执法：企业责任、暂缓起诉协议与跨境合作：实务影响

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

对公司及其董事会而言

对总部设在新加坡的公司而言，吉宝案和Seatrium案的主要启示是：主动报告与合作决定结果。两家公司都获得了无需审判的解决方案。在两宗案件中，当局都将主动报告与合作列为决定性因素。Seatrium协议也显示了所需付出的代价：巨额经济罚款、依据ISO 37001对反贿赂体系进行认证的义务、向检控官提交年度报告，以及在不当行为结束多年后仍须与外国机构合作的义务。

因此，发现不当行为的董事会必须迅速决定是否报告、向何处报告以及按何种顺序报告。答案取决于所涉及的司法管辖区、某一当局从另一当局获悉此事的风险，以及在一国作出的认罪对其他国家程序的影响。每个相关司法管辖区律师的意见都不可或缺；同时还需要开展协调一致的内部调查，使调查结果能够与多个当局分享，而不会不必要地放弃法律特权。

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对个人而言

董事和雇员不应以为公司的解决方案能够保护他们。暂缓起诉协议不能与个人订立，而Seatrium协议明确保留了对任何其他人的检控。此外，如公司所犯罪行系在高级职员同意、纵容或疏忽下发生，CDSA规定高级职员须承担责任。吉宝案中的严厉警告是特殊证据困难的产物，并不意味着存在从宽处理的一般惯例。

对金融机构而言

新加坡的银行和资产管理公司在执法中扮演着不同的角色。它们持有外国希望冻结的账户，收到MACMA项下的出示令，并报告可能被转交外国金融情报机构的可疑交易。它们还面临其雇员的认知依据CDSA第73条归于机构本身的风险。以下核对清单概述了董事会和合规人员应审查的要点。

- 梳理集团、其代理人及其交易对手开展业务的每个司法管辖区，并识别其中哪些对在境外实施的贿赂或洗钱主张管辖权。
- 确保第三方中间人、代理人和顾问均经过有书面记录的尽职调查，因为吉宝和Seatrium都是通过中间人行贿的。
- 预先确定组织内由谁决定是否主动报告、向哪些当局报告，以及如何协调在不同司法管辖区的报告。
- 将在一个司法管辖区协商达成的任何事实陈述，视为可能在其他司法管辖区被使用的文件，并据此起草。
- 在协商解决方案时，争取订入将就相同事实向外国当局支付的款项予以抵免的条款，并核查哪些类型的付款符合条件。
- 为应对MACMA项下的出示令做好准备，掌握哪些文件存放于何处，以及哪些文件受法律特权保护。
- 检讨反贿赂管理体系是否符合Seatrium协议所要求的ISO 37001标准。
- 关注对个人的处理：纪律措施、合作协议以及另行检控的可能性。

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- 考虑税务状况，因为Seatrium协议禁止在新加坡或其他地方扣除罚款。

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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