

## MAXpower corruption allegations center around scheme to use company cash advances to pay bribes

Jurisdiction : - Asia /China /Hong Kong /Indonesia /North America /North East Asia /Singapore /South East Asia /USA

27 Apr 16 | 04:37 GMT

Author: Phoebe Seers

### IN BRIEF

Corruption allegations involving an Indonesian power company in which Standard Chartered Bank, or SCB, has a substantial stake center around a scheme by company executives to obtain cash advances that were then used to bribe Indonesian officials and employees to win contracts, MLex has learned.

Corruption allegations involving an Indonesian power company in which Standard Chartered Bank, or SCB, has a substantial stake center around a scheme by company executives to obtain cash advances that were then used to bribe Indonesian officials and employees to win contracts, MLex has learned.

MAXpower, the Singapore-registered power company headquartered in Indonesia that is at the center of the allegations, is run by current or former directors of Standard Chartered Private Equity, or SCPE, the private equity and venture capital arm of UK-listed SCB.

As MLex reported, the US Department of Justice, or DOJ, has been informed that MAXpower may have bribed Indonesian officials, in breach of provisions of the US Foreign Corrupt Practices Act, or FCPA, which prohibits the bribery of foreign officials. Some of MAXpower's directors are US nationals (see [here](#)).

Under the scheme, executives requested cash advances ostensibly for business purposes, but then passed that money on to other company employees to pay bribes to win or renew contracts, as well as to provide gifts and meals to Indonesian government officials, which may have also included the police and the military. The cash advances were sometimes justified under the guise of corporate social responsibility.

It is understood that around \$750,000 may have been advanced between 2013 and 2015 for the purpose of paying bribes, although this practice of using cash advances to pay bribes may go back as far as late 2012, around the time SCB first invested in MAXpower, MLex understands.

One of MAXpower's clients is state-owned Perusahaan Listrik Negara, or PLN, which has a monopoly on electricity distribution in Indonesia. It seems likely that some of the payments were made to PLN officials or employees to either

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renew existing contracts or secure new contracts.

Money requested through this cash advance system was also used to provide security, to help ensure MAXpower's invoices were paid on time and to secure necessary documentation.

Standard Chartered Bank controls MAXpower through three separate entities. One of those entities is SCPE. Since 2012, SCB has invested \$143 million in MAXpower.

MAXpower's current chief executive officer, Greg Karpinski, was appointed to the company's board of directors in 2012. According to the company's website, Karpinski used to be co-CEO of Standard Chartered IL&FS Asia fund, and co-head of SCPE's Energy, Resources & Infrastructure team.

SCPE brought three more of its executives onto MAXpower's board of directors in June 2015, and currently SCPE directors, or former SCPE directors, make up four of the five members of MAXpower's board of directors.

MAXpower director Kanad Virk, also a US national, serves as co-Head of SCPE's Energy, Resources and Infrastructure team. Virk also serves as chief operating officer of the Standard Chartered IL&FS Asia Growth Infrastructure Fund, another entity through which SCB is invested in MAXpower.

Another MAXpower director, Benjamin Soemartopo, is the managing director of SCPE in Indonesia.

Director Nainesh Jaisingh is the managing director and global CEO of SCPE, and has been with Standard Chartered for over 15 years, according to MAXpower's website.

Jaisingh is also a director of fund Marina III, a shareholder in MAXpower. MLex believes SCB acts as general partner of Marina III, which has also borrowed money from SCB.

MAXpower was founded by three Europeans, Sebastiaan Sauren, Willibald Goldschmidt and Arno Hendricks. The company is in the business of developing, owning and operating power plants in Indonesia, Myanmar and Thailand.

MLex understands that external auditors PricewaterhouseCoopers, or PwC, discovered the wrongdoing in 2014.

After launching an internal investigation, MAXpower has since implemented, or has tried to implement, stricter payment and CSR controls, and has rolled out an enhanced anti-bribery training policy, MLex understands.

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The three founders, who are linked to the allegations, had their employment contracts terminated in December 2015.

The allegations have, to some extent, been disclosed to MAXpower's creditors and shareholders, and possibly the Monetary Authority Singapore as well as the DOJ.

**Related case file(s)**

Bribery - Standard Chartered Private Equity - Standard Chartered Bank - MAXpower - Indonesia

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## Indonesia's MAXpower fired whistleblower in run-up to attempted bond issue

Jurisdiction : - Asia /Indonesia /South East Asia

5 May 16 | 10:07 GMT

Author: Phoebe Seers

### IN BRIEF

MAXpower, the Indonesian power company at the center of a major corruption scandal, fired a whistleblower in the run-up to a failed bond issue in the US, MLex has learned.

MAXpower, the Indonesian power company at the center of a major corruption scandal, fired a whistleblower in the run-up to a failed bond issue in the US, MLex has learned.

In mid-2014, a MAXpower employee raised concerns about the company's accounting procedures, in particular, misrepresenting sales to overstate the value of the company to one, or several, of MAXpower's directors. Shortly after, the employee was asked to leave the company.

The employee's concerns were raised at a time when MAXpower was preparing to raise \$250 million via a bond issue in the US, which was announced in early January 2015.

Standard Chartered Bank, or SCB, acted as joint lead arranger for the bond. SCB appears to control MAXpower through three different entities, including its SCPE subsidiary. Four of the five directors of MAXpower were directors of SCPE when they joined the board. One joined as a fulltime director in 2012, while the other three joined fulltime in June 2015.

It is understood that the employee who was fired had put in place, or had tried to put in place, a whistleblowing mechanism to protect parties who were being allegedly defrauded by MAXpower's accounting practices. It is understood the employee also raised concerns about MAXpower's management.

According to reports at the time, presentations for the bond issue took place in Singapore, Hong Kong, London and the US.

SCB, JP Morgan and Goldman Sachs acted as global joint bookrunners and joint lead managers and Singaporean bank OCBC acted as a lead manager. According to reports at the time, the group of banks had "close ties" to MAXpower. Aside from Standard Chartered entities holding shares in MAXpower, former MAXpower CFO, Michael Wirawan, used to work at JPMorgan, Finance Asia reported.

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Finance Asia also said ahead of the roadshow: “during roadshows, the company is also likely to flag its close relationship with General Electric - it is now subsidiary GE Jenbacher's largest global distributor of power equipment.” General Electric has declined to comment on its relationship with MAXpower since the corruption allegations were first raised.

By February 2015, it was reported that the proposed bond issue failed to gather sufficient interest, and the deal was pulled. It remains unclear why investors shied away from the deal.

SCB declined to comment.

Shortly after, in June 2015, SCPE invested \$60 million in structured equity into MAXpower, in conjunction with a \$222 million refinancing package, also arranged by SCB together with OCBC.

At the time, US national Greg Karpinski was a director of MAXpower and a managing director of Standard Chartered Private Equity, or SCPE. He was also co-head of SCPE's Energy, Resources and Infrastructure team, and a member of Standard Chartered IL&FS Asia fund's investment committee.

Kanad Virk served as an alternate director. He was also a managing director of SCPE, and alongside Karpinski, was co-head of SCPE's Energy, Resources and Infrastructure team.

It is also understood that at the time of the attempted bond issue, Karpinski was a member of MAXpower's audit committee and Virk was a member of MAXpower's compliance committee.

Karpinski and Virk didn't respond to requests for comment.

Sidley Austin acted as legal advisors to MAXpower in the attempted bond issue, alongside Indonesian law firm Adnan Kelana Haryanto & Hermanto and Singapore firm Allen & Gledhill.

MLex understands the whistleblower was employed for just a matter of weeks before he blew the whistle. It is understood he was compensated financially on being asked to leave the company, and entered into a settlement agreement.

MLex believes other directors were made aware of the whistleblower's concerns at the time, including the current chief executive, Karpinski. It is not clear what steps were taken to improve the company's practices, if any, following the whistleblower's disclosure.

It is also unclear at this stage when, or how, SCB was made aware of the whistleblower, although MLex understands the existence of the whistleblower is

something of an open secret among Jakarta's business community.

SCB has invested \$143 million into MAXpower through various entities since 2012.

As reported by MLex, it has been alleged that since 2012 MAXpower executives requested cash advances ostensibly for business purposes, but then passed that money on to other company employees to pay bribes, as well as provide gifts, meals and entertainment, to Indonesian government officials, including the police and military, and non-government organizations (see [here](#)).

Over the weekend, SCB told MLex it would usually disclose such allegations to the US Department of Justice "as a matter of course" (see [here](#)).

MLex understands that external auditor PricewaterhouseCoopers, or PwC, was made aware of the cash advance malpractice in 2014 in the run-up to the bond issue. It is not clear if the whistleblower raised the wrongdoings with PwC, or if PwC discovered them of their own accord. But when PwC raised the issue with the company, MAXpower's board was forced to launch an internal investigation.

Subsequently, MAXpower's legal advisor Sidley Austin was retained to conduct an extensive investigation into the allegations. MAXpower's three European founders had their employment contracts terminated in December 2015 in relation to the bribery allegations, although they continue to hold shares in the company.

SCB has also launched an investigation into MAXpower and has retained Baker & McKenzie to advise it. It is understood that the DOJ has been informed that MAXpower, or MAXpower employees, may have breached provisions of the US Foreign Corrupt Practices Act, which prohibits the bribery of foreign officials.

SCB is also still under a deferred prosecution agreement with the DOJ in relation to sanctions violations.

#### **Related case file(s)**

Bribery - Standard Chartered Private Equity - Standard Chartered Bank - MAXpower - Indonesia

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## Allegations against MAXpower extend to suspicious transactions with related parties

Jurisdiction : - Asia /China /Hong Kong /Indonesia /North America /North East Asia /Singapore /South East Asia /USA

6 Jun 16 | 08:06 GMT

Author: Phoebe Seers

### IN BRIEF

Allegations of misconduct against MAXpower, the Indonesian power company at the center of a bribery scandal, extend to significant dealings and suspicious transactions with related parties, MLex has learned. Among the concerns that have been raised are inexplicable payments of around \$3 million made to a sub-contractor that was once wholly owned by two wives of MAXpower's founders and extensive contracting with entities that are controlled by MAXpower's founders or their nominees.

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Investigations have revealed that many of MAXpower's key projects involved contracts with entities purported to be independent from MAXpower, but that are largely owned and run by MAXpower's founders, nominees or close business associates.

Standard Chartered Bank, or SCB, has been involved with MAXpower since 2012, when it invested \$58 million into the company through the Standard Chartered IL&FS Fund and appointed Greg Karpinski, former managing director of Standard Chartered Private Equity, or SCPE, to the board. At this time, Kanad Virk, a managing director of SCPE, was appointed as Karpinski's alternate. Currently, four of MAXpower's five directors have ties to SCPE.

MAXpower is facing allegations that its executives bribed officials of Indonesian state-owned power company PLN to win or renew contracts. As reported by MLex, executives requested cash advances ostensibly for business purposes, but then passed that money on to other employees who used it to win or renew contracts (see [here](#)).

It is believed that the cash advances were recorded as employee loans that may subsequently have been written off in the company's accounts.

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In addition to those bribery allegations, further concerns have been raised about numerous payments totaling around \$2 million made between 2013 and 2015 to a sub-contractor - PT Hasta - that was once wholly owned by the wives of MAXpower's founders for goods that MAXpower never received, and an overpayment of more than \$1 million to the same sub-contractor via a payment made twice for the same invoice.

The double payment was made by Navigat Energy, a wholly owned MAXpower subsidiary, in late 2012 or early 2013 by way of a letter of credit issued by SCB to Hasta for \$1.2 million.

One of MAXpower's founders - Arno Hendriks - was understood to be de facto a director of Hasta. Between 2012 and 2013, Hasta was wholly owned by the wives of MAXpower's two other founders, Willibald Goldschmidt and Sebastiaan Sauren.

It is not clear how these payments have been recorded in MAXpower's financial accounts.

MAXpower did not respond to questions for comment.

It is also believed that these incidents were two notable problems among many MAXpower had in its dealings with Hasta. It is not clear what the current position is regarding MAXpower's relationship with Hasta.

Additionally, serious concerns have been raised about MAXpower's dealings with related entities, and how these dealings have been recorded in MAXpower's accounts.

As part of its distributed power business, MAXpower distributes General Electric Jenbacher power engines in Southeast Asia. In doing so, it enters into power sale and supply agreements with Indonesian-incorporated intermediary companies.

It now appears these Indonesian intermediaries were founded, owned and controlled by the same people who were directors and owners of MAXpower, and that a significant proportion of MAXpower's power projects in Indonesia involve contracting with these related entities.

Offshore companies were formed as holding companies for these intermediary companies, MLex has learned. Goldschmidt, Sauren and Hendriks were shareholders and directors of these offshore companies, the subsidiaries of which MAXpower contracted with.

This issue was raised in mid-2014 by a whistleblower who subsequently had his employment contract terminated. It is understood the whistleblower also raised

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these issues with MAXpower's external auditors, PricewaterhouseCoopers, in the run-up to an attempted bond issue in the US.

At this time, MAXpower's directors were Goldschmidt, Sauren, Hendriks, Daniel Budiman and Karpinski, with Virk appointed as Karpinski's alternate.

It is understood that towards the end of 2014, and prior to the planned bond issue, the issue of the founders' ownership of these intermediaries, and the concerns of the whistleblower, were partly disclosed to SCB and described as management oversights that had occurred because MAXpower's executives had been focused on the company's growth, and not on corporate governance.

Following this disclosure, it is unclear what subsequent due diligence SCB undertook on MAXpower prior to the attempted bond offer.

SCB declined to comment on the allegations.

In the bond-offer document that was presented to would-be subscribers in Singapore, Hong Kong, London and the US in early 2015, MAXpower disclosed that a number of its strategic resellers were previously owned by MAXpower or its shareholders, and were subsequently acquired by "certain local developers who were able to secure land and/or concessions for the supply of natural gas after acquiring these entities."

"Following these transfers, these entities became independent third parties who sold electricity generated by our plants to PLN. We do not have any existing ownership or influence over our strategic reseller customers and all our dealings with them are conducted on an arm's length basis," the offer document says.

It is understood that many of these intermediary companies continue to be owned and run by nominees and close business associates of MAXpower's founders, and that MAXpower continues to provide financial and other support to these companies.

It is also understood that MAXpower contracts with intermediary companies with close connections to government officials. For example, one of MAXpower's contractors is owned by the son and nephew of a government official.

MAXpower's attempt to raise \$250 million via the bond issue, which was co-led by SCB, Goldman Sachs and JP Morgan, failed. In June last year, SCPE invested another \$60 million in structured equity in conjunction with a \$222 million refinancing package, arranged by SCB and Singapore bank OCBC.

At this stage, SCPE brought more of its own directors onto MAXpower's board, and Karpinski was appointed CEO.

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MAXpower is currently in default on certain financial covenants under the loan agreements it has entered into, according to notes in the company's 2014 consolidated financial statement. It is believed the company had to write off around \$70 million from its accounts last year, a consequence of it having adopted accounting practices that allowed it to book profits that could take up to 14 years to materialize from contracts upfront in its accounts. When the cash flow from those contracts failed to materialize, the company had to start writing down its assets.

According to its website, MAXpower's wholly owned subsidiary Navigat Energy is the largest distributor and servicing agent of General Electric Jenbacher engines in Asia. It is understood that General Electric has allowed its distribution agreements with MAXpower to lapse, and it is not clear that the New York Stock Exchange-listed conglomerate intends to renew them.

As reported by MLex, the US Department of Justice is investigating the allegations in light of possible breaches of the US Foreign Corrupt Practices Act, which prohibits the bribery of foreign officials, requires that companies keep accurate books and records and maintain a system of adequate internal controls.

#### **Related case file(s)**

Bribery - Standard Chartered Private Equity - Standard Chartered Bank - MAXpower - Indonesia

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## MAXpower directors, founders secretly recorded discussing how to pay cash to Indonesian officials

Jurisdiction : - Asia /Indonesia /South East Asia

6 Sep 16 | 10:19 GMT

Author: Phoebe Seers

### IN BRIEF

The directors, CEO and founders of Indonesian power company MAXpower were secretly recorded in August last year discussing novel methods of delivering money to government officials to renew business contracts after their systematic misuse of the company's cash advance system to pay bribes was foiled, MLex has learned.

The directors, CEO and founders of Indonesian power company MAXpower were secretly recorded in August last year discussing novel methods of delivering money to government officials to renew business contracts after their systematic misuse of the company's cash advance system to pay bribes was foiled, MLex has learned.

The meeting was surreptitiously recorded by one of those present. The recording has been handed over to the US Department of Justice, MLex understands.

At the meeting in Jakarta, CEO Greg Karpinski and directors Kanad Virk, Benjamin Soemartopo and Daniel Budiman met with the company's three founders to discuss, among other things, how to continue to extract money from the company and use it to further the renewal, or extension, of existing business contracts.

The group discussed ways of legitimizing their requests for cash, including through the supposed commissioning of feasibility studies, the establishment of a consultancy firm that could then issue invoices to the company and even the misuse of the company's corporate social responsibility, or CSR, program, so they could continue to make improper payments to government officials to ensure that its contracts were extended.

"Like doing a feasibility study for the [contract] extensions," Soemartopo said at one point.

"You could set up a consultancy firm and we use them...for the invoices," one of the founders said.

The group agreed that for getting their own invoices paid on time, the risk of paying bribes was no longer warranted: "I kind of feel like extensions are really

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critical stuff, but for getting paid on a regular basis? Fuck it. Enough is enough,” Karpinski said. “You know what: we’re not going to pay to get paid on our own contracts. And if we are sustainable, once we start pulling in enough money, we can withstand [the payment delay].”

“We’ll find some other way. I mean, take them to karaoke, take them golfing, take them to Singapore, I don’t care. But fuck it, we don’t have to pay any more to get paid on our contracts,” Karpinski is heard to say.

“I agree with Greg, if it’s like [a contract] extension, we have to do it, right?” Budiman asked.

At one point, the members of the group joke about using a CSR initiative and handing out footballs stuffed with cash, or giving away Xboxes.

“Can we do a CSR thing?” Budiman asked.

“I’m happy to look into that,” Karpinski responded.

“Can we find a hollow [foot]ball and then stuff it,” Budiman said to laughter.

One of the founders suggested they should each be paid \$250,000 in annual bonuses, which could then be used to make the improper payments.

Karpinski, Virk and Soemartopo did not respond to MLex’s questions for comment. Budiman and the founders could not be reached for comment.

The meeting occurred at the same time law firm Sidley Austin had been engaged by MAXpower to investigate bribery concerns raised in mid-2014 by a whistleblower and by external auditors PriceWaterhouseCoopers, or PWC. Standard Chartered executive Nainesh Jaisingh was the only MAXpower board member not present at the August 2015 meeting when the recording was made.

As reported by MLex, it has been alleged that since 2012 MAXpower executives requested cash advances ostensibly for business purposes, but then passed that money on to other company employees to pay bribes, as well as provide gifts, meals and entertainment, to Indonesian government officials, including the police and the military, to win or renew contracts. (see [here](#))

The company conducted an internal investigation and produced a report in mid-2015 that detailed the systematic misuse of the company’s cash advance system to bribe government officials.

In conducting their investigation, Sidley Austin liaised directly with MAXpower’s internal audit committee, which comprised Virk and Budiman, both of whom were members of MAXpower’s board of directors. Virk is an employee of

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Standard Chartered Private Equity, or SCPE.

According to MAXpower's website, Virk serves as co-head of SCPE's Energy, Resources and Infrastructure team, and COO of the Standard Chartered IL&FS Asia Growth Infrastructure Fund.

It appears that the internal audit committee and Karpinski represented to Sidley Austin that MAXpower's three European founders were the architects of the misuse of the cash advance system to make improper payments and had their employment contracts terminated as a result. It also appears that the audit committee represented that MAXpower's board of directors was either unaware of, or not complicit in, the systematic misuse of the cash advance system.

However, this account is discredited by the recording of the August 2015 meeting.

Sidley Austin was initially unaware of the existence of the recording, although late in their investigation they were provided with a copy of it, resulting in a revision to their analysis of the allegations.

Still, the company's creditors, shareholders and other interested parties were advised in a letter from MAXpower at the beginning of this year that around the time of the August meeting, the company's three European founders had ceased to play any active role in the management of the company.

MAXpower sent a letter to its stakeholders, including its lenders and shareholders, in January, saying it had "terminated the service contracts of each of the Founders by notices dated 11 December 2015....Moreover, the Founders had earlier ceased, from June 2015, to be involved with day-to-day management and removed from being signatories on the Company's bank accounts."

At the August 2015 meeting, the group also discussed closing out the internal audit committee's investigation into the bribery allegations. Virk raised his concerns about the company's disclosure obligations:

"Basically every single time the company pays interest, the company has to say it is in compliance with our covenants. We clearly haven't historically been compliant with one of these. You can stay silent, but then everyone's in jeopardy. If you tell them everything, they freak out."

"So you basically tell them something in the required form which is 'we believe we may have breached one of these covenants, we are taking all steps to remedy it, including putting in place training, compliance, cash controls, etc. and believe it is remedied.' How do you do this basically which ties it up with the loan and doesn't put ourselves at risk?" Virk asked.

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“I’m not worried about Standard Chartered,” Virk said of his employer, “it’s really some bank in Taiwan or wherever, [but] it does not give them the right to ask for their money back.”

The status of Virk’s position with the power company at present is unclear.

It is understood that even while the Sidley Austin investigation was underway, improper payments continued to be made to Indonesian government officials. It is not clear exactly when those payments stopped.

The group considered removing PWC as external auditor because there “is some emotional baggage,” according to one of the founders. They decide against the move, because it will “look suspicious,” and in any event, “the existence of a [internal audit] report is something that an auditor always gets to see.”

The founders’ business development role going forward is mooted at the meeting, but not decided upon.

As reported by MLex, certain members of MAXpower’s board of directors tried to obstruct Sidley Austin’s investigation into the bribery allegations and limit its scope. It is understood that Virk has now been stripped of his management role at the power company (see [here](#)).

A second investigation conducted by King & Spalding is now underway, which is looking both at the issue of the misuse of the cash advance system and also issues of fictitious business and related-party transactions (see [here](#)).

Standard Chartered is also said to be conducting its own investigation into the wrongdoings that occurred at MAXpower.

The bank declined to comment on reports of the meeting.

#### **Related case file(s)**

Bribery - Standard Chartered Private Equity - Standard Chartered Bank - MAXpower - Indonesia

## Indonesia's MAXpower engaged in investigation to find sources of corruption disclosures

Jurisdiction : - Asia /Indonesia /South East Asia

6 Dec 16 | 10:09 GMT

Author: Phoebe Seers

### IN BRIEF

Since allegations of bribery and other corruption at MAXpower appeared in mainstream media at the end of September – six months after MLex first reported the news – the Indonesian power company has engaged global investigations firm Kroll Associates, with the assistance of US law firm Ropes & Gray, to try to track down and identify employees who could be disclosing information about the corruption to third parties, including the US Department of Justice, or DOJ, MLex has learned.

Since allegations of bribery and other corruption at MAXpower appeared in mainstream media at the end of September – six months after MLex first reported the news – the Indonesian power company has engaged global investigations firm Kroll Associates, with the assistance of US law firm Ropes & Gray, to try to track down and identify employees who could be disclosing information about the corruption to third parties, including the US Department of Justice, or DOJ, MLex has learned.

Among other things, it is understood that MAXpower is seeking specifically to determine the sources for reports that were initially published by MLex, and later by The Wall Street Journal.

The investigation comes at a time when US authorities have made it a priority to protect whistleblowers and penalized firms that have retaliated against employees who speak up about corporate wrongdoing.

The fallout from the MAXpower scandal has been significant. MAXpower's CEO, Greg Karpinski, stepped down from his role, along with the head of Standard Chartered's private equity unit, Joe Stephens. Two other Standard Chartered executives who sat on MAXpower's board – Kanad Virk and Benjamin Soemartopo – have also lost their jobs with the bank and subsequently with MAXpower.

Japanese conglomerate Mitsui, which entered into a joint venture with MAXpower in Myanmar, has brought legal proceedings against the company for breaching representations on compliance with local and international anti-bribery laws. General Electric, which was a major source of business for MAXpower, has allowed its contracts with the MAXpower group to lapse, and doesn't currently intend to renew them.

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MAXpower initially engaged law firm Sidley Austin and then later King & Spalding to conduct independent investigations into allegations that the company's executives misused a cash advance system to funnel bribes to government officials. Concerns have also been raised about significant dealings with related parties. King & Spalding's investigation is ongoing.

Separately, MAXpower's investigation process also involved tasking Kroll with investigating how the US DOJ got wind of the corruption.

In response to questions from MLex, MAXpower said: "The company is now under new leadership and is committed to upholding the highest standards of corporate governance."

"Over the past year, we have put in place several new internal controls. We have engaged and continue to work with professional advisory firms to investigate a number of issues. Until the conclusion of these investigations, it would be inappropriate for the company to comment further at this stage."

It was understood that the company has restructured some of its reporting lines, but a source familiar with the reorganization said it was not clear from the moves that their purpose was to strengthen the company's internal controls.

Further, the DOJ will not look favorably on any retaliation against whistleblowers taken by MAXpower's board.

Recently, the US has been ramping up whistleblower protection and penalizing firms that seek to retaliate against those who speak up about corporate wrongdoing. At the end of September, the DOJ fined casino gaming company International Game Technology \$500,000 for firing an employee who reported concerns about the company's financial statements to senior management and the US Securities and Exchange Commission, or SEC.

It was the first time a company had been penalized solely for targeting whistleblowers, and the regulator said it would continue to take action against companies that retaliate against whistleblowing efforts.

"This whistleblower noticed something that he felt might lead to inaccurate financial reporting and law violations, and he was wrongfully targeted for doing the right thing and reporting it," Andrew Ceresney, director of the SEC's Division of Enforcement, said.

"Bringing retaliation cases, including this first stand-alone retaliation case, illustrates the high priority we place on ensuring a safe environment for whistleblowers," Jane Norberg, chief of the SEC's Office of the Whistleblower, said. "We will continue to exercise our anti-retaliation authority when

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companies take reprisals for whistleblowing efforts." (see [here](#))

In 2014, MAXpower terminated the position of a whistleblower who raised concerns about the company's accounting procedures in the run up to a bond issue in the US. (see [here](#))

Now that two of MAXpower's directors who initially hired Kroll – Karpinski and Soemartopo – have left the company it is not clear for how long Kroll will continue to be engaged by MAXpower or whether the company will seek to pursue this line of investigation.

New Standard Chartered executives have been brought onto MAXpower's board to replace those that left. Henry Clarke of Standard Chartered Bank's Energy, Resources and Infrastructure team has been appointed as a director. Winston Mandrawa, a financial adviser at Standard Chartered, was brought onto the board as an alternate director in March, although for unclear reasons he has already stepped down from that role.

Nainesh Jaisingh, newly appointed head of Standard Chartered Private Equity, remains a board member.

Syamsurizal Munaf came on as chief executive officer of MAXpower at the beginning of November, replacing former Standard Chartered executive Karpinski. Munaf was formerly with Indonesia Stock Exchange-listed firms Medco Energi and Elnusa. He declined a request by MLex to comment on his plans to revive the company.

MAXpower's founders – three Europeans – had their service contracts with the firm terminated in December last year following disclosure of the allegations.

Under the 2012 shareholders agreement entered into between the founders and Standard Chartered entities, among others, it is still open to the founders – who still own around a third of the company – to either reappoint themselves or to appoint a representative to the board.

Attempts by Standard Chartered's private equity arm to buy out the founders' shares in MAXpower have reached a deadlock, MLex has learned.

It is unclear at the moment whether MAXpower is cooperating with the DOJ. US policy requires that companies wishing to be eligible for any credit for cooperating with them must provide all relevant facts about individuals involved in misconduct. According to that policy, both MAXpower and Standard Chartered will have to "give up the individuals, no matter where they sit within the company," according to a memo on the policy issued last year by Deputy Attorney General Sally Yates.

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Standard Chartered Bank has already said the bank "proactively referred this matter to the appropriate authorities and [has] conducted [its] own review."

It is possible that blowback from the DOJ is what resulted in the abrupt removal of Karpinski from his position at MAXpower and Stephens from his position with Standard Chartered Private Equity.

Standard Chartered will be expected to answer questions on how it got so heavily invested, both financially and in terms of senior executives, in MAXpower. The bank is already under a deferred prosecution agreement with US authorities for alleged Iran sanctions breaches.

Standard Chartered bought a stake in MAXpower in 2012 and became its majority shareholder in 2015 through its private equity businesses. Reports indicate the bank intends to wind down those units within the next 18 months.

Just last week the bank announced the resignation of its regional CEO for Asean and South Asia, Ajay Kanwal, for failing to disclose some details of his past personal investments. The move is not believed to be related to events at MAXpower. Earlier this year, global CEO Bill Winters said the bank would take a "zero tolerance" policy on compliance issues.

MAXpower Commissioner Erry Riyana Hardjapamekas, a former commissioner at Indonesia's Corruption Eradication Commission, or KPK, has been active in dealing with the local media in Indonesia in response to questions about the corruption allegations.

At the moment, Indonesia's underperforming power sector is receiving heightened scrutiny from the country's anti-corruption watchdog.

Last month, the KPK said it planned to investigate suspected corruption in 34 stagnant projects managed by the state-owned electricity company PLN, one of MAXpower's clients. In local media, KPK Deputy Chief Laode Muhammad Syarif was reported to have said that the commission will pay special attention to these cases.

Indonesian President Joko "Jokowi" Widodo had previously asked PLN to look into power projects that were either behind schedule or had ceased progress entirely. Jokowi threatened to report the issue to the KPK.

Jokowi last year launched his power generation plan - designed to provide an additional 35,000 MW of capacity by 2019 - despite loud concerns that the target was too ambitious. The plan constitutes one of the major programs by the Jokowi administration to help boost economic growth. It's estimated to cost a total of 1.12 trillion rupiah (\$88 billion).

MAXpower has several contracts with PLN. While a report prepared by Sidley Austin for MAXpower said there was a "strong indication" improper payments were made to government officials, it is not clear which, if any, PLN contracts were obtained purely on the back of those improper payments. At least one employee told Sidley Austin that MAXpower was able to win contracts with PLN owing to its "special relationship" with the state-owned company's bidding committee, despite not always meeting PLN's specifications.

That employee said the "special relationship" was established through a mixture of improper payments and goodwill built over time.

In a recording of a meeting of MAXpower's founders and directors, made surreptitiously in August 2015, one of MAXpower's founders can be heard to say:

"The feedback I got from some of the....boys [from another local power company] was part of the reason why some of the business was down was because they stopped doing it [paying bribes]. I mean, how many times do you want to go for karaoke? How many times do you want to go for dinner? At the end of the day, these guys also said instead of spending it on karaoke, just give me the [cash]."

It also appears that at the request of PLN, MAXpower gave priority to the employment applications of relatives of PLN employees.

PLN President Director Sofyan Basir said PLN and its officials are not involved in the alleged bribery involving MAXpower, local news outlets reported.

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