

# COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

**To Norges Bank**

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UNOFFICIAL ENGLISH TRANSLATION

**Recommendation to exclude Hansae Yes24 Holdings Co Ltd and Hansae Co Ltd from the Government Pension Fund Global (GPF)**

## Summary

The Council on Ethics for the Government Pension Fund Global (GPF) recommends that Hansae Yes24 Holdings Co Ltd (Hansae Yes24) and its subsidiary Hansae Co Ltd (Hansae) be excluded from the GPF due to the working conditions at the latter's textile factories.

Hansae has 11 subsidiaries, which produce textiles and clothing in five countries in Southeast Asia. Hansae Yes24 is Hansae's largest shareholder and has a decisive influence over it. Both companies are listed on the stock exchange in South Korea.

### *Matters considered by the Council on Ethics*

The Council on Ethics has considered whether there is an unacceptable risk that HansaeYes24 and Hansae contribute to or are themselves responsible for systematic violations of internationally recognised human rights and labour rights.

To qualify as systematic, the human rights violations must be substantial in scope - that they are numerous in quantity, that different types of rights are infringed or that abuses take place in many entities within the company. The Council takes the position that "systematic" requires an accumulation of such violations and not merely isolated incidents; in other words that they constitute a pattern of behaviour. Furthermore, in its capacity as employer, each company has an individual and direct responsibility for its workforce and for preventing their employees' labour rights from being infringed at its own operations. The Council takes the position that, with respect to norm violations perpetrated within a company's own operations, the threshold for what can be accepted must be lower than when a company contributes to norm violations perpetrated by a third party.

In its assessment of the risk of further human rights violations, the Council attaches importance to how a company has responded when norm violations have been uncovered, and what it has done to prevent their reoccurrence.

### *Scope of the Council's investigations and its assessment*

This recommendation is based largely on reports deriving from inspections of working conditions at Hansae Vietnam's factories in the period October 2015 to October 2016, conducted by US organisations the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC).

Numerous violations of statutory health and safety provisions were uncovered at Hansae Vietnam, including overwork leading to workers fainting at their sewing machines, restrictions on employees use of toilet facilities, as well as harassment, deficient fire safety precautions, forced overtime, illegal restrictions on sick leave, unfair dismissal, discrimination and a lack of freedom of association. These violations of ethical norms took place at several of Hansae Vietnam's factories, and also seem to be occurring at Hansae's subsidiary, Costec, in Myanmar.

Not all the violations can be characterised as human rights abuses and are not individually serious – but they are substantial in scope. They demonstrate that national laws are not being complied with, that measures are not implemented and that management makes little effort to verify and follow up that requirements relating to working conditions at the factories are met. The FLA found 81 violations of its guidelines, and has ordered Hansae Vietnam to implement around 250 measures via a "corrective action plan". According to the FLA report, Hansae Vietnam has already carried out many measures, with more scheduled for implementation in 2017.

Violation of labour rights at Hansae's operations has been pointed out over many years. Both individual customers and the Better Work Program regularly inspect the factories. For example, in several of its annual reports, Better Work has pointed out the lack of fire safety precautions and the lack of freedom of association. These conditions were nevertheless still observed by the WRC in 2016. The Council on Ethics concludes that, up to now, the company has not had a system in place to prevent, uncover and remedy violations of workers' rights.

The Council has communicated with Hansae on several occasions in the past year, and has also met with the company. Hansae Vietnam is in the process of remedying many of the norm violations uncovered during the inspections in 2016. Following its meeting with the Council on Ethics in September, Hansae has disclosed that it has put in place new management at Hansae Vietnam. The company has engaged a US law firm with experience in the field of human rights to evaluate the company's policies and initiatives, and to propose improvements to management systems and the implementation of best practices. The Council is also aware that Hansae has hired third-party expertise to help the company improve the dialogue between employees and factory management, and to provide training for Hansae Vietnam's management staff.

The Council on Ethics has noted that the company is now endeavouring to improve working conditions at Hansae Vietnam. Nevertheless, the Council attaches considerable weight to the fact that labour rights violations at the company have been pointed out for many years, and that Hansae has also previously pledged to correct norm violations in its own operations, without this resulting in lasting improvements. The Council considers that Hansae must create the necessary framework for a permanent improvement in working conditions, not merely at its factories in Vietnam, but in all its production facilities. This requires a significant change in attitudes to labour rights in the Group, as well as a comprehensive system through which the Group communicates that norm violations are unacceptable. It must also take responsibility for identifying risks, uncovering violations, addressing non-conformances and introducing a management system in which non-compliance with statutory provisions and internal guidelines has tangible consequences. It is not enough to respond piecemeal to norm violations at the individual factory only after they have been pointed out, as Hansae has done to date.

Even though Hansae is now prepared to make changes at other subsidiaries and factories as well, it is not clear to the Council how or when this will take place. A change in corporate culture, leadership and organisation in areas that are not solely linked to profit will be demanding and will probably take a long time. In light of the fact that the company's efforts to take a more systematic approach to labour rights seem to be in their infancy, that the scale of the norm violations at several of the company's factories has been extensive and has persisted over a long period, and that the company has not previously proved itself capable of generating lasting improvements in working conditions, the Council on Ethics considers that there is still an unacceptable risk that Hansae will continue to be responsible for systematic violations of labour rights.

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# 1 Introduction

Following a number of serious accidents and reports of poor working conditions in certain countries' textiles industries, the Council on Ethics has started to examine working conditions at textiles factories in countries where violations of labour rights are presumed to be particularly widespread. Hansae is one of the companies that has been scrutinised.

Hansae is a multinational company, with 11 subsidiaries producing textiles and clothing in five countries (Vietnam, Nicaragua, Guatemala, Haiti, Indonesia and Myanmar). Over 90 per cent of its output (around 300 million pieces of garments) are sold in the US market. The company employs more than 36,000 people.<sup>1</sup>

Hansae Yes24 owns 42 per cent of the shares in Hansae, and is the company's largest shareholder. Together with the shareholdings belonging personally to the company's senior executives, Hansae Yes24 has a controlling interest of 53.93 per cent.<sup>2</sup> Both Hansae and Hansae Yes24 are listed on the stock exchange in South Korea.

As at 31 December 2016, the GPFG owned 1.29 per cent of the shares in Hansae (market value USD 11 million) and 1.52 per cent of the shares in Hansae Yes24, (market value USD 5.2 million).

## 1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that HansaeYes24 and its subsidiary Hansae "contribute to or are responsible for serious or systematic human rights violations" as set out in the Guidelines for Observation and Exclusion from the Government Pension Fund Global (ethical guidelines).<sup>3</sup> The Council's assessment builds largely on the result of investigations into working conditions at Hansae's factories in Vietnam.

This case relates to labour and human rights violations at the company's own operations. In several respects, therefore, this assessment differs from recommendations that have resulted from the Council's evaluation of companies' contribution to the violation of ethical norms by third parties. In its capacity as employer, a company has a direct responsibility for its workforce and for preventing the violation of their employees' labour rights.

The GPFG's ethical guidelines state that a company may be excluded as a result of human rights violations that are either serious or systematic. The Council bases its assessment of what constitutes "serious or systematic" violations on internationally recognised conventions and authoritative interpretations thereof. A specific assessment must be made in each individual case to determine whether the human rights violations will qualify as serious or systematic.

Of particular relevance in this case are the labour rights encompassed by articles 23 and 24 of the UN's Universal Declaration of Human Rights, and set out in article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), whose provisions include the right to a fair wage, safe and healthy working conditions, the reasonable limitation of working

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<sup>1</sup> Hansae's homepage: <https://www.hansae.com/en/index.asp>

<sup>2</sup> Bloomberg

<sup>3</sup> Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG), <https://lovdata.no/dokument/INS/forskrift/2014-12-18-1793?q=retningslinjer+++pensjonsfond+++utland>.

hours, periodic holidays with pay and equal opportunities. The Committee on Economic, Social and Cultural Rights (CESCR) has elaborated on how article 7 should be interpreted, and has made it clear that health, safety and the environment are fundamental elements in the right to safe and healthy working conditions.<sup>4</sup> Article 8 of the ICESCR encompasses the right to form trades unions and join the trades union of one's choice, and the right to strike. In addition, the ILO's core conventions lay down minimum standards for several areas of working life, including freedom of association<sup>5</sup> and equal pay.<sup>6</sup> Conventions covering occupational safety and health are also relevant.<sup>7</sup>

Although international human rights conventions bind states not companies, companies can be said to contribute to human rights violations. The Council on Ethics takes no position on the extent to which the state is responsible for any human rights violations that may occur. It is sufficient to establish that the company in question acts in a way that contributes to serious or systematic violation of internationally recognised human rights.<sup>8</sup> This applies irrespective of whether the state in which the violations take place has signed the conventions against which the actions are assessed.

The Council has considered whether conditions at Hansae's own factories must be deemed to constitute *systematic* human rights violations pursuant to the GPFG's guidelines. The Council has previously taken the position that a small number of human rights violations may be sufficient for a company to be excluded from the GPFG if the abuses are of a serious nature. On the other hand, individual violations do not need to be as serious if the abuse is systematic.<sup>9</sup>

To qualify as systematic, the human rights violations must be substantial in scope. This could mean that they are numerous in quantity, that different types of rights are infringed or that abuses take place in many entities within the company. The Council takes the position that "systematic" requires an accumulation of such violations and not merely isolated incidents; in other words that they constitute a pattern of behaviour. In previous recommendations, the Council has attached importance to the existence of a "systematic and planned practice on the part of the company to operate at, or beyond, the boundaries of what are accepted standards for the working environment".<sup>10</sup>

With regard to assessing the risk of new human rights violations occurring in a company's own operations, the Council holds the view that previous norm violations could provide an indication of future patterns of behaviour. The Council attaches importance to how a company has responded when norm violations have been uncovered, and what it has done to prevent their reoccurrence. The UN Guiding Principles on Business and Human Rights articulates an

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<sup>4</sup> The UN Committee on Economic, Social and Cultural Rights (CESCR) is an independent committee of experts, which monitors states' implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>. In April 2016, the committee published "General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)", in which it elaborated in more detail how article 7 should be interpreted, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/087/51/PDF/G1608751.pdf?OpenElement>

<sup>5</sup> ILO Conventions 87 and 98.

<sup>6</sup> ILO Conventions 100 and 111.

<sup>7</sup> Inter alia, ILO Convention 155 on Occupational Safety and Health.

<sup>8</sup> This is discussed in more detail in the Council on Ethics' recommendation to exclude Wal-Mart Stores Inc, section 3.2, 15 November 2005, and the recommendation to exclude Monsanto Co, section 5.1, 20 November 2006.

<sup>9</sup> Council on Ethics recommendation to exclude Total SA, section 3.1

<sup>10</sup> Council on Ethics recommendation to exclude Wal-Mart Stores Inc, p. 21.

expectation that companies will respect human rights, prevent the risk of their abuse and take action to remedy any human rights violations that do occur.<sup>11</sup> The company has a duty to comply with national legislation and norms even when these are not enforced by the authorities. It is expected that a company assess the actual and potential negative impacts that its operations have on those affected by them, and demonstrate that it has strategies and procedures in place that help to prevent human rights violations. Companies must also consider whether the measures implemented are effective, and make whatever changes are necessary to prevent violations happening again. The company must also publish details of what it is doing to prevent human rights violations in its own operations. The Council on Ethics takes the position that it is up to the company concerned to substantiate that it is working adequately to prevent human rights violations.

## 1.2 Sources

This recommendation rests on studies of the working conditions at Hansae Vietnam's factories in the period October 2015 to October 2016 performed by US organisations the Fair Labor Association (FLA)<sup>12</sup> and the Worker Rights Consortium (WRC).<sup>13</sup> Information relating to working conditions at the company's factories in Myanmar is based on information and reports provided by the WRC, among others.

The company has itself contributed a significant amount of information after it received a copy of the Council's draft recommendation. This information includes policies, procedures and measures to prevent violations of workers' rights. A meeting has also been held between representatives of the Council and Hansae Yes24, Hansae and Hansae Vietnam. At Hansae's request, the Council has also communicated with consultants that the company has engaged to help it in the human rights area.

## 2 Working conditions at Hansae's factories

### 2.1 Hansae Vietnam

More than half of Hansae's textiles production takes place in Vietnam, where the company has three garment production facilities and one textile finishing plant. Established in 2001, Hansae Vietnam Co. Ltd. (Hansae Vietnam) is the company's oldest production unit in Vietnam, and with a workforce of 10,000 it is also the largest.<sup>14</sup> The facility comprises 12 separate factories, each with its own management, and is located in the Cu Chi Industrial Zone in Ho Chi Minh City.

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<sup>11</sup> UN Guiding Principles on Business and Human Rights:

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>12</sup> Fair Labor Association is a collaboration between universities, voluntary organisations and brands to improve working conditions at textiles factories, among others, see <http://www.fairlabor.org/>.

<sup>13</sup> Worker Rights Consortium is an independent organisation that investigates working conditions at textiles factories worldwide, see <http://www.workersrights.org/>.

<sup>14</sup> Hansae Fashion Worldwide, "Overseas Facilities: Vietnam," <https://www.hansae.com/ko/overseas/vietnam.asp>.

Vietnam's Labor Code of 2012 and associated statutory regulations,<sup>15</sup> including the Labor Hygiene Standards of 2012,<sup>16</sup> regulate working conditions and labour rights in accordance with international conventions. The law contains detailed provisions on an employer's obligations with respect to its workforce, including those relating to occupational health, safety and environment (HSE).

The International Labour Organisation (ILO) and the International Finance Corporation (IFC) have established *Better Work* programmes which, through measures such as inspections and training, are intended to improve working conditions and competitiveness in the textiles industry.<sup>17</sup> Hansae Vietnam has been evaluated by Better Work since 2009.<sup>18</sup>

Furthermore, Hansae's customers also inspect working conditions at the factories which produce textiles for them. According to information provided by Hansae, 26 such inspections were carried out at Hansae Vietnam in 2015, without any serious non-conformances with the customers' ethical guidelines being identified.<sup>19</sup>

#### *Investigations performed by the Worker Rights Consortium and the Fair Labor Association*

The FLA and WRC investigate working conditions following complaints submitted by third parties. In both cases, the complaints against Hansae came from universities in the USA. The WRC launched its investigation into Hansae Vietnam in October 2015, during a period of strike action at the factory which is supposed to have been motivated by working conditions. At that time, the WRC was not given access to the factory, but carried out interviews with employees outside the factory premises. The investigation's findings indicated many violations of workers' rights. The report was published in May 2016.<sup>20</sup> In parallel with this, early in 2016, the FLA started investigating the reasons for the strikes at the factory. The FLA's investigation was based on interviews with factory managers and workers, both on site and off site, and a review of documents. The report was published in June 2016 and concluded that the strikes were due partly to misunderstandings and poor communication between workers and line managers/executives, and partly to working conditions at the factory, including extremely high production quotas, the lack of effective complaints procedures and inadequate fire safety precautions.<sup>21</sup> The findings of the two investigations largely concurred.

In July 2016, the FLA inspected the entire facility to assess working conditions against the organisation's own guidelines.<sup>22</sup> The FLA and the WRC then performed a further joint inspection in October 2016. The WRC interviewed 41 current and former Hansae employees both off site and on site, and performed a thorough occupational health and safety (OHS) inspection of the factories with the help of technical experts. The FLA examined the extent to which the company had made improvements following the inspection in July. Both reports

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<sup>15</sup> Labor Code of June 18, 2012, Law 10-2012-QH13 ("Labor Code"), for the English translation, see <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

<sup>16</sup> Ministry of Health, Labour Hygiene Standards (Oct. 10, 2012).

<sup>17</sup> More information about the programmes can be found at <http://betterwork.org>.

<sup>18</sup> Hansae's letter to the Council on Ethics, 5 August 2016.

<sup>19</sup> See footnote 18.

<sup>20</sup> Worker Rights Consortium Assessment of Hansae Vietnam Co., Ltd May 6, 2016, <http://workersrights.org/Reports/WRC%20Assessment%20re%20Hansae%20Vietnam%205.6.2016.pdf>

<sup>21</sup> Global Standards, *Independent Investigation at Hansae Vietnam for FLA*, 9 May 2016, <http://www.fairlabor.org/report/hansae-vietnam>.

<sup>22</sup> FLA *Code of Conduct*, <http://www.fairlabor.org/our-work/labor-standards>.



were published in December 2016, and covered the findings from May to October.<sup>23</sup> The reports substantiate each other and document widespread violations of national labour legislation, international norms and the FLA and the US universities' own code of conduct, with which Hansae has pledged to abide under the terms of its contracts with buyers.

The investigations into working conditions at Hansae Vietnam uncovered violations of statutory OHS provisions, including high temperatures in the premises, overwork leading to workers fainting at their sewing machines, harassment, forced overtime, illegal restrictions on sick leave, unfair dismissal, discrimination, inadequate complaints procedures, a lack of freedom of association, restrictions on employees' use of toilet facilities and certain line managers' illegal demands for kickbacks from job seekers in return for employment.

The FLA found 81 violations of its code of conduct. Not all the violations can be characterised as human rights abuses. However, they demonstrate that national laws are not being complied with, that measures are not implemented and that management makes little effort to verify and follow up that requirements relating to working conditions at its factories are actually met. All in all, the company has been ordered to implement around 250 measures through a corrective action plan. According to the FLA report, Hansae Vietnam has already carried out many measures, with more scheduled for implementation in 2017.

### **2.1.1 Occupational health and safety**

The right to a safe and healthy working environment is laid down in international norms and Vietnamese law, and clearly spelled out by the CESCR:

“Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health”.<sup>24</sup>

The committee also states that freedom from harassment is part of a safe and healthy working environment.

#### *High production quotas, exhaustion and fainting*

In the investigations undertaken in May 2016, workers spoke about unreasonably high production quotas, a lack of breaks and high temperatures in the factory premises.<sup>25</sup> Employees at eight factories testified that workers often fainted in the workplace. In some of the buildings, this was a daily occurrence in the hot season. In one of the factory buildings, workers brought their own fans to keep cool. More than half of the workers interviewed reported having either fainted themselves or seen others do so, or said that it was general knowledge that workers fainted during the working day. Employees linked the fainting episodes to a combination of factors, including:

- Overtime working due to unreasonably high production quotas based on what the most proficient workers can manage under optimal conditions, including overtime. The

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<sup>23</sup> Worker Rights Consortium *Factory Assessment Hansae Vietnam Co., Ltd. Vietnam) Findings, Recommendations, Status Update* December 6, 2016, <http://www.workersrights.org/freports/WRC%20Assessment%20re%20Hansae%20Vietnam%2012.6.16.pdf> and Fair Labor Association *Independent External Assessment Report* 5 July 2016, <http://portal.fairlabor.org/fla/go.asp?u=/pub/zTr5&tm=5&Rid=1854&Fdn=13&Fna=AA0000002066%5F2016%2Epdf>.

<sup>24</sup> CESCR *General comment No. 23 (2016) on the right to just and favourable conditions of work*, section 1.

<sup>25</sup> WRC Assessment Report p. 9.

company's practice has also been to increase production targets even further for employees who do meet their quotas.

- A lack of rest breaks. Many employees reported working through their lunch breaks and beverage breaks to avoid losing work time. Some managers have also restricted the employees' bathroom breaks or prevented them from using the toilet facilities other than at times determined by management.
- Harassment and disciplinary measures against employees who work too slowly.
- High temperatures in several of the factory buildings.

### *Harassment*

Workplace harassment is prohibited under Vietnamese law.<sup>26</sup> Nor is it legal to unfairly terminate a worker's employment contract, e.g. on the grounds of a dispute with management or failure to meet production quotas.<sup>27</sup>

Workers at Hansae reported widespread harassment from supervisory staff at the factory. Verbal abuse is particularly common, though there have also been reports of individual instances of physical violence against employees. Both the FLA and the WRC write about a worker in one of the factories who was first physically abused by a supervisor and then fired illegally. The factory subsequently attempted to cover this up by means of fabricated salary payments.<sup>28</sup> Workers report that line managers shout insults at them when they visit the toilet, when they work too slowly or make a mistake, when they ask for time off or refuse to work overtime. Workers are also threatened with dismissal if they fail to meet their production quotas or obey their supervisors.

### *High temperatures in the factory buildings*

The authorities in Vietnam require that, in the hot season, the indoor temperature does not exceed 34 degrees Celsius for light work, 32 degrees for normal work and 30 degrees for heavy work.<sup>29</sup> Better Work has set 32 degrees Celsius as the maximum temperature in the textiles industry.<sup>30</sup>

The inspection undertaken in October, a cool month, measured an average temperature in the seven factory buildings of 30-35 degrees Celsius, with four exceeding 32 degrees. The inspection also showed that the cooling systems installed in some of the buildings had little effect. The FLA report states that "The temperature is too high during the summer months to work in the factories that do not have a ventilation system (Factories 5, 6, 8, 9, 10, 12, and Mini)".

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<sup>26</sup> Labor Code, Article 8.

<sup>27</sup> FLA Assessment Report, Finding no. 13.

<sup>28</sup> FLA Assessment Report Finding no. 15: "The foreign manager took the fabric bag that the worker was sewing and shouted at the worker for not reaching the quota. The worker then took the bag back to resume work and the factory manager grabbed a metal stick in an attempt to assault the worker, at which point the other workers, the line supervisor, and the production manager intervened. The worker was asked to sign a letter of resignation citing a personal reason. The worker was terminated immediately and compensated for not being given advance notice of termination. The payroll and time records provided to assessors showed that this worker's ID card was swiped in and out for 45 days following termination (the required advance notice period for termination according to the worker's indefinite term contract) and that the worker continued to receive monthly payments after termination. There was no reprimand or any other disciplinary actions taken against the manager involved in the incident." See also the WRC Assessment Report, p. 76.

<sup>29</sup> Ministry of Health, *Labor Hygiene Standards* (Oct. 10, 2012)

<sup>30</sup> Better Work, *Guide to Vietnamese Labor Law for the Garment Industry 2016*, section 9.7, [http://betterwork.org/vietnam/wp-content/uploads/BWV\\_LLG-update\\_English\\_280316.pdf](http://betterwork.org/vietnam/wp-content/uploads/BWV_LLG-update_English_280316.pdf) .

The company has shared its own temperature measurements with the Council. The measurements apply to four buildings and date from June 2016, which is normally a hot month. The results show that none of the measuring points exceeded 34 degrees Celsius. Since neither the outdoor temperature nor the method of measurement has been disclosed, it is not possible to assess these results.<sup>31</sup> The WRC concludes that “temperature levels in many of Hansae’s facilities, during a large part of the year, even with evaporative cooling systems will violate the relevant legal maximum and, as a result, contribute to incidents of physical collapse among Hansae workers”.<sup>32</sup>

#### *Other violations of HSE requirements*

In total, the October inspection at Hansae Vietnam uncovered 41 regulatory infractions.<sup>33</sup>

The inspections uncovered a large number of infractions relating to fire safety, including locked exit doors, blocked corridors, missing fire extinguishers, poor handling of flammable chemicals, inadequately signposted escape routes and inadequate evacuation plans. According to management at one of the factories, the prevention of pilfering was as important as the employees’ safety, and locked doors were necessary to prevent workers from leaving the building without permission. Poor fire safety standards have been pointed out repeatedly in Better Work’s inspections – most recently in 2015.

It was also pointed out that the company does not investigate the causes of work-related accidents and illnesses. A review of 10 randomly chosen work-related accidents between November 2015 and August 2016, where workers were transferred to hospital for treatment, after being given first-aid at the factory infirmary, showed that the conclusion in each case was that it had been caused by errors or carelessness on the part of the worker. The injuries included electrocution resulting in a fall and head injuries, broken fingers and cuts. In connection with these accidents, no evaluation of the equipment or work routines was performed. The corrective response was worker retraining and frequent reminders that employees must work safely. All the post-accident investigations were carried out by managers and supervisors at the factory concerned.<sup>34</sup>

According to the FLA, Hansae Vietnam’s HSE policy dates from January 2016, but the company lacks procedures for how it should be followed up in-house. No one at management level is specifically responsible for HSE at the individual factory, although there are two HSE employees at head office.<sup>35</sup> However, these individuals do not engage in practical HSE supervision at the factories.

“They do not participate in periodic walk-around safety inspections of the 12 manufacturing plants – these are conducted by members of Hansae’s compliance department who lack any safety and health training. They also do not investigate accidents or illness incidents, nor do they measure employees’ exposure to airborne contaminants, such as the chemical solvents used in the cleaning/spot-removing rooms. The safety staff also do not interact with other company personnel whose duties also relate to health and safety, such as the staff of the factory’s health clinic or Hansae’s

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<sup>31</sup> Hansae’s letter to the Council on Ethics, 5 August 2016.

<sup>32</sup> WRC Assessment Report, pp. 18-19.

<sup>33</sup> WRC Assessment Report, Appendix 1.

<sup>34</sup> FLA Assessment Report, Finding no. 30 and WRC Assessment Report, Appendix 1.

<sup>35</sup> According to the company, Hansae Vietnam has an OHS department comprising two full-time employees at its head office, as well as 23 people working partly with OHS issues at the company’s 12 factories. According to the investigations conducted in 2016, those working partly with OHS issues are responsible primarily for production management at the factories not OHS, see the WRC Assessment Report p. 43.

compliance department. They are not members and do not participate in meetings of the facility's 27-member health and safety committee."<sup>36</sup>

The FLA assesses the company's HSE efforts thus:

"There is an overall lack of monitoring and governance of the Health, Safety & Environment System. The factory [Hansae Vietnam] lacks the manpower and resources to properly monitor the implementation of the Health, Safety & Environment policies and procedures."

It also says: "The factory has not properly conducted a risk assessment to identify the risks and hazards in the factory and establish the necessary Health & Safety policies and procedures."<sup>37</sup>

### 2.1.2 Forced overtime

Entitlement to rest, leisure time and a reasonable limit on working hours is laid down in article 7(d) of the International Covenant on Economic, Social and Cultural Rights. This is further set out in a number of ILO conventions,<sup>38</sup> including ILO Convention 1, which establishes the principle of an eight-hour working day and a 48-hour working week as the maximum total working hours. Working hours are similarly regulated in Vietnamese labour law. However, this caps permitted overtime at 300 hours per year, 30 hours per month and 12 hours per week.<sup>39</sup> Pursuant to Vietnam's labour law, all overtime must be voluntary.

Hansae has admitted that many of its employees have previously worked more than 300 hours' overtime per year. This is also stated in Better Work's reports. Some workers claimed that the company has tried to circumvent the statutory ceiling by asking workers to clock out at the normal time but continue to work for a further two hours. Workers are supposed to have received cash payments for these hours, which were not recorded. It is uncertain how widespread this practice is.<sup>40</sup> The company itself asserts that it carefully monitors the use of overtime and complies with the statutory requirements.

Hansae Vietnam's voluntary overtime policy dates from May 2016. In the opinion of the FLA, however, there is no congruence between the policy and the factories' actual practice, because workers must sign a consent form stating that they have voluntarily chosen to work overtime. Any employee not wishing to work overtime must explain why and obtain a supervisor's permission.<sup>41</sup> A request to avoid working overtime is often met with verbal abuse on the part of management.<sup>42</sup> Unauthorised refusal to work overtime leads to a written warning and, in some cases, dismissal.

According to the investigations carried out, unregistered and unpaid working has been common. Until recently, it was required that employees were present 15 minutes before the start of the working day. This practice had been going on for several years. Over the course of a year, the unregistered time accumulates to approx. 1.5 weeks' unpaid work.<sup>43</sup> At six of the

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<sup>36</sup> WRC Assessment Report, Appendix 1.

<sup>37</sup> FLA Assessment Report, Finding no 121, Root Causes no. 104, no. 106.

<sup>38</sup> A total of 22 ILO conventions, 18 recommendations and one protocol have been adopted with respect to working hours. This includes ILO Convention 1 (Hours of Work (Industry)), Convention 14 (Weekly Rest (Industry)) and Convention 132 (Holidays with Pay).

<sup>39</sup> Labor Code, Article 69, Decree 109/2002/NĐ-CP, Article 1 (C) 3 Circular 15/2003/TTBLĐTBXH, § II (1.2)

<sup>40</sup> WRC Assessment Report, p. 55.

<sup>41</sup> FLA Assessment Report Finding no.11.

<sup>42</sup> WRC Assessment Report p. 53.

<sup>43</sup> WRC Assessment Report p. 59.

factories, employees worked through their lunch and dinner breaks to meet their production quotas, without this being recorded or compensated.<sup>44</sup>

The FLA maintains that the company lacks mechanisms to monitor and manage how the overtime requirements are implemented.<sup>45</sup>

### **2.1.3 Wage deductions for lawful sick leave**

Vietnamese law entitles employees to take sick leave if they have a doctor's certificate.<sup>46</sup> Employees interviewed in May 2016 claimed that the company made it difficult for them to take the sick leave to which they were entitled. Sometimes, managers simply refused to grant them sick leave at all; sometimes, managers overrode the doctor's certificate and granted only some of the days that they were supposed to take off sick.

According to the employees interviewed, the entire monthly attendance bonus (VND 250,000 (USD 11.22)) would be withdrawn in the event of one or more days of lawful sickness absence. This corresponds to two days' wages, and was perceived by workers to be punishment for being off sick.<sup>47</sup>

### **2.1.4 Unfair dismissal**

Vietnam's labour law does not permit unfair dismissal, and employers are entitled to fire workers only if they have breached the terms of their employment contract.<sup>48</sup>

At Hansae, it has been usual for managers who wish to get rid of an employee, for whatever reason, to ask the person to leave voluntarily rather than justify their termination of employment. Documents also show that, in some cases, the company has forged an employee's timesheets to give the impression that they have left voluntarily and that they have worked out their notice, while – in fact – the person was fired with immediate effect.<sup>49</sup>

The review also indicated that managers did this when there were insufficient grounds for termination in accordance with the company's own regulations or the employee's employment contract, for example when an employee brought their own needles to work, was in conflict with a manager or did not meet their production quota.<sup>50</sup>

### **2.1.5 Discrimination**

The UN Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights contain explicit provisions (in articles 2 and 3) prohibiting discrimination on the grounds of gender, birth or status, etc. The ban on discrimination against women is set out in further detail in the UN's Convention on the Elimination of All Forms of Discrimination against Women. ILO Convention 100 on equal pay for men and women

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<sup>44</sup> Factory 2, Factory 5, Factory 6, Factory Mini, Factory 11 and Factory 12.

<sup>45</sup> FLA Assessment Report, Finding no.11 Root Causes no. 56 -57

<sup>46</sup> Law on Social Insurance of November 20, 2014, Law 58/2014/QH13 ("Law on Social Insurance"), Article 25 (1), for the English translation, see <http://vietnamlawenglish.blogspot.com/2014/11/vietnam-social-insurance-law-2014.html>

<sup>47</sup> WRC Assessment Report p. 49.

<sup>48</sup> Labor Code, Article 38.

<sup>49</sup> WRC Assessment Report p. 75.

<sup>50</sup> FLA Assessment Report Finding no. 13.

establishes the same principle. Under Vietnamese law, it is prohibited to terminate a woman's employment on the grounds of pregnancy.<sup>51</sup>

According to the workers at Hansae, it has been common practice not to renew the contracts of women workers when they become pregnant. This applies in particular to workers on short-term contracts. At the same time, this seems to have been practised slightly differently at the various factory buildings.<sup>52</sup> In the FLA's assessment, this practice is the result of company management's lack of interest in promoting an equal-opportunities working environment.<sup>53</sup>

### **2.1.6 Complaints procedures**

Access to effective complaints procedures is one of the cornerstones of the UN's guidelines for responsible business practice. Employees must be able to raise issues relating to working conditions, so that measures may be implemented to remedy any harm or abuse that has occurred.

Hansae Vietnam has a scheme whereby employees can submit complaints by means of, among other things, suggestion boxes that are located in the factories. According to the FLA, employees have no faith that they will not be met with reprisals if they complain, since complaints cannot be submitted anonymously. They must include the complainant's name and ID number. Furthermore, the suggestion boxes are located in the production premises, in full view of everyone. The FLA points out that no one at the company is responsible for the complaints procedure or for dealing with complaints.

### **2.1.7 Freedom of association**

Freedom of association is laid down in the International Covenant on Economic, Social and Cultural Rights, in addition to ILO Convention 87 on Freedom of Association and Protection of the Right to Organise (one of the ILO's core conventions) and in the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

According to Vietnamese law, all trades unions in the country must be affiliated to the *Vietnam General Confederation of Labour (VGCL)*, which sorts under the Communist Party of Vietnam.<sup>54</sup> Free and independent trades unions are therefore not permitted. Nevertheless, the law does not preclude employees from nominating and electing trades union representatives.

At Hansae Vietnam, two managers in the HR department were the leader and the deputy leader of the union. Other managers at the factory also held positions in the union, and made up over half of the union's executive board. The rest of the board comprised employees in the HR department and other head office staff.<sup>55</sup> The FLA writes: "There is no proof that the workers voted democratically on the Labor Union representative nominees or subsequently the Labor Union representatives."<sup>56</sup>

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<sup>51</sup> Labor Code Article 155 (3).

<sup>52</sup> In factories no. 5, 8, 9, 11 and 12, employees described cases where women's employment contracts were not renewed if they became pregnant during their first two years of employment. See FLA Assessment Report Finding no. 4.

<sup>53</sup> FLA Assessment Report Finding no. 13, Root causes no. 2

<sup>54</sup> VGCL, *Statutes of the Vietnamese Trade Unions* (5 November 2008), [http://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=94503&p\\_country=VNM&p\\_count=532](http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94503&p_country=VNM&p_count=532)

<sup>55</sup> WRC Assessment Report, p. 67.

<sup>56</sup> FLA Assessment Report Finding no. 14, point 53.

Hansae Vietnam has been a member of and been inspected by Better Work since 2009. Management's encroachment on trades union activity at the company has been pointed out in every single report from 2009 to 2015.<sup>57</sup>

## 2.2 Hansae in Myanmar – Costec International

Hansae owns two production companies in Myanmar: Myanmar Ayeyarwaddy MFG Co, Ltd and Costec International Co, Ltd (Costec), which Hansae purchased in 2013 and 2014 respectively. The companies produce textiles and clothing, and employ 900 and 700 employees respectively.

In June and July 2016, the WRC undertook interviews with a small selection of current and former Costec employees.<sup>58</sup> The survey indicates violations of labour rights and national legislation relating to freedom of association, working hours, wages, harassment and OHS.

In January and February 2015, before the introduction of the minimum wage in Myanmar, employees at several textiles factories, including Costec, went on strike in support of higher pay. The strike at Costec lasted a month. Government authorities and employers cracked down hard on the striking workers,<sup>59</sup> and many, including 14 Costec employees, were arrested and sentenced to prison. When the dispute ended, those who had gone on strike were refused further work at the factory. This applied to 158 people, who have still not been readmitted to the workforce. The case was heard at various levels of the judicial system in Myanmar, and Costec's right to blacklist the workers was eventually upheld.<sup>60</sup>

In Myanmar, the law caps the number of working hours at 10 hours per day (including breaks) and 60 hours per week. According to the workers, in the past year, the normal working day has lasted 12.5 hours, corresponding to a 75-hour week. The company is said to have reduced the workers' lunch breaks from 40 minutes to 30 minutes. It was claimed that many workers have had further cut their breaks to 20 minutes in order to meet their high production quotas. In the course of the past year, the company is said to have introduced a 20-minute break after the ordinary shift and before the start of overtime. At the same time, according to the same interviewees, the company has demanded that those workers who make use of the break must work 20 minutes longer after their ordinary working hours. The workers said that they are not compensated for overtime in their breaks.

According to the workers interviewed, forced overtime is, in practice, imposed at the factory. Any exemption from overtime must be applied for, and requires the signature of five specific managers and head office staff. In practice, this is extremely difficult to obtain.

The country's labour law entitles workers to six days' paid welfare leave per year. Costec employees who make use of this entitlement report that their wages are docked for the period in which they are away from work. In connection with sick leave, the company also seems to

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<sup>57</sup> Better Work *Compliance Assessment Reports* and Hansae 2009, 2011-2015.

<sup>58</sup> WRC *Assessment Costec International CO Ltd (Hansae Co Ltd) Myanmar/Burma, Information from Worker Interviews*. April 2017.

<sup>59</sup> See, for example, The Irrawaddy "Police Arrest Protesting Garment Workers", 4 March 2015, <http://www.irrawaddy.com/news/burma/police-arrest-protesting-garment-workers.html>

<sup>60</sup> The reason for this was that the workers had not returned to work within the specified deadline. According to the workers, the deadline could not be met because they were either in prison, afraid of reprisals or had not been told about the deadline. See footnote 58 and Hansae's letter to the Council on Ethics dated 20 February 2017.

require that any medical certificate be issued by a state-run hospital, and does not accept medical certificates issued by a doctor in general practice. If true, this would be illegal.

At Costec, too, workers report being verbally abused and insulted, as well as physically assaulted.<sup>61</sup> The company is said to have installed CCTV surveillance cameras near the toilet facilities, which require a special key card to access (the factory has 2-3 key cards for 100 employees). Visits to the toilet without a key card are punished by the loss of a half-day's pay. Workers also report a periodic lack of clean drinking water and high temperatures in the factory. The premises are said to be without ventilation/cooling equipment.

### **3 Information from the company**

#### **3.1 The Council on Ethics' contacts with the company**

The Council contacted Hansae for the first time in June 2015 to request information about working conditions at the company's factories in Vietnam. Hansae did not reply to this request, nor did Hansae wish to grant access for an inspection of the factories in Vietnam.

Hansae responded to a draft recommendation that the Council sent to the company in June 2016. The draft was based on investigations carried out in May of that year. The subsequent FLA and WRC investigations from July and October 2016 had not yet been published. The draft recommendation addressed largely the same issues as this recommendation, although certain of the conditions, including those relating to OHS, were not as well documented. Since then, the Council has been in contact with the company up to and including February 2017. The company has provided details of Hansae Vietnam's policies, initiatives and activities relating to working conditions at the factories, and has shared Better Work's inspection reports from 2009 and 2011-2015.

In September 2016, the Council also held a meeting with Hansae in Oslo, Norway, at which management systems and procedures, among other topics, were discussed.

Only later did the Council receive information on working conditions at Costec in Myanmar. This information was sent to Hansae in January 2017, and the company has commented on it, as described below.

#### **3.2 The company's efforts to improve working conditions**

In its reply to the draft recommendation, Hansae writes that it has focused on promoting human rights in the workplace since the company was established. The company has therefore implemented many measures to uphold and improve the workers' rights and welfare.

Hansae has its own guidelines which, according to the company, comply with buyers' requirements and national legislation. Among other things, they include a ban on discrimination and forced labour, and address wages and working hours, the working environment (including a ban on any form of harassment) and freedom of association. Both the inspection reports from the FLA and WRC, and Hansae's communications with the Council describe the measures Hansae Vietnam will implement to improve working conditions.

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<sup>61</sup> Employees said that, in a fit of rage, one of the Korean senior executives at the factory had thrown packets of shirts at employees.



### *High production quotas, exhaustion and fainting*

With respect to fainting, the company writes: “The company can state with confidence that fainting is not a regular occurrence at any of its factories in Vietnam... In order to guarantee a safe and healthy working environment, the Company has continuously maintained internal standards that were higher than what was mandated by law.” And furthermore: “We are indeed aware of cases where employees have fainted while working in the factory. However, based on experience and health examinations conducted on such individuals, fainting may be due to several reasons (at least, not solely attributable to inhumane working conditions).”<sup>62</sup>

The company has an infirmary with medical staff, where patient visits are recorded. At its meeting with the Council, Hansae confirmed that fainting episodes are not recorded as a separate category in the log. The company therefore has no overview of how many people have fainted during working hours.<sup>63</sup> One of the measures being taken after the inspection is that the company will now ensure correct registration. According to employees interviewed, those who faint are allowed around half an hour’s rest at the infirmary before they must return to work. The Council raised this with Hansae, which stated that it was voluntary for the individual to return to work, and that the workers themselves generally wished to do so.

At its meeting with the Council, the company disclosed that it plans to revise the system for calculating production quotas, which will not be based on the use of overtime and will take account of rest periods. Such a system will be piloted at one of the factory buildings in 2017 and implemented in the other buildings in 2018. Hansae has disclosed that the company has reduced its production quotas following the investigations in May. However, according to workers who were interviewed in October, this seems to vary between the factory buildings. Some workers reported that the quotas have actually been reduced, that breaks are kept and that there is less harassment. Quotas applicable to others are unchanged, while some have even reported that they have been told that their quotas will be increased. In general, it seems as though the number of fainting episodes has fallen. It is not certain whether this is due to the measures taken by the company or to cooler weather.

### *Harassment*

In 2016, Hansae collaborated with Better Work with respect to training and communication in the workplace, and has held meetings with managers at the factories to ensure that internal guidelines are followed up. According to the WRC, it seems as though the level of harassment has been reduced since the inspections in 2016. The company has made it clear that such behaviour, including the verbal abuse of employees, is not accepted. Moreover, the company has said that it will provide better training for supervisory staff and improve complaints procedures.

### *High temperatures*

In connection with the inspections, Hansae Vietnam has said that it will install cooling systems at all its factory buildings that do not have air conditioning, and will also consider other opportunities to reduce the indoor temperature.

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<sup>62</sup> Letter to the Council on Ethics, 20 February 2017.

<sup>63</sup> In July 2016, two employees who had fainted at factories 5 and 11 were admitted to the clinic. The incident was recorded in the handwritten log of workers who had visited the clinic. However, the fainting episodes were not recorded in the clinic’s list of illnesses and injuries for that month. Instead, they were logged under the categories “low blood sugar” and “digestive problems”. WRC Assessment Report p. 20.

### *Fire safety*

With respect to fire safety, the company says: “Along with the welfare of its employees, the Company considers the safety of its employees a top priority.” Following the inspections in July and October 2016, Hansae has improved certain conditions and says that it will continue to improve fire safety standards.<sup>64</sup>

### *Forced overtime*

The company confirms that employees must give written consent to working overtime. According to Hansae, the company has never forced anyone to work overtime, and expressed surprise at the survey’s findings. Hansae has changed its practice, such that employees no longer need to justify why they do not wish to work overtime. The work no longer takes place during breaks (the machines are powered down during the lunch break), and all working hours are recorded and compensated.

However, according to the WRC, the company has not compensated workers for unpaid and unrecorded work performed over a long period.<sup>65</sup>

### *Wage deductions for lawful sickness absence*

With respect to sick leave, the company states that this is regulated by its internal guidelines, which comply with the law in Vietnam. The company is unaware of any cases where employees have lost bonuses as a result of sick leave. “The Company believes that this practice most likely occurred in only isolated instances [ ] and is not a widespread practice amongst all of the factories.” The inspection in October shows that these conditions have improved. Nevertheless, it remains difficult for employees to get sick leave approved because the doctor’s certificate must be handed in on the morning of the same day that the period of sick leave commences.

### *Unfair dismissal*

Hansae has responded that the company has changed its procedures such that all disciplinary cases are now evaluated in meetings between the manager, union, witnesses and the employee concerned.

### *Discrimination*

Hansae permits no discrimination and, according to the company’s policy, aims to: “create an equal and favorable work environment in which all employees in the Company are treated respectfully and are ensured legitimate rights.” Hansae claims that the reason pregnant workers did not have their contracts renewed was that they were not considered skilled enough. The company says that many pregnant women have had their contracts renewed, and that it plans to implement better training and communication with employees to make it clear that discrimination is not accepted.

### *Freedom of association*

According to the WRC, the leader of the trades union has now moved to a new position as an HR consultant, while the deputy leader has resigned from his position in the union. The company has accepted that incumbents of management positions should not stand for election to union office.

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<sup>64</sup> WRC Assessment Report, pp. 22-27.

<sup>65</sup> WRC *Update on Remediation of Labor Rights at Hansae Vietnam (Nike)* 10 April 2017, <http://www.workersrights.org/university/memo/041017.html>

It is not clear to the Council whether this has actually been implemented. As far as the Council is aware, the election of the trades union leader in the spring of 2017 was carried out by secret ballot. However, there was only one name on the ballot paper, which the employees could vote yes or no to. This person was the former leader of the union and not nominated by the employees.

#### *Costec, Myanmar*

With respect to working conditions at Costec, Hansae repeats that it is “*committed to operating in accordance with applicable legal requirements and the standards of our customers. In addition, the Hansae Code of Conduct states that our factories should ‘respect the human dignity of the employees’ and ‘provide the utmost working environment’ in a manner that is compliant with all ‘rules, regulations, and standards related to working conditions’.*” The company also writes that, in response to the Council’s queries, it has looked into working conditions at the factory with the help of an external law firm from South Korea, which has reviewed documents at the factory and interviewed factory management, among other things. Hansae admits that in some areas, such as forced overtime and a lack of breaks, working conditions at the factory were not up to standard. Since 20 February this year, the company has altered its procedures to avoid forced overtime and will also change the length of the breaks to a minimum of 30 minutes in order to comply with regulatory requirements.

With respect to the strike, the company takes the position that it had no legal obligation to readmit the 158 workers. In this connection, the Council notes that at the meeting in September, Hansae said that the company had been in conflict with trades union representatives, but that the conflict had resolved itself when they voluntarily handed in their notice.

In all other respects, the company maintains that it acts within the law, and that its own investigations have not revealed problems corresponding to those described in the interviews with employees and reported in Section 2.2.

### **3.3 The company’s efforts to reduce the risk of norm violations**

At its meeting with the Council on Ethics, Hansae described the procedures and routines it has established to ensure that working conditions at its factories comply with internal guidelines. The company has a Compliance department at head office, as well as regional teams. The department deals with buyers and works to document and follow up inspections through corrective action plans. Among other things, the regional teams carry out self-audits and assist the factory with the correction of non-conformances and training. Hansae stated that it performs monthly self-audits, the results of which are evaluated and improvements measured. Hansae also described the method it uses to reduce the number of non-compliances (assessment tool for recurrence prevention). In short, this involves identifying the problem, observing current practice, comparing current practice with applicable standards and implementing changes. Furthermore, factory management is engaged in an evaluation process that involves training, subsequent assessment of practice, development of action plans and measurement of progress.

Following the meeting in September, Hansae has disclosed that it has installed new management at Hansae Vietnam. The company has also engaged a local firm of consultants to undertake quarterly inspections of the factory. Furthermore, the company has hired a US law firm with experience in the human rights area to evaluate the company’s policies and measures, and propose improvements to management systems and the implementation of best practices. The project is primarily aimed at Hansae Vietnam, but Hansae writes that the

company will in future also work with the law firm to address working conditions at its other factories.

The Council received a copy of the consultants' report in March 2017. Its assessment is based on the working conditions and norm violations that were uncovered by the FLA and WRC's investigations in 2016. Among other things, it examines the extent to which Hansae's management systems are capable of limiting or preventing similar norm violations in the future. The consultants make recommendations on what Hansae Vietnam and Hansae should do to ensure that working conditions at the factories comply with national legislation, buyers' requirements and internationally recognised labour rights standards. The report points to the importance of a corporate culture that is based not only on compliance with buyers' requirements, but where managers at all levels of the organisation are motivated to respect workers' rights. Furthermore, the report underlines the importance of having an overarching human rights policy, of performing risk assessments as a foundation for preventing norm violations and the systematic implementation of the company's policies at the factories themselves.

The Council is also aware that Hansae has recently hired in expertise to help the company improve the dialogue between employees and factory managers, and to provide training for management personnel at Hansae Vietnam.

#### **4 The Council on Ethics' assessment**

The Council on Ethics has considered whether there is an unacceptable risk that Hansae Yes24 and Hansae contribute to or are themselves responsible for systematic violations of internationally recognised human rights and labour rights norms in connection with their production of textiles and clothing. The Council's scrutiny has been directed principally at Hansae's textiles factory in Vietnam.

Hansae is the direct owner of the factories in Vietnam. The holding company Hansae Yes24 is, along with members of company management, the controlling owner of Hansae. This was confirmed at a meeting with the Council. The Council upholds its practice from previous recommendations and takes the position that if a subsidiary is excluded on the grounds that the GPF's ethical guidelines have been contravened, the parent company must also be excluded if it has a decisive influence over the subsidiary's operations.

In other cases involving violation of the human rights criterion, the Council has considered companies' *contribution* to norm violations perpetrated by third parties. The starting point for this case is that Hansae, as the employer, is itself responsible for any norm violations that occur at its factories. The Council takes the position that, with respect to norm violations perpetrated within a company's own operations, the threshold for what can be accepted must be lower than when a company contributes to norm violations perpetrated by a third party.

The norm violations at Hansae Vietnam's factories are well documented through investigations carried out in 2015 and 2016. The violations of labour rights are not individually serious, but they are extensive. The Council finds it substantiated that the working environment at the company's factories has been harmful to workers' health. Overwork, driven by unreasonably high production quotas, a lack of rest, high temperatures and harassment from supervisors seem to have been a widespread problem at Hansae Vietnam. Although fainting has not been uncommon at the factories, the company has neither recorded the incidents nor investigated their cause. The Council has also noted violations of fire safety provisions, that legitimate periods of sick leave have been penalised by loss of

wages or cut short by management dictate, and that the company has – in practice – forced employees to work overtime. Frequent and repeated threats of dismissal if production quotas are not met, restrictions on bathroom breaks, verbal abuse and other harassment which certain managers at the factory have practised, are all clear violations of the right to safe and healthy working conditions. The Council notes that the violations also seem to contravene national labour laws, whose purpose is precisely to ensure good working conditions at the textiles factories.

Other norm violations relate to discrimination and restrictions on freedom of association. Workers have been fired or have not had their contracts renewed due to pregnancy. Even though freedom of association is limited in Vietnam, Hansae curtails it even further by having the union run by managers and administrative personnel. The right to form a trades union and to organise is considered a precondition for improving working conditions, conducting collective bargaining negotiations and for preventing the violation of other labour rights.

Violations of labour rights at Hansae have been pointed out over many years. As far back as the early 2000s, violations of labour rights at a subsidiary in Saipan were cited in a lawsuit filed in a US court. “Workers are typically required to meet a high quota or may not be paid for the full hours worked in a day. Workers may be forced to work overtime to meet that quota. [ ] Employees have also been required to provide "volunteer time" to the factory. Hansae is a contractor with defendants Dayton, J.C. Penney, Sears, GAP and Limited.”<sup>66</sup>

Following a comprehensive assessment, the Council finds it well documented that the company’s practices in many areas contravene internationally recognised labour rights and national legislation. Norm violations have been numerous in quantity, different types of rights have been infringed, and the violations seem to have continued over a long period of time. It also seems as though the norm violations are taking place at several of the company’s entities – in many of Hansae Vietnam’s factories and at Costec in Myanmar. In the Council’s opinion, this constitutes a pattern of behaviour indicating that the norm violations are systematic.

The Council attaches importance to the fact that Hansae previously seems, only to a limited extent, to have implemented measures leading to lasting improvements in working conditions at its factories. Despite the fact that Hansae has regularly been inspected by customers and Better Work, corresponding to an average of one inspection every second week in 2015, numerous norm violations are still being found at the company. For example, in several of its annual reports, Better Work has pointed out inadequate fire safety and restrictions on freedom of association. These same issues were nevertheless still observed by the WRC in 2016.

The Council has noted that the company has painted a groundlessly positive picture of working conditions by, for example, giving the impression that workers have themselves chosen to work overtime or given their notice voluntarily, while in reality they have been unfairly dismissed.

The company claims that it performs regular internal controls and assessments to prevent repeated norm violations, but has apparently failed to discover that neither statutory regulations nor its own guidelines are being complied with. Nor has the company established any system for following up workplace injuries or other work-related incidents, and has therefore a limited potential to learn from them. The Council concludes that the company has

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<sup>66</sup> Lawsuit filed by trades unions and human rights organisations against US fashion brands that buy clothing from, among others, Hansae, see <http://www.globallabourrights.org/reports/html-file/abstract-48.html#V.A.>, paragraph 54.

so far had no system to prevent, uncover or remedy violations of labour rights within its operations.

Following the investigations in 2016, Hansae has installed new management at Hansae Vietnam and has given notice of a number of measures to remedy the human rights violations that the WRC and FLA have uncovered. Hansae has also made minor changes at Costec. However, the Council on Ethics takes into account that Hansae also previously has pledged to implement directives resulting from inspections without this having led to lasting improvements. The Council also attaches importance to the fact that some conditions do not seem to have been remedied, such as compensation for unpaid overtime. Furthermore, the changes that the company has implemented with respect to the election of trades union representatives make very little difference in practice. As long as there does not seem to be any real dialogue between workers and management, the Council cannot be confident that the measures Hansae has announced will have any lasting effect. This also applies to the company's factory in Myanmar.

The Council considers that systematic human rights violations in a company's own operations do not occur by accident, but are often a consequence of the way the company organises its business. Almost without exception, it seems as though the purpose of the many different violations and restrictions on workers' statutory rights is to cut operating costs. In previous recommendations, the Council has attached importance to the existence of a "systematic and planned practice on the part of the company to operate at, or beyond, the boundaries of what are accepted standards for the working environment".<sup>67</sup> The norm violations found at Hansae are of such a scale and such a nature as to appear to the Council to constitute a planned practice.

The Council on Ethics takes the position that in areas where there is a high risk of human rights violations, companies must work systematically to prevent such abuses, as outlined in the UN Guiding Principles on Business and Human Rights. The Council considers that Hansae must create the preconditions for a permanent improvement in working conditions, not just in Vietnam, but in all the company's factories. This requires a significant change in attitudes to workers' rights within the Group, and a comprehensive system through which the Group communicates that norm violations are unacceptable. It must also take responsibility for identifying risks, uncovering violations, addressing non-conformances and introducing a management system in which non-compliance with statutory provisions and internal guidelines has consequences. It is not sufficient to respond piecemeal and reactively to norm violations at the individual factory as and when they are pointed out, as Hansae has done to date.

Hansae has 11 subsidiaries, 12 factories and 36,000 employees in countries where the risk of human rights violations is known to be high. In the Council on Ethics' dialogue with Hansae's consultant on human rights, it was implied that Hansae is now prepared to make changes that will also have an impact in other factories belonging to the company. However, the Council gained no clear picture of how or when this will happen.

The Council has received no information indicating that the company has pledged to implement a wide-ranging, long-term process which could lead to a system capable of preventing human rights violations within the company. A change in corporate culture, leadership and organisation in areas that are not solely linked to profit will be demanding and will probably take a long time. In light of the fact that the company's efforts to take a more systematic approach to labour rights seem to be in their infancy, that the norm violations at

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<sup>67</sup> The Council on Ethics' recommendation to exclude WalMart Stores Inc.

several of the company’s factories have been extensive and have gone on for a long time, and that the company has not previously proved itself capable of generating lasting improvements in working conditions, the Council on Ethics considers that there is still an unacceptable risk that Hansae will continue to be responsible for systematic violations of labour rights.

## 5 Recommendation

The Council on Ethics recommends that Hansae Yes24 Holdings Co Ltd and its subsidiary Hansae Co Ltd be excluded from the GPFG due to the unacceptable risk that the companies are responsible for systematic human rights violations.

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Johan H. Andresen Chair (sign.)	Hans Chr. Bugge (sign.)	Cecilie Hellestveit (sign.)	Arthur Sletteberg (sign.)	Guro Slettemark (sign.)
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