Deferred prosecution agreements

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Before 2018: the conditional warning to Keppel

Singapore's first major resolution with a company for foreign bribery came before the deferred prosecution regime was available. On 23 December 2017 the CPIB, in consultation with the Attorney-General's Chambers, served a conditional warning in lieu of prosecution on Keppel Offshore & Marine Ltd (KOM) for corruption offences under the Prevention of Corruption Act. Between 2001 and 2014, KOM had made corrupt payments to officials of the Brazilian oil company Petrobras and to other parties in order to win contracts, disguising them as commissions paid to an intermediary under consultancy agreements.[1]

The terms of the warning required KOM to pay US$52,777,122.50 to Singapore within 90 days and a further US$52,777,122.50 within three years, less any penalties paid to specified Brazilian authorities in that period. The CPIB explained that both payments formed part of a total criminal fine of US$422,216,980 payable to the United States, Brazil and Singapore. In deciding not to prosecute, the authorities took into account KOM's self-reporting, its "substantial cooperation" and the extensive remedial measures it had taken.[2]

A conditional warning is an instrument of prosecutorial discretion without a statutory framework of its own. It involves no court, no admission of guilt in a public document and no judicial review of its terms. Its use for a payment of more than US$100 million showed that the Public Prosecutor needed a more transparent instrument for serious corporate cases. Parliament supplied one in the following year.

Part 7A of the Criminal Procedure Code

The Criminal Justice Reform Act 2018, passed by Parliament on 19 March 2018, inserted a new Part 7A on deferred prosecution agreements into the Criminal Procedure Code 2010.[3] Commentators noted that the regime resembled the English scheme introduced in 2014, particularly in requiring a court to find that the agreement is in the interests of justice. They also observed that the Singapore legislation contains no equivalent of the English code of practice on the circumstances in which an agreement is appropriate.[4]

A deferred prosecution agreement is defined as an agreement between the Public Prosecutor and a person who has been charged with, or is being considered for prosecution for, an offence listed in the Sixth Schedule of the Code. Such an agreement may be concluded before or after a charge, but "cannot be entered into after the commencement of the trial". Only a body corporate, a limited liability

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partnership, a partnership or an unincorporated association can be its subject, which "cannot be an individual" and must be represented by an advocate. The schedule of eligible offences covers the main economic crimes, including corruption and money laundering.[5]

Content and effect

Every agreement must contain a charge or draft charge, a statement of facts that may include admissions, and an expiry date. Its requirements may include a financial penalty, compensation of victims, the disgorgement of profits, a compliance programme, the appointment of a monitor, cooperation with investigations and the payment of costs. While the agreement is in force, a subject that has been charged is deemed to have been discharged without acquittal, and it "cannot be prosecuted for the alleged offence in any criminal proceedings". The limitation periods for related civil penalty, disgorgement, confiscation and disciplinary proceedings are suspended.[6]

At expiry, the Public Prosecutor gives written and public notice that he will not prosecute, and the subject can no longer be prosecuted for the offence. The protection falls away if the company provided inaccurate, misleading or incomplete information during the negotiations and knew or ought to have known that it was so. On application, the court may also grant a discharge amounting to an acquittal. Financial penalties and disgorged profits received by the Public Prosecutor are paid into the Consolidated Fund.[7]

Judicial approval, breach and publicity

The agreement takes effect only when the General Division of the High Court, on the application of the Public Prosecutor, declares that it is in the interests of justice and that its terms are "fair, reasonable and proportionate". The hearing takes place in private. A refusal does not prevent a fresh application for a different agreement, and the Public Prosecutor may appeal against it. Variations require the same approval. If the Public Prosecutor believes that the company has failed to comply, he must prove the breach on a balance of probabilities, whereupon the court must terminate the agreement. The company then has no right to recover payments already made.[8]

Publicity is the principal safeguard against the criticism that negotiated justice takes place behind closed doors. The agreement, the declaration and the court's reasons are in principle published in the Government Gazette. The court may postpone publication "to avoid substantial risk of prejudice to the administration of justice", for example where individuals still face trial, and may order redaction or non-publication on grounds of justice, public safety, security or propriety. Once the agreement is approved, its statement of facts is treated as an admission by the company in later criminal proceedings. Material from negotiations that fail is in general inadmissible against it.[9]

The first agreement: Seatrium

The first use of the regime came seven years after its enactment. On 28 March 2024 Seatrium announced that the Attorney-General's Chambers was agreeable to a deferred prosecution agreement, and on 30 July 2025 it announced that the agreement had been signed. The penalty was set at US$110

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million, of which up to US$53 million could be offset against sums paid to Brazilian authorities under leniency agreements totalling more than BRL 728.9 million. The net amount payable to Singapore was therefore at least US$57 million.[10]

The gazetted text of the agreement shows how the statutory requirements were translated into concrete obligations. Seatrium had to pay US$57 million within 30 days of approval and the remaining US$53 million within 30 months, reduced by any fines or criminal penalties paid in the meantime to the federal prosecutors, the Office of the Controller General, the Federal Attorney General or Petrobras on the same facts. It also had to pay costs of S$250,000, was barred from deducting any of these sums for tax purposes "in Singapore or elsewhere", and agreed to default interest of 5.33 % a year. The agreement runs for three years from the date of approval.[11]

Its compliance obligations are as significant as its financial terms. While the agreement is in force, Seatrium must have its anti-bribery management system certified to the ISO 37001 standard by an accredited body acceptable to the Public Prosecutor. It must also review its ethics and compliance programme and report annually on the improvements, the training of personnel, the due diligence on agents and consultants and the measures taken against identified risks of corruption. Its cooperation obligation extends to its subsidiaries and, at the request of the Public Prosecutor or the CPIB, to foreign law enforcement agencies. The company may not publish any statement that contradicts the statement of facts.[12]

The court's reasons

The summary of the court's reasons, published with the agreement, is the first judicial guidance on the application of section 149F. On the interests of justice, the court took into account the seriousness of the alleged offences, the self-reporting by the board and its extensive cooperation with the CPIB, and the fact that the offences had been committed more than ten years earlier. It also noted that all implicated individuals had resigned, been warned or been dismissed, that a conviction could harm uninvolved shareholders, employees and suppliers, that the company had improved its compliance programme and that it had no criminal antecedents.[13]

On proportionality, the court held that a penalty of US$110 million "would deter future offending and signals that serious corporate offending will have severe consequences". The comparison with the statutory fines is telling. A company convicted on a single charge under section 5 or 6 of the Prevention of Corruption Act faces a maximum fine of S$100,000, together with a penalty equal to the gratification. A negotiated agreement can therefore impose sums that a criminal court could reach only through a large number of charges. The court also allowed the publication of the draft charges and statement of facts to be postponed under section 149J(1).[14] The public therefore knows the terms of the agreement but not yet the facts that Seatrium has admitted.

Individuals and the Keppel stern warnings

Deferred prosecution agreements protect only the company. Section 149D excludes individuals, while the Seatrium agreement expressly preserves the prosecution of any person other than Seatrium and its

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subsidiaries. The treatment of individuals in the Keppel case nevertheless showed the limits of the system. In January 2023 the CPIB, in consultation with the Attorney-General's Chambers, issued stern warnings in lieu of prosecution to six former senior managers of KOM. They had allegedly conspired to pay about US$55 million in bribes to foreign consultants, who then paid bribes to Petrobras officials.[15]

The Bureau explained that the case was "complex and transnational, involving multiple authorities and witnesses from several countries", that many documents were located in other jurisdictions and that "key witnesses are located outside of Singapore and cannot be compelled to give evidence here".[16] The decision provoked public criticism and questions in Parliament.[17] It also explains why the court in the Seatrium case gave weight to the fact that all implicated individuals had been dealt with in one way or another. A company resolution is credible only if the treatment of the people who acted for it is also visible.

Notes

1. CPIB, "Conditional Warning Issued to Keppel Offshore & Marine Ltd", 23 December 2017, cpib.gov.sg.
2. CPIB, "Conditional Warning Issued to Keppel Offshore & Marine Ltd", 23 December 2017, cpib.gov.sg.
3. Criminal Justice Reform Act 2018 (No. 19 of 2018), passed on 19 March 2018, inserting Part 7A (ss 149A–149M) into the Criminal Procedure Code 2010; the amendment by Act 19 of 2018 and the reference date of 31 October 2018 in s 149B(1) appear in the text reproduced on lawplayer.com (accessed November 2026); date of passage according to secondary summaries.
4. Simmons & Simmons, "Singapore introduces Deferred Prosecution Agreements", 28 March 2018, simmons-simmons.com: DPAs "will only be available in relation to prescribed offences, such as corruption and money laundering"; court approval "mirrors the requirements in the UK scheme"; no guidelines equivalent to the UK Code of Practice.
5. Criminal Procedure Code 2010, ss 149A, 149B and 149D (text as reproduced on lawplayer.com, accessed November 2026); Simmons & Simmons, 28 March 2018, above; Clyde & Co, "DPA: corporate criminal liability in Singapore", 21 August 2025, clydeco.com, referring to the Sixth Schedule of the Criminal Procedure Code 2010.
6. Criminal Procedure Code 2010, s 149E (text as reproduced on lawplayer.com, accessed November 2026); Criminal Procedure Code 2010, s 149C (text as reproduced on lawplayer.com, accessed November 2026).
7. Criminal Procedure Code 2010, s 149I (text as reproduced on lawplayer.com, accessed November 2026); Criminal Procedure Code 2010, s 149L (text as reproduced on lawplayer.com, accessed November 2026).
8. Criminal Procedure Code 2010, ss 149F and 149M (text as reproduced on lawplayer.com, accessed November 2026); Criminal Procedure Code 2010, ss 149G and 149H (text as reproduced on lawplayer.com, accessed November 2026).
9. Criminal Procedure Code 2010, s 149J (text as reproduced on lawplayer.com, accessed November 2026); Clyde & Co, 21 August 2025, above, on publication in the Government Gazette by default; Criminal Procedure Code 2010, s 149K (text as reproduced on lawplayer.com, accessed November 2026).
10. Clyde & Co, "DPA: corporate criminal liability in Singapore", 21 August 2025, clydeco.com: announcements of 28 March 2024 and 30 July 2025; penalty of US$110 million (about S$141 million), US$53 million offset against Brazilian settlements of over BRL 728.9 million (about S$168.4 million); net US$57 million (about S$73 million) payable to Singapore; first DPA since the regime was introduced in 2018.

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11. Government Gazette Notice No. 2439 of 30 April 2026, Schedule (DPA between the Public Prosecutor and Seatrium Limited), clauses 6.1–6.5; Government Gazette Notice No. 2439 of 30 April 2026, Schedule, clause 1.1(e): "Expiry Date means the date falling 3 years after the Effective Date".
12. Government Gazette Notice No. 2439 of 30 April 2026, Schedule, clauses 7.1–7.3; Government Gazette Notice No. 2439 of 30 April 2026, Schedule, clauses 5.1–5.2 (cooperation "at the request of the Public Prosecutor or the Bureau, any Law Enforcement Agency", defined in clause 1.1(g) as an agency of any jurisdiction investigating offences, excluding the Bureau); Government Gazette Notice No. 2439 of 30 April 2026, Schedule, clause 9.1.
13. Government Gazette Notice No. 2439 of 30 April 2026, para. 3(a)(i)–(vi).
14. Government Gazette Notice No. 2439 of 30 April 2026, para. 3(b)(i); Government Gazette Notice No. 2439 of 30 April 2026, para. 2(2).
15. Government Gazette Notice No. 2439 of 30 April 2026, Schedule, clause 4.3(d); CPIB, "Stern Warnings Issued to Six Former Keppel Offshore & Marine Limited Employees", 12 January 2023, cpib.gov.sg.
16. CPIB, "Stern Warnings Issued to Six Former Keppel Offshore & Marine Limited Employees", 12 January 2023, cpib.gov.sg.
17. Parliamentary questions on the Keppel stern warnings and ministerial reply in February 2023.

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