

AES:DCP
F.#2017R01904

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

DEFERRED PROSECUTION
AGREEMENT

- against -

Cr. No. 18-102 (S-1) (KAM)

LOYAL BANK LTD.

Defendant.

-----x

The United States Attorney’s Office for the Eastern District of New York (the “Office”) and the defendant Loyal Bank Ltd. (“Loyal Bank” or the “Company”) enter into this deferred prosecution agreement (the “Agreement”).¹

CRIMINAL INDICTMENT AND ACCEPTANCE OF RESPONSIBILITY

1. The Company acknowledges that the Office has obtained the above-captioned criminal indictment charging the Company (and other defendants) with conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h) (Count Two of the Indictment).

¹ The caption in this matter also includes defendant Loyal Agency and Trust Corp. (“Loyal Agency”), which, as of September 27, 2022, has been struck from the Registrar of Company of the State of St. Vincent and the Grenadines and is not operational or in liquidation. Given that Loyal Agency is a defunct organization, this Agreement is not entered into with respect to Loyal Agency.

2. In light of the Indictment, the Financial Services Authority² (the “FSA”) issued a directive³ that placed certain restrictions and obligations on the Company and thereafter engaged Deloitte & Touche Barbados Ltd. (“Deloitte”) to conduct an independent examination of the Company to assess, among other things, its financial position. Based on its independent examination, Deloitte concluded that the Company was insolvent and asset deficient. As a result, and in further consideration of the Indictment, the FSA revoked the Company’s banking license and obtained a judicial order for the Company to be wound up and for the appointment of Mr. Ikins Clarke and Ms. Joan Betty Brathwaite of Deloitte to be appointed as Joint Liquidators for this purpose (the “Joint Liquidators”).

3. The Joint Liquidators had no prior knowledge of, nor any involvement in or awareness of, any of the conduct described or charged in the Indictment and bear no responsibility – personal, corporate, or otherwise – in connection with the resolution of this matter in accordance with the terms of the Agreement.

4. The Joint Liquidators wish to cooperate with the Office in its investigation and prosecution pursuant to the Indictment and subject to the approval or further direction of the High Court of Saint Vincent and the Grenadines, on behalf of the Company, hereby (a) withdraw the Company’s plea of not guilty to the Indictment; (b) knowingly waive the Company’s right to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (c)

² The FSA is the financial services regulatory authority created by the Saint Vincent and the Grenadines Financial Services Authority Act, No. 11 of 2011, of the Laws of Saint Vincent and the Grenadines (the “FSAA”).

³ Pursuant to Section 8(1) of the FSAA.

knowingly waives any objection with respect to venue to any charges by the United States arising out of the conduct described in the Indictment.

5. In further pursuance of the Order of the High Court of Saint Vincent and the Grenadines, the Joint Liquidators, acting on behalf of the Company and based on its books and records in their possession, admit, accept, and acknowledge, on behalf of the Company, that the Company is responsible:

a. under United States law for the acts of its officers, directors, employees, and agents as charged in the Indictment, and that the allegations described in the Indictment are true and accurate; and

b. for the acts of its officers, directors, employees, and agents as charged in Count Five of the Indictment, which charges a conspiracy to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (“FATCA”), in violation of Title 18, United States Code, Section 371.

TERM OF THE AGREEMENT

6. This Agreement is effective for a period of one year from the date hereof (the “Term”). The Company agrees, however, that, in the event the Office determines in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Office, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Office’s right to proceed as provided in Paragraphs 15 through 19 below. Any extension of the Agreement extends all terms of this Agreement. If the Court rejects the Agreement, all the provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

RELEVANT CONSIDERATIONS

7. The Office enters into this Agreement based on the individual facts and circumstances presented by this case, including:

a. in or about August 2018, after the above-captioned Indictment was returned, Loyal Bank began liquidation proceedings in St. Vincent and the Grenadines. Specifically, pursuant to an order of the High Court of Justice of St. Vincent and the Grenadines, liquidation proceedings to wind-up Loyal Bank commenced and court-supervised Joint Liquidators from Deloitte were appointed to oversee the liquidation process. Loyal Bank's liquidation proceedings are expected to conclude in approximately 2025. Once the liquidation proceedings are complete, Loyal Bank will no longer exist.

b. the Company did not receive voluntary disclosure credit because, prior to the filing of the Indictment and the commencement of liquidation proceedings, it did not voluntarily and timely disclose to the Office the facts set forth in the Indictment;

c. the Joint Liquidators, acting on behalf of the Company, and pursuant to an Order of the High Court of Saint Vincent and the Grenadines dated February 11, 2021, have been authorized to disclose certain information to the Office, as a result of which the Company has received partial credit for its cooperation with the Office, including by collecting and producing evidence and records;

d. the Company engaged in remedial measures, including: (i) separating employees who participated in, or who had knowledge of, the misconduct described in the Statement of Facts; (ii) undertaking substantial efforts to strengthen compliance; (iii) at the direction of the St. Vincent and Grenadine regulator, pre-liquidation, engaged Deloitte partners to conduct an examination of the Company's affairs; and (iv) pursuant to court order, Deloitte

partners have served and continue to serve as court-supervised Independent Joint Liquidators with responsibility to wind down operations and to liquidate all assets of the Company.

- e. the nature, seriousness and pervasiveness of the offense conduct, which included executives at the highest level of the Company;
- f. the Company has no prior criminal history; and
- g. the Company, through its Joint Liquidators, has committed to continuing to cooperate with the Office as described in Paragraph 8 below.

FUTURE COOPERATION AND DISCLOSURE REQUIREMENTS

8. Subject to the approval and further direction of the High Court of Saint Vincent and the Grenadines, the Company shall continue to cooperate fully with the Office in any and all matters relating to the conduct described in this Agreement and the Indictment, and any individual or entity referred to therein, as well as in any other matters under investigation by the Office. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to the following:

- a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to their activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Office, upon request, any document, record or other tangible evidence about which the Office may inquire of the Company;

b. Upon request of the Office, the Company shall designate knowledgeable employees, agents or attorneys to provide to the Office the information and materials described in Paragraph 8(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information;

c. The Company shall support any application by the Office to secure the attendance of present or former officers, directors, employees, agents and consultants of the Company for interviews or testimony, as requested by the Office. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation; and

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Office pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, as well as the Multilateral Development Banks (“MDBs”), of such materials as the Office, in its sole discretion, shall deem appropriate.

9. In addition to the obligations in Paragraph 8 above, during the Term of the Agreement, should the Company learn of credible evidence or allegations of money laundering or tax evasion, the Company shall promptly report such evidence or allegations to the Office.

Payment of Monetary Penalty

10. The Office and the Company agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- a. The 2018 USSG are applicable to this matter.
- b. Offense Level. The total offense level is 22, calculated as follows:

Base Offense Level (§ 2S1.1(a)(2); § 2B1.1(b)(1)(F))	18
Plus: Conviction Under 18 U.S.C. § 1956 (§ 2S1.1(b)(2)(B))	+2
Plus: Sophisticated Laundering (§ 2S1.1(b)(3))	+2
- c. Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$2,000,000
- d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 5, calculated as follows:
 - (a) Base Culpability Score 5
 - (b)(4) the organization had 10 or more employees and an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense +1
 - (g)(3) The organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct -1

TOTAL	5
--------------	----------

Calculation of Fine Range:

Base Fine	\$2,000,000
Multipliers	1 (min) / 2 (max)
Fine Range	\$2,000,000 to \$4,000,000

11. The Company agrees to transfer the monetary penalty of \$2,000,000 into an escrow account within ten (10) business days of the execution of this agreement for the benefit of the United States Treasury. The Company and the Office agree that the monetary penalty is appropriate given the facts and circumstances of this case, including the factors described in Paragraph 7 above. The \$2,000,000 monetary penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Office that the \$2,000,000 monetary penalty is the maximum penalty that may be imposed in any future prosecution, and the Office are not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Office agrees that under those circumstances, they will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$2,000,000 million monetary penalty. The Company shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that the Company pay pursuant to this Agreement or any other agreement concerning the conduct set forth in the Indictment entered into with an enforcement authority or regulator.

CONDITIONAL RELEASE FROM LIABILITY

12. Subject to Paragraphs 15 through 17 below, the Office agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against the Company or any of its current or former wholly-owned subsidiaries relating to any of the conduct described in the Indictment. This Agreement does not provide any protection against prosecution for any future conduct by the Company. In addition, this Agreement does not provide any protection against

prosecution of any individuals, regardless of their affiliation with the Company. The Office, however, may use any information related to the conduct described in the Indictment:

- a. in a prosecution for perjury or obstruction of justice;
- b. in a prosecution for making a false statement;
- c. in a prosecution or other proceeding relating to any crime of violence; or
- d. in a prosecution or other proceeding relating to a violation of any

provision of Title 26 of the United States Code.

DEFERRED PROSECUTION

13. In consideration of the undertakings agreed to by the Company herein, the Office agrees that any prosecution of the Company for the conduct set forth in the Indictment be and hereby is deferred for the Term. To the extent there is conduct disclosed by the Company that the parties have specifically discussed and agreed is not covered by this Agreement, such conduct will not be exempt from further prosecution and is not within the scope of or relevant to this Agreement.

14. The Office further agrees that if the Company fully complies with all of its obligations under this Agreement, the Office will not continue the criminal prosecution against the Company described in Paragraph 1 above and, at the conclusion of the Term, this Agreement shall expire. Within six (6) months of the Agreement's expiration, the Office shall seek dismissal with prejudice of the criminal Indictment filed against the Company described in Paragraph 1 above, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and the Statement of Facts.

BREACH OF THE AGREEMENT

15. If, during the Term, the Company: (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) fails to cooperate as set forth in Paragraphs 8 and 9 of this Agreement; or (d) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the charges in the Indictment described in Paragraph 1 above. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by the Company or its personnel. Any such prosecution relating to the conduct described in the Indictment or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Office is made aware of the violation or the duration of the Term plus five years,

and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

16. In the event the Office determines that the Company has breached this Agreement, the Office agrees to provide the Company with written notice prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of the breach, as well as the actions the Company has taken to address and remediate the situation, which the Office shall consider in determining whether to pursue prosecution of the Company.

17. In the event that the Office determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Office or to the Court, including any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Office.

18. The Company acknowledges that the Office has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

19. Thirty (30) days after the expiration of the period of deferred prosecution specified in this Agreement, the Company, by the Joint Liquidators, will certify to the Office that the Company has met its disclosure obligations pursuant to Paragraphs 8 and 9 of this Agreement. Each certification will be deemed a material statement and representation by the Company to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

SALE, MERGER, OR OTHER CHANGE IN CORPORATE FORM OF COMPANY

20. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the Indictment, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The Company shall notify the Office at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form, including dissolution, in order to give the Office an opportunity to determine if such change in corporate form would impact the terms or obligations of the Agreement.

PUBLIC STATEMENTS BY COMPANY

21. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above and described in the Indictment. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 15 through 17 of this Agreement. The decision whether any public statement by any such person contradicting the acceptance of responsibility set forth above for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Office.

If the Office determines that a public statement by any such person contradicts in whole or in part the acceptance of responsibility described above, the Office shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Indictment provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Indictment. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

22. The Company agrees that if they, or any of its direct or indirect subsidiaries or affiliates, issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult with the Office to determine: (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and the Company; and (b) whether the Office has any objection to the release.

23. The Office agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation. By agreeing to provide this information to such authorities, the Office is not agreeing to advocate on behalf of the Company, but rather are agreeing to provide facts to be evaluated independently by such authorities.

LIMITATIONS ON BINDING EFFECT OF AGREEMENT

24. This Agreement is binding on the Company and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

NOTICE

25. Any notice to the Office under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Chief, Business and Securities Fraud Section, United States Attorney's Office, Eastern District of New York, 271-A Cadman Plaza East, Brooklyn, New York 11201. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Sher Tremonte LLP, 90 Broad St., 23rd Floor, New York, NY 10004. Notice shall be effective upon actual receipt by the Office or the Company.

COMPLETE AGREEMENT

26. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for the Company and a duly authorized representative of the Company.

Dated: Brooklyn, New York
December 20, 2024

BREON PEACE
United States Attorney
Eastern District of New York


By: David C. Pitluck
David Pitluck
Assistant United States Attorney


Approved:

Alixandra Smith
Alixandra E. Smith
Chief, Criminal Division

Agreed and consented to by:

FOR LOYAL BANK LIMITED (IN LIQUIDATION)


Ikins Clarke


Michael Tremonte, Esq.
Katie Renzler, Esq.
Counsel to Loyal Bank Limited (In Liquidation)