Fundamental Business Ethics

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 (GPFG).[1]

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

As this criterion is unique to KLP, we do not have any decisions from the Council on Ethics upon which to rely. To date, KLP has not excluded a company under this criterion, but we find it valuable nevertheless – particularly for cases that involve serious financial misconduct other than corruption. Examples include:

- Serious or systematic violations of consumer protection laws that threaten human life and health
- Serious or systematic tax evasion or money laundering
- Serious or systematic violations of anti-competition laws
- Serious or systematic violations of UN or EU sanctions

Although these examples are more likely to involve national rather than international law, some international guidelines exist. For example, the OECD Guidelines for Multinational Enterprises[2] address taxation and competition.

Key considerations

The key considerations for this criterion largely parallel those for assessments under the corruption criterion. KLP makes exclusion decisions based on whether there is an unacceptable risk for ongoing or future violations. This is particularly challenging for assessments that involve allegations of illegal activities. Our experience is that companies often deny the allegations until a court judgment concludes otherwise, at which point the company points to comprehensive improvements undertaken to its compliance program as evidence that the risk of future violations is low.

The goal with KLP's assessments of a company's compliance program is to analyze whether a company has a system in place sufficient to prevent, detect, and remediate violations. KLP expects companies to design compliance 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." 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:

No companies have been excluded under this criterion.

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[1] https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/

[2] http://mneguidelines.oecd.org/guidelines/