



Decision to rescind exclusion from investment portfolios

2 December 2013

Introduction

KLP and the KLP funds ('KLP') have decided to rescind their exclusion of the Toyota Motor Group with effect from 1 December 2013. The company has been excluded since June 2006, due to its association with violations of international labour rights, in breach of KLP's guidelines on responsible investment.

With respect to violations of labour rights, KLP's guidelines refer in general, and the reason for the exclusion of Toyota in particular, to the following international norms:

- *ILO's eight core conventions*, two of which are relevant in this case: Convention No. 87 on freedom of association and the right to organise, and Convention No. 98 on the right to organise and collective bargaining.
- *OECD's guidelines for multinational companies*, Chapter V on employment conditions and industrial relations.
- *UN's Global Compact*, Principle 3 stipulating that businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

The matter relates to Toyota Motor Philippines Corporation ('Toyota Philippines'), which is a joint venture owned by Toyota (34 per cent), GT Capital Holdings Inc (51 per cent) and Mitsui & Co. Ltd (15 per cent).¹ The company was accused of obstructing their workers' right to freedom of association and for unlawful termination of employment.

¹ Ownership structure according to Toyota Motor Philippines Corporation's [website](#) and [Philstar](#).

Dialogue

Over the years, KLP has engaged in an ongoing dialogue with Toyota. We have had meetings with representatives from their head office in Tokyo, as well as with Toyota Motor Europe and representatives from their London and Brussels offices. KLP has also, through our service supplier, GES Investment Services, pursued a dialogue with Toyota Philippines as well as other relevant sources, such as the ILO and involved international trade unions.

KLP has engaged in this dialogue within the framework of Nordic Engagement Cooperation, along with Folksam (Sweden) and Ilmarinen (Finland), as well as other international institutional investors.

Description of the incident – background and development

The case started in 1999 when the Toyota Motor Philippines Company Workers' Association (TMPCWA) sought to become the employees' representative in collective bargaining negotiations with the employer at Toyota Philippines' factories. Toyota Philippines declined to recognise the TMPCWA as either a trades union or as a negotiating party. The company lodged a protest against the registration of the trades union with the Philippines' Department of Labor and Employment (DOLE), but their complaint was not upheld.

Union elections were held in 2000, with almost all employees casting a vote. The 'Yes' side defeated the 'No' side. Toyota Philippines lodged a protest against the election with the DOLE, but their complaint was not upheld this time either. The TMPCWA submitted a proposal for a collective wage agreement, but Toyota Philippines filed a complaint to the DOLE with regard to the TMPCWA's authorisation as a trades union.

While the case was under consideration, protests against the company were staged. Toyota Philippines claimed that these constituted an illegal strike. As a consequence, 227 employees were dismissed, and 64 suspended from work because of their participation in the strike. Toyota Philippines also initiated legal proceedings against other employees and union members for having initiated the strike (ILO 2007).

The DOLE subsequently found that the TMPCWA was a trades union and a negotiating party with respect to Toyota Philippines. The TMPCWA notified the company that strike action would be taken if the sacked employees were not given their jobs back. The strike went ahead, and turned violent in connection with intervention by the police and security guards. The TMPCWA submitted a complaint to the ILO regarding the entire process, including episodes of involvement and surveillance by the Philippines armed forces (ILO 2010).

The National Labor Relations Commission – a quasi-legal (sic.) conciliation body under the DOLE – became involved in an attempt to broker an agreement. The Commission found that the first strike was unlawful under the country's labour legislation, and that the dismissals were therefore justified. However, the Commission ordered Toyota Philippines to grant financial compensation to those workers who had been dismissed, if continued employment was not an alternative (Castan Centre for Human Rights Law et al. 2008). An appeal court upheld the Commission's decision in 2003 (Castan Centre for Human Rights Law et al. 2008).

The union submitted a complaint to the ILO Committee on Freedom of Association on the grounds of unlawful dismissal and other labour rights violations. In reports published in both 2003 and 2004, the ILO called on the Philippines government to implement measures to enable the TMPCWA, as an

approved negotiating party, and Toyota Philippines could negotiate and initiate discussions for the eventual reinstatement of the sacked workers, or payment of compensation if this was not an alternative (ibid.).

The Philippines Supreme Court overturned the appeal court decision and ordered Toyota Philippines to initiate collective bargaining negotiations with the TMPCWA. However, the company continued to refuse to negotiate with the trades union.

Toyota Philippines and the TMPCWA met for the first time in 2005 (IMF 2006). A new trades union, the Toyota Motor Philippines Corporation Labor Organization (TMPCLO), was established that same year, and applied for approval as a collective bargaining negotiating party. The TMPCWA criticised the new trades union for having close ties with company management through individual employees (ILO 2005).

In 2006 the DOLE instructed that elections be held at the factory to determine which trades union should be the employees' collective bargaining negotiating party. The election was won by the new trades union, the TMPCLO. The TMPCWA deemed the election and the election result to be invalid, and lodged a protest with the DOLE. The DOLE rejected the complaint and declared the TMPCLO to be the employees' negotiating party.

The TMPCWA submitted a complaint to the ILO. The ILO was critical of aspects of the election procedure, the interpretation of the results and that the election was undertaken in such a challenging situation, with ongoing litigation and complaints. The ILO requested once again that the government account for the situation (ILO 2006 and 2007).

In October 2007 the Supreme Court nonetheless handed down a judgment upholding the company's allegation that the strike was illegal and the dismissals therefore lawful. The Supreme Court set aside the decisions of previous courts and also revoked the sacked workers' right to compensation. The Supreme Court stated that it was high time the parties stopped seeing each other as opponents and recognised that they were mutually dependent on each other (ibid.).

A final judgment from the Supreme Court was handed down in 2010, bringing litigation on this matter to a close. The Supreme Court found in favour of Toyota Philippines' claim that the dismissals were lawful. The TMPCLO was confirmed as the employees' negotiating party. Nonetheless, the case continues in the ILO (ILO 2010), and remains open in 2013.

The case is further complicated by the various hearings and judgments in the Philippines legal system and the Philippines' authorities' handling of the case. The case led to criticism not only of Toyota Philippines, but of the Philippines government as well. The country has ratified the ILO's core conventions, but the ILO considers that the right to freedom of association and collective bargaining have in fact been curtailed by the complicated administrative processes involved (ILO 2007, ILO 2010, Castan Centre for Human Rights Law et al. 2008).

Assessment

In KLP's assessment, Toyota Motor Group has met the inclusion criteria to a sufficiently satisfactory degree for the exclusion to be rescinded.

1. The incident has ceased

In 2012 the Philippines organisation, the Labour Education and Research Network (LEARN) confirmed that the 2006 election was free and fair, and that the TMPCLO must be deemed to be an independent trades union, with an agreement to conduct collective bargaining negotiations. This has subsequently also been confirmed by IndustriALL Global Unions, an international metalworkers' union², which had supported the TMPCWA.³ IndustriALL Global Unions has also visited the Philippines to investigate the case. They concluded that the TMPCLO must be deemed to be a real and independent trades union, thus putting an end to the old conflict. This conformation was seen as a breakthrough in the case, given that the union had been one of the fiercest critics.

The company's employees now have a trades union that is recognised by both the company and the workers. The employees have therefore been given the freedom and the opportunity to form a trades union and conduct collective bargaining negotiations. The specific conflict is over, and the norm violation has ceased. The criterion is therefore deemed to have been met.

2. The company has handled the incident in a responsible manner

Although the company opposed the first trades union, it has approved a new trades union. Furthermore, the workers have been offered financial compensation. The requirement to pay compensation to the workers was revoked by a Philippines court, but Toyota Philippines has nevertheless decided to pay compensation on humanitarian grounds.⁴ In 2010 it was reported that over 60 per cent of the sacked workers had accepted financial compensation from Toyota Philippines (ibid. IMF 2010). The amount of compensation has been set at one month's salary for every year of employment.⁵ The criterion is therefore deemed to have been met.

3. Systems and routines are in place to prevent similar incidents occurring in the future

Although Toyota has had a corporate social responsibility policy for many years, it has not made specific mention of labour rights. KLP's main objective in the dialogue with Toyota has been to get the company to adopt a robust and unambiguous policy to avoid such problems in the future.

In 2008 Toyota changed its policy, adding the following form of words: "*The company recognizes its employees' right to freely associate or not to associate in compliance with the laws of the countries in which it operates.*"⁶ The policy is the same today.⁷

KLP considers this change to be an important step in the right direction. Nevertheless, the change did not bring the company entirely where wanted, since Toyota chose not to refer to international labour rights (the ILO's core conventions) in its policy. In KLP's opinion the company should further revise its policy with a reference to international labour rights to eliminate any doubt or difference of interpretation in situations where a conflict may potentially arise between national legislation and

² IMF, the International Metalworkers' Federation, merged with two other international trades unions in 2012 to form [IndustriALL Global Union](#), an organisation that represents 50 million workers in 140 countries.

³ Letter from IndustriALL Global Unions to GES 22.08.2012

⁴ Letter from Toyota Philippines to GES 26.10.2010.

⁵ Letter from Toyota Philippines to GES 12.10.2010 and ILO (2007)

⁶ [Toyota Motor Group Sustainability Report 2008](#)

⁷ [Toyota Motor Group Sustainability Report 2013](#), side 78

practice and the ILO's core conventions – as was the case in the Philippines. This is something the company has not wished to do. As far as KLP understands Toyota's stance, the company feels that a reference to international labour rights is not necessary. It points instead to *the Toyota Way*, *the Toyota Guiding Principles* (which include corporate social responsibility) and the *Toyota Code of Conduct* as being sufficient to safeguard freedom of association and its relations with its workforce. These are the company's governing guidelines, the foundation of the company's values and an essential part of Toyota's operations and culture.⁸

A policy is not a goal in itself, but a means to reach a goal – which in this case is to respect international labour rights. Nevertheless, an adopted policy provides an assurance to investors and other stakeholders with respect to the standards applying in the company. In this case we have ended up discussing with the company what such a policy should look like. The company and KLP have differing views on this matter. The question therefore becomes: to what level of detail can we as investors frame our demands on the company? A basic principle is that it should be up to the company to decide which policy works best, and how it can be implemented as effectively as possible.

If freedom of association and labour rights had repeatedly proved to be a problem for the company, KLP would have continued to maintain this demand. However, a review we have carried out of all the reports published about the company over the past three years shows, according to publicly available sources, no indications that Toyota has had similar problems in other parts of its business. Based on this review, there are no grounds to assert that freedom of association and labour rights are a systematic or serious problem within the company. KLP will, naturally, continue to monitor the company and its operations in the future.

The company has made a clear improvement, given that its policy now explicitly mentions its employees' right to free association. KLP therefore considers that the most important element is in place for us to deem this criterion to have been met.

4. Points 1–3 have been verified

Key to the fulfilment of the verification criteria is that the company now has an approved trades union, and that the company is therefore no longer associated with violations of international labour rights. That the IndustriALL Global Unions, one of the company's fiercest critics, which has followed the case over several years, has changed its opinion on the situation at Toyota Philippines represents important confirmation of this. The information provided in points 1-3 has been confirmed by IndustriALL Global Unions (points 1 and 2), public documentation from the company, as well as KLP's own review of publicly available information about the company in the past three years (point 3), and the ILO Committee on Freedom of Association (point 1). The criterion is therefore deemed to have been met.

Decision

KLP and the KLP funds have decided to rescind their exclusion of Toyota Motor Group with effect from 1 December 2013.

⁸ The documents have not been published in their entirety, but the company reports and quotes excerpts from the documents in its corporate social responsibility reports. See, for example, pages 56, 62-63 and 78 in the [2013 Corporate Social Responsibility Report](#).

Sources

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