



Decision to exclude JBS SA

August 2018

Summary

KLP and the KLP Funds (hereafter, "KLP") have decided to exclude the company JBS SA (hereafter, "JBS") from their investments due to an unacceptable risk of gross corruption. The decision is mainly based on the Council on Ethics' recommendation to the Government Pension Fund Global (GPFG), published on July 10, 2018¹, when Norges Bank excluded the company. As of the 29th of August, KLP's investments in JBS SA had a market value of 4.2 million NOK.

Recommendation by the Council on Ethics

JBS is one of the world's largest food companies². The company has more than 235 000 employees and sales offices in more than 20 countries. JBS was listed in 2007, and is listed on BM&FBOVESPA's New Market in Brazil. 42% of the company is owned by the family-owned holding company J&F. Two family members of the founder of J&F and JBS were previously in leading positions at JBS and are among the main suspects in the corruption case the company is involved in.

The Council on Ethics recommendation to exclude JBS states:

Former members of JBS' management and board of directors have admitted to bribing more than 1,800 politicians from 28 different political parties in Brazil. This is said to include almost 200 members of parliament, a number of district governors, as well as several of the country's presidents. In total, the bribes could amount to almost NOK 1.5 billion, paid out over the past 10-15 years.

The Council on Ethics has assessed whether there exists an unacceptable risk that JBS may, once again, become involved in similar actions. The seriousness and the scale of the corrupt practices, and the company's response to them, are important elements in this assessment. The Council has also attached importance to the measures the company has implemented to prevent, detect and respond to corruption, as well as the political landscape in which the company operates.

¹ [The Council on Ethics recommendation to exclude JBS SA from the GPFG](#)

² [JBS SA webpage](#)

A more detailed description of the case is available in the full recommendation by the Council of Ethics³

KLPs guidelines and analysis

According to the KLP Guidelines for Responsible Investment "KLP shall exclude companies from investment where there is an unacceptable risk that the company is responsible for or complicit in...gross corruption...".⁴ When it comes to corruption, KLPs guidelines are identical to those of the GPF. Moreover, KLPs guidelines state that KLP shall observe exclusions from the GPF, and generally follow these exclusions.

In the case of JBS, Norges Bank decided to exclude the company:

*The Council on Ethics recommends that JBS SA be excluded from investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is responsible for gross corruption.*⁵

Common practice at KLP is to value the recommendations of the Council of Ethics highly, unless there are clear reasons to deviate. As explained in the recommendation to exclude JBS⁶, the definition of gross corruption states that⁷:

1. "Gross corruption" exists if a company through its representatives
 - a. Gives or offers an advantage – or attempts to do so – so as to unduly influence:
 - i. a public servant in the execution of public duties or in decisions which may bring the company an advantage, or
 - ii. a person in the private sector who takes decisions or has influence on decisions which may bring the company an advantage,
 - b. demands or receives bribes, and
 - c. the corrupt acts mentioned in letters a and b are carried out in a systematic or comprehensive manner.
2. In its assessment, the Council also places emphasis on whether the company has implemented effective anti-corruption procedures that are organised in a way that enables it to prevent, detect and respond to corruption.

As explained in KLPs decision to exclude Petrobras, gross corruption includes both paying and receiving bribes, where this entails a serious and systematic practice that involves the

³ [The Council on Ethics recommendation to exclude JBS SA from the GPF](#)

⁴ [KLP, The KLP Guidelines for Responsible Investment](#)

⁵ [The Council on Ethics recommendation to exclude JBS SA from the GPF](#)

⁶ [Ibid](#)

⁷ [Ibid, page 1](#)

company's top management.⁸ In the case of JBS, the company has bribed more than 1800 politicians from 28 different political parties, equaling four fifths of Brazil's registered political parties.⁹ According to the Council on Ethics recommendation, this includes nearly two hundred members of parliament, multiple governors and previous presidents. The Council on Ethics estimate the total bribes at around 1.5 billion NOK over the last 10-15 years.¹⁰ Based on the actions outlined above, the corruption practices at JBS are deemed both serious and systematic.

In corruption cases, KLP also assesses the forward-looking risk that a portfolio company will be responsible for gross corruption in the future. In this respect, there are several factors in the Council of Ethics recommendation to exclude JBS, giving KLP cause for concern:

The Council on Ethics notes that the company is now attempting to put a comprehensive compliance programme in place, in line with international best practice in the field. Examples include the fact that they have sought external assistance from an international law firm to develop the programme, that they have set up a separate compliance office, that they have established an external and professionally operated reporting channel, and that they are in the process of developing a methodology for third-party due diligence. However, since JBS has not sent over the actual plan for implementation of the company's compliance programme, it is not possible for the Council to make any further assessment of whether the abovementioned elements fully meet the fundamental requirements for this type of measure, or whether the programme otherwise contains all the other elements that it is natural to expect in a "best practice" programme.

The steps companies take to prevent corruption are, however, not limited to the establishment of a compliance programme. Corporate governance must also be tailored to the risk of corruption. In a situation where former members of the company's board and management have been directly responsible for gross corruption, it is expected that sufficient distance is established between the corrupt acts and those responsible for them on the one hand, and the company's board and management on the other.¹¹

The Council on Ethics recommendation to exclude JBS indicates they are doubtful as to whether sufficient changes have been made to the company's board and management, to ensure that appropriate levels of distance has been established. Several of the current members of the board, who are also in leading positions in the company, held their positions while the corruption practices found place. Moreover, these employees have family relations to the main suspects in the corruption case. The Council of Ethics concludes that it will be

⁸ KLP, " Decision to exclude Petróleo Brasileiro S.A. (Petrobras)"

⁹ [The Council on Ethics recommendation to exclude JBS SA from the GPF](#)

¹⁰ [Ibid](#), page 13-14

¹¹ [The Council on Ethics recommendation to exclude JBS SA from the GPF](#), page 14-15

challenging for the company to undertake independent evaluations when leading employees, as well as board members, are impartial.¹²

KLP finds the Council of Ethics analysis and conclusion to be well founded, and see no reason to deviate from its recommendation.

Recommendation

KLP and the KLP Funds exclude the company JBS SA from their investments due to an unacceptable risk of gross corruption.

¹² [The Council on Ethics recommendation to exclude JBS SA from the GPF](#)