

UNOFFICIAL ENGLISH TRANSLATION

To Norges Bank

02.11.2020

**Recommendation to exclude Shapir Engineering and Industry Ltd from the
Government Pension Fund Global**

Summary

The Council on Ethics recommends that Shapir Engineering and Industry Ltd (Shapir) be excluded from investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict.

Shapir is an Israeli construction company listed on the stock exchange in Tel Aviv. At the close of 2019, GPF owned the equivalent of 0.1 per cent of the company's shares, to the value of NOK 19 million.

The Council on Ethics' position is that the Israeli settlements in the West Bank have been built in violation of international law and that their existence and constant expansion causes significant harm and disadvantage to the area's Palestinian population.

The Council on Ethics' recommendation rests on the fact that the company engages in the construction of homes in Israeli settlements in the West Bank. The company has not replied to the Council's enquiries but provides details of its operations on its website.

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1 Introduction

The Council on Ethics for the Government Pension Fund Global (GPF) has assessed the Fund's investments in Shapir Engineering and Industry Ltd¹ (Shapir) against the Guidelines for Observation and Exclusion from the GPF.²

At the close of 2019, the GPF owned 0.1 per cent of the company's shares, worth NOK 19 million. Shapir is an Israeli company with operations in the building and construction sector.

1.1 Matters considered by the Council

The Council on Ethics has assessed whether, pursuant to section 3(b) of the GPF's ethical guidelines, there is an unacceptable risk that Shapir is contributing to or is itself responsible for serious infringements of the rights of individuals in situations of war or conflict in connection with its construction of dwellings in Israeli settlements in the West Bank.

1.2 Sources

Regarding information about the Shapir's operations, the Council on Ethics has based its assessment on information published on the company's own website. With regard to the area's status under international law, the Council relies on statements issued by various UN bodies, the International Court of Justice in the Hague, and the International Committee of the Red Cross.

2 Background

2.1 Israeli settlements in the West Bank

The West Bank is the term used for the area of land that lies east of the 1948 demarcation line and west of the River Jordan. The territory was occupied by Israel during the Six-Day War in 1967. Before that, the area was occupied by the Kingdom of Jordan. Following the signing of the Oslo Accords, authority for parts of the West Bank, the so-called A and B areas, was transferred to a Palestinian self-governing authority. A large part of the West Bank is designated as Area C and remains under Israeli civilian and military authority. All Israeli settlements in the West Bank are located in Area C. Over 400,000 Israelis currently live in settlements in the West Bank.

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the settlements and their associated infrastructure cause substantial harm to the Palestinian population. The separation barrier and a large number of roadblocks and checkpoints prevent freedom of movement between Palestinian areas and access to agricultural land. This is having a negative impact on economic development in the West

¹ Issuer ID: 43514043

² Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpfg-01.09.2019.pdf>

Bank. Other factors, such as the settlements' use of limited natural resources, are also highly disadvantageous to the Palestinian population:

*“Since 1967, about 250 Israeli settlements and settlement outposts have been established across the West Bank, including East Jerusalem, in contravention of international law. Settlements are a key driver of humanitarian vulnerability. The establishment and constant expansion of settlements has had a negative impact on the living conditions of Palestinians, resulting in the loss of property and sources of livelihood, restrictions on access to services, and a range of threats to physical security, which in turn have generated need for assistance and protection measures by the humanitarian community.”*³

Further:

*“Palestinians in the West Bank are subject to a complex system of control, including physical (the Barrier, checkpoints, roadblocks) and bureaucratic barriers (permits, closure of areas) which restrict their right to freedom of movement. The expansion of Settlements, restrictions on access to land and natural resources and ongoing displacement due to demolitions in particular, are ongoing.”*⁴

2.2 Legality of Israeli settlements in the West Bank

2.2.1 Fourth Geneva Convention

The point of departure for assessing the legality of the settlements is the Fourth Geneva Convention (Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War). The Convention establishes, *inter alia*, the rights and duties an occupying state has in an occupied territory. The Convention came into effect in 1950, and Israel became a signatory to it, without reservations, in 1951. The legality of the settlements may be assessed against the Convention's ban on an occupying state relocating parts of its population to an area that it occupies.

The Convention's area of scope is set out in Article 2, which states, *inter alia*: “[...] Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

Article 4 sets out who the Convention is intended to protect: “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. [...]”

Article 49(6) of the Convention states that: “[...] The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁵

³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA): Humanitarian Impact of Settlements: <https://www.ochaopt.org/theme/humanitarian-impact-of-settlements>,

⁴ OCHA: <https://www.ochaopt.org/location/west-bank>

⁵ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

After the Six-Day War, Israel disclaimed its legal obligation to abide by all the Convention's provisions on the grounds that the West Bank was already occupied by Jordan before it was occupied by Israel. Although this reservation was rejected by other states and by the UN, it resulted, *inter alia*, in Israel permitting the construction of settlements in the occupied areas. In 2004, Israel's Supreme Court found that the Fourth Geneva Convention applied in full to the occupied areas and that construction of settlements therein was illegal. However, it further specified that the ban applied only to the establishment of new settlements, not the expansion of existing settlements.

2.2.2 International bodies' views on the legality of the settlements

There is broad international consensus that the Israeli settlements in the West Bank violate international law.

The UN Security Council has passed a number of resolutions on the settlements. Security Council Resolution 465, which was passed unanimously on 1 March 1980, states, *inter alia*, that Israel's policy and practice with respect to building settlements in occupied areas are without legal validity and constitute "a flagrant violation" of the Fourth Geneva Convention.⁶ Most recently, this was repeated in Resolution 2334 from 2016.⁷

In 2004, the International Court of Justice (ICJ) in the Hague issued a legal opinion on the legality of Israel's separation barrier in the West Bank. Here, the ICJ also considered the legality of the Israeli settlements. The ICJ took the position that the Fourth Geneva Convention applies in full to Israel's occupation of the West Bank, and that the establishment of settlements in the occupied area is illegal: "*The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.*"⁸

On several occasions, the International Committee of the Red Cross (ICRC), which has a treaty-based mandate under the Geneva Conventions, has issued statements on the legality of the Israeli settlements in the West Bank. A statement from 2001 says: "*The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. They reaffirm the illegality of the settlements in the said territories and of the extension thereof.*"⁹

2.2.3 Norway's position on the legality of the settlements

Norway's official position with respect to the settlements has always been that they violate international law. This is rooted in the resolutions passed by the UN Security Council and the opinions published by the ICJ.¹⁰

⁶ Security Council Resolution 465:

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

⁷ Security Council Resolution 2334: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

⁸ ICJ, 2004: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

⁹ Conference of High Contracting Parties to the Fourth Geneva Convention Declaration, Geneva, 5 December 2001: <https://www.icrc.org/en/doc/resources/documents/article/other/5fldpj.htm>

¹⁰ Norwegian Ministry of Foreign Affairs: Answers to questions about the Israeli settlements in occupied territory (in Norwegian only), 27.11. 2019:

https://www.regjeringen.no/no/aktuelt/dep/ud/dialog_stortinget/stortinget_svar/2019/svar_bosettinger3/id2680080/

2.2.4 Israel's view of the settlements' legality

The Israeli view is that the settlements are not illegal and that claims to this effect are politically motivated. Israel refers, *inter alia*, to the fact that the relocation of Israelis to the settlements is voluntary and that the settlements do not displace other population groups in the area. Moreover, Israel points out that several of the settlements have been established in areas where Jewish communities were located in ancient times.¹¹

2.2.5 The Council on Ethics' previous practice

The Council on Ethics has previously taken the position that the Israeli settlements in the West Bank have been built in violation of international law, and that their existence and constant expansion cause significant harm and disadvantage to the Palestinian population in the area. The Council considers that a company that engages in the physical construction of settlements in the West Bank is closely associated with the violation of international law and contributes directly to it, and that this constitutes grounds for recommending that the company be excluded from investment by the GPF.¹²

2.3 The company's activities

The company has been and remains involved in a range of construction activities in the West Bank. According to information published on its own website, it has completed a major construction project in the Maale Adumin settlement, where it has built four eight-storey apartment blocks and 22 detached houses.¹³ Furthermore, the company informs that it operates the Natuf Quarry, near the Nilil settlement,¹⁴ and that it has a concrete production plant near the Migdal Oz settlement.¹⁵ All of these are located in Area C of the West Bank. According to information obtained, the company has previously also built homes and infrastructure at the Gilo and Pisgat Ze'ev settlements in East Jerusalem, and at Maale Adumim and Beit Horon in the West Bank.

3 Information from the company

Shapir has not replied to the Council's requests for information about the company's current and planned operations in the West Bank. The company has been sent a draft version of this recommendation and been invited to comment on it. Nor has the company responded to this.¹⁶

¹¹ Israel Ministry of Foreign Affairs: Israeli Settlements and International Law: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>

¹² The Council on Ethics' recommendations to exclude the companies Africa Israel Ltd and Danya Cebus (2009), and Shikun and Binui Ltd (2011): <https://etikkradet.no/tilradninger/alvorlige-krenkelser-av-individers-rettigheter-i-krig-og-konflikt/>

¹³ Shapir's website: <https://www.shapir.co.il/en/real-estate-dev-ap-const-completed/maale-adumim-shapir-07/>

¹⁴ Shapir's website: <https://www.shapir.co.il/en/quarries/natuf-quarry/>

¹⁵ Shapir's website: <https://www.shapir.co.il/en/industry/concrete-plants/#pojo-tab-item-1-2>

¹⁶ Letters from the Council on Ethics to Shapir Engineering and Industry Ltd: 2 July 2020, 25 August 2020, 24 September 2020.

4 The Council's assessment

In line with its previous practice, the Council on Ethics considers that Shapir, through its engagement in the construction of Israeli settlements in the West Bank, is contributing to the violation of international law in a way that constitutes grounds for recommending that the company be excluded from investment by the GPF.

On its website, the company informs that it is engaged in ongoing construction work in the West Bank, and that it has recently completed a major project involving the construction of dwellings in a settlement there. Lacking any further specification from the company it is difficult for the Council to obtain a full overview of the company's activities in the area. On the basis of the information available, the Council considers that there is an unacceptable risk that Shapir will in future build Israeli settlements in the West Bank and thereby contribute to serious violations of the rights of individuals in situations of war or conflict. In the Council's view, this risk will be present until the company gives notice that it no longer engages in this type of activity.

5 Recommendation

The Council on Ethics recommends the exclusion of Shapir Engineering and Industry Ltd from the Government Pension Fund Global due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict.

Johan H. Andresen
Chair

(Sign.)

Hans Chr. Bugge

(Sign.)

Cecilie Hellestveit

(Sign.)

Trude Myklebust

(Sign.)

Brit K. S. Rugland

(Sign.)