

# COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

**To the Ministry of Finance  
21 December 2011**

**Recommendation for exclusion of Shikun & Binui Ltd. from the  
Government Pension Fund Global (GPF)**

# UNOFFICIAL ENGLISH TRANSLATION

## 1 Summary

The Israeli company Shikun & Binui Ltd.<sup>1</sup> is involved in building Israeli settlements in East Jerusalem and has also previously been involved in building settlements in the occupied territories on the West Bank and in East Jerusalem.

The Council has sent the company its questions by letter as well as sent it a draft of this recommendation for comments. The Council has not received any response.

The Council bases its opinion on statements made by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which state that the building of Israeli settlements on the West Bank and in East Jerusalem is contrary to the IV Geneva Convention. The purpose of the IV Geneva Convention is to protect civilians in situations of war and occupation.

The Council considers that the investment made by the Government Pension Fund Global (GPF) in the company is contrary to the Fund's Ethical Guidelines because the company's activities entail an unacceptable risk that it will contribute to serious violations of the rights of individuals in situations of war or conflict. The Council therefore recommends the exclusion of Shikun & Binui Ltd. from the investment universe of the GPF.

## 2 Introduction

In the fall of 2011, the Council decided to assess whether it should recommend the exclusion of the Israeli company Shikun & Binui Ltd. from the GPF because it is involved in building Israeli settlements in East Jerusalem. At the end of 2010, the GPF owned shares in the company worth NOK 13.8 million.

### 2.1 What the Council on Ethics has considered

The GPF's Ethical Guidelines section 2.3(b) states that:

*“The Ministry of Finance may, on the advice of the Council on Ethics, exclude companies from the investment universe of the fund if there is an unacceptable risk that the company contributes to or is itself responsible for: [...] serious violations of the rights of individuals in situations of war or conflict”*<sup>2</sup>

The Geneva Conventions are specifically referred to in the preparatory documents of the GPF's Ethical Guidelines as part of the basis for an evaluation of companies' activities in situations of war or conflict.<sup>3</sup> The purpose of the IV Geneva Convention<sup>3</sup> is to protect civilians during war and occupation. The Council has previously found that the participation of

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<sup>1</sup> Issuer ID: 350591, SEDOL 6151292

<sup>2</sup> Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe, [http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics\\_council/ethical-guidelines.html?id=425277](http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277)

<sup>3</sup> Norwegian Government White Paper (NOU) 2003: 22, annex 7, para. 3.2, <http://www.regjeringen.no/Rpub/NOU/20032003/022/PDFS/NOU200320030022000DDDPDFS.pdf>

companies in government's breaches of the Geneva Conventions may constitute grounds for their exclusion from the Fund. In this regard the Council has previously recommended the exclusion of companies that build Israeli settlements on the West Bank and in East Jerusalem.<sup>4</sup>

The Council has considered whether Shikun & Binui Ltd. contributes to violations of the IV Geneva Convention by building an Israeli settlement in East Jerusalem and, if so, whether this should lead to the exclusion of the company from the GPFG.

## 2.2 Sources

The Council has relied on the company's own website for information about the company and its construction work.

## 3 Background

Shikun & Binui Ltd.<sup>5</sup> is one of the largest companies in Israel's construction industry. It has several subsidiaries whose activities include the construction of roads and houses as well as property sales. The company operates both in Israel and abroad. Its wholly owned subsidiaries include Shikun & Binui Real Estate Development and Solel Boneh.<sup>6</sup>

Shikun & Binui Ltd. is listed on the Tel Aviv stock exchange. The company is 57 per cent owned by the private Israeli investment company, Arison Group.

The residential project *Ramat Rachel Dreams* in the East Talpiyyot area of East Jerusalem is included in the list of ongoing and completed projects on Shikun & Binui Real Estate Development's website. According to its sales prospectus this project is due to be completed in January 2013.<sup>7</sup>

The Council has obtained information showing that the company has previously been involved in other construction projects in East Jerusalem and on the West Bank:

- The construction of 102 dwellings in the Israeli settlement of Ma'aleh Edumim by Shikun & Binui Real Estate Development's in 1994 as detailed in documents concerning legal proceedings against the authorities on a tax issue. Ma'aleh Edumim is one of the largest Israeli settlements on the West Bank.
- Solel Boneh has been lead contractor for several settlements on the West Bank. In 2006, interest groups approached the *Ministry of Housing and Construction* with a query under the Israeli Freedom of Information Law as to which companies have been awarded contracts for the construction of settlements. In the Ministry's response, Solel Boneh is given as, *inter alia*, main contractor for the construction of the Homat Shmuel settlement in Har Homa in East Jerusalem.

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<sup>4</sup> Recommendation to exclude the companies Africa Israel Ltd. and Danya Cebus Ltd., 16 November 2009, and the subsequent letter from the Council of Ethics to the Ministry of Finance, 9 March 2010, [http://www.regjeringen.no/pages/13898012/Africa\\_Israel.pdf](http://www.regjeringen.no/pages/13898012/Africa_Israel.pdf)

<sup>5</sup> The company's website: <http://en.shikunbinui.co.il/>

<sup>6</sup> The company's website: [http://en.shikunbinui.co.il/category/solel\\_boneh\\_about](http://en.shikunbinui.co.il/category/solel_boneh_about)

<sup>7</sup> According to the company's website and sales description (in Hebrew), the building is in an area which lies at the junction of *Eliyahu Lankin* and *Korch* streets [http://en.shikunbinui.co.il/category/residential\\_projects](http://en.shikunbinui.co.il/category/residential_projects).

- Solel Boneh has a factory for the production of ready-mixed concrete in Kyriat Sefer, adjacent to the Israeli settlement of Modi'in Illit on the West Bank. The company refers to this itself on its website.<sup>8</sup>

In 2004 the Israeli authorities also announced that Solel Boneh had won the tender for a split contract to erect the West Bank separation barrier.<sup>9</sup>

## **4 Legality of the Israeli settlements on the West Bank and in East Jerusalem**

### **4.1 The IV Geneva Convention**

The main purpose of the IV Geneva Convention is to protect civilians during war and occupation. The convention determines, amongst other things, the rights and obligations of the occupying power in an occupied territory.

The convention entered into force in 1950. Israel became party to the convention without reservations in 1951.

Article 49 of the IV Geneva Convention states:

*“[...] The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.”*<sup>10</sup>

### **4.2 Views of the international bodies on the settlements**

Regarding the legality of the settlements, the Council makes reference to statements by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which establish that the building of Israeli settlements on the West Bank and in East Jerusalem is in breach of the IV Geneva Convention.

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<sup>8</sup> The company's website: [http://en.shikunbinui.co.il/category/solel\\_boneh\\_logistics](http://en.shikunbinui.co.il/category/solel_boneh_logistics)

<sup>9</sup> Israel Security Fence, 10 February 2004 (in Hebrew)  
<http://www.securityfence.mod.gov.il/Pages/Heb/hadashot.htm#news18>

<sup>10</sup> Article 49, IV Geneva Convention: <http://www.icrc.org/ihl.nsf/WebART/380-600056?OpenDocument>

### *Security Council resolutions*

The UN Security Council has adopted a string of resolutions which establish that the settlements are illegal, including resolutions 446 (1979), 452 (1979), 465 (1980), 471 (1980) and 476 (1980).

UN Security Council resolution 465, which was adopted unanimously on 1 March 1980, establishes among other things that Israel's policy and practices of building settlements on occupied territory, including East Jerusalem, have no legal validity and “constitute a flagrant violation” of the IV Geneva Convention.<sup>11</sup>

### *The ICJ's advisory opinion*

In its 2004 advisory opinion<sup>12</sup> on the legality of Israel's separation barrier on the West Bank, the ICJ also considered the legality of the settlements:

*“The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”*<sup>13</sup>

Here, the ICJ found that Israel's establishment of settlements on the West Bank and in East Jerusalem is illegal.

### *Statements by the International Committee of the Red Cross (ICRC)*

The ICRC has on several occasions made statements about the legality of the Israeli settlements.

A statement in 2001 says, *inter alia*, that the ICRC has repeatedly pointed to the fact that the Israeli settlements have been established in breach of international humanitarian law. The ICRC emphasises that in connection with the settlements, the Israeli state has introduced laws and administrative guidelines which contravene the IV Geneva Convention in a number of respects.<sup>14</sup>

### *Statement by the UN Secretary-General*

In August 2011, the UN Secretary-General commented on plans to build further settlements in East Jerusalem as follows:

*“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.”*<sup>15</sup>

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<sup>11</sup> “The Security Council [...] Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”, <http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

<sup>12</sup> ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 4 July 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf>

<sup>13</sup> Ibid para. 120

<sup>14</sup> Para 5, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo\\_print](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo_print)

<sup>15</sup> Statement by UN Secretary-General, August 6, 2011: <http://unispal.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/c4bb7721a06a99dc852578e6004a5728?OpenDocument>

Here, again, the illegality of constructing of settlements on the West Bank and in East Jerusalem is underlined.

### 4.3 The status of East Jerusalem

Israel asserts that East Jerusalem has a different status to the rest of the West Bank. Israel resolved to annex East Jerusalem in 1980 by adopting the “*Basic Law: Jerusalem, Capital of Israel*”.<sup>16</sup> In 1980 the UN Security Council adopted Resolution 478 which establishes, among other things, that Israel’s annexure of East Jerusalem is illegal and does not change the area’s status as an occupied territory.<sup>17</sup>

## 5 The company’s position

The Council has written to Shikun & Binui Ltd. asking whether it, or any of its subsidiaries or the companies it controls, are involved in or have future plans to participate in the construction of Israeli settlements on the West Bank (*Judea and Samaria*) or in East Jerusalem, and, if so, what the nature of these activities is and what plans the company has for future activity in said areas.<sup>18</sup>

The Council has also sent the company a draft of this recommendation with an invitation to make any comments it may have.<sup>19</sup>

The company has not responded to any of the Council’s approaches.

## 6 The Council’s assessments

There is wide international consensus that Israel’s building of settlements on the West Bank and in East Jerusalem is illegal. In the view of the Council, companies that build such settlements may be excluded from the GPFG. In its deliberations of such cases, the Council does not distinguish between the building of settlements in East Jerusalem and in the rest of the West Bank.

As discussed in previous recommendations, the Council on Ethics’ role is to assess the GPFG’s investments in companies under the Fund’s Ethical Guidelines. The Council bases its assessment on the company’s activities and conduct, not on possible violations committed by states or other parties.

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<sup>16</sup> Israeli Ministry of Foreign Affairs: “*Basic Law: Jerusalem, Capital of Israel*

1) *Jerusalem, complete and united, is the capital of Israel.[...]*”,

<sup>17</sup> “*The Security Council [...]*

2) *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;*

3) *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”;*

<sup>18</sup> Letter from the Council on Ethics to Shikun & Binui Ltd, 5 September 2011. A subsequent enquiry was sent on 14 October 2011.

<sup>19</sup> Draft recommendation sent to Shikun & Binui Ltd. 15 November 2011. The Council on Ethics requested any comments by 9 December 2011.

The Council finds that Shikun & Binui Ltd. has been, and probably still is, involved in the construction of settlements in the occupied territories. As the company has not responded to the Council's approaches, it is not possible for the Council to provide the exact status of the company's current and future construction projects in the occupied territories, except to the extent that, according to its sales prospectus, the *Ramat Rachel Dreams* project is due to be completed in 2013.

On the basis of the information available about the company's earlier and current construction projects on the West Bank and in East Jerusalem, the Council finds that there is an unacceptable risk that the company will participate in future violations of ethical norms by undertaking the construction of Israeli settlements there. The Council on Ethics believes that this risk will remain as long as such activities are permitted or until the company makes it clear that such activity has ceased.

## **7 Recommendation**

The Council on Ethics recommends that the company Shikun & Binui Ltd. be excluded from the Norwegian Government Pension Fund Global on the basis that there is an unacceptable risk that the company will contribute to serious violations of the rights of individuals in situations of war or conflict.

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Ola Mestad  
Chair  
(sign.)

Dag Olav Hessen  
(sign.)

Ylva Lindberg  
(sign.)

Gro Nystuen  
(sign.)

Bente Rathe  
(sign.)