

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

UNOFFICIAL ENGLISH TRANSLATION

To the Ministry of Finance

1 November, 2013

**Recommendation to exclude the companies Africa Israel Investments Ltd.
and Danya Cebus Ltd. from the investment universe of the Government
Pension Fund Global**

1 Summary

The Council on Ethics is recommending the exclusion of the Israeli companies Africa Israel Investments Ltd. (AI) and Danya Cebus Ltd. (DC) from the Government Pension Fund Global (GPF) due to an unacceptable risk of the companies, through their construction activity in East Jerusalem, contributing to serious violations of the rights of individuals in situations of war or conflict.

2 Introduction

In September 2013, the Council on Ethics decided to reconsider the Fund's investment in AI¹ and DC by reference to the Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe (the ethical guidelines).² The reason for this was information that DC is constructing settlements in East Jerusalem. This construction activity must be regarded as illegal.

DC is a listed subsidiary of AI, which owns 82 per cent of DC.

The companies were excluded from the GPF from August 2010 to August 2013 on the recommendation of the Council on Ethics. The reason for the exclusion was that the companies were engaged in the construction of settlements in the West Bank.

When the Council on Ethics was in contact with the company in the spring of 2013, AI made it clear that neither the company nor any of its subsidiaries were involved in or had plans to construct settlements in the West Bank. The Council on Ethics proceeded on this basis, and recommended in April of this year that the companies should no longer be excluded from the GPF.³ Since then, the Council on Ethics has received information that DC is constructing settlements in East Jerusalem.

2.1 What the Council has considered

The Council on Ethics has considered whether there is an unacceptable risk of AI or DC contributing to serious violations of the rights of individuals in situations of war or conflict in accordance with section 2(3)(b) of the ethical guidelines. The background is DC's construction of the 'C Jerusalem' project in the the Gilo neighbourhood in East Jerusalem.

2.2 Sources

The information about DC's construction of settlements in East Jerusalem became known to the Council on Ethics after the recommendation to revoke the exclusion of the companies was published.

AI has confirmed to the Council on Ethics that DC is the general contractor for the C Jerusalem project.

¹ ISIN: IL0006110121.

² http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277.

³ Recommendation to revoke the exclusion of Africa Israel Investments Ltd. and Danya Cebus Ltd., 25 April 2013 (published 21 August 2013).

3 Background

3.1 Previous cases

The Council on Ethics has twice previously made recommendations regarding the exclusion of companies engaged in the construction of settlements in the West Bank and East Jerusalem.^{4 5} The recommendation to exclude the company Shikun & Binui Ltd. in 2011 was made due to the company's construction of settlements in East Jerusalem. The assessment of the Council on Ethics regarding AI's construction activity in East Jerusalem is identical to the assessment on which the 2011 recommendation was based.

3.2 The legality of Israeli settlements in East Jerusalem

The purpose of the Fourth Geneva Convention is to protect civilians during war and occupation. The convention establishes the obligations and rights of an occupying power in an occupied territory. Israel acceded to the convention without reservations in 1951.

Article 49 of the convention states, '[...] *The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*'

In connection with Israel's launch of the plans to construct further settlements in East Jerusalem, to which this recommendation relates, the UN Secretary-General stated in 2011: '*The Secretary-General is deeply disappointed by the recent approval by the Government of Israel to build more than 900 housing units in East Jerusalem. He reiterates that settlement activity in the West Bank, including East Jerusalem, is contrary to international law, and he is concerned by provocative actions on the ground.*'⁶

The International Court of Justice (ICJ) in The Hague⁷, the UN Security Council⁸ and the International Committee of the Red Cross (ICRC)⁹ have established that Israel's construction

⁴ Council on Ethics: Recommendation 16 November 2009 on exclusion of the companies Africa Israel Investments Ltd. and Danya Cebus Ltd.:

http://www.regjeringen.no/pages/13898012/Recommendation_Africa_Israel.pdf.

⁵ Council on Ethics: Recommendation 21 December 2011 on exclusion of the company Shikun & Binui Ltd.:

http://www.regjeringen.no/pages/37921777/Tilr_Shikun_Binui_publ_eng.pdf.

⁶ Statement 6 August 2011 by the UN Secretary-General:

<http://unispal.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/c4bb7721a06a99dc852578e6004a5728?OpenDocument>

⁷ In its advisory opinion of 2004 concerning the legality of Israel's separation barrier with the West Bank, the ICJ also considered the legality of the settlements (paragraph 120): '*The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.*' In this context, the ICJ found that Israel's establishment of new settlements in the West Bank and East Jerusalem is illegal. <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁸ Security Council resolution 465, which was unanimously adopted on 1 March 1980, established among other things that Israel's policy and practice of constructing settlements on occupied territory, including East Jerusalem, lack legal validity and '*constitute a flagrant violation*' of the Fourth Geneva Convention.

<http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

⁹ The ICRC has made statements on the legality of the Israeli settlements in the West Bank on several occasions. A statement from 2001 stated, among other things, that the ICRC had repeatedly pointed out that the Israeli settlements had been established in contravention of international humanitarian law. The ICRC emphasised that the State of Israel had introduced laws and administrative regulations in connection with the settlements that contravened the Fourth Geneva Convention in certain areas.

http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo_print

of settlements in the West Bank and East Jerusalem contravenes the Fourth Geneva Convention.

3.3 The status of East Jerusalem

Israel claims that East Jerusalem has a different status from the rest of the West Bank. In 1980, Israel annexed East Jerusalem by adopting the '*Basic Law: Jerusalem, Capital of Israel*'.¹⁰ In 1980, the UN Security Council adopted resolution 478, which established, among other things, that Israel's annexation of East Jerusalem was illegal and did not alter the occupied status of the territory.¹¹

4 Information from the companies

The Council on Ethics has written to AI, asking whether it or its subsidiaries are involved in construction projects in East Jerusalem.¹²

In an email from AI (10 September of this year), the company confirmed that DC is the general contractor for the C Jerusalem project in East Jerusalem. The company also pointed out that it regards East Jerusalem as part of Israel, and that its construction activity there cannot be equated to the construction of settlements in the rest of the West Bank.

The Council on Ethics sent a draft version of this recommendation to AI on 2 October, 2013, and invited the company to submit any remarks it may have. AI did not respond to this.

5 The Council's assessment

The Fund's investments in companies that can be said to contribute to violations of the Fourth Geneva Convention may fall within section 2(3)(b) of the GPFG's ethical guidelines.

There is broad international consensus that Israel's construction of settlements in the West Bank and East Jerusalem is illegal, and there is no basis for the suggestion that settlements in East Jerusalem and in the rest of the West Bank should be assessed differently under international law. DC's construction of the C Jerusalem project must therefore be equated to the construction of Israeli settlements in the rest of the West Bank. The Council on Ethics maintains that companies that construct such settlements should be excluded from the GPFG.

¹⁰ Israel's Ministry of Foreign Affairs: '*Basic Law: Jerusalem, Capital of Israel*
1) *Jerusalem, complete and united, is the capital of Israel.[...]*',
http://www.mfa.gov.il/MFA/MFAArchive/1980_1989/Basic%20Law-%20Jerusalem-%20Capital%20of%20Israel.

¹¹ '*The Security Council [...]*
Affirms that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;
[...] Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith';
<http://unispal.un.org/UNISPAL.NSF/0/DDE590C6FF232007852560DF0065FDDB>

¹² Letter from the Council on Ethics to Africa Israel Investments Ltd, 4 September 2013.

AI holds a controlling interest in DC. Thus, AI should be excluded as a consequence of DC's construction activity in East Jerusalem.

6 Recommendation

The Council on Ethics recommends the exclusion of the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. from the investment universe of the Government Pension Fund Global due an unacceptable risk of the companies contributing to serious violations of the rights of individuals in situations of war or conflict.

Ola Mestad
Chair

(sign.)

Dag Olav Hessen

(sign.)

Ylva Lindberg

(sign.)

Marianne Olsson

(sign.)

Bente Rathe

(sign.)