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STATENS PENSJONSFOND
UTLAND

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Recommendation regarding Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India, Korea Gas Corporation and POSCO

Contents

1 Summary

The Council on Ethics no longer recommends the exclusion of the companies POSCO, Daewoo International Corporation, Korea Gas Corporation (KOGAS), Oil and Natural Gas Corporation Ltd. (ONGC) and GAIL India Ltd. from the investment universe of the Government Pension Fund Global (GPFG). The companies participate in a joint venture with the Chinese state-owned company China National Petroleum Corporation (CNPC), which is responsible for the construction and operation of an 800 km overland gas pipeline across Myanmar. Construction of the pipeline was completed in June 2013.

Since May 2010, the Council on Ethics has made three recommendations to the Ministry of Finance recommending the exclusion of the companies involved in the construction of the pipeline, most recently on 21 June 2012. The exclusion recommendations were based on the risk that the companies might contribute to human rights violations in connection with the construction of the pipeline.

The Council considers it plausible that the companies have contributed to severe or systematic human rights violations in connection with the construction of the pipeline, even after the political situation in Myanmar changed. The Council's decision to no longer recommend the exclusion of the companies must be seen in light of the fact that the Council's earlier recommendations concerned the actual construction of the pipeline. As construction has now been completed, the situation has changed and the basis for the earlier recommendations is no longer present.

The Council does not ignore the possibility that further human rights violations will occur. Military forces will continue to protect the pipeline after it has entered into operation, and a heavy military presence will still be maintained along the entire route, particularly in conflict areas. However, any such breaches will be linked to the operation of the pipeline and will thus require a new assessment of the companies' contribution to human rights violations as well as the steps that must be taken to prevent the occurrence of such violations.

2 Background

On 27 March 2009, the Chinese and Myanmarese authorities concluded an agreement for the construction of two pipelines: a pipeline to transport gas from the Shwe field off the coast of Myanmar, and a parallel pipeline to transport oil. The Myanmarese part of the pipeline is almost 800 km long and crosses Myanmar, from the port of Kyauk Phyu (Sittwe) in Rhakine State to Yunnan Province in China. The pipeline crosses areas populated by various ethnic groups. Construction work began in 2010, and on 29 July 2013 it was reported that the gas pipeline had entered into operation.[1] Myanmar's military is responsible for the security of the pipeline. There has been increased militarisation along the route of the pipeline, and there have been reports of the use of forced labour and other serious human rights violations against the local population throughout the construction period.

The gas pipeline is operated by the Chinese state-owned company China National Petroleum Corporation (CNPC). The Korean companies Daewoo International Corporation (Daewoo) and

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[1] http://www.ft.com/intl/cms/s/0/870f632c-f83e-11e2-92f0-00144feabdc0.html#axzz2aVOEwBKp , http://www.irrawaddy.org/archives/40894.

Korea Gas Corporation (KOGAS), along with the Indian companies Oil and Natural Gas Corporation Ltd. (ONGC)[2] and GAIL India Ltd. (GAIL), are minority owners in a joint venture with CNPC.[3]

On 26 May 2010, the Council on Ethics recommended the exclusion of CNPC's subsidiary, PetroChina, due to PetroChina's unusually close relationship with CNPC and the risk of the company contributing to gross human rights violations in connection with the construction of the pipelines.[4] The Council on Ethics considered *inter alia* the companies' management and corporate structures, as well as the composition and coordination of operations between the companies. As concerns the risk of contributing to human rights violations, the Council concluded that the companies had to be perceived as one single unit insofar as CNPC's operations in Myanmar could not be separated from those of its subsidiary in this context. The Ministry of Finance did not follow the recommendation regarding PetroChina, as it took the view that PetroChina's links with CNPC were not such that the two companies should be regarded as one unit.

On 2 May 2011, the Council on Ethics recommended the exclusion of CNPC's partners in the joint venture from the investment universe of the GPFG on the same grounds. In the Council's opinion, by participating in the project the partners in the joint venture were accepting that the military would be responsible for the security of the pipeline. In the Council's view, both the type of project and the role of the military in the project would present an unacceptable risk of the companies contributing to severe human rights violations.

On 8 May 2012, the Ministry of Finance requested that the Council on Ethics update its recommendation of 2 May 2011 on the exclusion of Daewoo, KOGAS, GAIL and ONGC in light of the political developments that had taken place in Myanmar. A new recommendation was made on 21 June 2012 that also included the Korean company POSCO, as POSCO had acquired a controlling ownership interest in Daewoo. The Council concluded that the grounds for exclusion continued to be present and had in fact been strengthened since the Council's recommendation of 2 May 2011. The following was among the reasons given by the Council: 'The Council finds that the increased militarisation of the area around the pipeline is documented, especially in Rhakine State and Shan State, at the southern and northern ends of the pipeline respectively. These are areas with important ethnic populations. It looks like the conflict around the northern area has been intensified by the pipeline, which is central in the acts of violence taking place in the area. In these areas the military forces have strengthened their presence during the last year in order to ensure the pipeline's territories.' Further, 'The Council attaches importance to the fact that many different sources confirm that the military in Myanmar continues to carry out systematic and serious human rights violations, and that torture, murder, rape, forced labour and other forms of abuse continue to take place in areas through which the pipeline will pass. These abuses are on-going and appear to have increased as the military has sought to control the territories along the pipeline corridor.'

Reports of assaults committed by the military, including in Shan State in the north, have also been received regularly since the recommendation was made in June 2012 as a result of the conflict and militarisation along the pipeline. The reports generally come from local human

[2] ONGC is participating through its wholly-owned subsidiary ONGC Videsh Ltd.
[3] The Council provided a detailed account of the joint venture and the rights and obligations of the partners in the recommendation of 2 May 2011. The information available in the companies' annual reports and on websites suggests that there have not been any changes in the participants or ownership interests in the joint venture.
[4] The Council on Ethics' recommendation to exclude PetroChina is available at www.etikkradet.no.

rights organisations and focus on forced labour (portering), harassment, confiscation of land and failure to pay compensation.[5]

3 The Council's assessment

The Council has considered whether the basis for recommending the exclusion of the companies POSCO, Daewoo, KOGAS, ONGC and GAIL is still present in light of the fact that the gas pipeline has now been completed. In the Council's two previous recommendations relating to these companies, the Council emphasised that both the type of project and the role of the military in the project carried an unacceptable risk that the companies would contribute to human rights violations.

In the first recommendation to exclude these companies (2011), the Council's point of departure was the imminent risk of severe or systematic human rights violations in connection with major infrastructure projects in Myanmar (then Burma). The Council had previously expressed its general view in this regard in a letter to the Ministry of Finance (11 October 2007) on the construction of pipelines in Burma: '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.'[6]

In view of the political development that has occurred in Myanmar in recent years, the Ministry of Finance requested a new general assessment in 2012. At that time, the Council concluded that it would assess companies' operations in Myanmar under the same criteria as in other countries, but would pay particular attention to companies' potential contributions to any human rights violations in connection with major infrastructure projects.[7] This was followed up in the second recommendation to exclude the companies, made in June 2012. The basis for the Council's earlier conclusion was updated, including through the Council's own research of the ongoing human rights situation in areas along the pipeline. At that time, the Council did not doubt that severe or systematic human rights violations had been committed in connection with the construction of the pipeline even after the political situation in Myanmar had changed. Even though the human rights violations were committed by the Myanmarese military and not the companies, there was a clear connection between the violations and the companies' operations in the sense that the violations took place in order to facilitate the future operations of the companies. It was also clear that the companies had entered into the joint venture with a single pupose – to construct an overland pipeline in Myanmar. Furthermore, they had accepted that the military should be responsible for securing land areas and organising the security along the pipeline. The Council also deemed it likely that the companies in the joint venture had, or should have had, knowledge of the violations committed in connection with the preparation of the pipeline. The Council therefore concluded that the companies had contributed to the human rights violations.

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[5] http://business-humanrights.org/media/shan-pipeline-april-2013.pdf, http://www.burmalibrary.org/docs14/Pipeline_Nightmare-en-red.pdf.
[6] Letter from the Council on Ethics to the Ministry of Finance, 11 October 2007.
[7] Letter from the Council on Ethics to the Ministry of Finance, 22 February 2012.

The Council's present conclusion that the companies should no longer be excluded must be seen in light of the fact that all of the Council's recommendations and assessments in this case have related to the actual construction of the pipeline. As construction has now been completed, the situation has changed and the basis for the earlier recommendations is no longer present.

The Council does not ignore the possibility that further human rights violations may occur. Military forces will continue to protect the pipeline after it has entered into operation, and a heavy military presence will still be maintained along the entire route, particularly in conflict areas. Nevertheless, any such breaches will be linked to the operation of the pipeline, which is expected to cause less conflict than the construction phase, and will thus require a new assessment of the companies' contribution to human rights violations and the steps taken to prevent the occurrence of such violations.

4 Recommendation

The Council on Ethics no longer recommends that POSCO, Daewoo International Corporation, Oil and Natural Gas Corporation Ltd, GAIL India and Korea Gas Corporation be excluded from the investment universe of the GPFG.

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Ola Mestad Chair	Dag Olav Hessen	Ylva Lindberg	Marianne Olssøn	Bente Rathe
(sign.)	(sign.)	(sign.)	(sign.)	(sign.)