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## **SLW COMMENTARY**

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### **THE KEPPEL BRIBERY SCANDAL TESTS SINGAPORE'S ZERO TOLERANCE POLICY TOWARDS CORRUPTION**

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1 On 12 January 2023, the Corrupt Practices Investigation Bureau ("CPIB"), in consultation with the Attorney-General's Chambers, announced that it would not be prosecuting six former senior management staff of Keppel Offshore & Marine Ltd ("KOM") for their involvement in US\$55 million in bribes paid to Brazilian state officials to secure thirteen large contracts there. Instead, they would be given "stern warnings".

2 Does this decision signal a crack in Singapore's long professed policy of zero tolerance towards corruption? Should Singaporeans be concerned by the decision? The answer depends on what one makes of the CPIB's justification for its decision and whether any further information is given. In the absence of compelling further information from the authorities, the decision is discomforting.

#### **The Bribery Scheme**

3 First, the facts. For years (between 2001 and 2014), KOM and others conspired and paid huge bribes to officials of Brazilian state-owned oil company, Petrobras to influence them and certain Brazilian politicians to secure thirteen projects in Brazil. KOM channelled these bribes through a consultant. To conceal these illegal payments, KOM group executives created and signed consulting agreements with shell companies controlled by the consultant. Through this scheme, KOM and its related companies earned profits of over US\$350 million from business corruptly obtained in Brazil.

#### **KOM's Admission & US\$422million fine**

4 KOM admitted these facts in a lengthy agreed statement of facts it signed with the US Department of Justice ("DOJ") in 2017 as part of a deferred prosecution agreement. That statement details KOM's involvement in the bribery scheme, including emails exchanged

between KOM group executives and the consultant. As part of a global resolution involving the DOJ and authorities in Brazil and Singapore, KOM paid US\$422 million in fines.

### **The CPIB's Decision**

5 The CPIB investigated at least six former senior management staff of KOM for their involvement in the Petrobras bribery scandal. Its decision not to prosecute any of the six is explained in just one short paragraph in its press release:

“This case is complex and transnational, involving multiple authorities and witnesses from several countries. There are evidential difficulties in cases of such nature. Many of the documents are located in different jurisdictions. In addition, key witnesses are located outside of Singapore and cannot be compelled to give evidence here. The decision whether to prosecute the six individuals for criminal offences has to take into consideration all relevant factors, such as the culpability of each individual, the available evidence and what is appropriate in the circumstances. Having taken these into consideration, stern warnings were issued to the six individuals.”

### **Is the CPIB's Decision Justified?**

6 Let's test it.

7 First, the fact that a corrupt scheme is complex and transnational cannot on its own justify non-prosecution. In this modern day and age, a fraud or corrupt scheme will often be complex and involve foreign elements, with some evidence and witnesses overseas. The CPIB statement correctly accepts that something more must be required before a decision is made not to prosecute wrongdoers.

8 Second, there is already a very large amount of evidence of the bribery scheme available with KOM which is fully accessible to prosecutors. This is clear from the admissions in KOM's agreed statement of facts with the DOJ. It shows that KOM conducted a “thorough internal investigation” into the bribery and made the findings available to the DOJ; produced foreign country documents to the DOJ; and provided to the DOJ “all relevant facts known to it, including information about the individuals involved in the misconduct”. This evidence included the identities of the consultant, the KOM group executives and the Brazilian officials involved.

9 Third, the CPIB also has extensive investigative powers over the six former KOM senior management staff, who all appear to be within the jurisdiction. The CPIB has been investigating the six individuals for several years now. There is every likelihood that given its resources, vast investigative experience, and the massive amount of evidence already available, the CPIB would probably have secured admissions from one or more of the six individuals through their investigations.

10 Fourth, advanced digital forensic tools are also available to access KOM’s servers and the six individuals’ personal mobile devices to identify and collect yet further relevant evidence. KOM’s DOJ statement shows that a fair amount of communication on the matter took place via email. Likely, even more communications occurred via chats on the individuals’ personal mobile devices. Such electronic evidence is very likely already in the CPIB’s possession, whether obtained initially through KOM’s “thorough internal investigation” or via the CPIB’s own subsequent investigations. If yet more extensive electronic searches need to be made, the CPIB has the technical resources and legal powers to do so.

11 Fifth, even assuming some evidence required to secure a conviction is located overseas, Singapore authorities have recourse to international assistance from their foreign counterparts. Under our Mutual Assistance in Criminal Matters Act 2000 (2020 Rev Ed), the Attorney-General may request foreign government assistance to arrange for relevant overseas evidence to be collected and sent to Singapore. The global resolution in this case involving authorities in the US, Brazil, and Singapore shows the extent of cooperation which exists. Hence, the fact that some evidence in this case may be located overseas should not bar a prosecution here.

12 It is, therefore, difficult to appreciate the decision not to prosecute based on the CPIB’s limited explanation. Add to this the fact that KOM itself has openly admitted its involvement in the bribery and paid a massive US\$422 million fine; this is one of the largest bribery scandals in Singapore’s history; the corrupt acts involved the wholly owned subsidiary of a Singapore public listed company; senior management of KOM were implicated; the pattern of criminal conduct extended over a decade; and huge sums in bribes were involved. The DOJ itself highlighted some of these aggravating factors.

### Questions That Must Be Asked

13 The CPIB’s decision may well be justified for reasons which have not been fully explained in its overly general press release. Whether that is so will very much depend on the answers to some key questions.

- (a) With such extensive evidence already available, what exactly is the missing evidence against the six individuals, if any, without which an effective prosecution cannot be mounted?
- (b) Have none of the six individuals made any admission(s) or given helpful evidence to the CPIB in respect of that missing evidence?
- (c) Is that evidence not available as part of the “*voluminous evidence and information*” that KOM uncovered as part of its “*thorough internal investigation*” or through the CPIB’s own investigations, including using digital forensics tools?
- (d) Who are the so-called “*key witnesses*” who are located overseas? Even if they are not named, what was their role in the bribery, and is their evidence so crucial that a conviction cannot be secured without their testimony?

- (e) To the extent that “*many of the documents are located in different jurisdictions*”, are they not part of the “*foreign documents*” that KOM obtained and forwarded to the DOJ? At any rate, how important are these foreign documents to secure a conviction, and why?
- (f) If the foreign evidence is indeed crucial, has assistance been sought from foreign authorities? If so, has such assistance been refused?
- (g) Is the evidence in this case such that not even a single individual was sufficiently blameworthy to warrant a prosecution?

14     Incorruptibility is a foundational value for Singapore. Failure to prosecute cases like the present without strong justification, when the facts appear glaring, is highly damaging. It leads to unhelpful speculation that there is some other factor at play. Doubts which strike at the foundation of our commitment to incorruptibility and the rule of law must never be allowed to take root.

15     While the Attorney-General is not ordinarily required to explain his prosecutorial decisions, given the stakes involved here, it will be highly desirable that he does so in this case. The CPIB statement shows the authorities have already considered that their non-prosecution decision warrants an explanation, albeit the statement given so far raises more questions than it answers. It is in the national interest that a full justification, with sufficient detail on the questions posed, is given for the decision not to prosecute in this case. Broad, general responses of the type in the CPIB press release are wholly inadequate.

16     If our national policy of zero tolerance for corruption is to have any meaning, it must involve the robust enforcement of our anti-corruption laws, whether the corruption takes place in Singapore or overseas. That enforcement must extend not just to those who actively participate in giving a bribe, but also to all senior executives and board members (including those at the ultimate parent of group companies) who are aware of and who either condone the illicit payments or turn a blind eye towards them.

17     When it comes to our national commitment to incorruptibility and the rule of law, we will be judged not just by what we say, but equally by what we do.

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