

**To Norges Bank**

5 June 2018

**Recommendation to exclude Texwinca Holdings Ltd from the Government Pension Fund Global (GPF)**

## Summary

The Council on Ethics recommends that Texwinca Holdings Ltd be excluded from investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is responsible for systematic human rights violations.

Texwinca is a Chinese company that produces yarn, knitted fabrics and garments, and has its own retail division in China. Texwinca owns 50 per cent of the shares in Megawell Industrial Ltd (Megawell), making it that company's largest shareholder. Megawell owns the garment factories Hugo Knit and Kollan in Vietnam as wholly owned subsidiaries. Texwinca states that it does not have a controlling influence over Megawell and that the company's strategy is to remain a passive shareholder.

The Council on Ethics has assessed the risk that Texwinca contributes to or is itself responsible for systematic violations of internationally recognised human rights and labour rights. The company's corporate ownership structure has led the Council to conclude that norm violations at Kollan and Hugo Knit constitute norm violations in Texwinca's own operations. The Council's assessment rests on investigations into working conditions at Megawell's factories in Vietnam.

To qualify as systematic, the human rights violations must be substantial in scope, ie 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. 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 future 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.

The Council's investigations point to a working environment at Kollan and Hugo Knit that may be harmful to employees' health. Employees at both factories have reported substantial overtime, high production quotas, high indoor temperatures and widespread harassment and abuse by supervisory staff, which, at Kollan, is said to have contributed to employees fainting at their posts. Employees also report violations of fire safety regulations and restrictions on bathroom breaks, and say that legitimate sick leave is penalised through wage deductions and that the company, in practice, forces people to work overtime. Other norm violations relate to discrimination, in that female workers do not have their contracts renewed if they become pregnant, and restrictions on freedom of association, since management representatives run the trade unions at the factories. The Council finds it substantiated that the company's practices in many areas contravene both internationally recognised labour rights and national legislation.

The Council attaches importance to the fact that Texwinca has not helped to clarify this matter. The company has provided limited information about its relationship with Megawell, has not allowed the factory to be inspected and has failed to make any comment on draft recommendations to exclude the company from the GPF. Texwinca argues that conditions at the factories of which it is the principal shareholder are none of its business. The Council therefore has access to less information in this case than in other similar cases it has assessed.

The information deficit also relates to the scale of norm violations and what the company is doing to prevent them. In accordance with the wording of Report No. 20 (2008–2009) to the Norwegian Storting (parliament), the Council on Ethics has concluded that a lack of information on the company's conduct and, not least, a lack of willingness on the part of the company to provide information may, in and of itself, add to the risk of contributing to unethical behaviour being deemed unacceptably high.

Texwinca has had the same position as Megawell's major shareholder for more than 20 years and presents Megawell as part of its corporate structure. Texwinca's dominant shareholding, combined with the fact that several individuals have been members of the boards and managements of both companies for many years, causes the Council to presume that Texwinca's management is aware of and has accepted the working conditions at Megawell's factories in Vietnam. Neither Texwinca nor Megawell have disclosed what the companies are doing to improve those working conditions, nor have they indicated any commitment to preventing labour rights violations at the factories in Vietnam. When Texwinca claims that it has no influence over manufacturing operations in Vietnam, and Megawell does not publish any information about its business, it is natural for the Council to draw the conclusion that neither Texwinca nor Megawell are taking any responsibility for the prevention of human rights violations at the factories in Vietnam. The Council on Ethics considers that when a company in this way disclaims responsibility for preventing norm violation and fails to provide information about conditions or its own initiatives in its operations, the risk of systematic labour rights violations becomes unacceptably high.

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# 1 Introduction

After numerous serious accidents and reports of poor working conditions in certain countries' textiles industries, the Council on Ethics began a series of investigations into working conditions at textiles factories in countries where the incidence of labour rights violations is presumed to be particularly large. Texwinca Holdings Ltd (Texwinca)<sup>1</sup> is one of the companies that has been investigated.

Texwinca produces yarn, knitted fabrics and garments, and has its own retail division in China. Texwinca has around 15,000 employees in China and produces for fashion brands in the USA, Europe and Asia.<sup>2</sup> Texwinca has a 50 per cent stake in Megawell Industrial Ltd (Megawell), making it the company's largest shareholder. Megawell owns garment factories in Vietnam (Hugo Knit and Kollan Vietnam) and China. Hugo Knit and Kollan are wholly owned subsidiaries of Megawell.<sup>3</sup>

Texwinca is listed on the Hong Kong Stock Exchange. At the close of 2017, the GPF Global owned 1.01 per cent of the company's shares, with a market value of just over NOK 63 million.

## 1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that Texwinca may "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>4</sup> The Council's assessment builds largely on the result of investigations into working conditions at Megawell's factories in Vietnam.

The Council bases its assessment of what constitutes serious or systematic violations on internationally recognised conventions and authoritative interpretations thereof. 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 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>5</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,

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<sup>1</sup> Issuer Id: 116568

<sup>2</sup> Texwinca Holdings Ltd. "Group History," <http://www.texwinca.com/hist.asp>

<sup>3</sup> Texwinca Holdings Ltd. "Group Structure" <http://www.texwinca.com/struct.asp>.

<sup>4</sup> Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF Global), <https://lovdata.no/dokument/INS/forskrift/2014-12-18-1793?q=retningslinjer+++pensjonsfond+++utland>.

<sup>5</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>

including freedom of association<sup>6</sup> and equal pay.<sup>7</sup> Conventions covering occupational safety and health are also relevant.<sup>8</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>9</sup> This applies irrespective of whether the state in which the violations take place has signed the conventions against which the actions are assessed.

When assessing the violation of human and labour rights in a company's own operations, the Council takes the position that employers have a direct responsibility for their workforce and for preventing the infringement of their employees' labour rights. In this case, Texwinca's ownership structure has led the Council to consider the norm violations to be norm violations at the company's own operations. The Council has considered whether conditions at Texwinca's 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>10</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>11</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 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>12</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

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<sup>6</sup> ILO Conventions 87 and 98.

<sup>7</sup> ILO Conventions 100 and 111.

<sup>8</sup> *Inter alia*, ILO Convention 155 on Occupational Safety and Health.

<sup>9</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, see [www.etikkradet.no](http://www.etikkradet.no)

<sup>10</sup> Council on Ethics recommendation to exclude Total SA, section 3.1

<sup>11</sup> Council on Ethics recommendation to exclude Wal-Mart Stores Inc, p. 21.

<sup>12</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)

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.

Furthermore, any assessment of future risk may be affected by the availability of information on the company's conduct. In Report (white paper) No. 20 (2008–2009) to the Norwegian Storting (parliament), the Ministry of Finance underlines that “a lack of information may affect any assessment of the extent to which there is an unacceptable risk of complicity.<sup>13</sup> If it is, in reality, not possible to obtain sufficient information to assess the risk of norm violations, this could, given the circumstances, be perceived in and of itself as taking an unacceptable risk.” In cases where there are clear indications that a company is responsible for or contributes to serious or systematic human rights violations, the Council on Ethics will, in compliance with this report to the Storting, consider that inadequate information about a company's conduct could contribute to the risk of complicity in unethical conduct being deemed unacceptably high. A lack of willingness on the part of the company to provide information will be a material factor in any such assessment.

## 1.2 Sources

The Council on Ethics has looked at two of Megawell's factories in Vietnam. Hugo Knit was investigated in the spring of 2016 and Kollan in the summer of 2017. The investigations were carried out with the help of consultants and are based on interviews with factory employees outside their place of work.

Texwinca declined the Council's request for permission to inspect Hugo Knit in November 2015. Texwinca has declined to comment on two draft recommendations issued by the Council and the company has failed to provide any information about working conditions at the factories in Vietnam.

## 2 Texwinca and Megawell in brief

Texwinca's founder, chairman and now executive director bought Megawell in 1989.<sup>14</sup> In 1997, a wholly owned subsidiary of Texwinca bought 50 per cent of the shares in Megawell. Two people own shareholdings in Megawell of 25 per cent each.<sup>15</sup>

Texwinca's chairman is also a director of Megawell, a position he has held since 1989.<sup>16</sup> He describes himself as: “supreme authority in and ultimate control of the companies and the Texwinca Group”.<sup>17</sup> Other members of his family, including his brother, have been members of Texwinca's executive management and board of directors<sup>18</sup> while also being directors at

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<sup>13</sup> Report (white paper) No. 20 (2008-2009) to the Storting On management of the Government Pension Fund Global (GPF) in 2008.

<sup>14</sup> Texwinca's founder and chairman was also the company's CEO until 2013. After 2013, he became an *executive director*.

<sup>15</sup> Email from Texwinca to the Council on Ethics, 1.11.2015 and *Li Tin Sang V. Poon Bun Chak, Poon Kit Ho and Perfection Inc in the High Court of Hong Kong*, <https://www.hongkongcaselaw.com/li-tin-sang-v-poon-bun-chak-and-others-2/>.

<sup>16</sup> Megawell's report to the companies register in Hong Kong 1989-2017, <https://www.cr.gov.hk/en/home/index.htm>.

<sup>17</sup> *Li Tin Sang V. Poon Bun Chak, Poon Kit Ho and Perfection Inc in the High Court of Hong Kong*, para 56.

<sup>18</sup> Texwinca's annual reports 1998-2017.

Megawell.<sup>19</sup> One of his sons, who has been a director at Megawell since 2015,<sup>20</sup> was also appointed Executive Director and made a member of Texwinca's board in 2017.<sup>21</sup>

Texwinca's 1998 annual report describes Megawell as "the Group's garment manufacturing operations".<sup>22</sup> Subsequent annual reports describe Megawell as a "material associate and strategic partner".<sup>23</sup> Texwinca's shareholding has remained unchanged since 1997. According to an overview of Texwinca's corporate structure published on its website, Megawell is included as a unit within the group.<sup>24</sup> Texwinca is both Megawell's most important customer and most important supplier.<sup>25</sup>

### 3 Investigations into working conditions at Kollan and Hugo Knit

The garment factories Kollan and Hugo Knit are both located in the Linh Trung Export Processing Zone, in the Thu Duc district on the outskirts of Ho Chi Minh City. In October 2015, Kollan had around 2,000 employees, while Hugo Knit had a workforce of 1,350.<sup>26</sup>

Vietnam's Labour Code from 2012 and associated statutory instruments,<sup>27</sup> including the Labour Hygiene Standards from 2012)<sup>28</sup> regulate working conditions and labour rights in accordance with international covenants and conventions. The law contains detailed provisions relating to employers' obligations to their workers, including those covering occupational health, safety and the environment (HSE).

#### 3.1 Involuntary overtime

The right to rest, leisure time and a reasonable limit to working hours is set out in the International Covenant on Economic, Social and Cultural Rights (Article 7d). This is further defined in a number of ILO conventions,<sup>29</sup> including convention no. 1, which sets out the principle of an eight-hour working day and a 48-hour working week as the maximum permitted working time. Working hours are similarly regulated in Vietnam's Labour Code, though this caps permitted overtime at 300 hours per year, 30 hours per month and 12 hours per week.<sup>30</sup> Under Vietnam's Labour Code, all overtime must be voluntary.<sup>31</sup>

Employees at Kollan reported that they normally worked a 60-hour week, of which 12 hours was overtime. Over the course of a month, this adds up to 48 hours; and over a year to more

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<sup>19</sup> See footnote 16.

<sup>20</sup> See footnote 16.

<sup>21</sup> Texwinca Holdings Ltd, Appointment of Executive Director 29.9.2017. Announcement to the Hong Kong Stock Exchange.

<sup>22</sup> Texwinca Annual Report 1998, <http://www.irasia.com/listco/hk/texwinca/annual/index.htm>

<sup>23</sup> Texwinca Annual Report 2017, [http://www.irasia.com/listco/hk/texwinca/annual/ar177798-e00321\\_ar\\_0705\\_0340.pdf](http://www.irasia.com/listco/hk/texwinca/annual/ar177798-e00321_ar_0705_0340.pdf)

<sup>24</sup> Texwinca Group Structure, <http://www.texwinca.com/struct.asp>

<sup>25</sup> Factset: Texwinca Holdings Ltd

<sup>26</sup> Social Insurance Bureau, Social Insurance payment summary for Kollan and Hugo Knit. Newer figures have not been made available to the Council on Ethics.

<sup>27</sup> Labour Code of June 18, 2012, Law 10-2012-QH13 ("Labour Code"), for the English translation, see <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

<sup>28</sup> Ministry of Health, Labour Hygiene Standards (Oct. 10, 2012).

<sup>29</sup> A total of 22 ILO conventions have been adopted, 18 recommendations and a protocol on working hours. These include ILO conventions no. 1 on working hours, no. 14 on a weekly day of rest and no. 132 on paid holidays.

<sup>30</sup> Labour Code, Article 69, Decree 109/2002/NĐ-CP, Article 1 (C) 3 Circular 15/2003/TTBLĐTBXH, § II (1.2)

<sup>31</sup> Labour Code, Article 106 re Overtime work (2).

than 500 hours of overtime. The employees' payslips showed that some employees had worked 55 hours overtime during a month. At Hugo Knit, too, employers reported a lot of overtime, saying that they normally worked 13.5 hours of overtime per week. Over the course of a month this adds up to 65 hours, corresponding to 775 hours of overtime per year. The use of overtime at both factories is higher than permitted.

Employees at both factories said it could be difficult to refuse to work overtime. Kollan employees said they had to get permission from a supervisor to avoid overtime. While some said it was easy to avoid, others said they were pressured into working overtime. Employees also said that the factory had no system for recording whether overtime was voluntary. At Hugo Knit, employees said that they risked being shouted at if they refused to work overtime, and that factory management had demanded they sign a statement declaring that they had chosen to work overtime voluntarily.

Employees at both factories said that they were often pressured into working through part of their meal breaks if it was necessary to meet production quotas. No overtime supplement was paid for this work, as employees are entitled to receive under Vietnam's Labour Code.<sup>32</sup>

### **3.2 No wage increases, wage deductions and restrictions on sick leave**

Under Vietnamese law, employers must establish a pay scale, rising in increments of at least 5 per cent from one pay grade to the next.<sup>33</sup>

According to employees at Kollan, they do receive wage increases from time to time, for example in connection with changes in their employment contracts. The last wage increase was less than 0.5 per cent (the equivalent of USD 0.9 per month). Payslips showed that employees who had worked at the factory for many years were paid only a marginally higher rate than the new recruits who were interviewed.

Employees at both Kollan and Hugo Knit reported wage deductions if they took sick leave. According to workers at Kollan, the company docked the entire month's housing, food, and position allowance, corresponding to USD 22.50) if an employee took more than two days' sick leave, even if they had a doctor's medical certificate. This constitutes legitimate sickness absence which, by law, the company has a duty to accept.<sup>34</sup>

Similarly, employees at Hugo Knit said that up to half of their attendance bonus was docked if they took one day of lawful sick leave (corresponding to USD 2), and that the entire bonus was docked for two days' sickness absence (USD 4.5). If an employee took any further sick leave, the rent and food allowance (approx. USD 27.50) was also docked, even if the employee had a doctor's medical certificate.

Employees are entitled to paid sick leave through the country's social security system.<sup>35</sup> Vietnam's Labour Code does not permit the use of wage deductions to penalise employees.<sup>36</sup>

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<sup>32</sup> Labour Code, Article 97 (1a).

<sup>33</sup> Decree 49/2013/ND-CP, Article, available at <http://staffing.vn/en/r600/Decree-492013ND-CP--on-wages-of-labor-code.html>.

<sup>34</sup> Law on Social Insurance, Article 25, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99775/126463/F-1921723198/VNM99775%20Eng.pdf>

<sup>35</sup> Law on Social Insurance, Article 25.

<sup>36</sup> Labour Code, Article 128.

### 3.3 Occupational health and safety

The right to a safe and healthy working environment is laid down in international norms and further defined by the Committee on Economic, Social and Cultural Rights (CESCR) thus: “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>37</sup> The committee also says that freedom from harassment is part of a safe and healthy working environment.

#### *Harassment*

Harassment, including public humiliation and the punishment of employees, is forbidden under Vietnamese law.<sup>38</sup>

Workers at both factories reported widespread verbal abuse, such as telling off, swearing and insults from supervisors. This happened particularly when employees did not meet their production targets, asked not to work overtime or returned from sick leave or holiday.

Employees at Kollan also reported that some managers punished employees returning to work after lawful absence by demanding that they stand in front of the production line for an hour. They also said that if anyone argued with their supervisors, they would be punished – either by being given other tasks which would make it difficult for them to meet their production targets or, in extreme cases, by being pressured into quitting their jobs.

#### *Fire safety*

Both the Kollan and Hugo Knit factories are two-storey buildings. Kollan employees said that the only way down from the first floor to the ground floor is via an open staircase at either end of the building. In the event of a fire on the ground floor, there is a danger that the stairwells will fill with smoke, making them unusable for evacuation purposes. According to the workers, there are no other emergency exits.

At Hugo Knit, each floor has two exit doors. Employees said that one of the exit doors on the first floor was kept locked during working hours. In the event of a fire, this could mean that employees have no escape route from the first floor.

Vietnam’s Labour Code contains many provisions relating to fire safety, including access to safe emergency exits.<sup>39</sup> Several of the workers who had been at Hugo Knit since 2012 reported that no fire drills were held at the factory. The law requires fire drills to be held at least once a year.<sup>40</sup>

#### *Fainting and high indoor temperatures*

The Vietnamese authorities require that the indoor temperature not exceed 34C for light work, 32C for normal work and 30C for heavy work during the hot season.<sup>41</sup> Better Work has set 32C as the maximum indoor temperature in the textiles industry.<sup>42</sup>

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<sup>37</sup> CESCR General Comment No. 23 (2016) on the right to just and favourable conditions of work, section 1.

<sup>38</sup> Labour Code, Article 8 (2).

<sup>39</sup> Better Work Vietnam 2017: *Guide to Vietnamese Labour Law for the Garment Industry*, Section 9.11.5, available at [https://betterwork.org/dev/wp-content/uploads/2017/04/BWV\\_LLG-update\\_English\\_March-2017.pdf](https://betterwork.org/dev/wp-content/uploads/2017/04/BWV_LLG-update_English_March-2017.pdf)

<sup>40</sup> Better Work Vietnam 2017: *Guide to Vietnamese Labour Law for the Garment Industry*, Section 9.11.1.

<sup>41</sup> Ministry of Health, *Labour Hygiene Standards* (Oct. 10, 2012)

<sup>42</sup> Better Work, *Guide to Vietnamese Labour 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) .

Workers at Kollan reported high temperatures inside the building. Since measured data is unavailable, it is not possible to state exactly how hot it is inside the premises. Several employees said that they had seen co-workers faint while at their posts. High temperatures are considered a contributory factor to fainting in textiles factories.

Employees at Hugo Knit also reported high temperatures inside the factory. They explained that the factory does have a cooling system, but that it is turned on for only one hour a day because factory management believes the increased humidity it causes damages the products.

#### *Inadequate protective equipment*

Vietnam's Labour Code requires employers to ensure that those employees who work in an environment hazardous to their health are provided with adequate protective equipment.<sup>43</sup>

Employees at Kollan described a dusty working environment, with a lot of noise. Nevertheless, they were not given dust masks or ear plugs. At Hugo Knit, employees are given dust masks and earplugs, but these are not replaced often enough. As a result, staff buy their own masks to reduce the amount of dust they inhale. Earplugs are replaced every other month, which is too infrequently to provide adequate protection.<sup>44</sup>

#### *Restrictions on bathroom breaks*

According to employees at Kollan, the only toilets are on the building's ground floor. For employees working on the first floor, who have further to go to reach the toilets, factory management is said to have put a limit of two bathroom breaks per day in order to reduce the amount of time employees are away from their posts.

Employees at Hugo Knit said that factory management requires them to record in writing the exact time they enter and exit the toilets, and that they receive a written warning if they exceed the allotted time.

### **3.4 Discrimination**

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights contain explicit provisions (in Articles 2 and 3) prohibiting discrimination on the grounds of gender, birth or other status. The ban on discriminating against women is elaborated in further detail in the Convention on the Elimination of All Forms of Discrimination against Women. ILO convention no. 100 on equal pay for men and women also establishes this same principle. Under Vietnamese law, it is not permitted to dismiss a woman from her job because she has become pregnant.<sup>45</sup>

Employees at Kollan said that it was normal practice for the company not to renew the employment contracts of women workers who fell pregnant. This applied particularly to workers on short-term contracts.

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<sup>43</sup> Labour Code, Article 149.

<sup>44</sup> For example, see the U.S. Dept. of Labor, Occupational Safety and Health Administration, Interpretive Letter concerning Employer Obligation to Provide Hearing Protectors, Oct. 2, 2000, [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=25014](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25014).

<sup>45</sup> Labour Code Article 155 (3).

### **3.5 Freedom of association**

The right to freedom of association and the right to organise are laid down in the UN Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the ILO's convention no. 87 on Freedom of Association and Protection of the Right to Organise (one of the ILO's core conventions) and the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

Under Vietnamese law, all trade unions must be affiliated to the Vietnam General Confederation of Labour (VGCL), which is controlled by the country's Communist Party.<sup>46</sup> The formation of free and independent trade unions is therefore not permitted. Nevertheless, the law does not prevent employees from nominating and electing their own trade union representatives.

Employees at both Kollan and Hugo Knit reported that there was a trade union at each of the factories, but that they functioned solely as social welfare organisations which did not represent employees in disputes with factory management.

The trade union leader at Kollan was said to work in the factory management's office. Those interviewed did not know of any other members of the trade union leadership. Nor were they aware of any collective bargaining agreement. Employees also said that there was no functioning complaints mechanism at the factory and that they had no opportunity to submit complaints in the event of any disagreement with a supervisor or if they wished to raise other work-related issues.

Employees at Hugo Knit reported that they could contact the trade union only through their supervisors, who are representatives of factory management. As a result, the workers did not contact the trade union about working conditions for fear of being dismissed. They did not know the identities of the people running the trade union.

## **4 Information provided by the company**

### **4.1 The Council's contacts with Texwinca**

The Council contacted Texwinca for the first time in June 2015 to request information about working conditions at the company's factories in Vietnam. Texwinca replied by referring the Council to the company's annual report and its Environmental, Social and Governance (ESG) Report, which can be found on the company's website. However, Texwinca's operations in Vietnam are not mentioned in the report.

Furthermore, Texwinca did not permit any inspection of Hugo Knit. In October 2016, the company was sent a draft recommendation to exclude it from the GPFG that had been prepared on the basis of the Council's investigations. Texwinca replied that the company did not wish to comment on the recommendation.

To obtain a broader basis for assessing the company, Kollan was investigated in May–July 2017. Texwinca was sent a new draft recommendation to exclude the company in February 2018. Once again, the company said it did not wish to comment on working conditions at the factories.

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<sup>46</sup> VGCL, *Statutes of the Vietnamese Trade Unions* (Nov. 5, 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)

In its communications with the Council on Ethics, Texwinca has commented solely on its corporate structure, but has otherwise provided no information about the matter at hand. According to Texwinca:

“We have no comment on the enclosed draft recommendation. As explained in our previous communication, it is the Group’s strategy to remain as a passive investor in the Megawell business. To allow maximum appropriate authority to the managers of Megawell Group to operate and expand the business, it was agreed that we would impose the minimum intervention in the business of Megawell. Though we hold 50% equity interest in Megawell Group, the other two active investors, acting in concert and collectively own the remaining equity interest, also maintain 50% controlling interest in Megawell Group. Thus, we have no legal right to exercise full control on Megawell.”<sup>47</sup>

## 4.2 Texwinca’s policies at its factories in China

There is no available information about what Texwinca or Megawell is doing to safeguard good working conditions at the factories in Vietnam.

With respect to Texwinca’s factories in China, the company writes:

“Specific to our textile operations, employees are offered a range of allowances and bonuses such as compensation for working in high temperature environments, night shift allowance as well as performance and end of year bonuses.”<sup>48</sup>

With respect to occupational health and safety, the company writes:

“Safety is a core tenet of our operations and embedded into the very fabric of the way in which we do business. The health and safety of our employees as well all those within reach of our operations is of utmost concern to us.”<sup>49</sup>

The company writes that it carries out frequent inspections at its production facilities in China and that employees who perform hazardous work are offered free annual health checks.

With respect to its suppliers, Texwinca states: “Our suppliers are expected to adhere to our high standards, demonstrating continuous development in a variety of operational, economic, social and environmental areas.” And further: “Our responsible departments also closely monitor suppliers at regular intervals to ensure compliance with social and environmental standards.”<sup>50</sup>

## 5 The Council on Ethics’ assessment

The Council on Ethics has assessed whether there is an unacceptable risk that Texwinca is contributing to or is itself responsible for systematic violations of internationally recognised labour rights norms in connection with Megawell’s production of fabrics and garments. Texwinca owns 50 per cent of the shares in Megawell, making it the company’s largest shareholder. The Council has looked into conditions at Megawell’s garment factories in Vietnam.

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<sup>47</sup> Email from Texwinca to the Council on Ethics, 11 April 2018.

<sup>48</sup> Texwinca Holdings Ltd., *Environmental, Social and Governance Report 2017*, [http://www.irasia.com/listco/hk/texwinca/annual/esr182339-e00321\\_esg\\_1006\\_1530.pdf](http://www.irasia.com/listco/hk/texwinca/annual/esr182339-e00321_esg_1006_1530.pdf)

<sup>49</sup> See footnote 48, p 33.

<sup>50</sup> See footnote 48, p 35.

Texwinca has had the same shareholding in Megawell for more than 20 years. Texwinca presents Megawell as part of its corporate structure. Nevertheless, Texwinca asserts that it does not have a controlling influence over Megawell, that the company's strategy is to remain a passive shareholder and that it has been agreed that Texwinca will exert minimal influence over Megawell. The Council does not know which agreements in law have been entered into between the companies, but considers that Texwinca's dominant shareholding, combined with the fact that Texwinca's top managers have held senior positions at Megawell for more than 20 years, indicates that Texwinca does indeed have a significant influence over Megawell.

Because of the company's ownership structure, the Council considers norm violations at Kollan and Hugo Knit to be norm violations in Texwinca's 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.

The Council on Ethics has based its assessment on its own investigations that were carried out in 2016 and 2017. These investigations point to a working environment that may be harmful to the employees' health. Workers at both factories have reported substantial overtime, high production quotas, high indoor temperatures and widespread harassment and abuse by supervisors. At Kollan, this has contributed to employees fainting at their posts. The Council has, moreover, noted employees' statements about violations of the fire safety regulations and restrictions on bathroom breaks, as well as claims that legitimate sick leave is penalised through wage deductions and that the company, in practice, forces employees to work overtime. In the Council's opinion, this constitutes a clear violation of the right to a safe and healthy working environment. The company's practice also seems to contravene national laws whose precise purpose is to ensure good working conditions in factories.

Other norm violations relate to discrimination and interference in the workers' freedom of association. The Council notes employees' reports that female workers do not have their contracts renewed when they fall pregnant. Although freedom of association in general is limited in Vietnam, it appears to the Council that the company imposes further restrictions, in that the unions are run by management representatives. The right to form trade unions and to organise is considered fundamental for the ability to improve working conditions, engage in collective bargaining and prevent other labour rights from being infringed. The Council notes that there does not seem to be any complaints mechanisms at the factories, through which employees can raise issues concerning the violation of labour rights with management.

The Council finds it substantiated that the company's practices in many areas contravene both internationally recognised labour rights and national legislation.

The Council attaches importance to the fact that Texwinca has not contributed to the clarification of matters in this case. The company has provided limited information about its relationship to Megawell, has not permitted the factory to be inspected and has not submitted comments on draft recommendations to exclude the company from the GPFG. Texwinca argues that conditions at factories of which it is the principal shareholder are none of its business. Consequently, the Council has had access to less information in this case than in other similar cases it has assessed. The information deficit applies to the scale of norm violations and what the company is doing to prevent them. In accordance with the wording of Report No. 20 (2008–2009) to the Norwegian Storting, the Council has concluded that a lack of information on the company's conduct and, not least, a lack of willingness on the part of the company to provide information may, in and of itself, add to the risk of contributing to unethical behaviour being deemed unacceptably high.

Texwinca’s dominant shareholding, combined with the fact that several individuals have been members of the boards and managements of both companies for many years, leads the Council to presume that Texwinca’s management is aware of and has accepted the working conditions at Megawell’s factories in Vietnam. Neither Texwinca nor Megawell have publicly disclosed what the companies are doing to improve those working conditions, nor have they indicated any commitment to preventing labour rights violations at the factories in Vietnam. When Texwinca claims that it has no influence over manufacturing operations in Vietnam, and Megawell does not publish any information about its business, it is natural for the Council to draw the conclusion that neither Texwinca nor Megawell are taking any responsibility for the prevention of human rights violations at the factories in Vietnam. The Council on Ethics considers that when a company in this way disclaims responsibility for preventing norm violation and fails to provide information about conditions or its own initiatives at its operations, the risk of systematic labour rights violations becomes unacceptably high.

## 6 Recommendation

The Council on Ethics recommends that Texwinca Holdings Ltd be excluded from investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is responsible for systematic human rights violations.

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Johan H. Andresen Leder (sign.)	Hans Chr. Bugge (sign.)	Cecilie Hellestveit (sign.)	Trude Myklebust (sign.)	Brit K. S. Rugland (sign.)
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