

UNOFFICIAL ENGLISH TRANSLATION

**To Norges Bank**

1 March 2018

**Recommendation to exclude JBS SA from the Government Pension Fund  
Global (GPFG)**

## Summary

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.

JBS, which is listed on the São Paulo stock exchange, is the world's second largest food company. In May 2017, it had over 235 000 employees in more than 20 countries worldwide. The family-owned holding company J&F owns approx. 42 per cent of the shares in JBS. Two of the sons of the founder of J&F and JBS have previously held the posts of Board Chair and CEO at JBS, and have also been the most important players in the corruption cases in which the company has been involved.

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.

In light of the seriousness and the scale of the corruption in question, the Council on Ethics takes the view that the company should, at an early stage, have investigated the allegations, cracked down on financial impropriety and taken steps to prevent any new incidents of corruption. This does not seem to have been the case. Neither the Board Chair nor the CEO were suspended when they came under investigation. Even when the CEO admitted corruption and entered into a plea bargain agreement with the prosecuting authorities, he retained his position until his arrest in September 2017. Nor did the company, at its own initiative, launch any investigation into the corruption allegations or implement any new measures in the area of compliance. Such measures were, in fact, imposed on it through a leniency agreement that the parent company entered into with the prosecuting authorities.

The Council on Ethics concludes that, up until May 2017, JBS had no comprehensive plan for combatting corruption. The compliance measures presented in its annual reports appear rather random and disjointed. The Council also wonders how real those measures have been, both in light of the corruption that was going on continuously, and the new initiatives that the company launched in 2017.

The Council has been in contact with JBS on numerous occasions, and the company has both submitted comments to a draft recommendation and provided information about its compliance programme. The Council has taken ad notam that the company is now attempting to put a comprehensive compliance programme in place, in line with international best practice in the field.

However, companies' efforts to prevent corruption are 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 board and management have been directly responsible for gross corruption, the Council on Ethics considers that the present composition of the board and management does not create sufficient distance to the corrupt acts and the

people responsible for them. The Board Chair has been with the company throughout the period in which the corruption has taken place. This is also true of the CEO, who is – at the same time – the board’s Deputy Chair. Both the CEO and another board member have close family ties to the primary perpetrators in the corruption case. For the Council on Ethics, it would seem to be particularly challenging for the company to pursue any internal investigations when both the chief executive and several board members are so lacking in impartiality. Furthermore, the Council notes that JBS’ other major shareholder, BNDES, has criticised the company’s poor corporate governance, even after the new measures to improve corporate governance were announced. The Council therefore concludes that there remains an unacceptable risk of gross corruption associated with JBS.

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# 1 Introduction

The Council on Ethics for the Government Pension Fund Global (GPF) has assessed the fund's investments in the company JBS SA (JBS)<sup>1</sup> against the corruption criterion in the guidelines for observation and exclusion from the GPF.<sup>2</sup> The company is involved in several corruption cases.

JBS was founded in 1953 and is listed on the stock exchange in São Paulo. In May 2017, JBS had in excess of 235,000 employees and production and sales activities in over 20 countries worldwide. The company is the world's second largest food company, and the world's largest meat producer. The bulk of its business is located in North and South America, Europe and Australia.<sup>3</sup>

At the close of 2017, the GPF owned 1.78 per cent of the company's shares, with a market value of NOK 1,173 million.<sup>4</sup>

## 1.1 Matters considered by the Council

The allegations of corruption levelled at current and previous members of JBS' top management relate to bribes paid to politicians and other public officials in Brazil, and illegal campaign contributions. A company may be excluded if there is an unacceptable risk that it is contributing to or is itself responsible for gross corruption, pursuant to s 3(e) of the Guidelines for Observation and Exclusion of Companies from the GPF.

The Council bases its assessment of the term "gross corruption" on the following definition:<sup>5</sup>

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.

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<sup>1</sup> Issuer ID: 10454198.

<sup>2</sup> Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): [http://etikkradet.no/files/2017/04/Etikkradet\\_Guidelines-eng\\_2017\\_web.pdf](http://etikkradet.no/files/2017/04/Etikkradet_Guidelines-eng_2017_web.pdf)

<sup>3</sup> JBS. Annual and Sustainability Report 2016, p. 20, <http://jbs.infoinvest.com.br/enu/4070/JBS%20RAS%202016%20EN%20170502%20Final.pdf>.

<sup>4</sup> Norges Bank's website, <https://www.nbim.no/no/fondet/beholdningene/>.

<sup>5</sup> See the Council on Ethics' recommendation to place Petrobras AS under observation, dated 21 December 2015, available at <http://etikkradet.no/files/2017/05/Recommendation-Petrobras-21-December-2015.pdf>.

The Council bases its assessment of future corruption risk on the nature of the corrupt acts that have been admitted and how the company has responded to them. The Council attaches importance to the extent of the corruption risk that the company will face moving forward, and the steps it has taken to limit this risk. What the company has previously done and what it is doing now to prevent corruption, constitute important elements in this assessment. The Council takes the position that it is the company which must substantiate that it is working sufficiently effectively to prevent corruption.

## 1.2 Sources

Information relating to the allegations of corruption against JBS derives primarily from articles in the Brazilian and international media, as well as from the Brazilian prosecuting authorities.

The assessment of the company's compliance and anti-corruption programme is based primarily on information published on JBS' website and correspondence with the company. The assessment of the company's corporate governance arrangements is based on information published on JBS' website and information contained in articles in the Brazilian and international media.

The company has also commented on a draft recommendation previously prepared by the Council on Ethics.

## 2 Scope and nature of the Council on Ethics' investigations

J&F is a family-owned holding company that was established in 1953 by the same person who founded JBS.<sup>6</sup> J&F owns approx. 42 per cent of the shares in JBS.<sup>7</sup> Two of the founder's sons used to be, respectively, JBS' Board Chair and CEO, and have also been at the centre of the corruption cases.

On 18 May 2017, the Brazilian Supreme Court (Supremo Tribunal Federal – STF) authorised a plea bargain agreement that JBS' Board Chair and CEO, as well as and five other people linked to JBS or J&F had entered into with the prosecuting authorities.<sup>8</sup> The day after, video recordings of the statements made by those involved were released to the public.<sup>9</sup>

The following key points can be drawn from these statements:

- JBS' management has admitted bribing – directly or indirectly – a total of 1,829 politicians from 28 different political parties.<sup>10</sup> These include 167 members of the

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<sup>6</sup> Bloomberg, Company Overview of J&F Investimentos S.A.:

<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=35495410>.

<sup>7</sup> <http://jbss.infoinvest.com.br/static/enu/composicao-acionaria-e-societaria.asp?idioma=enu> (as at 8 February 2018).

<sup>8</sup> EBC, 18 May 2017: *Ministro Edson Fachin homologa delação premiada da JBS*, <http://agenciabrasil.ebc.com.br/politica/noticia/2017-05/ministro-edson-fachin-homologa-delacao-premiada-da-jbs>.

<sup>9</sup> Veja, 22 May 2017: *Assista aos vídeos da delação da JBS*, <http://veja.abril.com.br/brasil/assista-aos-videos-da-delacao-da-jbs/>.

<sup>10</sup> In a memo from the Brazilian prosecuting authorities, released on 19 June 2017, the figure had increased to 1,893 politicians. Ministério Público Federal, 19 June 2017: *Memoriais sobre questões processuais relevantes envolvendo a homologação de acordo de colaboração premiada de executivos do Grupo J&F*, p. 18, <http://www.mpf.mp.br/pgr/documentos/MemorialacordoJF.pdf>.

Brazilian parliament's Chamber of Deputies (Câmara dos Deputados), 28 members of the Federal Senate (Senado Federal), 16 governors, as well as the incumbent and the two previous presidents of Brazil. The implicated parties have named varying amounts in their statements, but, over the past 10-15 years, a total of almost BRL 600 million (NOK 1.5 billion) may have been paid out in bribes.<sup>11</sup>

- The corruption was primarily intended to obtain public financing, tax breaks or other financial benefits, which could facilitate JBS' substantial growth:<sup>12</sup>
  - According to the statements, JBS secured its influence with the Brazilian Development Bank BNDES through the minister of finance. The bribes paid to the former finance minister constituted a 4 per cent fee on every loan contract that JBS signed with BNDES, as well as any investments that its wholly owned subsidiary BNDESPAR made in the company. Today, BNDES owns around 21 per cent of JBS.<sup>13</sup>
  - In 2015, JBS is supposed to have paid BRL 20 million (approx. NOK 50 million) in bribes to the then president of the Chamber of Deputies to avoid paying Employers' National Insurance Contributions in that part of its business engaged in poultry production.
  - In 2011, 2012 and 2013, JBS is supposed to have paid out a total of BRL 30 million (approx. NOK 75 million) in bribes to the governors of Mato Grosso and Mato Grosso do Sul in return for tax breaks.
  - The former chair of JBS' board of directors is also said to have attempted to influence the country's incumbent president to appoint new directors at the Brazilian Securities Commission (CVM).

A new case emerged immediately after the publication of the plea bargain agreement between senior officials at JBS and the prosecuting authorities. At that time, it became known that both JBS' Board Chair and CEO were under investigation by the CVM for insider trading and suspicious currency transactions in connection with the plea bargain agreement. In the first half of September, it was also reported that JBS' former Board Chair and CEO had both been detained by the Brazilian prosecuting authorities as part of their ongoing investigations into the case.<sup>14</sup>

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<sup>11</sup> O Globo, 19 May 2017: *Delator diz que dinheiro da JBS irrigou 1.829 candidatos de 28 partidos*, <https://oglobo.globo.com/brasil/delator-diz-que-dinheiro-da-jbs-irrigou-1829-candidatos-de-28-partidos-21366155>; Financial Times, 25 May 2017: *Culture of corruption engulfs Brazilian elite*, <https://www.ft.com/content/3490dbb8-4050-11e7-9d56-25f963e998b2>.

<sup>12</sup> See also G1, 24 May 2017: *Veja 8 situações em que os donos da JBS usaram a corrupção para obter vantagens*, <http://g1.globo.com/economia/negocios/noticia/veja-8-situacoes-em-que-os-donos-da-jbs-usaram-a-corrupcao-para-obter-vantagens.ghtml>; G1, 21 May 2017: *Dono da JBS diz que pagou propina por investimentos de fundos de pensão*, <http://g1.globo.com/politica/operacao-lava-jato/noticia/dono-da-jbs-diz-que-pagou-propina-por-investimentos-de-fundos-de-pensao.ghtml>.

<sup>13</sup> <http://jbss.foinvest.com.br/static/enu/composicao-acionaria-e-societaria.asp?idioma=enu> (as at 8 February 2017).

<sup>14</sup> Reuters, 19 May 2017: *Brazil watchdog opens new probes into JBS-related insider trading*, <http://www.reuters.com/article/us-brazil-corruption-jbs-regulator-idUSKCN18F0AT>; Reuters, 18 May 2017:

J&F concluded a leniency agreement with the Brazilian federal prosecuting authorities (Ministério Público Federal - MPF) on 31 May 2017. As part of the deal, the company agreed to pay a BRL 10.3 billion fine (approx. NOK 26 billion) over a period of 25 years for the various corrupt practices in which it had been involved.<sup>15</sup> According to the MPF, the agreement and fine related to matters which had been uncovered in connection with five different investigations, two of which related to JBS' business operations.<sup>16</sup>

Although the details of the cases were not known before the plea bargain agreement, the press had reported for several years that JBS was allegedly involved in corruption and other financial crimes. In July 2014, it emerged that JBS was involved in a tax case in Mato Grosso, in which the company was accused of having received BRL 73.5 million (approx. NOK 184 million) in unwarranted tax breaks.<sup>17</sup> In November 2014 and January 2015, a critical searchlight was trained on the company's close relations with the country's largest political parties.<sup>18</sup>

Since July 2016, it has been known that members of JBS' board and management were under investigation for corruption. In September 2016, JBS' CEO was ordered by a federal judge in Brasilia to temporarily relinquish his position, renounce any activity in the financial markets and surrender his passport to avoid imprisonment. This move sprang from suspicions of bribery for the purpose of obtaining money from the pension funds of several state-owned companies. JBS' Board Chair was also obliged to provisionally resign his position in connection with this matter.<sup>19</sup>

In March 2017, it emerged that JBS was under investigation for having bribed public inspectors to approve the sale and export of tainted/spoiled meat. It was also said, in this

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*JBS controlling shareholders sold nearly \$100 mill. in shares: filings*, <http://www.reuters.com/article/us-brazil-corruption-jbs-stocks-idUSKCN18E36Q>; Financial Times, 13 September 2017:

<https://www.ft.com/content/161e2be8-9895-11e7-a652-cde3f882dd7b>. JBS' former Board Chair was also detained because the Brazilian prosecuting authorities had, shortly before, received new information indicating that he had withheld information in connection with the leniency agreement entered into in May, see also: Reuters, 5 September 2017: <https://www.reuters.com/article/us-brazil-corruption-jbs/brazil-prosecutor-says-new-audio-threatens-batista-leniency-deal-idUSKCN1BF2IV>.

<sup>15</sup> Reuters, 31 May 2017: *Brazil's J&F agrees to pay record \$3.2 billion fine in leniency deal*, <http://www.reuters.com/article/us-brazil-corruption-jbs/brazils-jf-agrees-to-pay-record-3-2-billion-fine-in-leniency-deal-idUSKBN18RIHE>.

<sup>16</sup> Ministério Público Federal, 31 May 2017: *Acordo de leniência: força-tarefa Greenfield e procuradores do MPF fecham acordo com J&F*, <http://www.mpf.mp.br/df/sala-de-imprensa/noticias-df/acordo-de-leniencia-forca-tarefa-greenfield-e-procuradores-do-mpf-fecham-acordo-com-j-f>; JBS, 31 May 2017: *Material Fact – JBS Announces that its Holding Company entered into a Leniency Agreement with the Brazilian Federal Prosecutor's Office*, <http://jbss.foinvest.com.br/enu/4149/MATERIAL%20FACT%20-%20Agreement%20with%20MPF%20%282%29.pdf>.

<sup>17</sup> MidiaNews, 31 July 2014: *MPE diz que JBS foi "escolhida a dedo" como beneficiária*, <http://www.midianews.com.br/conteudo.php?sid=3&cid=205418>.

<sup>18</sup> UOL, 28 January 2015: *JBS nega relação entre doações e empréstimos com o BNDES*, <http://noticias.uol.com.br/politica/ultimas-noticias/2015/01/28/jbs-nega-relacao-entre-doacoes-e-emprestimos-com-o-bndes.htm>; Jornal da Mídia, 11 November 2014: *Políticos revelam 'homem da mala' do grupo JBS/Friboi*, [http://www.jornaldamidia.com.br/noticias/2014/11/11/Blog\\_do\\_JM/Politicos-revelam-homem-da-mala-do-grupo-JBSFriboi.shtml](http://www.jornaldamidia.com.br/noticias/2014/11/11/Blog_do_JM/Politicos-revelam-homem-da-mala-do-grupo-JBSFriboi.shtml).

<sup>19</sup> Folha de S.Paulo, 1 July 2016: <http://www1.folha.uol.com.br/poder/2016/07/1787539-jbs-e-alvo-de-nova-etapa-da-lava-jato.shtml>; Reuters, 5 September 2016: *JBS CEO ordered to step aside in Brazil pension fund probe*, <http://www.reuters.com/article/us-brazil-corruption-pensions-idUSKCN11B14G>; Wall Street Journal, 6 September 2016: *CEO of Brazil's JBS Suspended From All Management Posts by Court Order*, <https://www.wsj.com/articles/ceo-of-brazils-jbs-suspended-from-all-management-posts-by-court-order-1473170650>.



connection, that the company was given the opportunity to influence which inspector was selected to carry out the actual inspections of the company's production facilities.<sup>20</sup>

## 2.1 The political situation in Brazil

In recent years, Brazil has been in the throes of a serious political crisis, which must be seen in connection with several major corruption scandals involving the country's top political echelons. In 2014, the huge corruption scandal, dubbed "Lava Jato", came to public attention.<sup>21</sup> Since then, corruption scandals linked to the Soccer World Cup in Brazil in 2014, the Summer Olympics in Rio de Janeiro in 2016, and the J&F/JBS affair have come to light.<sup>22</sup>

In March 2017, it emerged that 83 Brazilian politicians were under investigation for corruption in connection with the Lava Jato case. This includes the two previous presidents, five members of the sitting government, the current and former leaders of both houses of the Brazilian national assembly and at least two former leaders of the opposition.<sup>23</sup> In May 2017, the sitting president was implicated in connection with the publication of the plea bargain agreement between JBS' management and the Brazilian prosecuting authorities.<sup>24</sup>

The widespread corruption in the Brazilian political system can be linked to both historical and structural factors. The electoral system – in which the individual representatives in the Chamber of Deputies are elected on an independent basis and decide for themselves which party they will support (so-called "open lists") – is not only an invitation to opportunism, it also encourages many small, weak parties and fleeting coalitions.<sup>25</sup> With elections at three different levels (federal, state and city) across one of the world's largest countries, election campaigns are also extremely expensive. It is very difficult for an individual political party to win an outright majority through the ballot box. The existence of as many as 35 different registered political parties in Brazil makes the situation even more challenging. The parties are also forced to expend considerable resources to secure the support of other parties in order to form a majority coalition.<sup>26</sup>

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<sup>20</sup> Bloomberg, 17 March 2017: *Brazil's Latest Scandal: Bribes, Acid and Tainted Meat Sales*, <https://www.bloomberg.com/news/articles/2017-03-17/brazil-meat-producers-jbs-brf-probed-in-alleged-bribery-scheme>; El País, 18 March 2017: *JBS e BRF, de "campeãs nacionais" a suspeitas de vender carne vencida*, [https://brasil.elpais.com/brasil/2017/03/17/politica/1489763244\\_536570.html](https://brasil.elpais.com/brasil/2017/03/17/politica/1489763244_536570.html).

<sup>21</sup> Bloomberg, 25 May 2017: *Brazil's Car Wash Scandal Reveals a Country Soaked in Corruption*, <https://www.bloomberg.com/news/articles/2017-05-25/brazil-s-car-wash-scandal-reveals-a-country-soaked-in-corruption>.

<sup>22</sup> Bloomberg, 25 May 2017. See also: Guardian, 4 June 2015: *Fifa corruption crisis: FBI inquiry now includes 2014 Brazil World Cup*, <https://www.theguardian.com/football/2015/jun/04/fifa-corruption-crisis-fbi-inquiry-now-includes-2014-world-cup-in-brazil>; Reuters, 25 May 2016: *Exclusive: Brazil investigating possible corruption at Olympic venues*, <https://www.reuters.com/article/us-olympics-rio-corruption-exclusive/exclusive-brazil-investigating-possible-corruption-at-olympic-venues-idUSKCN0YG2WT>.

<sup>23</sup> Guardian, 15 March 2017: *Brazil's corruption inquiry list names all the power players – except the president*, <https://www.theguardian.com/world/2017/mar/15/brazil-corruption-investigation-list-politicians-michel-temer>.

<sup>24</sup> O Globo, 17 May 2017: <https://oglobo.globo.com/brasil/dono-da-jbs-grava-temer-dando-aval-para-compra-de-silencio-de-cunha-21353935>.

<sup>25</sup> Washington Post, 25 May 2016: *How Brazil's electoral system led the country into political crisis*, [https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/25/how-brazils-electoral-system-led-the-country-into-political-crisis/?utm\\_term=.1a691a1a6df7](https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/25/how-brazils-electoral-system-led-the-country-into-political-crisis/?utm_term=.1a691a1a6df7).

<sup>26</sup> Guardian, 1 June 2017: *Operation Car Wash: Is this the biggest corruption scandal in history?*, <https://www.theguardian.com/world/2017/jun/01/brazil-operation-car-wash-is-this-the-biggest-corruption-scandal-in-history>; Transparency International, 22 June 2016: *Brazil: Overview of Corruption and Anti-Corruption*, p. 2,

Politicians have had direct influence over the appointment of chief executives at state-owned companies, and have themselves often been members of the boards of state-owned companies.<sup>27</sup> Funds from these companies have been used not only to finance the political parties through secret “slush funds”, they have also been diverted for the personal enrichment of both politicians and senior executives at the companies concerned.<sup>28</sup> Control over state banks or pension funds, as can be seen in the J&F/JBS case, has played an important role in the system of corruption.

As a consequence of these structural and historical conditions, there are many representatives in both the Brazilian national assembly and the government who may have a personal interest in obstructing the ongoing corruption investigations, and/or securing their own immunity from prosecution. With respect to the latter, members of Brazil’s national assembly have long sought to adopt a new law granting them amnesty for any unlawful party support (“caixa dois”) they may previously have received from private companies. The wheels of the judicial process with respect to corruption cases against elected representatives and many other figures of authority in Brazil have ground slowly due to special rules, under which any legal action taken against them can be pursued only in the Brazilian Supreme Federal Court, which suffers from substantial capacity constraints.<sup>29</sup>

### 3 Standards for compliance and corruption prevention

In its assessment of what a company is doing to prevent future corruption, the Council on Ethics looks to international standards of best practice and relevant legislation.

#### 3.1 International standards

On the basis of international standards for compliance and the prevention of corruption in multinational companies, certain key principles may be deduced with respect to steps an enterprise ought to take to establish and implement an effective anticorruption programme.<sup>30</sup> In addition, the OECD has drawn up its own set of principles for corporate governance,

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[https://www.transparency.org/files/content/corruptionqas/Brazil\\_overview\\_of\\_corruption\\_and\\_anticorruption\\_2016.pdf](https://www.transparency.org/files/content/corruptionqas/Brazil_overview_of_corruption_and_anticorruption_2016.pdf); Financial Times, 25 May 2017.

<sup>27</sup> Guardian, 1 June 2017.

<sup>28</sup> Transparency International, 22. June 2016, p. 3.

<sup>29</sup> Washington Post, 25 May. 2016; Guardian, 23 May 2016:

<https://www.theguardian.com/world/2016/may/23/brazil-dilma-rousseff-plot-secret-phone-transcript-impeachment>; Reuters, 17 March 2017: *Brazilian corruption probe sends politicians running for cover*, <https://www.reuters.com/article/us-brazil-corruption-amnesty/brazilian-corruption-probe-sends-politicians-running-for-cover-idUSKBN16O29A>.

<sup>30</sup> Internationally recognised guidelines and principles for the design of an anti-corruption programme may be found in: UNODC. 2013. *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, available at [https://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf); U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). 2012. *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>; OECD. 2010. *Good Practice Guidance on Internal Controls, Ethics and Compliance*, available at <https://www.oecd.org/daf/anti-bribery/44884389.pdf>; Transparency International (TI). 2013. *Business Principles for Countering Bribery*, available at [http://www.transparency.org/whatwedo/publication/business\\_principles\\_for\\_countering\\_bribery](http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery).

which, in several important areas, are of major significance for companies' work in the anti-corruption area.<sup>31</sup>

### *Compliance*

All relevant international bodies presume that senior management must be genuinely involved in the work if the company is to be capable of effectively preventing the occurrence of corruption. It is important that management clearly communicates a zero tolerance for corruption, and that the company communicates the importance of its corruption prevention activities to its workforce, business partners and representatives.<sup>32</sup>

In order to be able to define systems that are tailored to the specific business, a systematic effort is required to identify and assess corruption risk throughout the enterprise. Such assessments are performed regularly in connection with the evaluation of third parties, training and internal investigations. At the very least, the company must implement sound preventive measures in those areas where the company is most exposed to risk.<sup>33</sup>

To achieve the effective implementation of the systems concerned, good training schemes must be developed for employees and business partners over whom the company has a controlling or decisive influence. In particular, senior executives, middle managers and employees in at-risk positions must receive specifically tailored training.<sup>34</sup>

It is also important that the company performs checks on third parties, so-called due diligence, that third parties in at-risk areas are trained in anti-corruption and followed up on a regular basis, and that payments to such parties are proportional to the work performed.<sup>35</sup>

Management must encourage employees to act in compliance with the anti-corruption programme and report any suspected breaches of internal rules and regulations. Systems should be established so that employees and others can report matters anonymously and with no risk of reprisal.<sup>36</sup> The company should have a clear procedure for investigating any reported non-compliance with corporate guidelines, and the sanctions to be imposed on individuals who violate the rules must be made crystal clear.<sup>37</sup>

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new legislation and standards for best practice.<sup>38</sup>

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<sup>31</sup> OECD. 2015. *G20/OECD Principles of Corporate Governance*, <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>.

<sup>32</sup> UNODC (2013), Chapter III, (A); OECD (2010), Annex II, (A)(1); TI (2013), (6.1). See also World Bank Group (WBG). 2010. *Summary of World Bank Group Integrity Compliance Guidelines*, (2.1), available at <http://pubdocs.worldbank.org/en/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf>.

<sup>33</sup> This follows from UNODC (2013), Chapter II; OECD (2010), Annex II (A); DOJ and SEC (2012), Chapter 5, pp. 58-59; UK Ministry of Justice. 2011. *The Bribery Act 2010 Guidance*, Principle 3, available at <https://www.gov.uk/government/publications/bribery-act-2010-guidance>. A more comprehensive guide to how risk assessment may be carried out is contained in Global Compact's *A guide for anti-corruption risk-assessment* (2013), available at [https://www.unglobalcompact.org/docs/issues\\_doc/Anti-Corruption/RiskAssessmentGuide.pdf](https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf).

<sup>34</sup> UNODC (2013), Chapter III (H); OECD (2010), Annex II (A) point 8; TI (2013), point 6.4; WBG (2010), point 7.

<sup>35</sup> OECD (2010), Annex II (A) point 6(i); TI (2013), point 6.2; WBG (2010), point 5.

<sup>36</sup> UNODC (2013), Chapter III (I) and (J); OECD (2010), Annex II (A) points 9 and 11(ii); TI (2013), points 6.3.1 and 6.5.1; WBG (2010), points 8.1, 9.1 and 9.3.

<sup>37</sup> UNODC (2013), Chapter III (J) and (K); WBG (2010), point 10.

<sup>38</sup> UNODC (2013), Chapter III (L); OECD (2010), Annex II (A) point 12; TI (2013), points 6.8 and 6.10; WBG (2010), point 3.

According to such standards, it is crucial that anti-corruption activities are delegated to a dedicated function or a person with the necessary resources and autonomy. It is also important that the compliance department has direct access to group management and the board of directors.<sup>39</sup>

### *Corporate governance*

The OECD's principles state, among other things, that a company's board of directors is responsible for supervising its day-to-day management on behalf of the shareholders. In order for the board to be able to perform this function, it is crucial that it be capable of carrying out objective and independent assessments. This capability will normally depend a sufficient number of board members being independent of company management.<sup>40</sup>

One of the board's key functions is to safeguard the integrity of the company's accounting and financial reporting systems, including the performance of independent audits. Furthermore, the board must ensure that the company has appropriate internal control systems in place, particularly with respect to risk management, financial and operational control, as well as compliance with all laws, regulations and relevant standards. As examples of relevant laws, regulations and standards, the OECD's principles mention those national criminal law provisions that follow from the OECD's Anti-Bribery Convention, as well as to other forms of bribery and corruption.<sup>41</sup>

In order for the board to have sufficient oversight of a company's senior management, it will normally be necessary to establish an internal auditing function that reports directly to the board.<sup>42</sup> With respect to the company's compliance function, other relevant standards presume that this unit within the company also has direct access to the board of directors.<sup>43</sup>

## **3.2 National legislation**

Over the past decade, Brazil has introduced wide-ranging anti-corruption reforms. Numerous measures have been implemented to create greater transparency, Brazil has ratified several international anti-corruption conventions, and new national anti-corruption legislation was passed in 2013 (*Lei Anticorrupção*). This legislation has, for the first time, made companies administratively liable under civil law for corrupt practices.<sup>44</sup> Other important anti-corruption provisions have also been included in the general penal code (*Código Penal*), including active and passive corruption, see articles 333 and 317, respectively.

An amendment to Brazil's Anti-Corruption Act, which came into effect in March 2015, deals with specific aspects of in-house compliance and anti-corruption systems. Like other countries' laws in this area, specific requirements are here laid down with respect to

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<sup>39</sup> This follows from DOJ and SEC (2012), Chapter 5, p. 58; OECD (2010), Annex II (A) point 4; WBG (2010), point 2.3.

<sup>40</sup> OECD (2015), principle VI, p. 51, principle VI.E, p. 57.

<sup>41</sup> OECD (2015), principle VI.D.7, p. 56.

<sup>42</sup> OECD (2015), principle VI.D.7, p. 56.

<sup>43</sup> DOJ and SEC (2012), Chapter 5, p. 58; OECD (2010), Annex II, (A)(4).

<sup>44</sup> The international conventions include the *OECD Anti-Bribery Convention* (implemented by Decreto No. 3.678/2000) and the *United Nations Convention Against Corruption* (implemented by Decreto No. 5.687/2006). The Brazilian anti-corruption law is included in *Lei No. 12.846/13*.

companies' anti-corruption systems that also are taken into consideration when sanctions are imposed.<sup>45</sup>

## 4 Information provided by the company

### 4.1 JBS' reaction to the allegations of corruption

In July 2016, it was made public that JBS' Board Chair was under investigation for corruption. JBS immediately made it clear that neither the company nor any of its executives were the subject of or connected with this investigation.<sup>46</sup>

When JBS' Board Chair and CEO were both suspended from their positions in connection with another corruption investigation, JBS issued a stock market notice, on 13 September 2016, stating that the third brother in the family that owns J&F would take over temporarily as CEO, while the three brothers' father would take over as Board Chair.<sup>47</sup> Shortly afterwards, the two suspended brothers entered into an agreement with the prosecuting authorities, under which they were allowed to return to the company against a BRL 1.5 billion bond.<sup>48</sup> The day after this agreement with the prosecuting authorities became known, JBS' board decided to reappoint the brothers in question as, respectively, the company's Board Chair and CEO/Deputy Chair.<sup>49</sup>

In connection with the investigation into the granting of export licences for tainted meat, which was made public on 17 March 2017, JBS announced that no legal action had been taken against the company's management, and that its headquarters had not been searched.<sup>50</sup> When the investigation into the receipt of funds from BNDES was announced on 12 May 2017, JBS stated that all the investments that BNDES had made in the company had been carried out via BNDESPAR at a time when JBS was already a listed company, and that all these investments were fully in compliance with Brazilian financial market regulations and that no form of special treatment or special benefits had been given to JBS.<sup>51</sup>

Only when the plea bargain agreement with the prosecuting authorities was announced on 18 May 2017, did JBS issue any information linking the company to the ongoing investigations. In a stock market notice, JBS disclosed that seven executives employed by the company and its holding company J&F had concluded an agreement with the prosecuting authorities

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<sup>45</sup> Chapter IV, Art. 42 in *Decreto N° 8.420*, 18 March 2015: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2015/Decreto/D8420.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8420.htm).

<sup>46</sup> JBS, 1 July 2016: *Notice to the market – JBS is not a target of a Federal Police operation*, <http://jbss.foinvest.com.br/enu/3712/Notice%20to%20the%20Market%20-%20Federal%20Police%20Operation.pdf>.

<sup>47</sup> JBS, 13 September 2016: *Material Fact* <http://jbss.foinvest.com.br/enu/3810/Material%20Fact%20-%20W%20e%20J.pdf>.

<sup>48</sup> Wall Street Journal, 13 September 2016: *Brazilian Judge Permits JBS Executives to Return to Work*, <https://www.wsj.com/articles/brazilian-judge-permits-jbs-executives-to-return-to-work-1473810911>.

<sup>49</sup> JBS, 14 September 2016: *Material Fact* <http://jbss.foinvest.com.br/enu/3813/Material%20Fact%20-%20Wesley%20%282%29.pdf>.

<sup>50</sup> JBS, 17 March 2017: *Notice to the market*, <http://jbss.foinvest.com.br/enu/3999/Notice%20to%20the%20Market%20-%20PF%20Operation.pdf>.

<sup>51</sup> JBS, 12 May 2017: *Notice to the market*, <http://jbss.foinvest.com.br/enu/4089/Notice%20to%20the%20Market%20-%20Op%20Bullish.pdf>.

involving payment of a fine totalling BRL 225 million. The executives had also pledged to cooperate with prosecutors with respect to all matters covered by the agreement.<sup>52</sup>

In a stock market notice dated 26 May 2017, JBS announced changes in its board of directors. The notice stated that, at a board meeting held the same day, the Board Chair had resigned and pulled out of the company. Furthermore, this individual's father, JBS' founder, had become the board's Deputy Chair. Another director, who was not in the same family as the two aforementioned individuals but had been a member of the board for the past 4–5 years, had been appointed to the position of Board Chair.<sup>53</sup>

When the leniency agreement between J&F and the Brazilian prosecuting authorities was announced on 31 May 2017, JBS disclosed in a stock market notice that the fine amounting to BRL 10.3 billion and payable over a period of 25 years would be paid solely by J&F, but that the agreement also related to JBS.<sup>54</sup> Shortly afterwards, the company disclosed that implementation of a new compliance and integrity programme, including best global practice with respect to corporate governance, was also one of the requirements included in the agreement. JBS was also ordered to launch its own investigation into the matters mentioned in the plea bargain agreement and the leniency agreement.<sup>55</sup> The actual plan for JBS' compliance programme was approved on 28 June 2017.<sup>56</sup>

The arrest of JBS' CEO on 13 September 2017 was confirmed by the company in a stock market notice that same day.<sup>57</sup> Four days later, JBS announced that the board had unanimously elected the company's founder to be its new CEO. At the same time, JBS announced that it had created a global management team comprising three executives, who would assist the new CEO with advice and guidance. One of these three was the son of the former CEO who had just been arrested.<sup>58</sup>

## 4.2 Steps taken by JBS to prevent, detect and respond to corruption

### 4.2.1 Compliance

*Measures reported before May 2017*

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<sup>52</sup> JBS, 18 May 2017: Notice to the market,

<http://jbss.infoinvest.com.br/enu/4119/Notice%20to%20the%20Market.pdf>.

<sup>53</sup> JBS, 26 May 2017: Material Fact – Tarek Farahat elected Chairman of the Board of JBS,

<http://jbss.infoinvest.com.br/enu/4141/Material%20Fact%20-%20Board%20Change.pdf>.

<sup>54</sup> JBS, 31 May 2017: *Material Fact – JBS Announces that its Holding Company entered into a Leniency Agreement with the Brazilian Federal Prosecutor's Office,*

<http://jbss.infoinvest.com.br/enu/4149/MATERIAL%20FACT%20-%20Agreement%20with%20MPF%20%282%29.pdf>.

<sup>55</sup> JBS, 5 June 2017: *Material Fact - JBS Announces That J&F Signed a Leniency Agreement With the Federal Public Prosecutor's Office,* <http://jbss.infoinvest.com.br/enu/4156/MATERIAL%20FACT%20-%20Agreement%20with%20MPF.pdf>;

JBS, 28 August 2017: *Material Fact – Manifestation of the Company's Management, s. 3,* <http://jbss.infoinvest.com.br/enu/4299/JBS%20-%20Material%20Fact%20-%20Management%20Letter.pdf>.

<sup>56</sup> JBS, 28 June 2017: *Material Fact – JBS strengthens its Governance, Professionalism and Compliance,*

<http://jbss.infoinvest.com.br/enu/4197/JBS%20S.A.%20-%20Material%20Fact%20-%20Executive%20Committee2.pdf>.

<sup>57</sup> JBS, 13 September 2017: *Material Fact,* <http://jbss.infoinvest.com.br/enu/4331/Material%20Fact%20-%20WB%2013.09.17.pdf>.

<sup>58</sup> JBS, 17 September 2017: *Material Fact,* <http://jbss.infoinvest.com.br/enu/4341/Material%20Fact%20-%20JBS%2017.09.17.pdf>.

According to JBS' 2008 annual report, the company had had *ethical guidelines* in place since 2004. These guidelines were said to include provisions relating to gifts and entertainment, as well as an explicit ban on bribes, gratuities, illegal payments and other corrupt practices.<sup>59</sup> The guidelines were revised in March 2016.<sup>60</sup>

In its 2009 annual report, JBS stated that it had set up a reporting mechanism (Whistleblower's Channel), which employees could use to confidentially report any and all irregularities relating to the company's operations.<sup>61</sup> However, it can be seen from the company's 2015 annual report that it was only in 2015 that JBS established an online reporting channel to the company's ombudsman that could actually safeguard a whistleblowers' anonymity.<sup>62</sup>

According to the GRI report,<sup>63</sup> which is enclosed with the company's 2013 annual report, all of JBS' new employees received training in the company's anti-corruption guidelines and procedures.<sup>64</sup>

In JBS' 2015 annual report, it is stated that the company had that year established a Corporate Compliance Office. This unit was intended to serve all JBS' business areas and be responsible for identifying, assessing and monitoring risk, as well as developing training and communications programmes for all employees and suppliers. It was stated that this unit reported to the "Institutional Relations Department",<sup>65</sup> which, it has subsequently emerged, was run by one of the seven individuals encompassed by the 18 May 2017 plea bargain agreement with the Brazilian prosecuting authorities. However, in a letter to the Council on Ethics in October 2017, JBS disclosed that the newly created compliance department – whose objective was the implementation of corporate governance best practice and the prevention of any repetition of the actions referred to in the plea bargain and leniency agreements – will report directly to JBS' board of directors.<sup>66</sup>

#### *Measures reported after May 2017:*

In the stock market notice dated 28 June 2017, the company stated that it had approved the plan for its new compliance programme entitled "Always do the right thing", which was to be developed with the assistance of an international law firm.

In a letter to the company in late September 2017, the Council on Ethics asked JBS about its plans for implementing this programme, the mandate for the internal investigation, the company's most up-to-date corruption risk assessment and a description of the assessment methodology applied, as well as the company's future strategy for handling its relations with political parties and individual politicians, including donations to party funds.

In its reply to the Council, JBS provided a brief account of the main elements in its compliance programme.<sup>67</sup>

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<sup>59</sup> JBS Annual Report 2008, p. 57, [http://jbss.foinvest.com.br/enu/17/JBS\\_RA\\_2008\\_eng.pdf](http://jbss.foinvest.com.br/enu/17/JBS_RA_2008_eng.pdf).

<sup>60</sup> JBS, March 2016: Manual of Ethical Conduct, <http://jbss.foinvest.com.br/enu/3700/Manual%20ING%20FINAL.PDF>.

<sup>61</sup> JBS Annual Report 2009, p. 41.

<sup>62</sup> JBS Annual and Sustainability Report 2015, p. 35, <http://jbss.foinvest.com.br/enu/3726/16.06.2016%20RA%20ENG%20JBS%202015.pdf>.

<sup>63</sup> Global Reporting Initiative (GRI): <https://www.globalreporting.org/Pages/default.aspx>.

<sup>64</sup> JBS Annual and Sustainability Report 2013, p. 95, [http://jbss.foinvest.com.br/enu/3722/jbs\\_RA13\\_book\\_ENGLISH\\_FINAL.pdf](http://jbss.foinvest.com.br/enu/3722/jbs_RA13_book_ENGLISH_FINAL.pdf).

<sup>65</sup> JBS Annual and Sustainability Report 2015, p. 34.

<sup>66</sup> Letter from JBS to the Council on Ethics, dated 11 October 2017.

<sup>67</sup> Letter from JBS to the Council on Ethics, dated 11 October 2017.

- *Training:* According to JBS, between August and September all senior company executives (110 people) underwent training in anti-corruption legislation, regulations and guidelines, as well as cartel prevention, conflicts of interest, labour standards and money laundering. It is also stated that the company is developing a strategy for the training of other personnel in “critical positions”. Reference is made to the fact that JBS has over 100,000 employees in Brazil alone, and it is therefore emphasised that this effort must be systematic and carried out over time.
- *Guidelines and procedures:* The company’s ethical guidelines and other procedures are currently being revised. This includes guidelines on bribery and corruption, third-party due diligence, conflicts of interest, donations, sponsorships, etc. In a subsequent letter to the Council in January 2018, JBS disclosed that it aims to complete this work during the first half of 2018.<sup>68</sup>
- *Third-party due diligence:* JBS, is in the process of hiring a firm of consultants to assist it in developing a methodology for performing this type of research into both customers and suppliers.
- *Reporting channel:* In its first letter, JBS stated that it was in the process of establishing an external and professionally operated reporting channel. In its second letter, the company disclosed that the channel was now operational, and that it allows reports to be submitted anonymously. It was further disclosed that the company is in the process of identifying and training employees and committee members who will carry out investigations in response to the reports received.<sup>69</sup>
- *Compliance Office:* JBS stated in a stock market notice dated 14 June 2017 that it had appointed someone to head up the newly established Compliance Office.<sup>70</sup> In its reply to the Council on Ethics, the company further disclosed that the department had recruited four new employees during September and October 2017, and that it was still in the process of recruiting additional staff.

With respect to the *mandate for the internal inquiry*, JBS stated in its reply that this will be limited to the matters covered by the plea bargain agreement with the prosecuting authorities, but furnished no further information.

In its response to the Council’s question on *corruption risk assessment and methodology*, JBS stated that it has carried out global risk assessments since the first quarter of 2017. The company further stated that information deriving from the above-mentioned plea bargain agreement will be analysed in order to identify deficiencies and opportunities to prevent any such misdeeds reoccurring in the future.

With regard to the Council’s question on the company’s future *strategy for handling relations with political parties and politicians, including donations to party funds*, JBS has stated that political donations from companies are prohibited in Brazil. JBS stated that it would comply with the law and not make any political donations or have any relations with political parties in Brazil that are not legally permitted.

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<sup>68</sup> Letter from JBS to the Council on Ethics, dated 3 January 2018.

<sup>69</sup> Letter from JBS to the Council on Ethics, dated 3 January 2018.

<sup>70</sup> JBS, 14 June 2017: *Notice to the market - JBS Advances in Compliance Measures*, <http://jbss.infoinvest.com.br/enu/4178/Notice%20to%20the%20Market%20-%20Compliance.pdf>.



## 4.2.2 Corporate governance

The family which owns J&F have always held key positions in JBS' board and management. In an email to the Council on Ethics dated 11 January 2018, JBS made it clear that it cannot guarantee that members of the family, which is its major shareholder, will not continue to hold key positions in company management. Of the board's nine members, only four are independent of the company and its major shareholder.<sup>71</sup>

Although the new Board Chair, who was appointed in October 2017, is new to the board and not part of the family that owns J&F, he has been employed by JBS for the past 20 years. The father of the two brothers who have been implicated in the corruption continues to hold a seat on the board, as does the son of one of these brothers. The father is also the company CEO, while his grandson is his close advisor.

In May 2017, JBS established a new "Governance Committee" that was supposed to be chaired by the Board Chair and whose primary purpose was to ensure that global best practice in corporate governance and compliance was implemented at the company.<sup>72</sup> In its second letter to the Council on Ethics, JBS disclosed that it had established a dedicated "Ethics Committee", which will advise the board, define rules for the management of unforeseen situations and follow up the company's compliance programme, including the proposal of amendments to it.<sup>73</sup>

In July 2017, JBS' second-largest shareholder, BNDES, requested that an extraordinary general meeting of shareholders be held. With reference to the harm that had been caused to the company, BNDESPAR called for the replacement of JBS' CEO and the commencement of a civil suit against that individual and the three other former executives encompassed by the plea bargain agreement.<sup>74</sup>

However, in a stock market notice dated 28 August, JBS stated that a majority of the company's board wished the CEO to remain at his post until further notice. The majority felt that any such resignation would be premature, as long as the independent internal inquiry had not been carried out, and that there was, at that time, no objective basis for concluding that the person concerned had caused the company any harm.<sup>75</sup>

After JBS' board had appointed the two brothers' father as the company's new CEO on Saturday, 16 September 2017, BNDES's CEO publicly criticised the circumstances surrounding the decision and said that corporate governance at JBS was unsatisfactory.<sup>76</sup> In a

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<sup>71</sup> JBS' website, visited 2 February 2018: <http://jbss.infoinvest.com.br/static/enu/conselho-de-administracao.asp?idioma=enu>.

<sup>72</sup> JBS, 26 May 2017.

<sup>73</sup> Letter from JBS to the Council on Ethics, dated 3 January 2018.

<sup>74</sup> JBS, 26 July 2017: *Call Notice – Extraordinary Shareholders' Meeting*, <http://jbss.infoinvest.com.br/enu/4230/JBS%20-%20Edital%20de%20Convocao%20-%20AGE%20-%20Pedido%20BNDES%2026%2007%202017%20%28v.%20ingls%29.pdf>; BNDES, 14 August 2017: *BNDESPAR publica sua intenção de voto para AGE da JBS S.A.*, <https://www.bndes.gov.br/wps/portal/site/home/mercado-de-capitais/BNDESPAR-publica-sua-intencao-de-voto-para-age-da-jbs-sa>; Reuters, 15 August 2017: <https://www.reuters.com/article/brazil-corruption-jbs-BNDESPAR/BNDESPAR-to-back-suit-against-batista-family-in-jbs-meeting-idUSL2N1L10M4>.

<sup>75</sup> JBS, 28 August 2017: *Material Fact*, <http://jbss.infoinvest.com.br/enu/4299/JBS%20-%20Material%20Fact%20-%20Management%20Letter.pdf>.

<sup>76</sup> BNDES, 18 September 2017: *Nota à imprensa: JBS*, <https://www.bndes.gov.br/wps/portal/site/home/imprensa/noticias/conteudo/nota-imprensa-jbs>; Reuters, 18 September 2017: *Brazil's BNDES lambasts JBS CEO switch, seeks family's removal*, <https://www.reuters.com/article/us-jbs-ceo/brazils-bndes-lambasts-jbs-ceo-switch-seeks-familys-removal>.

letter of reply the following day, JBS said that it was considering taking legal action against BNDES's CEO, since it was felt that the statements of the previous day could harm JBS' interests.<sup>77</sup>

## 5 The assessment of the Council on Ethics

Based on the available documentation, the Council on Ethics has assessed whether there exists an unacceptable risk that JBS is involved in practices that constitute gross corruption, including whether the corrupt practices have been carried out in a comprehensive and/or systematic fashion.

Former JBS executives and board members have admitted bribing more than 1,800 politicians from 28 different political parties, in other words, 4/5 of the registered political parties in Brazil. This has included almost 200 members of parliament, numerous governors, as well as the country's incumbent and its two previous presidents. In total, the bribes could amount to almost NOK 1.5 billion, paid out over the past 10-15 years. On the basis of the above, the Council on Ethics concludes that JBS has been involved in gross corruption.

The Council has further assessed whether there is an unacceptable risk that the company may, once again, become involved in similar practices. The seriousness and scale of the corrupt practices and the company's response to them have been important elements in this assessment. The Council has also attached importance to the steps the company has taken to prevent, detect and respond to corruption, as well as the political landscape in which it operates.

The Council on Ethics takes the position that the corruption which has now been admitted is of such a scale and seriousness that the company, at an early stage, should have investigated the allegations, cracked down on the corrupt acts and implemented measures to prevent new incidents of corruption. This does not seem to have been the case at JBS. Neither the Board Chair nor the CEO were suspended when they came under investigation. When the plea bargain agreement with the Brazilian prosecuting authorities became public knowledge in May 2017, the company's CEO nevertheless remained in his position until he was arrested in September 2017.

Nor did the company, at its own initiative, commence its own inquiries into the corruption allegations or implement any new initiatives in the compliance area. It was, in fact, ordered to do so as part of a leniency agreement that the parent company entered into with the Brazilian prosecuting authorities at the end of May 2017.

However, allegations of financial impropriety were reported in the media as far back as 2014, though the board failed to address them. The Council on Ethics notes that the many stock market notices issued from 2016 until the plea bargain agreement of May 2017 did not address the corruption allegations. The Council on Ethics concludes that the company's passivity and reactive response to the corruption cases is an indication that JBS has not acted

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[idUSKCN1BT22M](https://www.bloomberg.com/news/articles/2017-09-18/batistas-keep-jbs-a-family-affair-as-shareholder-pressure-mounts); Bloomberg, 19 September 2017: <https://www.bloomberg.com/news/articles/2017-09-18/batistas-keep-jbs-a-family-affair-as-shareholder-pressure-mounts>.

<sup>77</sup> G1, 19 September 2017: *JBS diz que avalia medidas judiciais contra o presidente do BNDES*, <https://g1.globo.com/economia/negocios/noticia/jbs-diz-que-avalia-medidas-judiciais-contra-o-presidente-do-bndes.ghtml>.

to prevent and detect corruption, but has, primarily, been concerned to avoid a negative focus on the company.

The investigations which commenced in 2014, and which are still ongoing, have shown that corruption has been extremely widespread in Brazil. The information relating to JBS' activities give the Council on Ethics grounds to assume that key individuals at JBS have materially contributed to this. In recent years, Brazil has introduced anti-corruption legislation that is being enforced by the judiciary. The Council takes the view that although these measures have reduced the risk of corruption, it remains high. It is still unclear whether all the politicians who are suspected of corruption will be brought to trial. The Council on Ethics has also noted that politicians have interfered directly in state-owned companies' detailed decision-making processes. Politicians who seem to have played a central role in the system of corruption continue to hold key positions. Even though the management of state-owned companies has improved in recent years, the Council considers that the Brazilian system must still be deemed to constitute a considerable corruption risk.

When the risk of corruption is known to be high, companies must take particular care to organise themselves such that corruption does not take place.

The Council on Ethics concludes that, up until May 2017, JBS has not had a comprehensive plan for combatting corruption. The compliance initiatives that are presented in its annual reports appear to be relatively random and disjointed. This could be due to the fact that it was not until 2015 that JBS established a separate compliance entity. The Council also wonders how real these initiatives have been, both in light of the corruption that has been going on continuously, and the new measures that the company launched in 2017.

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 above-mentioned 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.

Some of the structural changes that JBS has made since the corruption case became public knowledge seem to be steps in the right direction. Examples include the creation of new board committees and direct reporting to the board from the Compliance Office. Nevertheless, the Council takes the view that the present composition of the board and management does not afford sufficient independence from the previous board and management. The Board Chair has been with the company throughout the period in which the corruption has taken place. This is also true of the CEO, who is – at the same time – the board's Deputy Chair. Both the CEO and another board member have close family ties to the primary perpetrators in the

corruption case. For the Council on Ethics, it would seem to be particularly challenging for the company to pursue any internal investigations when both the chief executive and several board members are so lacking in impartiality. Furthermore, the Council notes that JBS' other major shareholder, BNDES, has criticised the company's poor corporate governance, even after the new measures to improve corporate governance were announced. The Council therefore concludes that there remains an unacceptable risk of gross corruption associated with JBS.

## 6 Recommendation

The Council on Ethics recommends that JBS be excluded from investment by the Government Pension Fund Global (GPF) on the grounds of an unacceptable risk that the company is contributing to or is itself responsible for gross corruption.

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Johan H. Andresen Chair	Hans Christian Bugge	Cecilie Hellestveit	Brit Rugland	Trude Myklebust
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)