



Decision to exclude Nordic American Tankers Ltd January 2019

Introduction

KLP and the KLP Mutual Funds (KLP) have decided to exclude the company Nordic American Tankers Ltd from their investments due to an unacceptable risk that the company is contributing to serious environmental damage and gross violations of human rights.

Nordic American Tankers is a tankship company listed on the New York Stock Exchange and with offices in Bermuda and Norway. The company's management is Norwegian.

KLP had a small investment in Nordic American Tankers Ltd until October 9th 2018.

Incident

On July 25th 2018, KLP learned that Nordic American Tankers Ltd (NAT) had disposed of eight oil tankers.¹ A further two oil tankers were disposed of on December 7th 2018.² Based on information published in the media³ by the organisation NGO Shipbreaking Platform,⁴ and on searches for the vessels' AIS signals⁵ that KLP itself carried out, it was confirmed that the ships had been sold for dismantling on the beaches of Bangladesh and India. This practice is called "beaching".

¹ Announced in press releases on NAT's website. URL: <http://hugin.info/201/R/2201307/853747.pdf> and <http://hugin.info/201/R/2207082/857970.pdf>

² Announced in a press release on NAT's website. URL: <http://hugin.info/201/R/2228282/875030.pdf>

³ The Norwegian financial daily newspaper Dagens Næringsliv was the first media outlet to report where NAT's ships had ended up. URL: <https://www.dn.no/shipping/tanskip/nordic-american-tankers/bangladesh/tanskip-dumpet-pa-strand-i-bangladesh/2-1-386609> and <https://www.dn.no/shipping/to-nye-skip-dumpet-pa-strand/2-1-528720>.

⁴ KLP has been in direct contact with the organisation. Through quotes in the media, the organisation has also confirmed where NAT's ships have ended up.

⁵ AIS is an automatic identification system that has been introduced by the International Maritime Organisation (IMO). Onboard AIS transponders send out information about the ship's identity, position, speed and heading. (Course: Norwegian Coastal Administration, URL: <https://www.kystverket.no/Maritime-tjenester/Meldings--og-informasjontjenester/AIS/>). The AIS signals have been made available to KLP by the service www.marinetraffic.com. This service also provides information about each vessel's destination.

Previous exclusions

In January 2018, Norway's Government Pension Fund Global (GPF) excluded four companies as a result of their involvement in beaching. KLP followed the Council on Ethics' advice and excluded these companies from KLP's investment universe.⁶

The Council on Ethics considers there to be an unacceptable risk that a company may contribute to or itself be responsible for serious and/or systematic violations of internationally recognised human rights norms and for serious environmental damage when ships are dismantled on the beaches of Bangladesh and Pakistan.

The main points of the Council on Ethics' assessment are cited below. The complete recommendations relating to the companies mentioned in this decision document may be found on the Council's website.⁷

Human rights violations

The Council's assessment of what constitutes serious and/or systematic human rights violations rests on the Universal Declaration of Human Rights and ILO conventions.⁸

Extensive use of child labour in Bangladesh's shipbreaking industry has been reported, with children as young as 12 performing dangerous work and work that is hazardous to their health. If children under the age of 18 perform such work, it may be considered the worst form of child labour in contravention of ILO Convention 182. This alone can constitute grounds for exclusion of companies from the GPF.

To this must be added the continuous, innumerable and serious violations of a number of ILO conventions whose purpose it is to establish minimum standards which safeguard the lives and health of workers. The Council on Ethics does not find it necessary to consider the violations of each individual convention separately. The reported conditions demonstrate an almost total failure to comply with the conventions and to implement minimum standards, and this results in the vast number of accidents and considerable harm to health deriving from these operations. One reason why it is possible to operate this business at a low cost is the deliberate use of minimal resources on measures such as protective equipment, training, safety procedures and creating a secure working environment. Wide-ranging and serious violations of these conventions must be deemed to infringe fundamental rights to life and health, the sum of which must be said to constitute a serious breach of fundamental human rights.⁹

Environmental damage

The Council's assessment of whether environmental damage is serious depends on its scale, whether it is irreversible, whether it has a significantly negative impact on people's lives and health, whether national or international conventions have been violated, whether the company has failed to act to prevent the damage, and whether it is likely that the

⁶ KLP's published document describing the background for exclusion is available from URL: https://www.klp.no/polopoly_fs/1.39974.1521546151!/menu/standard/file/Skraping%20av%20skip.pdf

⁷ URL: <http://nettsteder.regjeringen.no/etikkradet-2017/tilradninger/grove-krenkelses-av-menneskerettigheter/>

⁸ Council on Ethics, *Recommendation to exclude Korea Line Corporation from the Government Pension Fund Global (GPF)*, pp. 1–2, Letter to Norges Bank, 29.06.2017. URL: <https://nettsteder.regjeringen.no/etikkradet-2017/files/2018/01/Tilr%C3%A5dning-Korea-Line-Corp.-2017-20465.pdf>

⁹ Ibid, p. 8.

company's practices will persist. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal encompasses the breaking up of ships.¹⁰

Environmental damage occurs as a result of failure to comply with both the Basel Convention and national legislation, in that several thousand tonnes of hazardous waste are sent annually to countries that have no infrastructure capable of dealing with it in a safe and sustainable manner. It is precisely this kind of transboundary transport of waste that the convention is intended to prevent. Given that it nevertheless does take place, the consequences are predictable: Serious pollution and the dispersal of environmental toxins, which in turn have a negative impact on human health and ecosystems in the area. Although no comprehensive documentation exists with respect to the harm caused, studies have revealed levels of pollution deriving from heavy metals, among other things, that to an extreme degree exceed established norms.

One particular problem with beaching is that shipbreaking takes place when the vessels are standing in mud and sand. As a result, the pollution leaches into the ground and is washed out with the tides. Even if arrangements were put in place at the beaching sites for the treatment of asbestos and PCBs, for example, the fundamental problem of containing and collecting the pollution would be impossible to resolve.¹¹

Assessment of the company's contribution to norm violations

Human rights violations and environmental damage occur as a result of the way the breakers yards operate. With regard to contributing to norm violations, the Council has considered whether a company can be held accountable for how a vessel that it no longer owns is broken up. When a ship is sent to be broken up, companies generally make use of a "cash buyer", a company whose core business is to handle ships that are due to be scrapped.

When a company sells a ship to a cash buyer, it is at the outset clear that the ship is being sold for the sole purpose of scrapping. Furthermore, both parties are aware that the price agreed depends largely on two factors: the volume of steel in the ship and the cost of dismantling it. The cheapest method of dismantling a ship is by beaching, which is why this process gives the seller the highest price for the vessel concerned.

The Council on Ethics presumes that companies that dispose of a ship for scrapping in this way are fully aware of what will happen to it next. It must also be considered as general knowledge in the shipping industry that environmental and working conditions associated with beaching are extremely poor. That a ship is nevertheless sent for scrapping at the Chittagong beach in Bangladesh or the beaches at Gadani in Pakistan is a consequence of an active choice on the part of the company that owned the vessel to maximise its profit. In the Council's opinion, that company must shoulder an independent responsibility for doing so. There are better ways of dismantling ships that are readily available to the shipowner, but these are more expensive.

In the opinion of the Council on Ethics, therefore, there exists a tangible connection between the shipowner's actions and the violation of ethical norms, which is of such a

¹⁰ Ibid, p. 2.

¹¹ Ibid, p. 8.

*nature as to constitute a contribution to the latter under the GPFG's ethical guidelines.*¹²

Dialogue with the company

When it learned that the eight sold vessels were on their way to Bangladesh for beaching, KLP initiated a dialogue with NAT in August 2018. A meeting was held between NAT's management and KLP's administration. At this meeting, KLP communicated its position, which was that NAT must ensure its ships are broken up responsibly, even when they have been sold via an intermediary.

KLP followed up this meeting by sending a letter to NAT's board of directors, in which it called on the company to introduce guidelines and implement appropriate measures to ensure that any future disposal of ships for scrap would be done responsibly. KLP's request was discussed by NAT's board on 9 November 2018, after which KLP was informed that the company would comply with the Hong Kong Convention (2009) in connection with future disposals.

On 7 December 2018, it became known that the company had sold a further two ships for beaching at yards in Bangladesh. KLP once again contacted NAT to find out how they were ensuring compliance with the company's new guidelines. KLP sought information about which yards the ships were to be broken up at, what inquiries the company had made with respect to the yards and what plans it had to follow-up the dismantling process going forward. NAT declined to answer KLP's questions. KLP has not been given any indication that the yards being used meet any requirements for responsible dismantling, nor have been voluntarily verified in accordance with the Hong Kong Convention.

Following Dagens Næringsliv's report on KLP's decision (27 January 2019), NAT informed KLP that it had included a clause in the ships' sales contracts requiring any subsequent buyers to comply with the Hong Kong Convention.

KLP's guidelines and analysis

Section 6.3 of "Guidelines for KLP as a responsible investor"¹³ states that:

KLP should exclude from its investments any companies that are associated with an unacceptable risk that they could contribute to or be responsible for [...]

- *serious or systematic violations of human rights*
- *serious environmental damage*

The wording of this provision is identical to the wording of the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG).¹⁴

NAT responded to KLP's call for responsible disposal with a policy to comply with the Hong Kong Convention in connection with future ship disposals. This was a step in the right direction for the company, but is not enough to ensure responsible disposal. The Hong Kong Convention has been adopted by the IMO, but has to date not been ratified by a sufficient

¹² Ibid, pp. 7–8.

¹³ Guidelines for KLP as a responsible investor (08.12.2017), KLP.no, URL: https://www.klp.no/polopoly_fs/1.39176.1513175215!/menu/standard/file/Retningslinje%20for%20KLP%20so%20ansvarlig%20investor.pdf

¹⁴ Council on Ethics: Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG) URL: http://etikkradet.no/files/2017/04/Etikkradet_Guidelines- eng_2017_web.pdf

number of member countries. Voluntary compliance with the Convention is no guarantee that ships will be dismantled responsibly. KLP takes the position that companies which dispose of ships must take the same responsibility with respect to a ship's dismantling as to its construction. Companies must make certain that both the country and the breakers yard have the physical installations, guidelines, systems and routines necessary to ensure the safe dismantling of the ship. This includes ensuring the safety of the workers and the safe handling of hazardous waste.

NAT has declined to accede to KLP's request for documentation that the ships it has disposed of are scrapped responsibly. The ships are now lying on a beach in Bangladesh, and KLP has received no indication that the yards comply with the Hong Kong Convention, or that they have the physical installations, guidelines, systems and routines necessary to ensure the safe dismantling of ships.

Assessed in the light of its "Guidelines for KLP as a responsible investor", KLP considers that there is an unacceptable risk that NAT is contributing to serious environmental damage and gross human rights violations.

Decision

KLP and the KLP Funds have decided to exclude Nordic American Tankers Ltd from their investment portfolios due to an unacceptable risk that the company is contributing to serious environmental damage and gross human rights violations.