

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

DAVID M. WEINBERG, STAFF DIRECTOR
WILLIAM E. HENDERSON III, MINORITY STAFF DIRECTOR
LAURA W. KILBRIDE, CHIEF CLERK

January 29, 2024

VIA ELECTRONIC MAIL [REDACTED]

Governor Yasir Al-Rumayyan
Public Investment Fund c/o USSA International LLC
767 5th Avenue, 45th Floor
New York, NY 10153

Dear Governor Al-Rumayyan:

On January 12, 2024, the Permanent Subcommittee on Investigations' ("PSI" or "the Subcommittee") received a letter from your counsel related to its ongoing inquiry into the Saudi Arabian Public Investment Fund's ("the PIF") activities in the United States.¹ Specifically, the letter urged the Subcommittee to reconsider its position with regard to the continued noncompliance of McKinsey & Company, M. Klein & Co., Boston Consulting Group, and Teneo Strategy ("the PIF Consultants") with the duly authorized subpoenas issued by the Subcommittee on November 2, 2023.² We write to respond to that letter and to confirm that the Subcommittee intends to continue to pursue its inquiry.

The Subcommittee has been examining the extent to which foreign powers may be using commerce within the United States as a tool of foreign influence—an inquiry squarely within Congress's and PSI's jurisdiction.³ The PIF Consultants likely possess information relevant to this inquiry, and the Subcommittee has issued a subpoena to each of the PIF Consultants to obtain that information and relevant records.⁴ While the PIF's letter describes this step as

¹ See Attachment A (Jan. 12, 2024 letter from the PIF's Counsel to Chairman Richard Blumenthal).

² *Id.* Subpoena to Sharon Marcil (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Michael Klein (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Bob Sternfels (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Paul Keary (Nov. 2, 2023) (on file with the Subcommittee).

³ See U.S. CONST. art. I § 8, cl. 3; *United States v. Lopez*, 514 U.S. 549, 558 (1995) (outlining the "three broad categories of activity that Congress may regulate" under art. I § 8, cl. 3); *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927) (noting that a "legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change."); S. Res. 59, sec. 12(e)(1), (2) 118th Cong. (1st Sess. 2023); S. Perm. Subcomm. on Investigations, 118th Cong., Rules of Procedure (2023), <https://www.hsgac.senate.gov/wp-content/uploads/PSI-Rules-118th-Congress-CPRT-118SPRT51199.pdf>.

⁴ See Letter from Chairman Richard Blumenthal, Permanent Subcommittee on Investigations, to Christoph Schweizer (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Request-to-BCG-re-Documents-and-Information_Redacted.pdf; Letter from Chairman Richard Blumenthal, Permanent Subcommittee on Investigations, to Michael Klein (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Request-to-M.-Klein-re-Documents-and-Information_Redacted.pdf; Letter from Chairman Richard Blumenthal, Permanent Subcommittee on Investigations, to Bob Sternfels (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Request-to-McKinsey-re-Documentsand-Information_Redacted.pdf; Letter from Chairman Richard Blumenthal, Permanent Subcommittee on

“unprecedented,” issuing subpoenas to U.S. businesses in furtherance of a legitimate Congressional inquiry is a common investigative practice expressly authorized by this Subcommittee’s rules.⁵ The U.S. Constitution empowers Congress to compel the production of information as part of its lawmaking role, and persons and entities within the United States are required by law to comply with duly authorized Congressional subpoenas.⁶

What is unprecedented here is the PIF’s repeated attempts to hamper this Subcommittee’s inquiry. The subpoenas to the PIF Consultants were issued after months during which you, the PIF, and the PIF Consultants repeatedly declined to voluntarily testify or provide any substantive, responsive information or records to the Subcommittee.⁷ These attempts began when the Subcommittee first invited you to testify at its July 11, 2023 hearing into the PIF’s proposed takeover of professional golf in the United States and you declined—first citing scheduling conflicts, then declaring yourself an “inappropriate witness” for a public hearing.⁸ The PIF then rebuffed the Subcommittee’s requests for further information on July 27, 2023 and August 16, 2023, obligating the Subcommittee to seek records from entities over which it has incontrovertible jurisdiction, including the PIF Consultants and the PIF’s U.S. subsidiary USSA International LLC.

Investigations, to Paul Keary (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Request-to-Teneo-re-Documents-and-Information_Redacted.pdf; Subpoena to Sharon Marcil (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Michael Klein (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Bob Sternfels (Nov. 2, 2023) (on file with the Subcommittee); Subpoena to Paul Keary (Nov. 2, 2023) (on file with the Subcommittee). The Subcommittee issued these subpoenas after each of the PIF Consultants declined to comply with its August 16, 2023 voluntary requests for information.

⁵ See e.g., *Live Nation issued subpoena regarding ticketing, fees by US Senate panel*, REUTERS (Nov. 21, 2023), <https://www.reuters.com/world/us/live-nation-issued-subpoena-regarding-ticketing-fees-by-us-senate-panel-2023-11-20/>; Dustin Volz, *U.S. Senate holds Backpage.com in contempt over sex trafficking ads*, REUTERS (Mar. 17, 2016), <https://www.reuters.com/article/idUSL2N16P1N4/>; Tax Haven Banks and U.S. Tax Compliance: Hearing Before the Perm. Subcomm. on Investigations, 110th Cong. (2008), <https://www.govinfo.gov/content/pkg/CHRG-110shrg44127/pdf/CHRG-110shrg44127.pdf>; How Saddam Hussein Abused the United Nations Oil-For-Food Program: Hearing Before the Perm. Subcomm. on Investigations, 108th Cong. (2004), <https://www.govinfo.gov/content/pkg/CHRG-108shrg97048/pdf/CHRG-108shrg97048.pdf>; see also S. Perm. Subcomm. on Investigations, 118th Cong., Rules of Procedure (2023), <https://www.hsgac.senate.gov/wp-content/uploads/PSI-Rules-118th-Congress-CPRT-118SPRT51199.pdf>.

⁶ *Watkins v. United States*, 354 U.S. 178, 187-88 (1957) (“It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.”).

⁷ The PIF offered to brief the Subcommittee and the Subcommittee accepted this offer. Letter from Chairman Richard Blumenthal, Permanent Subcommittee on Investigations, to Governor Yasir Al-Rumayyan, Public Investment Fund (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Letter-to-PIF-re-Response-Letter_Redacted.pdf. However, despite repeated emails from the Subcommittee regarding scope and scheduling of the briefing, the PIF never responded to schedule the briefing or agreed regarding the scope of the briefing. See Email from Subcommittee Staff to Counsel for the PIF (Sept. 6, 2023) (on file with the Subcommittee).

⁸ Letter from Chairman Richard Blumenthal, Permanent Subcommittee on Investigations, to Governor Yasir Al-Rumayyan, Public Investment Fund (Aug. 16, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-08-16-Blumenthal-Letter-to-PIF-re-Response-Letter_Redacted.pdf; Letter from Chairman Richard Blumenthal and Ranking Member Ron Johnson, Permanent Subcommittee on Investigations, to Governor Yasir Al-Rumayyan, Public Investment Fund (June 21, 2023), https://www.hsgac.senate.gov/wp-content/uploads/2023-06-21-Blumenthal-and-Johnson-Hearing-Invitation-to-al-Rumayyan_Redacted.pdf.

The most recent and concerning of these actions is the PIF's filing of lawsuits against each of the PIF Consultants in Saudi Administrative Court seeking to prevent the production of records to this Subcommittee. The PIF sued each of the PIF Consultants in Saudi Arabian Administrative Court on November 30, 2023.⁹ Both the PIF's decision to seek relief from a duly authorized U.S. Congressional subpoena in a foreign forum and the PIF's continued insistence that the PIF Consultants only produce records that it authorizes have led to the current impasse.

Nonetheless, the PIF's January 12, 2024 letter once again claims (without citation) that the Subcommittee subpoenaing the PIF Consultants and enforcing compliance with those subpoenas violates various principles of law. The Subcommittee cannot accept the PIF's claims absent any legal explanation. Therefore, the PIF may submit to the Subcommittee for its consideration a legal memorandum explaining the legal bases for its assertions with appropriate citations to U.S. law and relevant, established precepts of international law.¹⁰ As the deadline for the PIF Consultants' compliance is February 2, 2024, if the PIF wishes to submit such a memorandum, it should do so by February 2, 2024.

Your counsel has repeatedly expressed the PIF's willingness to engage with the Subcommittee in good faith, and reiterated this willingness in the most recent January 12, 2024 letter. You yourself offered Chairman Blumenthal similar assurances when you met in Saudi Arabia in October 2023. The PIF's actions to date are inconsistent with these assurances. If your desire for constructive engagement with this Subcommittee is sincere, we ask that the PIF's future actions honor the stated desire to engage in good faith.

Sincerely,



Richard Blumenthal
Chairman
Permanent Subcommittee on Investigations



Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations

Attachment

⁹ See Letter from Counsel for McKinsey to the Permanent Subcommittee on Investigations (Dec. 1, 2023) (on file with the Subcommittee); Letter from Counsel for BCG to the Permanent Subcommittee on Investigations (Dec. 1, 2023) (on file with the Subcommittee); Letter from Counsel for M. Klein to the Permanent Subcommittee on Investigations (Dec. 4, 2023) (on file with the Subcommittee); Letter from Counsel for Teneo to the Permanent Subcommittee on Investigations (Dec. 4, 2023) (on file with the Subcommittee).

¹⁰ Formal objections in writing are required of each PIF Consultant should any fail to comply with PSI's subpoena, and any submission by the PIF does not excuse any PIF Consultant from objecting on their own behalf.

Attachment A



RAPHAEL A. PROBER

January 12, 2024

VIA ELECTRONIC MAIL

The Honorable Richard Blumenthal
Chairman

The Honorable Ron Johnson
Ranking Member

Permanent Subcommittee on Investigations

Re: December 27 Letter to PIF Advisors

Dear Chairman Blumenthal and Ranking Member Johnson:

I write on behalf of my client, the Public Investment Fund of the Kingdom of Saudi Arabia (the “PIF”), in connection with your letters of December 27, 2023, to McKinsey & Company, M. Klein & Co., Boston Consulting Group, and Teneo Strategy (collectively, the “Advisors”). I understand that you have informed counsel for those entities that their clients are expected to appear at a hearing later this month to discuss their compliance with the Subcommittee’s November 2, 2023, subpoenas for documents and information related to their work with the PIF (the “Advisor Subpoenas”).

We respectfully urge you to reconsider your position in this matter. As detailed below, your demand for documents would require the Advisors to violate lawful orders issued by the courts of Saudi Arabia, protecting documents that are prohibited from disclosure under Saudi law. Moreover, the PIF has recently been able to authorize the disclosure of documents from certain Advisors, based on an assessment of relevant factors under Saudi law, and expects to authorize further productions from the Advisors in the near future. We remain hopeful that those disclosures will satisfy your interest in the Advisors’ engagements with the PIF.

We remind the Subcommittee of the following facts and circumstances relevant to this matter. The PIF is an instrumentality of the Kingdom of Saudi Arabia. Under the Penal Law on Dissemination and Disclosure of Classified Information and Documents (the “Penal Law”), both the PIF itself and those who do work for it—including the Advisors—are subject to restrictions on

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the disclosure of classified documents and information.¹ The Penal Law defines “Classified Documents” as “all types of media which contain classified information the disclosure of which prejudices the State’s national security, interests, policies or rights, whether produced or received by its agencies” and separately defines “Classified Information” as “information an employee obtains—or is privy to by virtue of office—the disclosure of which undermines the State’s national security, interests, policies or rights.”² A “public employee” for the purposes of the Penal Law includes “any person who is assigned by a government entity or any other administrative authority to carry out a certain task,” including an outside consultant or adviser.³

The Advisors’ relevant services agreements with the PIF are governed by Saudi law. To protect its sensitive information (as is its legal right and obligation), the PIF filed, and is continuing to file, Urgent Applications with the courts of Saudi Arabia to enjoin the Advisors from producing confidential documents pursuant to the Advisor Subpoenas.⁴ The Advisors appeared and filed papers as well. Having considered all arguments, the Saudi Court has issued binding interim injunctions, which the Advisors are now subject to, directing them to “refrain from providing any information related to” their respective “contract[s] entered into with the Public Investment Fund” pending final disposition of the cases, which are currently listed to be heard on January 22 and March 4, 2024.⁵

We understand that despite awareness of these legal obligations, the Subcommittee continues to press the Advisors for disclosure of years of confidential and protected information regarding the PIF. Even more concerning, the Subcommittee is demanding that the Advisors

¹ Penal Law on Dissemination and Disclosure of Classified Information and Documents, issued by Royal Decree No. (M/35) dated 8/5/1432 AH (corresponding to April 12, 2011 AD).

² Penal Law, Art. 1.

³ *Id.*, Art. 3(2).

⁴ Urgent Application, *Public Investment Fund v. Boston Consulting Group Inc. and Boston Consulting Group International Inc.* (filed Nov. 30, 2023 AD); Urgent Application, *Public Investment Fund v. Teneo Strategy LLC*, (filed Nov. 30, 2023 AD); Urgent Application, *Public Investment Fund v. McKinsey & Company Inc. and McKinsey & Company International Branch*, (filed Nov. 30, 2023 AD); Urgent Application, *Public Investment Fund v. The Klein Group LLC* (filed Nov. 30, 2023 AD).

⁵ Judgement in Urgent Application No. 117, *Public Investment Fund v. Boston Consulting Group Inc. and Boston Consulting Group International Inc.*, Administrative Case No. 8993 (dated 27/05/1445 AH, corresponding to Dec. 11, 2023 AD); Judgement in Urgent Application No. 119, *Public Investment Fund v. Teneo Strategy LLC*, Administrative Case No. 9022 (dated 05/06/1445, corresponding to Dec. 18, 2023 AD); Judgement in Urgent Application No. 116, *Public Investment Fund v. McKinsey & Company Inc. and McKinsey & Company International Branch*, Administrative Case No. 8990 (dated 05/06/1445, corresponding to Dec. 18, 2023 AD); Judgement in Urgent Application No. 125, *Public Investment Fund v. The Klein Group LLC M. Klein & Company LLC*, Administrative Case No. 8982 (dated 12/06/1445 AH, corresponding to Dec. 25, 2023 AD).

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produce confidential and protected material in direct contravention of a lawful and binding order issued by the courts of Saudi Arabia.

The Subcommittee's position in this matter is unprecedented. To our knowledge, no committee of Congress has ever sought to compel the production of information in these circumstances. Moreover, the Subcommittee's position runs counter to longstanding principles of sovereignty and international comity, which demand that the U.S. government, including the Congress, respect foreign laws and foreign courts. Appropriate deference to sovereignty and international comity ensures that U.S. law and the interests of the U.S. government are duly respected abroad, and also protects the delicate balance of foreign relations and international diplomacy. Disregard for those bedrock principles risks undermining U.S. interests and complicating relations with a critical U.S. ally, to say nothing of the risk posed to continued foreign investment in the United States.

Notwithstanding the Subcommittee's posture to date, the PIF remains committed to working with the Subcommittee to find a path forward that affords due respect to all parties. To that end, the PIF has continued to assess whether additional documents in the custody of the Advisors may be disclosed to the Subcommittee consistent with the laws of the Kingdom of Saudi Arabia.

We hope that the PIF's good-faith effort to accommodate the Subcommittee's interest will be matched with reciprocal acknowledgment of the weighty issues of sovereignty and national interest that constrain the PIF's and the Advisors' ability to provide confidential and protected information pursuant to the Advisor Subpoenas. We look forward to continued cooperative engagement on this matter and stand ready to discuss all relevant issues at any time.

Sincerely,



Raphael A. Prober
Counsel for the PIF