

Corruption

KLP seeks to apply a consistent and principled approach to all of its exclusion decisions. To ensure that we handle similar cases consistently, we rely on KLP's previous divestment decisions, as well as recommendations on exclusion from the Council on Ethics for the Government Pension Fund – Global (GPF).¹ The 2015 annual report for the Council on Ethics for the Government Pension Fund – Global contains a detailed description of their approach to corruption cases,² which KLP also uses for guidance in our analyses.

KLP makes exclusion decisions based on whether there is an unacceptable risk for ongoing or future violations, not on past violations alone. This approach highlights that KLP's goal is not to "punish" companies, but to ensure that KLP does not contribute to violations through its investments.

International standards

The most relevant international standards for corruption cases are the OECD Anti-Bribery Convention and the UN Convention Against Corruption. In defining "gross corruption," KLP has adopted the same standard as the Council of Ethics, based on Norwegian and international law:

Gross corruption exists if a company, through its representatives,

- a) *gives or offers an advantage – or attempts to do so – in order to unduly influence:*
 - i) *a public official in the performance of public duties or in decisions that may confer an advantage on the company; or*
 - ii) *a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company, and*
- b) *the corrupt practices as mentioned under letter a) are carried out in a systematic or extensive way.*³

This definition encompasses public and private corruption and highlights that it applies to corruption carried out in a systematic or extensive way. A single employee's payment of a bribe to a customs official would not amount to gross corruption, for example. KLP's aim is to single out corruption that occurs on such a scale or scope that we expect company leadership knows or should know about its occurrence. This also includes "passive" corruption, in which senior company executives participate in a coordinated and large-scale scheme to pay bribes using company funds, as occurred in the Petrobras case listed in the examples below.⁴

Key considerations

As outlined above, KLP makes exclusion decisions based on whether there is an unacceptable risk for ongoing or future violations. This is a particularly challenging exercise for assessments under the corruption criterion, as these inevitably involve allegations of illegal activities. Our experience is that companies often deny allegations of corruption until a court judgment concludes otherwise, at which point the company points to comprehensive improvements undertaken to its anti-corruption program as evidence that the future risk of corruption is low.

¹ <https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/>

² https://nettsteder.regjeringen.no/etikkradet-2017/files/2017/02/Etikkradet_AR_2015_web-1.pdf

³ https://www.regjeringen.no/globalassets/upload/fin/statens-pensjonsfond/recommendation_on_siemens.pdf (p.

⁴ See, also https://nettsteder.regjeringen.no/etikkradet-2017/files/2017/02/Etikkradet_AR_2015_web-1.pdf (p. 26-27) ("In order for passive corruption alone to form a basis for exclusion, the Council takes the view that the corruption must be extensive and/or systematic and that it must be possible to blame the company for this.")

The goal with KLP's assessments of a company's anti-corruption measures is to analyze whether a company has a system in place sufficient to prevent, detect, and remediate corruption. KLP expects companies to design anti-corruption systems based on an assessment of the company's specific industry and geographic risk, and to test regularly whether these systems function in practice. Perhaps the most difficult component to assess is whether there is a clear "tone from the top" on anti-corruption. We expect at a minimum that the board and management have clear roles in ensuring the company has a robust corporate compliance function.

The company's approach to corporate governance more broadly often provides an indicator of the tone at the top as well. We have seen in previous cases that weak protections for minority shareholders can insulate a company from taking a full accounting of past misconduct, particularly when doing so would unearth uncomfortable information about current management. KLP looks to whether there are consequences for individuals who violate the company's anti-corruption guidelines – regardless of the individual's position in the corporate hierarchy. The most egregious cases may require significant changes in management and even the board.

Examples:

Unacceptable risk of serious corruption in defense contracts

KLP excluded Leonardo SpA in 2017 due to concerns about the company's involvement in multiple, serious corruption cases. The company has been involved in serious cases of corruption, alleged to have taken place in four countries between 2009 and 2014. Three of the cases are still under investigation, while two former senior executives were convicted in Italy for gross corruption in connection with a contract in India. In every case, it is claimed that the company, via agents, bribed public officials. In dialogue with the company, KLP has not gained confidence that Leonardo SpA has implemented sufficient measures to reduce the risk of future gross corruption. The company was previously excluded for nuclear weapons involvement, based on the manufacture of a missile type that is no longer in production. As a result, KLP has changed the rationale for exclusion to unacceptable risk of gross corruption.

Unacceptable risk of serious corruption based on involvement in Lava Jato scandal

KLP excluded Petrobras in 2016. The company is involved in the largest corruption scandal in Brazilian history. Over more than a decade, the company's contracts with suppliers were routinely inflated by three percent of the contract sum, with the proceeds paid in bribes to Brazilian politicians, political parties and Petrobras executives. Despite the company's many remedial measures and continued outside pressure, KLP remains convinced that there remains an unacceptable risk that the company will be involved in corruption in the future.