

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

UNOFFICIAL ENGLISH TRANSLATION

To Norges Bank

15 March 2018

Recommendation to exclude Luthai Textile Co Ltd from the Government Pension Fund Global (GPF)

Summary

The Council on Ethics for the Government Pension Fund Global (GPFG) recommends that Luthai Textile Co Ltd (Luthai) be excluded from the GPFG due to the working conditions at the company's textile factories

Luthai is a vertically integrated textiles company that is engaged in the production of cotton, yarn, fabrics and shirts. Luthai has nine production companies in China, Vietnam, Cambodia and Myanmar. Luthai is listed on the Shenzhen Stock Exchange in China.

The Council on Ethics has considered whether there is an unacceptable risk that Luthai contributes to or is itself 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, 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 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.

The Council on Ethics' recommendation is based on its own investigations into working conditions at Luthai's garment factories in Cambodia and Myanmar from 2015 to 2018. The Council considers that labour rights violations have been extensive, particularly at the factory in Myanmar. The conditions reported by the workers include overwork driven by unreasonably high production quotas, a lack of rest breaks, high temperatures in the factory premises, widespread harassment by supervisors, and restrictions on employees' use of toilet facilities and access to drinking water. Employees are threatened with dismissal if they do not work overtime or meet production quotas, and there are unlawful restrictions on and wage deductions for sick leave and holidays.

The use of young people below the age of 18 under the same terms and conditions as adults, extensive use of temporary contracts, which are, in some cases, unlawful and which are used to pressure employees into accepting infringement of their rights and restrictions on their freedom of association, appear to occur at both the factories.

Based on the information to which the Council has had access, the company's practices in many areas contravene both internationally recognised labour rights and national legislation. The number of norm violations is substantial, several different types of rights have been abused, the practices seem to be widespread in several of the company's factories and applied over a period of time. In the Council's opinion, this demonstrates a pattern of behaviour indicating that norm violation is systematic. It also shows a failure to comply with national laws and implement necessary measures, as well as poor control and follow-up on the part of management to ensure that requirements relating to working conditions at the factories are actually fulfilled.

The Council has communicated with Luthai on several occasions between 2015 and 2017. Luthai has commented on draft recommendations and provided some information relating to its policies and procedures for preventing norm violations, among other things. The company has not permitted the factories to be inspected or granted the Council's request for access to inspection reports. Luthai itself denies many of the reported norm violations at its factories. However, the company has chosen not to substantiate its position and has provided little information. The Council on Ethics therefore bases its assessment on its own investigations.

The Council on Ethics gives weight to the fact that, previously, Luthai seems only to a limited extent to have implemented measures resulting in lasting improvements in working conditions. Many of the norm violations that were uncovered in the survey in Cambodia in 2015 were again found in 2016, despite the company's assurances that policies and procedures to prevent norm violations had been implemented. Although Luthai subsequently seems to have implemented improvements at the factory, the Council finds it concerning that a number of norm violations still do not seem to have been corrected. In its communications with the Council, Luthai has pointed out that the factory in Cambodia is certified in accordance with the SA8000 standard, an ethical standard which sets out requirements intended to secure good working conditions for employees, and that the factory therefore complies with requirements intended to ensure good working conditions. However, this can have little significance for the Council's assessment as long as the basis for certification is secret and cannot be verified. The fact that Luthai has elected not to substantiate its replies and follow-up investigations cannot confirm many of the company's claims weakens the Council's confidence that the company's procedures and initiatives will be effective enough to prevent future norm violations.

The Council also notes that the above-mentioned certification applies only to the factory in Cambodia. In the Council's view, the scale of the reported norm violations at the factory in Myanmar confirm that Luthai does not have a system in place that is capable of preventing, uncovering or correcting abuses of labour rights at its operations. The changes that have been made in Cambodia appear to be the result of a fragmented and reactive response to norm violations that have been pointed out to Luthai, rather than the expression of any change in the company's attitude to labour rights. The norm violations at the factory in Myanmar remain ongoing, and there is little to indicate that Luthai is taking effective steps to correct them.

The Council considers that systematic human rights violations within a company's own operations do not occur by accident, but are a consequence of the way the company organises its business. In this case, it appears as though the many different violations of and restrictions on the employees' statutory rights are intended to reduce the entities' operating costs. Executives at Luthai are also managers at its subsidiaries. The parent company is therefore obviously aware of and accepts the working conditions at its own factories. This must be assumed to include widespread failures to comply with the company's own guidelines and national labour laws. In the Council's opinion, this reinforces the impression that rights abuses are not accidental, but are an established and ingrained practice on the part of the company.

Luthai has more than 20,000 employees and operations in countries where the risk of human rights violations and poor working conditions is known to be high. The Council considers that a company with so many employees must be expected to have robust systems in place to safeguard their labour rights, in accordance with the United Nations Guiding Principles on Business and Human Rights. The Council cannot see that Luthai has such systems. The company has shown little desire to change its attitude to labour rights. Combined with the fact that Luthai is unwilling to provide insights into how it runs its business operations, this leads the Council to conclude that there is an unacceptable risk of Luthai being responsible for systematic human rights violations in the future, too. The Council therefore recommends that the company be excluded from investment by the GPF.

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1 Introduction

Following a number of serious accidents and reports of poor working conditions in the textiles industry in certain countries, the Council on Ethics has commissioned a series of investigations into working conditions at textiles factories in countries in which the violation of labour rights is presumed to be particularly common. Luthai Textile Co Ltd (Luthai)¹ is one of the companies to have been examined.

Luthai is a vertically integrated textiles company that is engaged in the production of cotton, yarn, fabrics and shirts. According to the company's 2016 annual report, Luthai has 15 subsidiaries, of which nine are production companies. Five of these are located in China, two in Vietnam and one each in Cambodia and Myanmar. According to Luthai, 80 per cent of the company's products are sold to brands and retailers in more than 30 countries. The company claims to be "the largest high-quality yarn-dyed fabric manufacturer and international top-brand shirt supplier in the world." Due to higher production costs in China, the company plans to continue expanding and exploiting "internationally advantageous resources". The company has a workforce of around 21,000 people.²

Luthai is listed on the Shenzhen Stock Exchange in China. At the close of 2017, the Government Pension Fund Global (GPF) owned 0.57 per cent of the company's shares, with a market value of NOK 47 million.

1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that Luthai 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).³ The Council's assessment builds largely on the result of investigations into working conditions at Luthai's factories in Cambodia and Myanmar.

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.⁴ Article 8 of the ICESCR encompasses the right to form

¹ Issuer Id: 223530 and ISIN no: CNE 000000ST8.

² Luthai Textile: Annual Report 2016, <http://disclosure.szse.cn/finalpage/2017-03-30/1203223460.PDF> and the company's website <http://www.ltc.com.cn/en/>.

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

⁴ 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

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 association⁵ and equal pay.⁶ Conventions covering occupational safety and health are also relevant.⁷

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.⁸ This applies irrespective of whether the state in which the violations take place has signed the conventions against which the actions are assessed.

This case relates to labour and human rights violations at the company's own operations, where Luthai is the employer and therefore has a direct responsibility for its workforce and for ensuring that their labour rights are not infringed. The Council has considered whether conditions at Luthai's own factories must be deemed to constitute *systematic* human rights violations pursuant to the GPF'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 GPF 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.⁹

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".¹⁰

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.¹¹ 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

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>.

⁵ ILO Conventions 87 and 98.

⁶ ILO Conventions 100 and 111.

⁷ Inter alia, ILO Convention 155 on Occupational Safety and Health.

⁸ 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.

⁹ Council on Ethics recommendation to exclude Total SA, section 3.1.

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

¹¹ UN Guiding Principles on Business and Human Rights:
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

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 is based largely on surveys of working conditions at Luthai's factories in Cambodia and Myanmar. The surveys were carried out with the help of consultants and are based on offsite interviews with Luthai factory employees, at locations where they would be safe and able to speak freely. In the Council's experience of this type of interview-based surveys, consistent and detailed statements by many employees provide a realistic picture of working conditions and how the company's procedures and initiatives are implemented within the organisation.

The factory in Cambodia was surveyed in September 2015 and again in June 2016, while the factory in Myanmar was examined in August 2017. Follow-up interviews were also carried out at both factories in December 2017 and January 2018, after Luthai had responded to the final draft of the Council's recommendation.

The company has commented on two draft recommendations to exclude, and has provided, among other things, information on its policies and procedures for the protection of labour rights.¹² The company has not permitted the factories to be inspected, nor has it made available the inspection reports on which its SA8000 certification rests or those prepared under the auspices of the Better Factories scheme.

2 Investigations into Luthai's factories

2.1 Luthai (Myanmar) Co Ltd

Luthai (Myanmar) is located in the Thilawa Special Economic Zone (SEZ), near Yangon.¹³ Luthai's factory went into operation in 2014 and produces shirts.¹⁴ Workers interviewed estimated that the workforce numbers some 900-1,100 employees.

¹² At the Council's request, Luthai has provided information on policies and procedures relating to the employment of underage workers and women, occupational health and safety, fire protection, complaints mechanisms, freedom of association, collective bargaining, etc.

¹³ The establishment of Thilawa, which commenced in 2013, has been frequently reported in the media due to the forced relocation of more than 4,000 inhabitants. Those who have already moved have not received adequate compensation and many are said to have lost their livelihoods. See, for example, Cristina Donateo, "Special Economic Zones and Human Rights Violations in Myanmar," *Heinrich Boll Stiftung* (February 2017), https://mm.boell.org/sites/default/files/uploads/2017/03/sez_and_hr_violations_in_myanmar_final.pdf; and International Commission of Jurists, "Special Economic Zones in Myanmar and the State Duty to Protect Human Rights," (February 2017), <https://www.icj.org/wp-content/uploads/2017/02/Myanmar-SEZ-assessment-Publications-Reports-Thematic-reports-2017-ENG.pdf>.

¹⁴ Luthai Textile: Annual Report 2015, <http://disclosure.szse.cn/finalpage/2016-03-30/1202098355.PDF>.

Working conditions and labour rights are regulated by many different laws and regulations in Myanmar. Provisions cover the minimum wage, working hours, overtime, holiday entitlement, sick leave and the working environment.¹⁵

Furthermore, Luthai's customers inspect the working conditions at the factories that produce garments on their behalf. Each customer's own guidelines for working conditions (codes of conduct) are generally included in the terms of the contract that the factory and the customer enter into.

2.1.1 Employment of young workers

ILO convention no. 182, which prohibits the worst forms of child labour, contains an explicit ban on all forms of harmful child labour and applies to children under the age of 18.¹⁶ In the ILO's recommendations on the application of the convention, long working hours are defined as dangerous work.¹⁷ With respect to the minimum age of employment, the convention recommends "the strict limitation of the hours spent at work in a day, in a week and the prohibition of overtime."¹⁸

In the survey of Luthai (Myanmar), it emerged that Luthai had employed several young workers under the age of 18. These youngsters have the same working hours and overtime conditions as adult employees.

In Myanmar, the minimum age of employment is 14. The law requires those employing youngsters under the age of 18 to meet certain requirements. For example, young workers under the age of 18 must produce a so-called *certificate of fitness* issued by a medical doctor.¹⁹ According to the company's workers, Luthai (Myanmar) does not comply with this requirement.

2.1.2 Forced 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,²⁰ 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.

Under Myanmar law working hours are capped at 10 hours per day (including breaks) and a total of 60 hours per week, of which 12 hours are deemed to be overtime.²¹ After five consecutive hours of work, the employee is entitled to a break of at least 30 minutes.²²

¹⁵ In 2017, the ILO issued a guide to Myanmar law, which also provides a summary of important requirements for businesses, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_577563.pdf

¹⁶ ILO convention no. 182.

¹⁷ ILO Recommendation R 190 Worst Forms of Child labour Recommendation, 1999.

¹⁸ ILO Recommendation R 146 Minimum Age Recommendation, 1973.

¹⁹ The Factories Act of 1951 (Factories Act) s 76.

²⁰ 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.

²¹ Factories Act, ss 62-64.

²² Factories Act, s 63.

Overtime must cease before midnight. Sunday working and overtime must be voluntary.²³ Work in excess of eight hours per day must be compensated at double time.²⁴

According to employees, normal working hours at the factory are a nine-hour day, six days a week. However, in the event of large orders, employees are also required to work on Sundays. Since February 2016, the normal working day has been increased to 10 hours, though workers often work 12-hours a day. This can rise to 14–16 hours a day and can last to midnight in the event of large orders.

On around one day a month, a small number of employees are asked to work until four o'clock in the morning – the equivalent of a 20-hour working day. Even so, they must start work again at noon the same day. The workers said that many work more than 20 hours of overtime a week, corresponding to a working week of 68 hours or more.

Employees have a one-hour break in the middle of the day. The extent to which they can actually take a break depends on whether they can meet the production target that they were allocated earlier in the day. If the quota has not been filled by noon, they are obliged to work through their break to get finished. The workers are not paid extra for this overtime. The workers also explained that they are not given an extra break when they work after 6 pm, as they are entitled to. They told of co-workers who had fainted while at work, and linked this to pressure of work, long working days and a lack of rest.

The workers explained that they cannot refuse to work overtime without being penalised. They said that the daily production target (1,200 garments) is calculated on the basis of a 10-hour working day, making it impossible to meet during normal working hours. Anyone unable to meet their production targets three days in a row is fired. The workers also said that Luthai penalises those who refuse to work overtime by docking their monthly attendance bonus (USD 11.50), even though the worker has not been absent from work. One employee said that if she rejected a request to work on a Sunday, her only weekly day off, the factory management would punish her by also docking the production bonus (USD 0.60 per day) she had earned the day before.

2.1.3 Wage deductions and restrictions on sick leave

Myanmar law entitles workers on sick leave to receive 60 per cent of their salary, up to a maximum of 30 days per year. The employee will receive their sick pay either through the social security system or from their employer if they are not enrolled in the system.²⁵ Employers are not entitled to apply wage deductions in the event of lawful absence,²⁶ nor is it permitted to demand payment from an employee for treatment at the first aid room that the factory is obliged to have.²⁷

According to the workers interviewed, Luthai deducts at least USD 1.50 per month from the employee's wages, purportedly as a contribution to the national social security scheme. However, employees said that they did not receive sick pay from either Luthai or the social security scheme when they were off sick. In addition, they said that the entire monthly attendance bonus is docked in the event of one day or more of sickness absence, even when it has been medically authorised.

²³ Factories Act ss 60 (1) and 62.

²⁴ Factories Act ss 62 and 73.

²⁵ The Social Security Law of 2012 (Social Security Law), s 23 (b).

²⁶ The Payment of Wages Act, 2016 (Payment of Wages Act), s 7.

²⁷ Factories Act. ss 47 and 106.

Workers also told of specific and in some cases self-experienced cases of accidents at work and occupational illnesses where the factory refused to accept sickness absence and ordered the employee to return to work without having received the necessary treatment by a doctor. This has, for example, occurred in cases where employees have fainted on the job . After a short break, they were ordered to resume work.

Workers also said that if they become sick or are injured at work and need treatment, the company will charge them USD 0.70–1.50 for medicines and treatment, which is deducted from their wages.

Follow-up interviews of the employees show that they now receive sick pay, but that the company still punishes sickness absence by docking their attendance bonus.

2.1.4 Wage deductions for holidays

The law grants six days of paid holiday (casual leave) each year, and the employer is not entitled to make deductions in employees' wages in connection with lawful absence from work.²⁸

According to the workers interviewed, Luthai permits its staff to take time off if they give notice in advance. In such cases, however, the employee's entire monthly attendance bonus is docked, even though the leave was approved by management. If a worker is absent from work without having given prior notice, Luthai also deducts around USD 15 from the production bonus that the employee had accrued by meeting their production quota for that month.

2.1.5 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."²⁹ The committee also says that freedom from harassment is part of a safe and healthy working environment.

Under Myanmar law, employers must ensure that they provide a safe and healthy working environment.³⁰

Harassment

Workers at Luthai reported widespread harassment by named supervisory staff at the factory. The workers are shouted at and cursed, and many have experienced physical abuse. Two of the employees interviewed said that they had been kicked by their supervisors. A third said that a supervisor had squeezed her neck, while a fourth told of repeated unpleasant verbal and physical advances by her supervisor.

The workers also said that the names of those employees who have been reprimanded for failure to keep their workstations clean are announced over the factory's loudspeaker system. The company also bans employees from holding hands, even though this is a common practice among friends in Myanmar.

²⁸ Payment of Wages Act, s 7.

²⁹ CESCR General Comment No. 23 (2016) on the right to just and favourable conditions of work, section 1.

³⁰ Factories Act ss 13 – 43.

Restrictions on access to toilet facilities

Employers have a duty to ensure that their workers always have access to toilet facilities.³¹

According to Luthai's workers, the company has a very restrictive policy with regard to the employees' use of the toilets. Before being allowed to use the toilet, the employee must show a "toilet access card". There are three such toilet access cards for each production line comprising 100 workers. Employees said that they could not use the toilet without an access card, and that it was the foreman who held the cards. In practice, toilet visits were limited to once a day.

The workers also said that the factory's management strictly enforced these restrictions. They told of a situation in which the factory's senior management had visited the toilet facilities to check whether the employees had the necessary access cards. Supervisors who had permitted an employee to use the toilet without a key card were shouted at. The workers also said that the toilets themselves had no door locks.

Restrictions on access to drinking water

By law, employers must ensure their workers have free and easy access to drinking water in the workplace.³²

Luthai has set up drinking water stations that are supposed to be available to the employees. However, interviewees said that their use is restricted in that the employee must obtain a "drinking water card" from their supervisor before they can visit the drinking water station.. There is one such card for each production line. Employees are not permitted to bring water into the workplace. According to the workers, when customers visit the factory, management puts out large water bottles around the production premises, which are removed as soon as the visit is concluded.

High temperatures inside the factory

The authorities demand that "*effective and suitable arrangement shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air, and such equable temperatures as will secure workers therein reasonable conditions of comfort and health.*"³³

Employees do not know precisely how hot it is inside the factory, but describe the temperature as uncomfortably high. With the exception of a few fans, Luthai has not installed any cooling or ventilation equipment in the building. Nor does it seem to have installed any thermometers to measure the indoor temperature, as the law requires.³⁴ High temperatures are often a contributory factor in fainting episodes at textiles factories.

2.1.6 Other conditions

The workers interviewed described a number of other censurable conditions at the factory:

Age discrimination

Luthai seems generally not to hire job applicants over the age of 35.

³¹ Factories Act s 21(1) (a).

³² Factories Act ss 20 and 21.

³³ Factories Act s 15.

³⁴ Factories Act s 15 (2).

Employment contracts

Employees are not given copies of the employment contracts that they sign when they are taken on at the factory. The employment contracts are temporary, lasting for one year at a time.

Non-transparent wage calculations

Employees said that their wage slips do not show how their pay is calculated, or which deductions have been made. They simply state the total amount for each month. Copies of wage slips from November 2017 merely show a series of figures without any explanation of what the figures mean or how they have been calculated.

Unreasonable hiring conditions

According to the employees, the company demands that migrant workers live at the company's hostel a 30-minute walk from the factory, as a condition of being offered a job.³⁵ At approx. USD 11.50 per month, the rent for a room shared with nine other people is way over the market price, according to workers. The room rent is deducted from the individual's wages. In follow-up interviews, the workers again confirmed that the factory runs a hostel, that migrant workers are obliged to live there and that the rent is deducted from their wages. The hostel was visited, and it was confirmed that the factory's Chinese supervisors live on one floor, while the production workers live on another.

2.1.7 Freedom of association and the right to organise

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 Myanmar law, companies with more than 30 employees must establish a Workplace Coordinating Committee (WCC) whose representatives are nominated and elected by the employees, unless there is an established trade union at the factory.³⁶ Employees said that Luthai's WCC has six employee representatives, but that these were chosen and nominated by management – not by the workers.

According to employees, the regulations at Luthai make it impossible to engage in trade union activity in the workplace. For example, Luthai bans its employees from speaking together in groups of more than two people while they are at work. Employees said that if more than two people were discovered talking together, the supervisor would take them to factory management who would give them a warning for participating in a group. Furthermore, employees are expressly banned from speaking together at company meetings.

Luthai also seems to engage in extensive surveillance of its employees. According to the workers interviewed, video cameras have been installed all over the factory, and security staff patrol the workers' canteen during the lunch break. Employees feel that they are under constant surveillance. They also stated that loud Chinese music is played in the canteen, which makes it difficult to have a conversation. According to one employee, the noise level is so high that people have to shout to each other to make themselves heard. The workers think

³⁵ Employees explained that only job seekers who, during their interview, said they “chose” to live in the hostel were offered a job.

³⁶ The Settlement of Labour Dispute Law of 2012 (“Settlement of Dispute Law”), s 3.

that Luthai's practice prevents them from socialising with their fellow employees at work. One employee said that working at the factory is like being in a prison.

One employee also told of an incident in which a colleague was fired by the company, supposedly because the individual had submitted a complaint to the authorities about unlawful working conditions at the factory.

2.2 Luthai (Cambodia) Co Ltd

Luthai (Cambodia) Co Ltd is located in Svay Rieng Province, outside the district capital Svay Rieng in southeast Cambodia, near the border with Vietnam.³⁷ The factory went into operation in 2014³⁸ and has 2,000 employees.³⁹

The Cambodian Labour Law of 1997 along with associated regulations, and rulings by the Arbitration Council regulate working conditions and labour rights in accordance with international conventions.⁴⁰

The International Labour Organisation (ILO) and the International Finance Corporation (IFC) have established Better Work programmes (Better Factories in Cambodia) which, through inspections and training, among other measures, are intended to help improve working conditions and competitiveness in the textiles industry.⁴¹ Luthai (Cambodia) participates in the programme, but it is not known when Luthai (Cambodia) was last inspected.

As in Myanmar, customers carry out regular inspections of the working conditions at the factory. Luthai (Cambodia) was first inspected in September 2015, and again in June/July 2016, after the factory was certified in accordance with the SA8000 standard, which is an ethical standard whose requirements also cover employees' working conditions.⁴²

2.2.1 Employment of young workers

In Cambodia, the minimum age of employment is 15. The law requires that employers take precautions when they employ young people between the ages of 15 and 18.⁴³ Among other things, employers must keep a register of young workers employed at the factory,⁴⁴ obtain confirmation from a parent/guardian that their child has permission to work at the factory,⁴⁵ and ensure that young workers do not work overtime.⁴⁶

The survey in 2015 indicated that several children under the age of 15 were employed at the factory. No children under the minimum age were found in 2016, but interviews and

³⁷ Luthai's website, <http://www.lttc.com.cn/en/>.

³⁸ Luthai Textile: Annual Report 2014, <http://www.lttc.com.cn/en/about/news.aspx#about3>.

³⁹ Garment Manufacturers Association Cambodia, <https://www.gmac-cambodia.org/members>.

⁴⁰ The Arbitration Council is an independent national body, which deals with labour disputes that fall within the scope of the Labour Law. The Council has a tripartite structure, with one third of the members are appointed by the government, one third by the trade unions and one third by the industry. The council is considered authoritative in its interpretation and application of Cambodia's Labour Law <http://www.arbitrationcouncil.org/>.

⁴¹ Further details of the programmes can be found at <http://betterfactories.org/>.

⁴² Further details of the standard can be found on Social Accountability International's website, <http://www.sa-intl.org>.

⁴³ Cambodian Labour Law s181 and Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 144, clause 2 (2002).

⁴⁴ Cambodian Labour Law s177.

⁴⁵ See footnote 44, s181.

⁴⁶ Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 144, clause 2 (2002).

observations indicated that many young people under the age of 18 were still working at the factory. The workers who were interviewed confirmed that the company demands identity papers, birth or marriage certificates as documentation of age. The workers also said that if someone could not obtain these documents at the time they were hired, the factory would still let them start work on condition that the papers were obtained later. The workers also said that when external inspectors visited the factory at the start of 2017, the youngest-looking employees were ordered not to come into work.

The workers said that no difference was made between young workers and adult workers with regard to overtime. Young workers have the same working hours as adults, including the requirement to work overtime.

2.2.2 Forced overtime

The Cambodian Labour Law states that all overtime must be voluntary.⁴⁷ Workers have no obligation to justify why they may not want to work overtime.

Employees who were interviewed in 2015 reported that management presumed that people would work overtime. They had to give a reason if they did not want to work overtime, which supervisors often refused to accept. Workers in some job classifications were themselves responsible for finding a replacement to do their jobs. The workers perceived overtime as mandatory rather than a choice.

In 2016, overtime was still not voluntary, and the company's practice in this area seems to have become harsher. Employees said that they were threatened with the non-renewal of their employment contracts if they refused to work overtime. This applied to employees under the age of 18 as well.

Follow-up interviews indicate that the pressure to work overtime has decreased slightly at the factory in Cambodia over the past year, even though the employees are still required to meet production quotas which cannot be achieved without overtime working.

2.2.3 Wage deductions for lawful sick leave

The Cambodian Labour Law gives employees the right to paid sick leave, and the Better Factories scheme considers that employers have a duty to comply with this provision.⁴⁸ Although the law entitles employers to dock the individual's attendance bonus proportionally to the number of days off sick, it is not permitted to dock the entire bonus for one day's absence.⁴⁹

Interviews with employees in 2015 showed that it was difficult for them to get sick leave approved. Only if the employee had a medical certificate from a large hospital would sick leave be accepted. There are, however, no such hospitals in the area. This is a practice which the Arbitration Council has ruled unlawful.⁵⁰

⁴⁷ Ministry of Social Affairs, Labor Vocational Training and Youth Rehabilitation, Prakas 80, clause 4 (1999).

⁴⁸ According to Better Factories, employers are supposed to provide their employees with sick pay. Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas no. 14 (2002); Prakas on the Internal Work Rules of the Enterprise (2002), clauses 1. Appendix for Prakas no. 14 (2002), Model Internal Rules, clause 4; and Stanford Law School and WRC, *Monitoring in the Dark*, Appendix A: ILO Better Factories: IMS Question Flow Checklist; re Sick leave, A-7. <http://humanrightsclinic.law.stanford.edu/wp-content/uploads/2013/03/Monitoring-in-the-Dark-Stanford-WRC.pdf>.

⁴⁹ Arbitration Council Award 63/04, issue 5, in *re Shine Well Industry Co Ltd*.

⁵⁰ Arbitration Council Award 81/05 (Jan. 19, 2006) in *re Supreme Garment*.

According to the workers, the entire attendance bonus is docked for one or more days of lawful sick leave. This corresponds to almost two days' wages. This practice did not seem to have been changed in 2016. Employees also said that when they actually could produce a medical certificate from a large hospital, the days they were off work were not counted as sick leave, but were deducted from the individual's holiday entitlement. According to the Labour Law, sickness leave may not be counted as holiday.⁵¹

Follow-up interviews indicate that the company continues to be restrictive in approving sick leave, even with a medical certificate issued by a doctor. However, in those cases where sickness absence is actually approved, the individual's attendance bonus is no longer docked.

2.2.4 Wage deductions for lawful holiday

Cambodian law gives employees the right to take a holiday after one year of employment.⁵² Employers are not permitted dock the individual's attendance bonus when they take holiday days that the employer has approved in advance.⁵³

Both in 2015 and 2016, workers reported that the entire monthly attendance bonus was docked if they took one day of holiday, even if managers had approved the holiday in advance. Some workers said that they had therefore not taken a single day of holiday since they went to work at the factory.

Follow-up interviews show that the company now seems to have changed this practice and no longer docks the bonus in connection with holidays.

2.2.5 Unlawful use of short-term contracts

According to the Cambodian Labour Law, someone who has worked at an enterprise for more than two years may not be employed on a short-term Fixed-Duration Contract (FDC). Such individuals are entitled to employment on a so-called Undetermined-Duration Contract (UDC).⁵⁴ Compared with short-term contracts, permanent employment gives workers greater job security and opportunities to accrue additional rights and remunerations based on the length of their employment service.⁵⁵

All the employers who were interviewed said that they were employed on short-term contracts and that the company continues to use such contracts for all employees, even though some of the workers had already been employed at the factory for two years in the first half of 2016.⁵⁶ The contract period had at that point been extended from three to six months. The workers interviewed estimated that around 300–400 employees had worked at the factory for more than two years.

Follow-up interviews indicate that Luthai continues to employ workers on temporary six-month contracts, even those who have been employed at the factory for more than two years. Short-term contracts are still used in order to fire unwanted workers. Employees reported that managers at the factory threatened workers with the non-renewal of their contracts if they

⁵¹ Labour Code Art. 166 and 167.

⁵² See footnote 51.

⁵³ Arbitration Council Award 52/05 (Huy Fu (Cambodia) Co. Ltd.), issue 2.

⁵⁴ Labour Code, Art. 67 (2) and Arbitration Council Award 10/03.

⁵⁵ Allard K. Lowenstein International Human Rights Clinic 2011: *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, Yale Law School, http://www.workersrights.org/wp-content/uploads/2016/02/Cambodia_TearingApartattheSeams.pdf.

⁵⁶ In 2015, Luthai is alleged to have employed all its workers on temporary, three-month contracts (FDCs). Since Luthai opened the factory in 2014, this was not against the law.

were unable to meet production quotas that the workers felt were unreasonably high.⁵⁷ They also told of employees who had engaged in trade union activity in 2017 and who had not had their employment contracts renewed.

2.2.6 Occupational health and safety

Under Cambodia's Labour Law, the workplace temperature must be maintained at a level that is appropriate for the health of employees.⁵⁸

In 2015, workers told that one or two employees faint every month. They were unable to say precisely how hot it is inside the premises. In 2016, employees working in the oldest of Luthai's two factory buildings (Building A) also complained about high temperatures and an extremely uncomfortable working environment, particularly in the afternoons. According to the employees, this building has no air conditioning. In the other building (Building B), which is newer, a cooling system has been installed.

In follow-up interviews, workers said that high temperatures are also due to the fact that the factory does not use the cooling system that has been installed, because management fears this will increase humidity levels in the premises, which in turn could damage the products. The cooling system is turned on when external inspections take place.

2.2.7 Freedom of association

Under Cambodian law, companies must stage elections for employee representatives no later than six months after the business has started operating.⁵⁹ Furthermore, it is not permitted to sanction employees because of their engagement in trade union activity.⁶⁰

In 2015, employees told of several cases where workers have been fired because they had taken part in efforts to form a trade union at the factory, or had been members of a trade union earlier in their working lives.⁶¹ This was confirmed by representative of the Collective Union of Movement of Workers, who said that Luthai workers they had spoken to about forming a union at the factory had been fired shortly afterwards. Both employees and union representatives felt that management's reaction had helped to scare employees away from trade union activity. In addition, the employees felt management's close cooperation with the local police was frightening. They said that uniformed police officers regularly came to the factory when workers were demonstrating in the neighbouring town of Bavet.⁶²

Employees interviewed in 2016 confirmed that no trade union had yet been established at Luthai. The workers still believed that the company would not permit trade unions and that

⁵⁷ One worker explained the situation thus: "We are on FDCs, so we cannot say anything, as [if we do speak up about unfair practices], our contracts won't get renewed."

⁵⁸ Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 147, clause 1 (2002).

⁵⁹ Labour Code, Arts. 283 to 299.

⁶⁰ Labour Code, Art. 12.

⁶¹ Workers told of management's practice of asking newly hired employees if they had previously participated in trade union activities. Those that admitted trade union membership were promptly fired. One worker explained the situation thus: "Luthai has a very strict rule of not allowing any worker to talk to outsiders or have relations with unions. If the factory knew any worker used to be in a union or had relationship with a union then the factory will fire them quickly."

⁶² In 2012, local authorities and security personnel were involved in a shooting episode in which three female textile workers were killed while protesting against working conditions at other textiles factories. Khuon Narim and Dene-Hern Chen, "Court Drops Triple Shooting Charge Against Bavet Governor" *Cambodia Daily* (Dec. 19, 2012), <https://www.cambodiadaily.com/archives/court-drops-triple-shooting-charge-against-bavet-governor-6759/>.

employees would be fired if factory management discovered that they were participating in the formation of a trade union. Employees explained that they had not had any opportunity to participate in the election of any employee representatives, and did not know if there was a trade union at the factory.

In its communications with the Council, Luthai refers to the “Care and Love Employee Committee” (CLEC) that the company has set up at the factory. According to employees, all the committee’s members are line managers who have been appointed by factory management. Employees also reported that even though they have been told that they can submit complaints to the CLEC, the committee acts as a charitable fund that demands contributions from employees to help workers in severe financial difficulties. None of those interviewed knew that the factory had set up complaints boxes through which employees could submit written complaints.

Follow-up interviews indicate that two trade unions have recently been established at the factory. One is affiliated to “the Cambodian Coalition of Apparel Workers Democratic Unions” (CCAWDU) and has around 200 members among the workforce. The other is, according to employees interviewed, an in-house association which is controlled by factory management and which has a far larger membership. The workers stated that they had been pressured by line management to join the in-house association. Membership fees for the in-house association (but not the trade union affiliate) are deducted directly from the employee’s wages.

The Council is aware that a two-day strike is reported to have taken place at Luthai (Cambodia) in December 2016. The strike, in which 1,700 employees took part, was in response to an assault on an employee representative in connection with a new attempt to form a trade union at the factory. The individual is said to have been assaulted by employees “specifically hired by the factory in order to quash [the workers’] attempt to form a union, as well as a request he made to remove a factory administrator.”⁶³ In the report, company management denied any involvement in the assault and said that it had nothing against the formation of trade unions at the factory.

3 Information provided by the company

3.1 The Council on Ethics’ contacts with the company

The Council contacted Luthai for the first time in June 2015 to enquire about working conditions at the company’s factories in Cambodia, Vietnam and Myanmar. Luthai did not reply to this enquiry. However, at a later date it did comment on a draft recommendation to exclude the company. The draft recommendation was sent to Luthai in October 2015, and was based on an examination of the company’s factory in Cambodia in June/July that same year.

The Council has subsequently communicated with the company on several occasions.⁶⁴ In its reply to the Council in October 2015 and in further communication in January 2016, Luthai stated that the factory in Cambodia was in the process of becoming certified in accordance with the SA8000 standard. The Council therefore decided to await developments in order to assess whether working conditions would improve once the certification process had

⁶³ The Phnomh Penh Post: Svay Rieng workers protest over unionisation rights, 14 December 2016, <http://www.phnompenhpost.com/national/svay-rieng-workers-protest-over-unionisation-rights>.

⁶⁴ Luthai’s letters to the Council on Ethics, dated 21 October 2015, 19 January 2016, 3 May 2016, 13 September 2016 and 8 December 2017.

concluded in February 2016.⁶⁵ Because the company has frequently referred to the fact that it operates in accordance with SA8000, the Council has requested the report on which its certification rests. However, Luthai has not complied with this request.

Luthai's factory in Cambodia was re-examined in June 2016. To obtain a broader foundation for its assessment of the company, the Council decided to also examine working conditions at Luthai's factory in Myanmar. In June 2017, the Council asked Luthai for permission to inspect the factory. After repeated requests, Luthai replied in August that it would consider the Council's request in 2018.

Luthai received a second draft recommendation to exclude the company in November 2017. Luthai replied in December.⁶⁶ In its letter, Luthai denied many of the norm violations, or claimed that they had been corrected. However, no documentation of this was provided. To obtain a better basis for assessing the company's response, follow-up interviews were carried out with employees at the factories in Cambodia and Myanmar in December 2017 and January 2018.

3.2 The company's efforts to improve working conditions

According to Luthai, the company has procedures in place to prevent human rights violations. To substantiate this the company has provided a list of 17 procedures relating to working conditions and labour rights.⁶⁷ In addition, Luthai has provided documents describing recruitment procedures, the protection of young workers and requirements relating to occupational health and safety. All these seem to apply only to the factory in Cambodia and are related to SA8000 certification.

In its reply of December 2017, Luthai commented on the norm violations at the factories in Cambodia and Myanmar as follows:

Employment of young workers

Luthai has repeatedly denied that young workers work at the factory in Cambodia, and write that no young workers are employed at the factory in Myanmar either. With respect to the factory in Cambodia, Luthai writes that the "information of the applicates must be complete, including: identity card, household register, work permit, birth certificate. There are no employees under the age of 18 in company."

With respect to Myanmar, Luthai writes that the minimum age for employment is 14 and that the factory "has no underage workers now". Luthai does not address the requirement that

⁶⁵ Luthai's letter to the Council on Ethics, 3 May 2016.

⁶⁶ Luthai's letter to the Council on Ethics, 8 December 2017.

⁶⁷ Luthai's letter to the Council on Ethics, 3 May 2016. The list of documents comprises: Procedure for Child Labor Relief and Education, Procedure for Underage Workers Protection, Management Regulation of Human Resource, Regulations on Environmental Operation and Management, Fire Prevention Safety Management Regulations, Management Regulation of Occupational Health and Safety, Emergency Preparedness and Response Control Procedure, Communication and Consultation Control Procedure, Procedure for Female Workers Protection, Control Procedures of Comments, Recommendations, Reports and Complaints from the Employees, Corrective and Preventive Measurements Control Procedure, Management Procedure of Supplier and Subcontractor, Identification, Acquisition, Updating and Transmission control procedure of Legal Regulations and Other Requirements, The Identification, Evaluation, and Grading Procedure of the Social Responsibility Factors, Internal Audit Procedures, Control Procedure of Management Review, Control Procedure of the Documents and Records, Operation Supervision Procedure, Control Procedure for Prohibition of Discrimination, Control Procedure for Freedom of Association and Collective Negotiation.

employees under the age of 18 must have a medical certificate and are not allowed to work at night.

Forced overtime

According to Luthai, all overtime is voluntary and employees must sign to confirm that they are working overtime voluntarily. “We always encourage the employees to work overtime voluntarily. Whether voluntary overtime based on employee card, no compulsive behavior will occur.”

With respect to the factory in Myanmar, Luthai writes that it complies with the law of the land, which limits the normal working week to 44 hours. “Employees are allowed to work overtime only if they are approved by the department of labor and are voluntary. The company has been insisting on voluntary overtime work and there is no forced overtime.”

Wage deductions in connection with sick leave

Luthai writes that the company provides sick pay to employees who have a “diagnosis certificate issued by the hospital, clinic and legal doctor” and that it does not dock the attendance bonus of any employee with such a diagnosis. Luthai also denies that the number of days off sick is deducted from the employee’s holiday entitlement.

With respect to the factory in Myanmar, Luthai says that employees receive sick pay through the social security system and that the company complies fully with national legislation . Luthai denies that employees are ordered back to work after they have become ill or injured at work.

Unlawful wage deductions in connection with holidays

Luthai says that the company places no restrictions on its employees’ holidays, and that employees decide for themselves when they want to take time off. The company also denies that employees are docked their entire attendance bonus when they take one or more holiday days. “If annual leave is used, the salary will be calculated according to normal attendance and will not be deducted.”

The company does not address this issue with respect to the factory in Myanmar.

Unlawful use of short-term contracts

In its reply to the Council in 2016, Luthai writes that its employment contracts comply with Cambodian legislation and that the company’s “Management Regulations of Human Resources [...] stipulate the condition of signing FDC or UDC contracts clearly”. Luthai also writes that short-term engagements would be converted to permanent employment contracts (UDC) after two years of service.⁶⁸

In its reply of December 2017, Luthai does not mention this. Instead, it writes that the law requires employers to provide severance pay to employees at the end of their contract period and that workers consent to work on short-term contracts in order to receive this remuneration. The company denies that it fires employees on short-term contracts, unless they have violated the factory’s rules and regulations.

Occupational health and safety

According to Luthai, the temperature at the factory in Cambodia is kept at 32°C and the company is implementing measures to improve the air circulation, “such as building fan room

⁶⁸ Letter from Luthai to the Council on Ethics, 3 May 2016.

and add air vents, to increase the air movement of workshops.” According to Luthai, the incidents of fainting happened earlier and were due to illness not the heat.⁶⁹

With respect to the factory in Myanmar, Luthai states that cooling and ventilation have been installed at the factory. “There is not a situation where the workshop is too hot.” The company writes that the temperature in the premises is measured regularly.

With respect to verbal harassment at the factory in Myanmar, Luthai writes that there used to be certain supervisors and interpreters who spoke loudly to employees and that the company intends to “strengthen its management to prevent such a situation”. Regarding physical harassment, there is, according to Luthai, “no such thing as corporal punishment, and we have not received any complaints from employees about this.” Regarding sexual harassment, Luthai writes that no “intentional harassment of employees” has been found and that the “company has a strict system, it is clear that harassment of employees is prohibited.”

With respect to the factory’s practice of publicly naming employees who have been reprimanded, Luthai writes that it will change “the notification mode, only notify the group.” Luthai does not expand on what this means.

Luthai denies that there are any restrictions on employees’ visits to the toilet or access to drinking water. However, the company writes that customers do not allow water in the workplace for quality reasons.

Other conditions (Myanmar)

The company denies that it discriminates against job seekers on the grounds of age and claims that it has several employees over the age of 35. Luthai also writes that employees are given a copy of their employment contract and that wage slips contain details of the amount paid. “There is base salary, overtime pay and various awards in the payroll, as well as social security deduction, no other deduction items.”

Luthai denies that it requires migrant workers to rent a room at the company’s hostel as a condition of employment. Luthai also denies that it has a hostel for employees at the factory in Myanmar.

Freedom of association and the right to organise

The Council on Ethics has raised the issue of trade union rights with Luthai. In its reply to the Council, the company writes that it does not prevent trade union activity and that employees are at liberty to organise themselves without fear of sanctions.

In its letter of December 2017, Luthai writes that during the year employees have formed two trade unions at the factory in Cambodia and that 90 per cent of the workforce is organised. “... what is more, our company makes no crackdown to any union.”

With respect to the strike at the factory in Cambodia in December 2016, Luthai explains that “two employees had a fight, the next day, one of them organized other employees to make a strike and requires our company to pay the salary of the day they had a strike. Finally, the labor arbitration committee affirmed the strike was illegal and we need not pay the salary.”

With respect to the factory in Myanmar, Luthai writes: “The company set up the WCC and its representatives are free to vote for the workers and there is no specified situation.” Luthai also writes that employees are not allowed to talk to each other while they are working (to maintain concentration and avoid injuries). Furthermore, to “maintain a good order of company meeting, the company bans whisper, it also reflected the employee’ respect for the

⁶⁹ Letter from Luthai to the Council on Ethics 8 December 2017.

other meeting representatives at the same time.” The company does not address the ban on meeting in groups or keeping employees under surveillance.

With respect to the firing of employees who have complained about working conditions, the company writes that, by law, any termination of employment must be approved by the authorities.

3.3 Luthai’s efforts to reduce the risk of norm violations

According to Luthai’s human rights policy, the company shall:⁷⁰

- respect “the dignity and right of all employees and their family members”
- respect “the dignity and right of gender equality, protect women and children from injury, not engage in or support the use of child labor”
- respect “the employees' right of work and prohibits forced or compulsory labor”
- safeguard “all employees' health and safety”
- not be involved in or tolerate “the use of disciplinary practices”.

Furthermore, the company must comply with national legislation.

In February 2016, the factory in Cambodia was certified in accordance with the SA8000 standard.⁷¹ This standard prohibits among other things, child labour and forced labour, and sets out a number of requirements relating to occupational health and safety, the environment, freedom of association and collective bargaining, no discrimination, working hours, wages and remunerations. As a minimum requirement, the company must comply with national legislation. The standard also requires companies to have a management system in place to ensure that the standard’s requirements are met.⁷²

Senior executives at Luthai are also managers at the company’s subsidiaries, including the factories in Cambodia and Myanmar. According to Luthai, the *Enterprise Management Department* at head office is responsible for implementing the procedures and contributing to factory management’s efforts relating to “social accountability”. Factory management is responsible for “the prevention of human rights violations and responsible for the social accountability work.” The company performs internal audits twice a year. The results are reported to the person responsible at head office and then to the chair of the company’s board of directors. The Council on Ethics has asked for access to the audit reports. The company has not complied with this request.

4 The Council on Ethics’ assessment

The Council on Ethics has considered whether there is an unacceptable risk that Luthai is contributing to or is itself responsible for systematic violations of internationally recognised human rights norms in connection with its production of textiles and garments. The Council’s investigations have been focused on the company’s garment factories in Myanmar and Cambodia.

The starting point for this case is that Luthai, in its capacity as employer, is responsible for any norm violations at its own production facilities. The Council takes the position that, with respect to norm violations perpetrated within a company’s own operations, the threshold for

⁷⁰ Letter from Luthai to the Council on Ethics, 13 September 2016.

what can be accepted must be lower than when a company contributes to norm violations perpetrated by a third party.

Violations of labour rights at Luthai's factories have been substantiated through four investigations of working conditions at two of the company's factories over a period of more than two years. Luthai itself denies many of the reported norm violations at its factories. However, the company has elected not to substantiate its position and has not provided a great deal of information. Nor has Luthai provided access to inspection reports or granted permission for factory inspections. The Council on Ethics therefore bases its assessment on its own investigations.

In the Council's view, the scale of labour rights violations appears to be substantial, particularly at the factory in Myanmar. The Council's investigations indicate a production system which leads to a working environment that is harmful to health, with employees driven to overwork by unreasonably high production quotas, little rest and high indoor temperatures, and where harassment by supervisors seems widespread. Incidents of employees fainting at work have been reported at both factories. Nevertheless, the company does not seem to have investigated what may have caused this. Frequent and repeated threats of dismissal if production quotas are not met, restrictions on visits to the toilet and access to drinking water, verbal and physical abuse practised by managers at the factory in Myanmar are clear violations of the right to a safe and healthy working environment.

To the Council, it seems as though the company, by means of threats of dismissal and other punitive sanctions, in practice pressures employees to work more overtime than the law allows, particularly at the factory in Myanmar. Such a practice places employees in a situation akin to coercion. At the factory in Cambodia as well, employees appear to be pressured into accepting violations of their rights through extensive, and to some extent unlawful, use of short term contracts (FDCs). The Council is aware that short-term contracts are often used to enable the company to dismiss workers who are unable to meet their production quotas, refuse to work overtime or act in undesirable ways, e.g. trade union activists.

The Council further notes that, in practice, Luthai does not seem to distinguish between adult employees and young workers, and that youngsters under the age of 18 are obliged to work overtime and, in Myanmar, probably also at night. The Council emphasises the fact that internationally recognised human rights prohibit overtime and nightwork for young workers and require that children and young people be given particular protection from long working days. Luthai's procedures for protecting its young employees seem either to be inadequate or not implemented at all.

Restrictions on freedom of association for Luthai's workers constitute another element which the Council on Ethics wishes to highlight. The right to form a trade union and to organise is deemed to be a precondition for the ability of employees to improve their working conditions and prevent the violation of other labour rights. The Council finds it substantiated that the company in Cambodia has dismissed employees who have taken part in trade union activities and has interfered in the nomination and election of employee representatives. The Council notes that this situation seems to have improved somewhat in Cambodia, but wishes nevertheless to point out that the company's control of the largest trade union and interference in the election of trade union representatives continues to violate the employees' freedom to organise. In Myanmar, Luthai prevents the formation of trade unions through its internal regulations, which prohibit employees from meeting and talking together. These rules appear to be enforced through extensive surveillance at the factory. In sum, it seems to the Council that Luthai restricts freedom of association in a number of different ways.

The Council on Ethics considers that the company's practices in several areas must be deemed to violate both internationally recognised labour rights and national legislation whose precise intention is to ensure good working conditions. The norm violations are numerous, various types of rights are infringed and the practice seems to have been extensively applied at several of the company's factories over a lengthy period of time. In the Council's opinion, this demonstrates a pattern of behaviour indicating that norm violation is systematic.

The Council on Ethics attaches importance to the fact that Luthai does not previously seem to have implemented measures leading to lasting improvements in working conditions. Many of the norm violations that were uncovered in the survey of conditions in Cambodia in 2015 were again found in 2016, despite the company's assurances that policies and procedures to prevent norm violations had been implemented. Even though Luthai subsequently appears to have made improvements at the factory, the Council finds that a number of norm violations have still not been corrected. In its communications with the Council, Luthai has pointed out that the factory in Cambodia is certified and meets requirements intended to ensure that employees enjoy good working conditions. However, this can have little significance for the Council's assessment as long as the grounds for certification remain secret and cannot be verified. When Luthai elects not to substantiate its replies, and subsequent surveys cannot confirm many of the company's claims, it undermines the Council's belief that the company's procedures and initiatives will be sufficiently effective to prevent future norm violations.

The Council also notes that certification applies only to the factory in Cambodia. In the Council's view, the scale of the reported norm violations at the factory in Myanmar confirms that Luthai does not have a system capable of preventing, uncovering and correcting violations of labour rights at its operations. Despite the company's claims that it performs regular internal controls and evaluations to prevent repeated norm violations, Luthai has apparently failed to discover that neither statutory requirements nor the company's own guidelines are being complied with. The changes that have been made in Cambodia appear more the result of a fragmentary and reactive response to norm violations that have been pointed out than the expression of any change in attitude to labour rights on the part of the company. The norm violations at the factory in Myanmar are still going on, and there is little to indicate that Luthai is taking adequate steps to correct this situation.

The Council considers that systematic human rights violations within a company's own operations do not occur by accident, but are a consequence of the way the company organises its business. In this case, it appears as though the many different violations of and restrictions on the employees' statutory rights are intended to reduce the company's operating costs. Executives at Luthai are also managers at its subsidiaries. The parent company is therefore obviously aware of and accepts the working conditions at its own factories. This must be assumed to include widespread failures to comply with the company's own guidelines and statutory provisions covering the working environment. In the Council's opinion, this reinforces the impression that rights abuses are not accidental, but are an established and ingrained practice on the part of the company.

Luthai has more than 20,000 employees and operations in countries where the risk of human rights violations and poor working conditions is known to be high. The Council considers that a company with so many employees must be expected to have robust systems in place to safeguard their employees' labour rights, in accordance with the United Nations Guiding Principles on Business and Human Rights. The Council cannot see that Luthai has such systems. The company has shown little desire to change its attitude to labour rights. Combined with the fact that Luthai is unwilling to provide insights into how it runs its business operations, this leads the Council to conclude that there is an unacceptable risk of Luthai being responsible for systematic human rights violations in the future, too.

5 Recommendation

The Council recommends that Luthai Textile Co Ltd be excluded from investment by the GPFG due to the risk that the company is responsible for systematic human rights violations.

Johan H. Andresen
Chair

(sign.)

Hans Chr. Bugge

(sign.)

Cecilie Hellestveit

(sign.)

Trude Myklebust

(sign.)

Brit K. S. Rugland

(sign.)