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Decision

Final statement: UK Lawyers for Israel complaint to UK NCP about PwC

Updated 11 March 2020

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This statement was published on 11 March 2020 by UK National Contact Point (UK NCP) for the OECD Guidelines for Multinational Enterprises.

Summary

The UK NCP examined the PwC global network of firms' actions in relation to audit work undertaken by PwC Palestine Limited for the International Bank for Reconstruction and Development (known as 'the World Bank') on a multi-donor trust fund for the support of the Palestinian Recovery and Development Plan¹ (PRDP-MDTF) until 2015.

Findings and recommendations

The UK NCP finds:

- that PwC global network of firms did not breach the OECD Guidelines for Multinational Enterprises when PwC Palestine Limited conducted its audit work in relation to the PRDP-MDTF bank account
- that the actions of PwC Palestine Limited met obligations under Chapter II General Policies in that by undertaking a financial audit of cash transfers in and out of a PRDP-MDTF bank account, they contributed to economic, environmental and social progress as part of the efforts of the World Bank in the region
- that the actions of PwC Palestine Limited met obligations under Chapter III Disclosure in that by undertaking a financial audit of the PRDP-MDTF bank account the audit firm's obligation in the first instance was to their client (the World Bank)
- that the actions of PwC Palestine Limited met obligations under Chapter IV – Human Rights when undertaking a financial audit of PRDP-MDTF bank account. The financial audit did not infringe the human rights of others or contribute to adverse human rights impacts

However, in line with the UK NCP role to promote the Guidelines and related due diligence to multinational enterprises it makes 2 recommendations. These are that PwC network firms:

- recognise the OECD Guidelines for Multinational Enterprises as a standard of responsible business conduct that apply globally to PwC network firms
- take steps to ensure that in all PwC policies and standards, codes of conduct etc. wherever appropriate, the OECD Guidelines for Multinational Enterprises be used and referenced by every member firm in all countries, regardless of whether or not that country is an OECD member state or a country adhering to the OECD Guidelines. If it has not already done so, the UK NCP recommends that PwC network firms use the OECD Due Diligence Guidance for Responsible Business Conduct for this purpose.

The UK NCP will issue a follow-up report to this final statement in March 2021.

UK NCP procedure

- the OECD Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment
- each country adhering to the Guidelines is required to maintain a National Contact Point (NCP) to consider complaints under the Guidelines

- the UK government maintains the UK NCP to meet this requirement. The NCP is not part of the OECD and has no wider responsibilities for OECD functions
- the UK NCP is staffed by officials in the Department for International Trade (DIT). It operates independently of Ministers, who have no role in UK NCP decision making on complaints

The UK NCP follows published procedures in handling any complaint with the following stages:

- an initial assessment to decide whether a complaint is accepted for further examination
- an offer of mediation if a complaint is accepted
- a further examination if mediation is refused or fails to produce an agreement between the parties
- final statement reporting the outcome of mediation or further examination

An initial assessment of this complaint was published in June 2018. The parties accepted mediation, but they were unable to reach an agreement.

The UK NCP began its further examination of the complaint in May 2019.

Detailed analysis

Details of the parties involved

The Complainant

1. The complainant is UK Lawyers for Israel (UKLFI) a Non-Governmental Organisation (NGO) based in the United Kingdom. The purpose of the organisation is to provide, assist in providing, procure or promote the provision of legal support including advocacy, research, advice and campaigning in combating attempts to undermine, attack and/or delegitimise Israel, Israeli organisations, Israelis and/or supporters of Israel².

The Respondent

2. The complaint was directed by the UKLFI against PwC Global Network. The UK firm, PricewaterhouseCoopers LLP (PwC UK) responded to the UK NCP that there is no such entity as the PwC Global Network. However, the UK NCP consider the PwC network of firms, for the purposes of the OECD Guidelines, to be a multinational professional services organisation. The firm that provided the relevant audit services was PwC Palestine Limited (PwC Palestine).

3. UKLFI alleged that in the course of PwC Palestine's audit work which it believed to have been for the Palestinian Authority (PA)³, it breached certain articles under the General Policies, Disclosure and Human Rights sections of the OECD Guidelines for Multinational Enterprises (the Guidelines). PwC UK refuted the allegation and explained that the audit work was in fact undertaken for the World Bank, not the PA.

UK NCP process

Initial assessment

4. The UK NCP received the complaint on 21 December 2016.

5. Following a meeting with the UK NCP to discuss their complaint UKLFI resubmitted the complaint in January 2017.

6. The UK NCP issued its initial assessment accepting the issues for further examination in June 2018.

7. The UK NCP, at initial assessment, accepted issues regarding the following Guidelines obligations:

Chapter II – General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

Enterprises should:

1, Contribute to economic, environmental and social progress with a view to achieving sustainable development.

7, Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

10, Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11, Avoid causing or contributing to adverse impacts on matters covered by the guidelines, through their own activities, and address such impacts when they occur.

12, Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13, In addition to addressing adverse impacts in relation to matters covered by the guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the guidelines.

Chapter III – Disclosure

1, Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

3, Enterprises are encouraged to communicate additional information that could include:

c) its performance in relation to these statements and codes

d) information on internal audit, risk management and legal compliance systems

e) information on relationships with workers and other stakeholders

Chapter IV – Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1, Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2, Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3, Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

5, Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6, Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

8, The UK NCP applies the updated 2011 Guidelines to the actions of companies from 1 September 2011 and the earlier version to actions before that date.

Mediation

9. Both PwC UK and UKLEI accepted the UK NCP's offer of mediation and agreed the proposed mediator. It took some time to agree terms of reference and arrangements for a meeting. A first meeting with the mediator took place on 21 February 2019.

10. The mediator reported to the UK NCP in the following months that the parties were continuing to pursue an agreement. However, on 8 May 2019, the mediator notified the UK NCP that the parties would not be able to come to an agreement.

11. On 10 May 2019, the UK NCP wrote to the parties to say that it would begin a further examination of the issues that were accepted for further examination in the initial assessment.

Further examination

12. The UK NCP wrote to UKLEI and PwC UK on 26 July 2019 and received further information from PwC UK on 6 September. That information was shared with UKLEI on 13 September and UKLEI responded on 23 September.

The Complaint

13. The complaint alleged that the Palestinian Authority (PA) uses donor funds to incite terrorism⁴ and provide lump sum payments and salaries to convicted terrorists and provide them with civil service and military positions. It also alleged that donors rely on the fact that the PA is audited by PwC Palestine to argue that no further scrutiny is needed of aid directed to the PA.

14. PwC UK responded that PwC Palestine had from 2009 until 2015 annually audited the cash transfers in and out of a Palestinian Recovery and Development Plan - Multi-Donor Trust Fund bank account (PRDP-MDTE). They had done so for the World Bank which monitors the PA's compliance with the PRDP.

The Context

15. Donor nations (including the UK⁵) have supported the Palestinian Authority through the PRDP-MDTE which amongst other items of expenditure pays the salaries of PA civil servants. This supports the essential infrastructure to build a Palestinian State and provide a two-state solution to end the Israeli-Palestinian conflict. A two-state solution is the foreign policy goal of many donor nations⁶.

16. There is concern that the Palestinian Authority put prisoners held for terror offences in Israeli jails on the civil service payroll⁷.

General Principles

17. PwC Palestine operate in a region of heightened political tension, military conflict and disputes between Palestinian Authority, Israel and Arab countries. Against this background PwC Palestine must consider the established policies of the Palestinian Authority territories in which they operate. It could be argued that by auditing the multi-donor trust fund for the support of the PRDP the firm contributes to economic, environmental and social progress of the region.

18. The Guidelines recommend risk-based due diligence. Due to client confidentiality owed by PwC Palestine to their clients, the UK NCP does not know, in the course of preparing these audits, what matters PwC Palestine discussed with their clients, including the extent to which donor funds were being used to pay salaries to prisoners in Israeli jails⁸.

19. The Guidelines recommend companies seek to prevent or mitigate adverse impacts, where they have not contributed to that impact. If PwC Palestine were concerned that donors' funds were being used to pay salaries to prisoners, the responsibility is not shifted from the PA to PwC Palestine. If PwC Palestine had concerns about this the UK NCP believe that these should have been shared with its client, the World Bank.

20. Due to client confidentiality the UK NCP does not know what conversations may have taken place between PwC Palestine and the World Bank and the Palestinian Authority, or whether PwC Palestine carried out risk-based due diligence to mitigate actual or potential adverse impacts. Similarly, the UK NCP does not know if any due diligence carried out by PwC Palestine addressed the question of whether PA civil service salaries were paid to prisoners in Israeli jails, and if PwC Palestine alerted the World Bank and donor nations to the possibility. We note that the PRDP included a specifically budgeted expense of \$61 million for the Ministry of Detainees and Ex-Detainees to Provide support and protection for prisoners, freed prisoners and their families⁹.

Disclosure

21. The Guidelines recommend that enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.

22. However, this provision does not require companies to provide detailed information about individual business relationships or share on demand their work for clients. Transparency does not extend to requiring businesses to forego the confidence of business partners or undermine their own competitiveness. In particular, professional services firms, which are subject to professionally imposed obligations of confidentiality are not free to disclose details regarding the entities they audit other than through the audit opinions given.

Human Rights

23. The Guidelines advise that states have the duty to protect human rights and this duty applies not only to the citizens of those states but also to citizens beyond the state's borders.

24. The UK NCP does not accept that it was part of the financial audit work conducted by PwC Palestine to consider the payment of civil service salaries to prisoners. However, the UK NCP accepts the UKLEI's concern that a financial audit could in some circumstances be overly relied on by donor nations to ensure funds were not encouraging adverse human rights impacts¹⁰.

25. PwC UK has provided details of the policies and standards which all PwC network firms follow and which are relevant to this matter. These cover:

- the code of conduct (a set of principles guiding PwC network firm personnel on how to behave and conduct business)
- network standards, policies and guidance (and local firm policies and guidance)
- client acceptance and engagement acceptance policies
- ethics and compliance policies (including anti-money laundering and anti-corruption standards and policies)
- a third party code of conduct
- human rights policy
- compliance monitoring
- annual compliance confirmations
- accountability frameworks

26. In respect of human rights by auditing the PRDP-MDTF PwC Palestine have not infringed the human rights of others. In the context of this complaint there is no suggestion that PwC Palestine's own activities have caused or contributed to adverse human rights impacts.

Information reviewed in further examination

The Complaint

27. The UKLEI complaint of January 2017 consisted of 34 pages, several annexes contain lists of, and correspondence between UKLEI and PwC UK as well as the World Bank. In addition to the information provided in the complaint, the complainants provided a 3 page letter together with a copy of a statement of cash receipts and disbursements and the auditor's report for the Palestinian Recovery and Development Plan Multi Donor Trust Fund (PRDP-MDTF) No. 99558 for the period 1 September 2014 to 30 September 2015.

The Response

28. In addition to its responses to the complaint of 21 March 2017 and 29 June 2017, PwC UK provided comments of the draft initial assessment on 10 April 2018. This was followed by 3 letters from external legal advisers acting for PwC UK dated 23 May, 14 June and 11 July 2018. PwC UK provided further information at the UK NCP's request on 6 September 2019.

Other sources

29. The UK NCP reviewed the numerous footnote links to other evidence provided by UKLEI to obtain additional background information.

30. The UK NCP also made online searches for additional information.

Information sharing

31. All the information provided to the UK NCP has been shared with the parties in the complaint. Information is shared on the understanding that while the complaint is under consideration it should not be shared further or made public. Once the UK NCP has issued its final statement the parties can communicate publicly about the complaint. Information and views provided during the proceedings by another party involved remain confidential unless that party consents to its release.

Limitations of further examination

32. The UK NCP operates within boundaries set by the OECD Guidelines for Multinational Enterprises, including the voluntary nature of the Guidelines and the requirement on NCPs to operate transparently.

33. The UK NCP has no powers to require any party to provide information or compel companies to provide papers.

34. The UK NCP has had no direct contact with PwC Palestine who cannot be the subject of the complaint in the UK.

35. PwC Palestine have a duty of confidentiality to their clients.

36. The UK NCP has some ability to share sensitive information between parties on a conditional basis. Its ability to do this depends on parties' own transparency or confidentiality obligations and on the level of good faith with which parties engage with the process. Where there is little trust or limited engagement, it is unlikely that sensitive information will be shared.

37. The UK NCP has made findings where it believes that information is available to support them.

Conclusions

Multinational Enterprise

38. The United Kingdom is an adherent to the OECD Guidelines and actively promotes them to UK companies. In accepting this complaint for further examination, the UK NCP confirmed that it believes that for the purposes of the OECD Guidelines the PwC network of firms is a multinational enterprise¹¹ even though PwC UK have consistently and strongly stated that the PwC network of firms is neither a global partnership nor a single entity but a network of separate firms. PwC UK has also indicated that it believes the policies and procedures of the PwC network of firms already meet the goals and objectives of the OECD guidelines. The complaint by UKLEI is directed at the PwC Global Network and the UK NCP continue to take the view that the PwC network of firms is a multinational enterprise covered by the OECD Guidelines.

39. While the UK NCP considers the PwC network of firms a multinational enterprise for the purposes the OECD Guidelines, the UK NCP does accept that there is a considerable degree of autonomy of entities within the PwC network and the work undertaken in this case by PwC Palestine would not have been overseen, approved or considered by another network firm located in another country. The Palestinian Authority is not a member of the OECD and there is no appropriate NCP in Occupied Palestinian Territories to consider this complaint.

40. On the basis of its further examination, the UK NCP has concluded that PwC network firms have not acted inconsistently with provisions of the OECD Guidelines requiring enterprises to:

- take fully into account established policies in the countries in which they operate and consider the views of stakeholders
- ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance
- respect human rights, avoid causing or contributing to adverse human rights, seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, have a policy commitment to respect human rights or carry out human rights due diligence

Recommendations to the organisation and follow-up

41. The UK NCP, in line with the NCP role to promote the Guidelines, makes 2 recommendations that PwC global network of firms:

- recognise the OECD Guidelines for Multinational Enterprises as a standard of responsible business conduct that apply globally to the network of firms
- take steps to ensure that in all PwC network policies and standards, codes of conduct etc. wherever appropriate, the OECD Guidelines for Multinational Enterprises should be used and referenced by every member firm in all countries: regardless of whether or not that country is an OECD member state or a country adhering to the OECD Guidelines. If it has not already done so, the UK NCP recommends that PwC network firms use the OECD Due Diligence Guidance for Responsible Business - Conduct for this purpose

42. The UK NCP will request an update from both parties in a year's time.

1. The PRDP is a plan to deliver high level national policy goals and supporting objectives. These goals and objectives are set out in the PNPA, the guiding policy framework for the PRDP, to provide: a forward-looking agenda for Palestinian development and for reforming Palestinian institutions; a clear rationale for the activities of ministries, agencies and other public bodies; a basis for establishing priorities in the allocation of financial resources; and, performance targets at the national and ministry/agency level. See <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/PRDP08-10.pdf> (<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/PRDP08-10.pdf>). ↩
2. The wording is taken from UKLFI's website and can be found at <http://www.uklfi.com/about-us/our-objects> (<http://www.uklfi.com/about-us/our-objects>) as of October 2019. ↩
3. Palestinian Authority (PA) is the governing body of the Palestinian autonomous regions of the West Bank and Gaza Strip. ↩
4. Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights. ↩
5. <https://publications.parliament.uk/pa/cm201415/cmselect/cmintdev/565/56507.htm#a9> (<https://publications.parliament.uk/pa/cm201415/cmselect/cmintdev/565/56507.htm#a9>). ↩
6. <https://undocs.org/en/A/RES/73/19> (<https://undocs.org/en/A/RES/73/19>). ↩
7. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-18/210004/> (<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-18/210004/>). ↩
8. See paragraphs 33 to 38 in the section on the limitations of information review. ↩
9. See <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/PRDP08-10.pdf> (<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/PRDP08-10.pdf>) page 59 ref Payments by the Ministry of Detainees and Ex-Detainees to 'Provide support and protection for prisoners, freed prisoners and

their families'. ↩

10. <https://publications.parliament.uk/pa/cm201415/cmselect/cmintdev/565/56507.htm#a9> (<https://publications.parliament.uk/pa/cm201415/cmselect/cmintdev/565/56507.htm#a9>) and <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-08/141795/> (<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-08/141795/>). ↩
11. See MNE Guidelines: Concepts and Principles, para 4 usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. ↩