. The transaction documents were signed on 7th March 2013 by Minister B (including conditions of loans notes and deed of covenant).

178. The execution of the transaction documents then allowed the payment of monies as follows:

- a. The GOT received the full \$600 million from the facility agent on 8th March 2013.
 - b. The GOT paid ST the full 2.4% fee i.e. US \$14.4million. From this ST paid:
 - i. The US \$6 million to EGMA on 15th March. The narration signed by SS stated "Payment of arrangement fee under the collaboration agreement between Standard Bank, Stanbic Bank Tanzania and EGMA" although in fact only ST and EGMA were parties to the Collaboration Agreement.
 - ii. \$4.1 m to ST's commission account (its 50% share of the 1.4% less its part of the excess counsel fees (see below))
 - iii. £33,750 (counsel fee excess) to ST suspense account.
 - iv. \$4.3 million to SB
179. SB issued a 26th March 2013 invoice to ST for \$4.3million with the narrative "Standard Bank fees for Tanzania Private Placement".
180. An issue arose over counsel fees which exceeded prior estimates. Under the Collaboration Agreement, EGMA was responsible for these fees and SB Employee I seems to have been proceeding on this basis. However following discussions between FVH and SS it was stated by FVH that SB and ST would "have to swallow the excess fees" and split the excess fees between them 50/50 (a further \$33,000 odd each). There is no record of why FVH and SS did not require EGMA to pay the further amount, as it was required to do under the Collaboration Agreement with ST.
181. Hence in the end EGMA only paid \$174,000 out of its monies for counsel fees.

H. Withdrawal of the EGMA monies

182. On the 11th March 2013 EGMA issued a written request to ST for the opening of a collection account to receive the fees. An employee within ST arranged for the account (cc SS) but with a "no debit status" (not mentioned in the EGMA instruction) which meant that EGMA could not withdraw monies without ST's knowledge.
183. In short, almost all of the EGMA US \$6 million was withdrawn in cash between 18th and 27th March 2013:
- 18/3/13 Cheque to Cash Dr Mboya US\$ 1.35 million,
 - 21/3/13 Cheque to Cash/Dr Mboya US\$ 1.45 million.
 - 25/3/13 Cheque to Cash/Dr Mboya US\$ 1.23 million,
 - 27/3/13 Cheque to Cash/Dr Mboya US\$ 1.17million.
 -
184. Each of the four cheques was signed by Mboya and Nyabuti. SS was instrumental in authorising each of these cash withdrawals. On each occasion the cash was taken to BA in his office. The documents indicate that on some occasions the customer was said to be present.
185. On the 27th March 2013 EGMA requested transfer of the remaining proceeds and closure of the collection account. The next day SS authorised this transfer of the remaining balance (about \$590,000) to EGMA's ordinary account and the collection account was closed.

186. Staff at ST raised their concerns about the above cash transactions, identifying the suspicious nature and risk for potential bribery, at the latest from 26th March onwards. In all no fewer than four ST individuals reported their concerns and escalated these within the relevant reporting and Compliance channels so that they were immediately referred to SBG head office and the relevant Compliance teams and board members.
187. On 2nd April 2013 SS responded to the questions raised with her by the ST Compliance department. She explained that EGMA were a credible institution with whom the bank had commenced discussions at the beginning of 2012 "to team up...to bid for the Government bond" (sic) and attached a copy of the Collaboration Agreement. She also claimed that there was full involvement of SB and the source of the funds was known.
188. On or around 15th May 2013 a document was created for the ST Board entitled "WHY IS EGMA WITHDRAWALS NOT MERIT FIU REPORTING UNDER THE \$600M PRIVATE PLACEMENT TRANSACTION TP [GOT]" . This document was emailed by SS to herself on 14th May 2013 and a copy located on her computer. Later the same day SS emailed the document to BA and ST Employee K on 14/5/13 as "final board paper on EGMA" This document for the Board put forward the following justification (although in respect of a number of matters it is demonstrably incorrect):
- a. The transaction was unique, very significant (the paper claimed it was the largest transaction for the group) and successful
 - b. There was a competitive bid process
 - c. The transaction went through numerous GOT committees and Tanzanian Attorney General approval
 - d. Attaching the Collaboration Agreement which set out EGMA's duties:

"Key role of EGMA in addition to above was that of ORIGINATION and EXECUTION of the transaction in terms of delivering the documentation required from the [GOT] to successfully closing the transaction"
 - e. Setting out further examples of what EGMA did and their "key interventions" (including stopping a cabinet session on 27th February 2013, obtaining Attorney General's opinion in good time, together with ST coordinating an investor briefing by Minister B (see earlier reference to February investor call), ensuring execution of various documents on time, educating key stakeholders on private placements)
 - f. Setting out EGMA and its staff's expertise
 - g. That there had been a relationship between another Standard Bank subsidiary and EGMA since 2012
 - h. There was future work with EGMA already in the offing
 - i. Proper KYC was conducted on EGMA
 - j. It was market practice for large government transactions to involve such partners (citing inter alia a separate bank's deal with total fees of 3.5%)

"It is our understanding that the government is supportive of partnership with local firms as it serves to empower local firms and well as transfer skills to ensure that the domestic market develops"

k. As to the role of SB, the document claimed that SB were:

"fully aware and critically involved in the [CA]...They provided the guidance and approval to [ST] on the process of collaborations given their experience elsewhere. SB...drafted the [CA] and provided the agreement to use for localization to [ST]...Further, EGMA and specifically DR Mboya were part of the working group for the transaction"

A list of the working group was attached but the SFO have not been provided with any attachments to the paper.

l. As to the withdrawal of the money in cash, it was said that the source of funds were "genuine and known", in line with the CA and the customer was known. The document also suggested that the withdrawal of cash in this way was not unusual or illegal per se.

189. By contrast in her 3rd June 2013 resignation letter SS stated that she felt she was being victimised for decisions taken by FVH and BA. She stated:

"I was a witness to a telephone call made by the CEO [Bashir Awale] to the SBG Head [FVH], put on speaker, where the matter was discussed between the two leaders and approvals to proceed granted quoting "this is normal/standard practise for Africa ...we have seen this before in other transactions ... It's fine we should proceed". SBG [sic] Global Head, Debt Capital Markets"¹¹

She went on to say that she had been "given the EGMA file and told that the Bank was collaborating with them [in the deal]".

190. In April or May 2013 ST appointed EGMA as an advisor in respect of a medium term note programme for a fee of 16.2 million TZ shillings¹².

I. APPLICABLE POLICIES

191. Throughout the life of this transaction, both SBG and SB had in place a number of committees, policies and procedures designed to address bribery and corruption.

192. In particular, the SB had an Introducers and Consultants policy in respect of Introducer and Consultant agreements and relationships relating to business transacted in the name of or on behalf of SB. This reflects the language in section 7 of the Bribery Act 2010.

193. A central tool in any system of anti-bribery and corruption is the KYC and due diligence process. This process should provide adequate information by which to identify any obvious warning signs associated with bribery and corruption (often referred to as red flags). The obligation to conduct KYC and due diligence was a focal point in the Standard Bank approach to anti-bribery and corruption.

194. The strength of any KYC and due diligence process lies not only in the quality of checks which are undertaken but also in the understanding of staff as to the extent of the obligation to conduct them. In this transaction, the final formal structure of the deal was in part dictated by SB's wish

¹¹ Jones Day believe this call is alleged to have taken place on the 26th September 2012. No recording of any such call has been retrieved by Jones Day.

¹² About \$8700 US dollars as on current exchange rates.

not to trigger an obligation on their part to KYC EGMA (because this would be time consuming and might jeopardise the deal, according to FVH).

195. In circumstances in which EGMA was being engaged and paid by another SBG entity (in this case ST) which was performing KYC on EGMA, the SB team believed that there was no requirement for SB to conduct its own KYC and/or due diligence on EGMA.
196. SB conducted KYC and due diligence checks on its client, the GOT, but only ST performed KYC checks on EGMA. The details of those ST KYC checks are set out in section F above. The KYC checks on EGMA performed by ST do not appear to have been conducted in the same level of detail as would have been the case had SB conducted its own KYC and/or due diligence on EGMA.
197. The quality of the SBG response to bribery and corruption was also influenced by broader policies designed to mitigate the risks in this area. In addition to the relevant compliance functions and high level structures (e.g. Board of Directors, Audit Committee) the most relevant committees and policies were as follows:

Standard Bank Group

Committees
Group Financial Crime Control Committee [GFCC]
Mandate Approval Committee [MAC]

Policies
Standard Bank Group Code of Ethics
GFCC Mandate
GFCC Unit Framework
Anti Bribery & Corruption Policy
Anti Financial Crime Policy
MAC Terms of Reference

Standard Bank plc

Committees
PEP Committee / Client Risk Management Committee

Policies
Anti Bribery & Corruption Policy
Introducers and Consultants Policy
Anti Money Laundering and Counter Terrorist Financing Policy

198. None of the SB deal team thought that the Introducers and Consultants policy applied. The policy was not clear. If the policy did apply, it was inadequately communicated to the SB deal team and/or that they were not properly trained to apply the policy in circumstances where a third party was being engaged by its sister company.
199. In summary:
- a. The applicability of the Introducers and Consultants policy was unclear on the face of the policy. Moreover, it was not reinforced effectively to the SB deal team through communication and/or training
 - b. SB's Introducers and Consultants policy and/or SB's training did not provide sufficient specific guidance about relevant obligations/procedures where two entities within the Standard Bank Group were involved in a transaction and the other Standard Bank Group entity engaged an introducer or a consultant
 - c. The SB deal team relied on its sister company, ST, to flag any anti-bribery and corruption risks relating to EGMA through ST's own KYC
 - d. As a consequence of their reliance on ST to flag any anti-bribery and corruption risks relating to EGMA (and the fact that ST did not identify such risks), the SB deal team did not identify the bribery and corruption risks relating to EGMA's involvement in this transaction
200. The result of this was that:
- a. overall, SB was engaged as joint lead manager with ST in a transaction with the government of what a number of international bodies consider to be a high risk country in which a third party received US \$6 million with the protection of only a bank account opening KYC check on that third party conducted by ST, a sister company in respect of which SB had no interest, oversight, control or involvement.
 - b. SB undertook no enhanced due diligence process to deal with the presence of any red flags regarding the involvement of a third party in a government transaction, relating to what a number of international bodies consider to be a high risk country
 - c. SB failed to identify and therefore deal adequately with the presence in this transaction of a politically exposed person.
 - d. No one within SB identified, documented or considered corruption red flags in this case.
 - e. SB permitted the formal structures of a transaction or relationship (i.e. contractual relationship, the identification of the client, the making of a payment) rather than the

broader risks to dictate the existence of any obligation to conduct KYC/due diligence checks.

- f. SB failed to address the risks of the arrival of a third party charging a substantial fee.
- g. SB did not provide clear guidance about relevant obligations/procedures where two parts of the SB Group (or other parties) are involved in a transaction
- h. the SB compliance team did not have the opportunity to assess the role of EGMA on this transaction (because it was reliant on the SB business unit identifying and raising any substantive concerns about EGMA or its role and the SB business unit relied on the findings of the KYC conducted by ST which did not identify such risks).
- i. the SB staff within that business unit were not adequately alive to bribery and corruption risks. Some of them were not aware of relevant SB and Group policies.
- j. an anti-corruption culture was not effectively demonstrated within SB on this transaction.

201. An analysis of the relevant policies, procedures training and awareness is contained within **Appendix 2** and **Appendix 3**.

CONCLUSION

202. The SFO's alleges that:

- a. ST and/or its senior employees BA and SS would be guilty of bribery contrary to section 1 of the BA 2010 were section 12(2)(c) and (4) of the Act omitted. They would be guilty in that they promised or gave a financial advantage to EGMA intending that advantage to induce a representative of the GOT improperly to show favour to SB and ST in appointing or retaining them for the purposes of the transaction. ST/BA/SS permitted US \$6 million to be paid to EGMA from the sum raised on behalf of the GOT intending it to be used to reward those public officials they believed had been induced to act improperly. They committed that offence intending to obtain or retain business for SB (or advantage in the same).
- b. ST, BA and SS were persons associated with SB.
- c. SB failed to prevent the commission of that bribery offence.
- d. The SB procedures designed to prevent the commission of bribery offences were inadequate.

SIGNED by

for and on behalf of

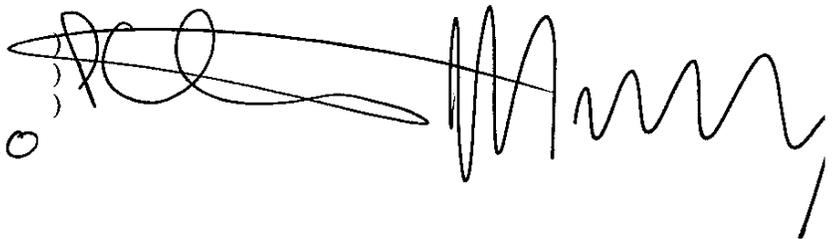
ICBC STANDARD BANK PLC

Position

Dated

Head of Legal & CEO

25 November 2015



APPENDIX 1 - ABBREVIATIONS**Stanbic Bank Tanzania Personnel**

Identity/ Abbreviation / Reference	Role	Organisation
Bashir Awale (BA)	Chief Executive Officer and Managing Director of ST	ST
Shose Sinare (SS)	Acting Head of Corporate and Investment Banking at ST and member of ST's management team	ST
ST Employee K	Head of Legal Services and Compliance	ST
ST Employee Z	Graduate trainee and son of Minister B	ST

Standard Bank Plc Personnel

Identity/ Abbreviation / Reference	Role	Organisation
Florian von Hartig (FVH)	Head of Global Debt Capital Markets	SB
SB Employee G	Head of SB's sub-Saharan Africa Debt Capital Markets Group until February 2012	SB
SB Employee H	London deal team member.	SB
SB Employee I	Head of Transaction Execution Group within SB DCM team. Solicitor	SB
SB Seconded J	London deal team member. Seconded solicitor	SB

Government of Tanzania Personnel

Identity/ Abbreviation / Reference	Role	Organisation
Minister A	Minister of Finance until May 2012	GOT
Minister B	Minister of Finance from May 2012	GOT
Public Official E	Deputy to Public Official X, MOF	GOT
Public Official M	Assistant Commissioner and Policy advisor, MOF	GOT
Public Official N	Chairman of the Technical Debt Management Committee	GOT
Public Official X	Most senior Civil Servant (Treasury) , MOF and member of the National Debt Committee	GOT

Corporate Entities

Abbreviation / Reference	Identity	Jurisdiction of Operation
SBG	Standard Bank Group Limited	South Africa
SBSA	Standard Bank South Africa	South Africa
SB	Standard Bank Plc	United Kingdom
ST	Stanbic Bank Tanzania Limited	Tanzania

APPENDIX 2 - APPLICABLE POLICIES, TRAINING & AWARENESS

Group Procedures and Policies

GFCC

1. Although SB was part of the Standard Bank Group, it operated under a separate control framework and had its own policies. Group Financial Crime Control [GFCC] had a clear mandate within the Standard Bank Group (which did not extend to SB) to operate pro-actively to prevent financial crime.
2. The GFCC Mandate states the purpose of the committee is to "have oversight over the management of financial crime across the Group". GFCC develops and controls SBG's Anti-Bribery and Corruption Policy and its Anti-Financial Crime Policy.
3. The Group Anti-Bribery and Corruption policy dated 8th June 2012 defines bribery and corruption in terms of the Bribery Act 2010 provisions. The policy defines key risk areas as including dealings with third parties and provides:

Dealings with Third Parties

Dealings with third parties may subject the SBG to legal liability, in particular where they engage in corrupt activities on the SBG's behalf, and therefore require a higher level of oversight under this policy to ensure that bribery risks are identified and managed. Examples include:

- Third parties acting on behalf of the SBG (for example Introducing Brokers and Consultants and Contractors);
- Third Parties with whom SBG contracts (for example customers); and
- Third parties over whom the SBG exercises or intends exercising (will exercise) a degree of ownership or control (for example subsidiaries, joint venture or partnerships).

Particular vigilance is required where third parties engage in contracts with public officials in the course of dealing with SBG business or where they operate in high risk jurisdictions."

4. The same policy also identified as key risk areas:
 - High Risk Countries
 - Payments to or at the request of public officials
5. In respect of detection, the policy states:

"The responsibility for identifying instances of suspected bribery lies with each staff member of the Business Unit. It is the responsibility of all Staff and Associated Persons to be vigilant of the risk of bribery and report any suspicion or incident or bribery".
6. The Group Anti-Financial Policy dated May 2011 provided that "all employees must receive training and education to equip themselves to combat financial crime and corruption."
7. Aside from the above statements of policy, the GFCC also offered an optional service to conduct forensic due diligence on third parties with which any bank business unit is considering doing business. Paragraph 3.24 of the GFCC Unit Framework provides:

Third Party Due Diligence

In contracting with a third party, there is often considerable risk from organisations not having a complete understanding of the entity to which they wish to do business (sic). In this regard the Financial Crime Control [bodies] can, upon request, perform a forensic due diligence of XYZ target entity and present a report to management detailing our findings.”

8. Although several red flags existed in this transaction, the GFCC's forensic due diligence service was not utilised by ST.

MAC

9. The MAC terms of reference defined "the authority and process for the approval of all Advisory, [Equity Capital Markets] and DCM mandates for [Corporate Investment Banking] on a global basis" (emphasis added). The MAC process was operated by the SBG Corporate Investment Banking business on a Group-wide basis. This was confirmed by SB Employee H at interview. The MAC was not a process operated by SB's Compliance or Risk function.
10. The purpose of the approval process as per the MAC terms of reference (see Section F above) is stated in general rather than clear terms as: "seeking to provide an efficient and consistent early stage approval for all mandates entered into by SBG". SB Employee H stated in interview that he could not recollect seeing the committee's terms of reference (although he was not provided with a copy of the document at interview to refresh his memory).
11. A member of the committee at the relevant time , stated in interview that the committee served three main purposes:
 - i. Commercial: to assist senior management in evaluating the validity of commercial strategies adopted in the various mandates.
 - ii. Compliance: to check whether the relevant team had been through the appropriate compliance and regulatory checks.
 - iii. Communication: to ensure proper and transparent communications amongst the senior people in the Group.
12. The template application form included the following boxes for completion:
 - "Overview of Business/Background Information: (short)"
 - "Details of Mandate and terms:"
 - "Proposed fee"
 - "Potential Conflicts (if Any)"
 - "Submitted to compliance: (Yes/No)"
 - "AML Classification"
 - "Possible Risks/disadvantages associated with mandate" "KYC process required:"
 - "Reputational risks: (Yes/No)"

13. The MAC terms of reference provided no guidance about how to fill in the template. The applicant was not required to provide any other documentation. The committee member stated in interview:

"So that the form would come in to my inbox as one of the approvers and I would read the form. If I had any questions I'd you know ask the questions generally by email. If I didn't and it was straightforward or appeared straightforward or I was already aware of it and was supportive, I would just express that I'm supportive. Which is the same process that all of the approvers went through. In the event that there was any either significant discussion or genuine concern about a mandate then the terms of reference provide for a meeting to be called at which there was a discussion. The practical reality is that happened relatively rarely because by the time mandates come to committee they generally have the support of the people that I've described, the product head, country head and in many cases they'll have been socialised amongst the senior group in some form or other generally."

14. The committee member also stated in interview that he was not aware of any connection between the MAC and the GFCC. The latter would not have any direct involvement in the mandate approval process.

15. The details of the application in respect of this transaction, which was made on behalf of both SB and ST, are set out in Section F above. The application form as submitted did not reveal the role of EGMA or its fee. In interview SB Employee H stated that the answer provided in relation to "Submitted to compliance", namely

"KYC approval is in advanced stage Approval is expected shortly"

referred to the KYC that SB were performing on the GOT. Hence an application which should have described the whole transaction did not include details of the third party engaged on the transaction.

16. In this case the MAC and its procedures (albeit that they were not part of SB's compliance control framework) were inadequate to identify bribery and corruption risks for the following reasons:

- i. there was a lack of clarity about the MAC's function
- ii. there was no connection between the MAC and the GFCC
- iii. there was no guidance about the completion of the form
- iv. the questions on the form were over simplistic and did not require or encourage detailed answers
- v. the approval procedure overall was superficial and did not require or encourage those considering the application to ask further questions
- vi. one of those considering the application in this case was the lead London deal team member responsible for the transaction.

SB Procedures and Policies

Anti Bribery & Corruption Policy

17. The SB Anti-Bribery and Corruption policy dated June 2012 placed the responsibility for detecting bribery and corruption risk onto the members of the relevant business unit.

18. The policy contained a similar statement on third parties to that set out at paragraph 2 above but with this additional passage "Introducing Brokers and Consultants and Service Providers must only be engaged in accordance with the Introducing Brokers and Consultants Policy or, as appropriate, the Service Providers Policy which, among other things:
- Provides for appropriate due diligence to be undertaken on the relationship;
 - Requires the use of appropriate contractual bribery prevention provisions in our agreements with these parties;
 - Requires consideration and approval by Compliance, Legal and management;
 - requires an annual review of all such relationships; and
 - requires the monitoring of payments to these parties in conjunction with the Bank's financial control systems.

Introducers & Consultants Policy

19. The Introducers and Consultants policy dated June 2012 stated:

"This policy has been formulated to:

- reduce any operational, reputational, regulatory and financial risks to the Bank that arise from relationships with Third Parties:
- ensure that senior management receive sufficient information to ascertain whether such agreements or payments are effective, commercially viable or properly used:
- reduce any bribery and corruption payments risk that the Bank may become exposed to: and
- ensure compliance with relevant legal and regulatory requirements".

20. The policy applied in respect of

- a. "Introducers and Consultant Agreements and relationships relating to business transacted on any of the Bank's balance sheets or in the name or on behalf of the Bank"; and
- b. "payments, commissions and other non-monetary benefits made to Introducers and Consultants."

"The Bank" is defined throughout as SB or its holding company Standard International Holdings Group.

21. In some respects, this new policy (first introduced in February 2012) established a more stringent approach to third parties. The policy required all prospective third parties to be verified under KYC/due diligence procedures. The policy introduced an enhanced third party questionnaire and required the relevant business unit "be able to provide evidence of work done by all Third Parties and be able to relate fees paid to the services rendered". The questionnaire made plain that the Bank had standard form third party agreements and if these were not used, details of the non standard agreement had to be provided. The standard form agreement included an undertaking that the third party had "no shareholders owning more than 10% of the

share capital and being a Government official, nor any director, officer or employee who held that post"

22. However the policy defined a third party as either an Introducer or a Consultant and each of these in turn as:

Introducer: "an entity or individual that introduces transactions and/or clients to the Bank, for which the Bank pays a commission or retainer (or some other form of economic benefit)"

Consultant: "typically provides advice to the Bank in the normal course of its business on specialist or technical issues in respect of which the Bank does not have local expertise or knowledge. Such Consultants are generally paid on the basis of the time spent providing the services or a fixed fee quote."

23. The wording of the policy stated that it relates to business transacted "*in the name of or on behalf of the Bank*". This reflects the wording in section 7 of the BA 2010. However, none of the SB deal team on the transaction in fact applied the policy. The language of the policy was unclear in relation to its application to circumstances where a consultant was directly engaged by a sister company of SB. If the policy did apply this was not effectively communicated to the SB deal team and/or that the training on the policy was inadequate to make this sufficiently clear.
24. On its face, the policy did not specifically deal with transactions where payments were being made to the third party by another Group company, rather than by SB.
25. EGMA was not an Introducer and SB was not paying EGMA any fees. SB Employee H stated in interview that he thought EGMA were supplying a service to the GOT, not the bank. However FVH in interview suggested that BA had explained that ST needed the assistance of EGMA.
26. On its face the policy did not seem to directly address the position of a third party introduced to provide services to the bank's customer and/or where bank customer would ultimately meet the third party's fees.
27. SB Employee I said in interview that she was aware of the policy but there is no indication in the documents provided to the SFO that any member of the SB deal team gave any thought to the applicability of this policy to this transaction. The view of the SB team appeared to be that SB did not need to conduct its own KYC and/or due diligence and that they could rely on ST to identify any anti-bribery and corruption risks relating to EGMA, and that the role of EGMA on the transaction did not require any specific compliance steps to be taken by SB.
28. In short, none of the SB deal team thought that this policy applied to EGMA. Given the terms in which it was written, that was a reasonable interpretation. If the policy was designed to have required SB to perform checks on EGMA its terms failed to make that clear.

Anti Money Laundering and Counter Terrorist Financing Policy

29. This SB policy dated June 2012 set out the requirement for and details of customer due diligence and stated:

"The Bank requires every effort to be made to determine and verify the identity and the bona fides of all persons conducting financial services business with the Bank in accordance with written procedures for accepting new clients"

30. The policy also highlights the increased money laundering risk associated with politically exposed persons (PEPs) which it defines as individuals who either have a high political profile or hold public office; or who are close associates of such persons. The policy states:
- " if a PEP is identified as being linked to a client, for example as a shareholder or director, on account opening or review, the nature of the PEP's links to the client should be assessed and the risk presented by the PEP link considered. As a result, additional due diligence may be required. Where an increased risk is noted, MLRO review is required, and the case may be escalated for further consideration by senior management"

PEP and Reputational Risk Committee [PEP/RRC]

31. As at September 2012 the PEP/RRC concerned the increased risks associated with PEPs where
- a client was a PEP
 - a PEP was connected to a client (as related party or ultimate beneficial owner)
32. The committee was responsible (inter alia) for
- "reviewing and approving, if considered appropriate, client relationships where there is information that suggests that relationship may have adverse financial crime or reputational implication for the Bank" and
 - ensuring an intensive review process for "all relevant accounts" (which included those linked to PEPs)
33. There is no suggestion within the paperwork made available to the SFO that any referral was made to this Committee or consideration given to any such referral. The SB deal team did not apply the Introducers and Consultants policy and instead relied on ST to identify the risks associated with EGMA from an anti-bribery and corruption perspective. ST did not identify any such risks relating to PEP connections with EGMA. No one within SB made any enquiries about whether EGMA had any PEP connections. Both FVH and SB Employee H stated that if they had known of the Kitilya connection to EGMA at the time, they would have been concerned.

Training & Culture

34. Although SB did have a relevant training system in place for its employees, the effectiveness of the training provided must be in doubt given that no SB deal team member raised any concern about this transaction or sought to ask any substantive question about EGMA, its role or its fee but instead relied on SB's sister company, ST, to flag any concerns arising from its KYC of EGMA.
35. The details of the training received by the SB deal team are recorded in **Appendix 3** together with relevant excerpts from their interviews about training and general awareness. The interviews of SB Employee G , SB Seconded J , SB Employee H and SB Employee I reveal that the training was often by way of internet questionnaires.
36. On the 9th January 2013 FVH attended an SB training course entitled "Standard Bank Anti-Bribery and Corruption (Associated Persons) Risk Training". The course materials made reference to the risks of third parties being used as conduits for bribes by being paid for non-existent services. However the training stated that where a consultant is not acting in relation to business transacted on the Bank's balance sheet or in the name of the Bank, they would not

be covered by the Introducers and Consultants policy but would instead be reviewed via the Bank's procurement process on a contract by contract basis. Whether the training correctly reflected the policy on that point or not, given the subject matter of the training, it is difficult to understand why it did not prompt FVH to at least ask further questions about EGMA. There is no document in the possession of the SFO which records FVH doing so.

37. None of the SB deal team appears to have identified or considered the risks of bribery and corruption in this transaction. Given that SB placed reliance upon the relevant business unit to identify whether the relevant policies applied and to identify bribery and corruption, any effective system requires a proactive approach by such individuals.

38. During his interview SB Employee G described the relationship between the business unit and the Compliance department:

"M JACKSON: And would the compliance officer be party to, let's say, discussions about negotiations so that they are able to assess what's going on and compare that to different clients' regime? Or is it a case of you went to them rather than them being proactive?"

SB Employee G: I think it's fair to say that we would, we would notify them in all instances. I don't recall a scenario in which they came of their own accord."

"SB Employee G: Meaning, if I were transparent and said 'This is a transaction, this is the counterparty, this is the structure, etc. etc. Can you please let me know if there are any compliance issues here or do you require any checks etc. etc.?' If I were upfront about that process I think I would have got the right answer out of compliance.

M JACKSON: I see.

SB Employee G: Or an adequate appropriate answer.

M JACKSON: I see. So what you're saying is that the onus was on the business managers to be straight with the compliance team about all the characteristics of a negotiation for the compliance team to then advise appropriately?

SB Employee G: Absolutely."

39. SB Employee H described the situation in similar terms:

"M JACKSON: Can you explain how the compliance department and I'll call it the business teams, how they interact with each other?"

SB Employee H: Sure. So I'm going to talk about the time I was at Plc because as I say they're split now. So we, we were sitting with the global markets team at that time. And there was a compliance person who sat on the floor and you know we could if we had any issues we would just, we could go over and speak to her about it and she would, you know there were occasional sessions where they would go through certain compliance messages. And so we knew who that person was."

40. SB Seconded J described her interaction with Compliance as follows:

"SB Seconded J: From a legal issue, if something came up which was a legal point, which I thought was an issue I would take it up the chain to whoever was more senior than myself on the legal side. And if there was a possible issue that I thought was a compliance issue the

appropriate procedures are to take it to the business guy who is working on the deal, the day-to-day sort of business guy and say, you know, look I think this is a possible compliance issue, I think we should flag this with compliance. And then it would be up to him and it usually was up to him to take it to the compliance person.

KINGSTON: Okay.

SB Seconded J: And if there were discussions with compliance I would usually be involved from the standpoint of, you know making sure that whatever the issue was properly explained to the compliance guy that with respect my business guy understood the conversations we were having, but at the end of the day the risk for making sure, whatever the issue was dealt properly with by compliance sits with the business."

41. SB Employee I her explained her role in respect of Compliance and the process for conducting KYC as follows:

"SB Employee I: I mean, I didn't have any specific compliance responsibilities than anyone else really on the team, because, you know, my role as a debt capital markets lawyer ... So, obviously if anything came up that I was concerned about, I have a responsibility, as anyone else does, to, to, you know, make a report to compliance. But I don't have any specific responsibilities assigned to me."

"SB Employee I: I don't know what the KYC procedure would be, because I know that under the introducing broker policy they do have, I believe, a different procedure set out to the one you would have. So you, you would have different procedures for a counterparty, you'd have different procedures for a client and, in turn, you would have different procedures, or they do, have outlined for an introducing broker. And so, if we were going to, if Standard plc was going to enter into that, that should be really discussion with, with compliance ... to get[?]their guidance. And that's what I've done when I've been. you know, when it's come up, you know, that. oh. they want that. I've gone to speak to compliance or advise the team. 'We need to go and speak to compliance'.

M JACKSON: So, compliance would be the ones who would know what the KYC process was, depending on the status of the third party?

SB Employee I: They would guide you in, you know, whether you needed to get further internal approvals and what the, the, you know, who to speak to, and then what the process would be."

42. In respect of this transaction there was an absence of appreciation by the SB deal team that there was an obligation on SB to conduct KYC and/or due diligence on EGMA and its role. Between them, they made the following points:
- i. Given the lack of contractual relationship with or direct payment to EGMA, SB had no obligation to KYC EGMA.
 - ii. SB's only KYC obligation was in respect of its customer, the GOT
 - iii. ST was obliged to KYC EGMA
 - iv. Had there been. any problem with EGMA, they believed this would have been brought to their attention by ST
 - v. SB did not need any more than a tick box form from ST that KYC had been completed

- vi. They had not asked any questions themselves about EGMA or its role and did not consider they were under any obligation to do so.

APPENDIX 3 - TRAINING SCHEDULE AND INTERVIEW EXCERPTS RE TRAINING & AWARENESS OF POLICIES

Training Schedule A (extract)

		Florian Hartig		SB Employee H		SB Employee I
Course name						
Anti Money Laundering (2010)		22/11/2010		N/A		17/11/2010
BCM - Business Continuity Management 2013		22/04/2013		22/04/2013		22/04/2013
Behavioural Awareness and Comms		11/04/2008		N/A		11/09/2007
Behavioural Awareness and Comms		22/11/2006		N/A		21/11/2006
Body Language		03/12/2009		N/A		03/12/2009
CIBI Mentoring Programme		07/04/2012		N/A		
Comp 2012 – AML		09/12/2011		29/05/2012		09/12/2011
Comp 2012 – Bribery and Corruption		10/10/2011		29/05/2012		10/10/2011
Comp 2012 – Conflicts of Interest		23/05/2012		29/05/2012		08/01/2013
Comp 2012 – Preventing Financial Crime		24/10/2012		24/10/2012		08/01/2013
Operational Risk Awareness		15/01/2013		15/01/2013		15/01/2013

Training Schedule B (extract)

Individual	Training	Date
Florian Hartig	Associated Persons Training	09/01/2013
	Compliance Policy Training	23/01/2013
	Market Conduct Training	04/06/2013
	Compliance Policy Training	16/09/2013
	Comp uk-Preventing	09/12/2013
	Financial Crime Code of Ethics Awareness	08/04/2014
	Client Risk Management	08/07/2014
	Training FATCA Training for International	27/06/2014
SB Employee H	Compliance Policy Training	23/01/2013
	Market Conduct Training	19/06/2013
	Compliance policy Training	16/09/2013
	Private Side Training	13/11/2013
	Comp uk Preventing Financial Crime	06/01/2014
	Code of Ethics Awareness	10/04/2014
	Client Risk Management Training	07/07/2014
	FATCA Training for International	25/07/2014
	Comp uk Conflicts of Interest	24/11/2014
	Comp uk Market Conduct	24/11/2014
Comp uk Preventing Financial Crime	11/12/2014	
SB Employee I	Compliance Policy Training	31/01/2013
	Market Conduct Training	23/05/2013
	Compliance Policy Training	16/09/2013

Individual	Training	Date
	Private Side Training 13/11/2013	
	Comp uk Preventing Financial Crime	10/12/2013
	Code of Ethics Awareness	28/03/2014
	Client Risk Management Training	08/07/2014
	FATCA Training for International	10/01/2014
	Comp uk Conflicts of Interest	17/12/2014
	Comp uk Market Conduct	12/11/2014
	Comp uk Preventing Financial Crime	17/12/2014

Interview Extracts (emphasis added)

1. Interviewees were asked in general terms about their views on the anti-bribery and corruption training offered by SB at the time. The interviewees did not have available to them their electronic calendars, emails, or SB's training materials or policies. However, their initial reactions to the general questions about compliance training are set out below.

2. SFO Interview with SB Secondee J

N HELEY: Sorry, the training for Standard Bank did you receive anything whilst you were there on the maternity cover?

SB Secondee J: I think that there were a **couple of intra compliance models that I, you know at my desk training** that I had to do when I started, **I don't remember them being particularly onerous or particularly extensive**. Again I haven't had access to Standard Bank email, computers etc. since December 2012, so in terms of confirming what I actually did you would need to ask the bank. I will say that I, having been and I don't know if this is helpful or not, having been at [Bank A] subsequent to my Standard Bank secondment, I was at [Bank A] on secondment for a year. **[Bank A] I think, well, it's a bigger bank it 's a different, it's a different footprint of the bank here in London and the compliance function at [Bank A] is also larger.**

SB Secondee J: How banks do it? How SB does it and how [Bank A] does it and now how [Bank B], which is where I am now does it, it's a training module that you do at your desk.

N HELEY: Okay.

SB Secondee J: It's not, I don't want to say it's online, because it's like a little separate training module and you read certain things and you click through. Most of them have exams, so little

questions during the time and you have to get a certain percentage before they'll let you finish it and if you get questions wrong you have to go back and read the stuff again.

S KINGSTON: Did you feel that training was sufficient for you to understand the implications of the Bribery Act?

SB Seconded J: I felt, well again hindsight is 20, 20, I think the training could have been more robust I felt it was a little light.

3. SFO Interview with SB Employee G

[As regards training]

SB Employee G: **But I think you need to distinguish in terms of what types of training.** I mean, if you're trying to offer senior bankers, you know, training in markets or how to run their business I think you're going to find resistance because most would have figured it out by now.

N HELEY: Mm-hmm yeah.

SB Employee G: If you're talking about training in terms of policies or compliance workshops or stuff like that –

N HELEY: Yeah.

SB Employee G: - I'm sure Standard Bank provided that to the extent that they were required to.

[As regards policies]

N HELEY: Okay. Did you have access to any policies, things like that?

SB Employee G: I'm sure I had access to them. I'm sure most of the policies were laid out in the employment contract.

N HELEY: Okay. On a daily basis, could you have accessed them through the Internet or something like that?

SB Employee G: I'm sure you could have.

N HELEY: Okay.

SB Employee G : **Not that I would have known where to look but I, if I were determined to find them, I'm sure I could have.** *[As regards workshops on compliance related issues]*

SB Employee G: **I don't recall attending any of those.** I do recall plenty of compliance-related quizzes being offered on the Internet which I think is pretty standard practice at most banks these days.

N HELEY: Was that pass and fail or.?

SB Employee G: I think so.

N HELEY: And were there any kind of **refresher sessions** afterwards?

SB Employee G: **Not that I can recall.**

N HELEY: And do you remember passing them or failing them?

SB Employee G: I remember passing them all.

N HELEY: Okay.

SB Employee G: **It was a fun challenge to see how quickly you could pass them.**

[re specific training on Anti-Bribery and Corruption]

N HELEY: Okay. Did Standard Bank, before you left, allude to the Act; did they, say, make any mention of it?

SB Employee G: No, no. **There may have been one of those Internet-based compliance quizzes** relating to whatever the predecessor of the Act was.

N HELEY: Mm-hmm. Okay.

SB Employee G: But I generally tended to think common sense prevails in a lot of these instances.

N HELEY: Okay.

M JACKSON: **So it wasn't a big roll-out of Bribery Act training during your time there?**

SB Employee G: **Not that I can recall.**

[re specific training on Anti-Bribery and Corruption]

N HELEY: And with regards to compliance and anti-bribery, I mean we touched on this earlier, do you remember ever seeing any hard material lying around, like handbooks on guidance on both subjects?

SB Employee G: **I don't.**

N HELEY: Was there any on intranet?

SB Employee G: **I vaguely recall one of those Internet brief quiz things that was sent on from compliance regarding bribery and corruption in one instance but I think that's the only time and it's a vague recollection.**

[re training techniques used by SB Plc]

SB Employee G: Most of the regulatory requirements that Standard Bank was required to roll out to its employees were conducted online. **So there was an online tutorial and then a quiz associated with that** and that is deemed to be, you're now fully briefed on this compliance issue.

N HELEY: Was that pass and fail or?

SB Employee G: I think so.

N HELEY: **And were there any kind of refresher sessions afterwards?**

SB Employee G: **Not that I can recall** [*re personal responsibilities with regards to compliance*]

N HELEY: Yeah. Okay. So with regards to your personal responsibilities at a senior level in the debt capital markets of Africa, what were your personal responsibilities with regards to compliance?

SB Employee G: **I'm not entirely sure. You know, I think most, there were, I'm sure there was a written policy.** It wasn't as; it kind of escapes me. It was certainly a minor part of what I focused on day to day and as I would say, **I think common sense prevailed.** Where it came into play would be where you were trying to, **when you were considering working with a new client, you would ensure that the company conducted a Know Your Customer process,** and that would be run for compliance. Most of the transactions that we did because they were international debt transactions involved sovereign governments in Africa or the large banks and so these were institutions that were generally very well known to Standard Bank. So we weren't necessarily bringing transactional opportunities to the bank for borrowers that the bank didn't know well.

N HELEY: So as you mentioned earlier, the compliance responsibility is, when you're doing a transaction is going through, a proposal, there's the Know Your Client checks.

SB Employee G: Right.

N HELEY: Would that be your responsibility to ensure that your employee had done that?

SB Employee G: **I wouldn't have relied on an employee to have done that. I would have gone directly to the compliance team myself.**

N HELEY: Okay. If there was a breach of the anti-corruption policy, for example, are you aware of what the consequences of that would have been?

SB Employee G: **Theoretically, no.** Do you mean what the institution's reaction would be or the law consequence?

N HELEY: The bank's, yeah.

SB Employee G: I, if I had been made aware of a breach for something I had done or something that I was aware the bank had done?

N HELEY: Both.

SB Employee G: No. **I don't think there was any clear road map as to what would have happened** other than I think most seasoned bankers would be wise enough to know that if it was caused by you or your team, **you would have been shown the door very quickly and the bank would have used you as the scapegoat.** So you would have been, you know, informally tossed under the bus. So, yeah, it would mean the implosion of your career.

4. SFO Interview with SB Employee I

N HELEY: Okay. Just broadly talking about training around Compliance –

SB Employee I: Mm-hmm.

N HELEY: - I accept, appreciate what you've said, that you wouldn't necessarily have as much responsibility as others. Would you have any training on compliance:

SB Employee I: Training and compliance is what, my- compli... training is the same as everyone else has in the bank, **so they will, you know, you will, they have a, sort of, Internet-based training and sometimes we have face-to-face training. But it's all organised by the compliance team and you're simply said, you, you know, you will need to go to this training or you need to do this online training, and it's all recorded: And so mine is the same as anyone else's in the bank. I haven't had any specific, special compliance training.**

N HELEY: Okay. And can you recall if that's pass or fail?

SB Employee I: It is, yes, it is. So, with the online training , typically you have an exam at the end and you have to usually get a score above 80%. If not, you have to keep retaking it.

[...]

M JACKSON: [...] So, perhaps we could move on to, more specifically, training relating to bribery and corruption legislation or policies relating to the use of intermediaries, or that, sort of, red flag type of process. Maybe we can move onto that more specifically.

SB Employee I: So, they have done Internet training in the past around financial crime. And now there's one where you have to pass an exam and get the 80% plus.

M JACKSON: Do you recall when in the past that was?

SB Employee I: I mean, I can only recall the most, most recent one. It's very *ad hoc* as and when they arise, you're literally emailed to say, you have this time period to do this training.

L DELAHUNTY: Do you recall when it was?

M JACKSON: The most recent one?

SB Employee I: The most recent one, yes, that was December 2014, on financial crime.

M JACKSON: Okay. Okay, and so, what did that cover? Well, actually, let's not focus on the one that's just been. If you can think back, I appreciate you might not be able to recall specific instances of training, but do you recall training about anti-corruption measures?

SB Employee I: **I can't recall anything, anything specific.** I was aware that they had a policy around things like introducing brokers. **But I just can't recall, off the top of my head, any specific, anything specific about, about that training.**

M JACKSON: And what was that policy?

SB Employee I: **I can't , I mean, I can't recall any, sort of, ins and outs because, from my perspective, when an introducing broker has arisen, I've always said to the business person concerned that, 'You need to speak with legal and compliance' and made that, you know, and recommended that referral.**

[...]

SB Employee I: **I just really can't recall from back then.** I can say that in the training that took place in December 2014 **the policy was flagged as the policy exists and there was a link to the policy within the training.**

N HELEY: Okay. Just specifically talking, now focussing on the Bribery Act [...] Do you recall any new policies being introduced following that?

SB Employee I: I can't recall any specific training, all I just recall was that before I went on maternity leave [...]

SB Employee I: And what they did was they then gave me training, all the training I'd miss they gave me when I returned on maternity leave, from maternity leave.

N HELEY: Oh okay. Was that quite a big chuck when you got back?

SB Employee I: **I can't, I can't really remember. I was so busy when I got back –**

N HELEY: Yes.

SB Employee I: - but I, I just know that I completed everything that I hadn't done, and made sure that compliance were aware that I wasn't there to do it. •

M JACKSON: Did that invoice Bribery Act training?

SB Employee I: **I can't remember I'm afraid.**

[...]

N HELEY: Okay, great, thank you. Just focussing on the risk of bribery, were you ever aware of any risk assessment procedures that the bank adopted in order to identify bribery?

SB Employee I: No, not, not from what I could recall, no.

N HELEY: Okay. And did you know if the bank ever established any objectives to counter bribery?

SB Employee I: No, I can't, I can't think of anything, I can't recall anything.

N HELEY: Okay. Did Mr Hartig, as your manager, ever issue a statement about bribery?

SB Employee I: **I can't recall anything.**

5. Section 2 Interview with SB Employee H

M JACKSON: Okay so were you satisfied that Plc's compliance procedures mitigated the risks involved in dealing with a country that sits somewhere near, nearer the bottom of such a scale?

SB Employee H: I had no reason to doubt it.

[...]

M JACKSON: And do you know what the, well within the policies what the consequences would be for a staff member for breaching anti-bribery and corruption policies?

SB Employee H: Yes. Because its part of the e-learnings, you know, the UK Anti-Bribery Act was, you know, it would, they mentioned that this Act is there and what the consequences are.

M JACKSON: Okay so that was a specific part of the e-learning, you recall that?

SB Employee H: I, yeah. I, yes.

M JACKSON: Yeah, do you recall if there was a, because that Act came, I think became effective in July 2011 . Do you recall if there was a particular awareness training in relation to it?

SB Employee H: I wasn't at the Bank at that time.

M JACKSON: Yeah.

SB Employee H: So I don't know.

M JACKSON: But when you joined, was there a particular training about the Act?

SB Employee H: I can't remember.

M JACKSON: Okay but you recall it being part of some of the training?

SB Employee H: I recall seeing the Act in one of the online learnings, yes.

[...]

M JACKSON: In respect of the training, were staff assessed on the training?

SB Employee H: There is an assessment at the end of the training where you have to answer a certain number of questions and to complete, for the training to be registered as complete, you do need to pass, there's a certain score either 70% 80%, so you need to basically pass that.

[...]

SB Employee H: So when I joined, from recollection because it has been a little while, there were e-learnings that I had to do. And some of those e-learnings were compliance related.

SB Employee H: Other than that I do remember that there was an induction programme, induction session. I can't remember what exactly occurred there. And, other than that I can't really remember. **I mean there may have been certain polices or procedures that may have been brought to my attention.**

SB Employee H: But **it's not something that I can remember** in much detail at this point.

[...]

M JACKSON: Okay. Did you receive any specific training on anti-bribery or corruption?

SB Employee H: As part of the, these e-learnings I'm referring to, **I'm sure that that was covered in those sessions.**

M JACKSON: Mm-hmm.

SB Employee H: **I can't remember exactly when I did one of those.**

M JACKSON: Do you remember anything about what you learned?

SB Employee H: Yeah I can remember **the overall message.**

M JACKSON: Which was?

SB Employee H: Don't, **don't bribe and if you do see, you know if you are aware of it then you should escalate it.**