

Opinion regarding the appropriateness of an "independent investigation" in parallel with the ongoing official preliminary investigations (Sw. *förundersökning*) led by a public prosecutor

The board of Lundin Petroleum AB (publ) (the "**Company**") has asked me to give an independent written expert report to the annual general meeting of the Company on 10 May 2012 – and, if required, also orally present said report during the meeting – in response to certain shareholder proposals submitted to the meeting. The shareholder proposals request that the Company should, on its own initiative and at its own expense, perform an "independent investigation" regarding the Company's previous business in Ethiopia and Sudan.

In connection with my assignment I have received certain basic documents concerning the matter, such as the notice convening the annual general meeting, the relevant shareholder proposals and the board's proposal concerning said proposals.

Before I proceed to give my views on the matter at hand, I will describe my background and expertise relevant to the assignment.

About my background and expertise

I have worked for practically 40 years in the judicial system, mainly as prosecutor (state attorney in Malmö, chief district prosecutor in Stockholm, Director of Public Prosecution at the Regional Prosecution Authority in Stockholm and then Director of Public Prosecution in Malmö). Furthermore, I have during a number of years been working as an expert with the police- and prosecution unit at the Ministry of Justice. For more than five years I was - under the president of the court of appeal - chief of administration over the Scania and Blekinge Court of Appeal, where I regularly served as an adjunct member.

Since 1 July 2008 I work in my own business (Sven-Erik Alhem AB) as a consultant, legal expert for the media, lecturer, moderator and columnist. Among other things, I regularly write legal articles for LexNova. In other words, I have continued my legal work after resigning as Director of Public Prosecution, and I am frequently engaged by the media for providing analysis and commentary on high-profile cases. I am also a non-profit chairman of the Victim Support Association since May 2009.

My assessment of the matter at hand

Initially, I note that it is widely known, and it has also been observed by media, that a preliminary investigation is ongoing under the direction of a prosecutor at the International Public Prosecution Authority in Stockholm, and that the preliminary investigation would concern an investigation of potential crimes against international humanitarian law in Sudan. Beyond the publicly available information, I have not been provided with any more precise information concerning the direction of the preliminary investigation (by which I refer to information on what specific suspicions of crime are involved and the precise grounds therefore, whether service of process has been made in respect of any particular person, to what extent investigations have been made so far, and for how long the remaining investigations are expected to last, etc.).

A preliminary investigation is always conducted under so-called confidentiality of investigation (Sw. *förundersökningssekretess*), and it would in my view be inappropriate to have informal contacts with the prosecutor to seek answers to the abovementioned questions.

It is unavoidable that the shareholder proposals may, at first glance, seem tempting to support. A separate initiative by the Company to initiate an independent investigation, in addition to the official governmental preliminary investigation, may at first glance appear to be a positive action. This would be the case not least in the light of the experience that legally complex and more extensive police investigations are generally negative in the sense that they often, and perhaps even usually, drag on for terribly long periods. If a lengthy investigation furthermore concerns a matter of substantial medial interest, it may feel important to show ability to take action and to,

unprejudiced, want to get to the bottom of the more or less unspecified allegations or insinuations of improprieties that appear in the media and the public debate.

The question of an "independent investigation", a "truth commission" or any other concept signalling the best of intentions is neither new nor unique to the Company. I have personally encountered this in other contexts and thereby with consistency and determination recommended against following this - with a drastic word - treacherous path. To, during an ongoing preliminary investigation and without any possibility to assess the closer direction and scope thereof (which easily can be changed by the prosecutor over the course of time) from an outside point of view, start something of a parallel or even extended private investigation would always risk to, to a significant extent, interfere with or, at worst, ruin the official investigation. Even if a private investigation would not objectively have such devastating consequences, there is always a risk it would, e.g. in the media context, be perceived to have caused such effect.

A private investigation would require discussions with various people under interrogation-like conditions. A meaningful investigation cannot be conducted without such "interrogation". However, the value of statements later given under oath by such "privately interrogated" persons before court (as witnesses or as plaintiffs) will be reduced. This would be the case regardless of whether there are objective reasons for the relevant hearings to be affected by such interrogations. Already the fact that unofficial interrogation-like discussions have taken place is something that is likely to in general raise doubts about the genuineness of statements.¹

Even if the Company fully co-operates with the prosecutor – a course of action which I understand is entirely consistent with the Company's explicit intentions – an important condition for achieving a satisfactory result with the investigation is that compulsory measures can be taken, at least as a latent threat, in case any third party (outside of the Company's control) would be unwilling to provide information. Furthermore, there must be a possibility to, with the assistance of local authorities, compel the assistance of third parties resident abroad. Both of the aforementioned tools are at the prosecutor's disposal during the official investigation, but are entirely unavailable to a private investigation. Accordingly, one can hardly reach any investigative successes by having private investigators to go around and politely ask people with essential information if they are willing to share their knowledge. When conducting a private investigation, all collection of information is in principle based on voluntariness and willingness to co-operate. Whether such attitudes will be available is naturally not easy to assess in advance.

Both the Company's management and the shareholders behind the proposals have, as I understand it, emphasised the importance of openness and transparency. Fundamentally, I think this feels right and good, especially in a situation where negative information about the Company has been published in the media.

From a media point of view, any resolution to initiate an "independent investigation" would, in my opinion, attract suspicion. Such resolution can easily be interpreted as an attempt by the Company to "compete" with the official preliminary investigation for the purpose of obtaining favourable information, regardless of how much the resolution highlights phrases such as "independent," "outsider", "unprejudiced" and "objective" to describe its purpose. In my opinion, a persistent suspicion in media is inevitable from the moment it becomes known that a resolution has been passed to initiate a private investigation.

What is recommended from my part is that the board of the Company in all respects co-operates with the official investigation in the event that the public prosecutor would contact the Company

¹ In this context it may be worthwhile to mention that experienced criminal defence lawyers, who for natural reasons can have both strong and objective reasons to want to talk to people who may be of any importance in assessing criminal charges brought against the defenders' principals, often themselves refrain from seeking out (and discussing with) concerned witnesses for the simple reason that misunderstandings easily arise about how the gathering of information took place. Even where such discussions are documented by tape-recording, any introductory discussion which was not recorded may be of relevance to the information provided. Therefore, it is my experience that many defence lawyers are keen on having interrogations carried out by police. This may at the same time entail a degree of uncertainty, since the defender does not know what person will say during such police interrogation.

during the course of the official investigation. Further, the board's position in this regard should, in my opinion, be that the board appreciates that the complicated facts of the case may be difficult to investigate and therefore cause delay, but that the board is nevertheless anxious that the investigation is completed as swiftly as possible in the light of i.a. the speculations contained in media against the Company.

My conclusions on the subject

With reference to what I have stated above, my firm conviction is to advise against approving an "independent investigation" based on the shareholder proposals which, in whatever respect, would even touch upon the area of the ongoing investigation led by a public prosecutor. Rather, the Company should in all respects co-operate with the official investigation in the event that the public prosecutor would contact the Company during the course of the official investigation.

This is a translation of the Swedish original statement

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