

UNOFFICIAL ENGLISH TRANSLATION

To the Ministry of Finance

11 October, 2007

Council on Ethics' assessment of companies with operations in Burma

We hereby refer to the letter from the Ministry of Finance, dated 28 September 2007, requesting an account of the work carried out by the Council on Ethics regarding investments in companies with operations in Burma.

Recommendations on exclusion of companies pursuant the Government Pension Fund's Ethical Guidelines are based on two fundamental prerequisites as outlined in the guidelines' preparatory work: First, there must be a *connection* between the company's operations and the relevant violations. Second, there must be an unacceptable risk for the company, and thus also, for the Fund, of contributing to *future* violations.¹

The Council thus assumes that the fact that a company has operations in states controlled by repressive regimes does not, in itself, constitute sufficient grounds to exclude a company from the Fund. Even though it can be inferred that the presence of a company generates revenues for the repressive regime and thereby contributes to uphold it, such a connection between a company and the *state's* unethical actions would not, in itself, be sufficient to exclude a company from the Fund. This applies regardless of where companies operate, including in Burma.

The Ethical Guidelines' preparatory work states that the objective to be achieved by excluding companies is to avoid the Fund's contribution to grave unethical actions. It is beyond the Council's mandate to assess whether the exclusion of companies could have additional effects, such as improvement of the political situation in a state.

The Fund's Ethical Guidelines pertain inter alia to the production of weapons which through normal use may violate fundamental humanitarian principles. In the guidelines' preparatory work, an exhaustive list of the type of weapons that fall under this category is provided. When applying the weapons criteria it is in any case *present* and *future* production which is considered. Sales of arms in general, including to repressive regimes, fall outside the scope of the Ethical guidelines.

Regarding the Fund's investment in companies with operations in Burma, the Council notes that there are no direct investments in Burmese companies. However, the Council is aware of at least 20 companies in the Fund's portfolio which have, or are in negotiations to have, operations of some extent in Burma. The majority of these companies belong to the energy, mining, oil and gas, hydroelectric power, telecommunications, banking, pharmaceutical and

¹ See <http://www.regjeringen.no/en/dep/fin/Selected-topics/andre/Ethical-Guidelines-for-the-Government-Pension-Fund---Global-/The-Graver-Committee---documents/Report-on-ethical-guidelines.html?id=420232&epslanguage=EN-GB>

hotel sectors. The companies are listed on, among others, the South Korean, Thai, Singaporean and French stock markets.

In 2005, the Council considered whether to recommend the exclusion of the company Total SA from the Fund, and decided *not* to recommend exclusion of the company because of its contribution to human rights violations in connection with the construction of a gas pipeline in Burma.²

The Council on Ethics did consider it likely that Total SA had contributed to the violations of human rights which took place in direct relation to the clearing of pipeline routs for a gas pipeline in the period 1995-98. The main reason why it was recommended not to exclude the company was that the human rights violations that could be associated with the company had taken place in the past. The Council did not find that there were *ongoing* violations or that it was an unacceptable risk that the company would contribute to *future* violations. The Council is not aware of any changes in the premises that led to this conclusion.

In the assessment of Total in 2005, the Council regarded, as general point of departure, that the risk of grave human rights violations in connection with construction of infrastructure in Burma is considerable. The situation has hardly improved since then. Grave human rights violations such as forced displacement of people and extensive use of forced labour can be expected. This is particularly the case in the first stages of large construction projects, when preparations are made for constructions, areas are cleared and roads are built. Even though it is the Burmese authorities and not the companies who principally commit the violations, it is likely to be a connection between the violations and the companies' operations, in the sense that the violations take place to facilitate for companies' future operations.

Several companies in the Fund have engaged in negotiations regarding the construction of oil and gas pipelines from Burma to India, China and Thailand. A number of alternative projects have been discussed between the Burmese authorities and different groups of companies. Since the Council of Ethics is particularly aware of the risk of violations of human rights in connection with large construction projects in Burma, it has especially surveyed the possible role of companies in the Fund in similar, new projects.

With this in mind, the Council has obtained information from the concerned companies as well as from different organisations. The Council's secretariat has also temporarily employed a staff member who, in February this year, was in the border areas between Burma and Thailand to gather information on the human rights situation related to construction projects. Also, during a visit to India in February, the secretariat sought to clarify the status of the cooperation between India and Burma for the construction of a gas pipeline. Research on this and other issues continues and in October of this year; the secretariat will meet with Burmese citizens in exile, various organisations and the Norwegian embassy in Bangkok to gather additional information.

Among the companies looked into by the Council is the South Korean company Daewoo International Corp. In the autumn of 2006, Norges Bank wrote to the company and requested information pertaining to Daewoo's possible role in the construction of a gas pipeline between Burma and India. The company responded in January of this year and clarified that the company's operations related to this have been limited to exploration activities only, that no

² See <http://www.regjeringen.no/pages/1662906/oversettelse%20T%204%20jan%202006.pdf>

decision has been made or contract entered into regarding the landing and transportation of natural gas, and that on the company's part, no efforts have been made to construct gas pipelines onshore in Burma. Moreover, the Council has learnt of an alleged conflict between the company and the Burmese authorities, where by, according to the information obtained, Burmese authorities now would rather sell the gas from these fields to China instead of India.

There are indications that, on a political level, Burma has entered into agreements to sell gas to China and it is thus to be expected that construction of gas pipelines between the two countries may take place. There are several companies in the Fund that could play a role in such a construction project, among these is the Chinese company Petrochina Co. Ltd. To the Council's knowledge, however, no contracts have yet been signed between Burmese authorities and companies in the Fund on construction of onshore pipelines in Burma. The Council monitors the development in this area closely.

If companies in the Fund's portfolio were to enter into contract agreements regarding the construction of such pipelines, the Council may recommend the exclusion of these companies already from the time of entering into the agreements. Because such undertakings would most likely involve an unacceptable risk of contributing to human rights violations, it is not considered necessary to wait until the violations actually take place.

On the subject of the company Daewoo's involvement in the construction of an arms factory in Burma, the Council is aware of an ongoing criminal trial in South Korea, where 14 executives from seven South Korean companies are indicted for illegal sale of production equipment and technology to Burmese authorities. These deliveries have been used to establish a factory which produces artillery shells in Burma. Among the indicted are employees from the companies Daewoo International Corp. and Doosan Infracore Co Ltd. (previously Daewoo Heavy Industries & Machinery Ltd.), both of which are in the Fund's portfolio.

South Korean law prohibits the export of military equipment and technology to Burma. Notwithstanding this, according to the indictment, employees of Daewoo in 2002 entered into a contact with Burmese arms industry to deliver weapon technology. The deliveries continued through 2005. It is somewhat unclear what the role of the companies has been in this; the payment for the deliveries have been transferred to the private accounts of the indicted and not to corporate accounts, and part of the indictment concerns sale of stolen technology. On the other hand, it is possible that Daewoo may have had an interest in the illegal transfers, as far as this may have contributed to facilitate Daewoo being rewarded contracts for production of natural gas in Burma.

Sale of technology and equipment for production of artillery shells generally falls outside the specific weapons criteria of the Fund's Ethical Guidelines. If, however, a company violates national law by illegally selling weapon technology to a suppressive regime, this may be viewed as a serious violation of fundamental ethical norms, and thus fall inside the last section of the Fund's ethical guidelines (*"Exclusion of companies from the investment universe where there is considered to be an unacceptable risk of contributing to: (...) Other particularly serious violations of fundamental ethical norms"*). But also when considering exclusion of companies on this basis, it is the unacceptable risk of contributing to *future* violations that has to be regarded.

In this case, the Council notes that the alleged illegal acts have already taken place, that the scheme was foiled before the deliveries were completed and that the deliveries then ceased immediately. The Council has no reason to assume that any of the involved companies will resume illegal transfers of weapon technology to Burma, especially considering the possible consequences facing the indicted. Based on this, the Council finds no reason to assess that there is an unacceptable risk of the implicated companies of contributing to future breaches of fundamental ethical norms.

The Council has reason to believe that companies in the Fund's portfolio may be involved in construction of hydro electric power plants in Burma. Such projects have previously been known to lead to forced displacement of people and to forced labour. Also, the Council is informed that mining companies in the Fund's portfolio may have operations in Burma. It must be assumed that conditions related to mining in Burma can be severe, both in terms of environmental aspects, working conditions and effects on livelihood for the population in proximity of the mines. Nor can it be ruled out that forced labour is used, either in the mining operations themselves or when clearing areas for new mines. The Council's work on information gathering on these topics continues.

Regards,

Gro Nystuen,
Chair,
Council on Ethics,
Government Pension Fund – Global