

This is an unofficial translation of a letter from the Ministry of Finance to the Council on Ethics for the Government Pension Fund Global, sent on Feb 18 2010.

Consideration of recommendation for exclusion

We refer to the letter of the Council on Ethics of 16 November 2009 with the enclosed recommendation to exclude the companies Africa Israel Investments (AII) and Danya Cebus Ltd (DC) from the Government Pension Fund Global. The recommendation is based on an assessment that the Fund is running an unacceptable risk of contributing to serious violations of the rights of individuals in situations of war or conflict by being invested in these companies.

This is the first time the Council on Ethics is recommending the exclusion of a company on the basis of “serious violations of individuals’ rights in situations of war or conflict”. In previous cases where an exclusion criterion was applied for the first time, the Council on Ethics undertook a thorough review of the content of the criterion and on the basis of inter alia the preparatory work on the guidelines and other relevant sources deduced the factors that the Council would attach particular importance to in assessing whether the criterion has been violated. The Ministry believes that this approach is generally appropriate, among other reasons in the interest of predictability in applying the criterion in subsequent cases. In view of this, the Ministry would request that the Council on Ethics elaborate on some details in its recommendation before a final decision is reached.

As it is worded, the criterion that deals with war and conflict concerns “serious violations of the rights of individuals”. In the present case there have been no reports of the rights of specific individuals having been violated. As the Ministry understands the recommendation, in this context it is a collective violation of individuals – the Palestinian population on the West Bank – that is the determining factor. The Ministry assumes that this is in keeping with a general understanding of international humanitarian law.

In its recommendation the Council on Ethics assumes that if there is a close connection between a company’s operations and a state’s violation of the IV Geneva Convention, the investment in the company may be regarded as representing an unacceptable risk of the Fund being complicit in violating rights of individuals in situations of war or conflict. At the same time, the Council on Ethics points out that any decision must be based on actions on the part of the company, not on possible norm violations by states or other parties. In cases like the present one, where the circumstances primarily relate to a state’s violation of a convention, the Ministry believes that a more detailed discussion of the factors the Council on Ethics believes are relevant might be desirable in determining whether there is a sufficiently close connection (does it for example matter who the principal is, questions relating to the company’s knowledge of the circumstances that lead to the violation, whether the company’s operations also benefit the violated party, etc.). We refer, for example, to the Council on Ethics’ deduction of relevant factors in cases pertaining to human rights violations (Total).

In its recommendation the Council on Ethics writes that not all economic activity linked to the settlements would necessarily represent unacceptable contribution to violations of the Fund's ethical guidelines, but that any finding must rest on a consideration of the materiality of the company's contribution. The Ministry agrees with this principle. The Council on Ethics' materiality assessment appears primarily to be related to the role of the construction industry in connection with the settlements, compared with the contribution of other industries and suppliers. The Ministry would like the Council of Ethics to state its view on whether the implication of this is that other companies, if any, with contractor operations connected with settlements in the occupied territories should be excluded from the portfolio or, in the event, whether an assessment should also be done of whether the contribution of the company in question may be said to be material within its industry.

The Ministry would also request further elaboration of certain facts, as these are important for assessing any ongoing norm violations and the risk of future norm violations. According to the recommendation, DC is currently a contractor on several construction projects to build settlements on the West Bank. The documentation cited is somewhat dated. The Ministry would like the Council on Ethics to report on the status of these projects and also whether the Council of Ethics is aware of other projects, if any, that DC is involved in.

Yours sincerely,

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Director General

Wilhelm Mohn (sign)

Adviser