

# COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

**To Norges Bank**

15.03.2021

**Recommendation to exclude Ashtrom Group Ltd from investment by the  
Government Pension Fund Global**

UNOFFICIAL ENGLISH TRANSLATION

## Summary

The Council on Ethics recommends that Ashtrom Group Ltd be excluded from by investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is contributing to serious infringements of the rights of the individual in situations of war or conflict.

Ashtrom Group Ltd is an Israeli construction and real estate company. Through its subsidiary Ashtrom Properties Ltd it owns and lets commercial properties.

Ashtrom Group Ltd is listed on the Tel Aviv Stock Exchange. At the close of 2020, the GPF owned 0.04 per cent of the company's shares, worth NOK 6 million.

The Council's recommendation is based on the fact that Ashtrom Properties lets industrial premises linked to Israeli settlements in the West Bank. The company has not replied to the Council's queries, but describes its operations in its annual report.

The Council considers that the company's letting of buildings constructed in violation of international law contributes to the continuation of an illegal state that their construction once initiated. This form of contribution to international law violations constitutes, in the Council's view, grounds for exclusion from the GPF.

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## 1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global has assessed the Fund's investments in Ashtrom Group Ltd<sup>1</sup> (Ashtrom Group) against the Guidelines for Observation and Exclusion from the GPFG.<sup>2</sup>

Ashtrom Group is an Israeli construction and real estate company, which is listed on the Tel Aviv Stock Exchange. Through its subsidiary Ashtrom Properties Ltd (Ashtrom Properties), it owns and lets commercial property. At the close of 2020, the GPFG owned 0.04 per cent of the shares in Ashtrom Group Ltd, worth NOK 6 million.

### 1.1 Matters considered by the Council

The Council on Ethics has assessed whether, pursuant to section 3(b) of the GPFG's ethical guidelines, there is an unacceptable risk that Ashtrom Group, through its subsidiary Ashtrom Properties, is contributing to or is itself responsible for serious infringements of the rights of the individual in situations of war or conflict in connection with its letting of commercial and industrial premises in Israeli settlements in the West Bank.

### 1.2 The relationship between Ashtrom Group and Ashtrom Properties

According to information provided on its website, Ashtrom Group owns 49.17 per cent of Ashtrom Properties' shares.<sup>3</sup> On its website, Ashtrom Properties states that "*Ashtrom Properties is an integral part of the Ashtrom Group ...*".<sup>4</sup> Furthermore, the same person chairs the boards of both companies.<sup>5</sup>

### 1.3 Sources

With respect to information about the Ashtrom Properties' operations, the Council has based its assessment on information published in the company's annual report for 2019. With respect 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.

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<sup>1</sup> Issuer ID: 176741

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

<sup>3</sup> Ashtrom Group – Group Structure: [Group Structure | About Us | ASHTROM Group LTD.](#)

<sup>4</sup> Ashtrom Properties – Company Profile: [Company profile \(ashtrom-properties.co.il\)](#)

<sup>5</sup> Ashtroum Group – Management: [Management | About Us | ASHTROM Group LTD.](#) And Tel Aviv Stock Exchange, Company Profile, Ashtrom Properties Ltd: [ASHTROM PROPERTIES LTD. Profile | TASE Site](#)

## 2 Background

### 2.1 Israeli settlements and industrial zones 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 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 farmland. This is having a negative impact on economic development in the West 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.”<sup>6</sup>*

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.”<sup>7</sup>*

### 2.2 Barkan Industrial Area

Industrial zones have been established in connection with some of the West Bank settlements, where Israeli enterprises can operate. The Barkan settlement lies in Area C of the West Bank, around 25 km east of Tel Aviv. According to the Israeli authorities: *“The Barkan Industrial Area is situated in Samaria, next to the settlement Barkan and north of Highway 5 (the Trans-*

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<sup>6</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA): Humanitarian Impact of Settlements: <https://www.ochaopt.org/theme/humanitarian-impact-of-settlements>,

<sup>7</sup> OCHA: <https://www.ochaopt.org/location/west-bank>

*Samaria Highway*)." This is confirmed on a satellite image, which shows the industrial area immediately adjacent to the settlement itself.<sup>8</sup>

## 2.3 Legality of Israeli settlements in the West Bank

### 2.3.1 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."<sup>9</sup> The purpose of this provision is to prevent an occupying power from absorbing occupied areas and to protect local populations from any worsening of their economic situation.<sup>10</sup> Any such action is deemed to be a war crime under the Rome Statute of the International Criminal Court.<sup>11</sup>

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.

### 2.3.2 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.

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<sup>8</sup> Ministry of Economy and Industry: Development Zone Industry Promotion: <http://www.economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/Barkan.aspx> ("Samaria" is the Israeli term for the West Bank.)

<sup>9</sup> 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>

<sup>10</sup> International Committee of the Red Cross, Commentary on the Fourth Geneva Convention (1958), Article 49, p. 283.

<sup>11</sup> Rome Statute of the International Criminal Court of 1998, Article 8(2)(b)viii.

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.<sup>12</sup> Most recently, this was repeated in Resolution 2334 from 2016.<sup>13</sup>

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.*"<sup>14</sup>

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.*"<sup>15</sup>

### **2.3.3 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 the ICJ's legal opinions.<sup>16</sup>

### **2.3.4 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 in ancient times.<sup>17</sup>

### **2.3.5 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

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<sup>12</sup> Security Council Resolution 465:

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

<sup>13</sup> Security Council Resolution 2334: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

<sup>14</sup> ICJ, 2004: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

<sup>15</sup> 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>

<sup>16</sup> Norwegian Ministry of Foreign Affairs: Answers to questions about the Israeli settlements in occupied territory (in Norwegian only), 27 November 2019:

[https://www.regjeringen.no/no/aktuelt/dep/ud/dialog\\_stortinget/stortinget\\_svar/2019/svar\\_bosettinger3/id2680080/](https://www.regjeringen.no/no/aktuelt/dep/ud/dialog_stortinget/stortinget_svar/2019/svar_bosettinger3/id2680080/)

<sup>17</sup> 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>

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. <sup>18</sup>

## 2.4 Rules governing the occupying power's right of use

There are severe constraints on an occupying power's right of use in respect of land. <sup>19</sup>

The use of occupied land for commercial purposes on behalf of the occupying power may occur only to the extent necessary for the administration of the occupied territory and to meet the basic needs of the occupied population. <sup>20</sup> This restriction on the right of use applies to all land and all real property. <sup>21</sup>

## 2.5 The company's business operations

In its 2019 annual report, Ashtrom Properties describes its industrial letting business. In the report's section 10.1.9.1, the company Ashald Ltd is disclosed to be wholly owned by Ashtrom Properties. It is further stated that Ashald Ltd owns and lets 32,2000m<sup>2</sup> of industrial premises in Barkan.

## 3 Information from the company

The Council on Ethics has written to Ashtrom Properties asking it to account for its operations in the West Bank. Ashtrom Group has been presented with a draft version of this recommendation and has been invited to submit any comments it may have on it. <sup>22</sup> The companies have not replied to the Council's queries.

## 4 The Council's assessment

On the basis of the information available, the Council on Ethics has considered whether there is an unacceptable risk that Ashtrom Group, via Ashtrom Properties, is contributing to serious infringement of the rights of the individual in situations of war or conflict.

The point of departure for the Council's assessment is that Ashtrom Group owns over 49 per cent of the shares in Ashtrom Properties and is its largest shareholder. Furthermore, Ashtrom Properties describes itself as an integral part of Ashtrom Group. The Council has also noted that the same person chairs the boards of both companies. It thus seems clear that Ashtrom

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<sup>18</sup> 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/>

<sup>19</sup> Article 55 of the Hague Convention IV of 1907.

<sup>20</sup> Institut de Droit International, Bruges Declaration on the Use of Force, 2 September 2003. London International Law Conference of 1943: "The rights of the occupant do not include any right to dispose of property, rights or interests for purposes other than the maintenance of public order and safety in the occupied territory".

<sup>21</sup> Eyal Benvenisti, *The international law of occupation*, Oxford University Press, 2012, p. 82.

<sup>22</sup> Letters from the Council on Ethics to Ashtrom Properties Ltd, dated 30 June, 26 August 2020 and November 12, 2020.



Group has a determining influence on the activities of Ashtrom Properties and may be said to contribute to norms violations perpetrated thereby.

The Council’s assessment rests on the fact that Ashtrom Properties owns and lets industrial property in the Barkan Industrial Area, which is linked to the Israeli settlement Barkan in the West Bank. The Council’s starting point is the broad consensus that the Israeli settlements in the West Bank violate international law. The Council has also previously taken this position.

The purpose of the Israeli industrial zones in the West Bank is primarily to support the Israeli settlements and the business community in Israel, not the upkeep of the occupied population or the provision of employment therefor. Nor is it a matter of maintaining or advancing industrial activity that was ongoing before the occupation.

The Council considers that the Barkan Industrial Area must be deemed an integral part of the Barkan settlement and that, for the Council’s purposes, there is no reason to view the industrial area’s legality otherwise than that portion of the settlement used for dwellings.

The Council has previously recommended the exclusion of companies engaged in the *construction* of Israeli settlements in the West Bank, *i.e.* construction companies involved in the physical building of the settlements. This case is not about a company’s construction activities, but its letting of already existing buildings. In the Council’s view, there is no reason in this case to differentiate between the two forms of operation. The company’s letting of buildings constructed in violation of international law contributes to the continuation of the illegal state that their construction once initiated. In this case, furthermore, the volume of buildings in question is relatively large. This form of contribution to international law violations constitutes, in the Council’s view, grounds for exclusion from the GPFG.

On the basis of the information available, the Council on Ethics considers that the norm violation is ongoing. Neither Ashtrom Properties nor Ashtrom Group have replied to the Council’s queries. The Council considers that until Ashtrom Group documents that it is no longer involved in the letting of industrial premises linked to Israeli settlements in the West Bank, there will continue to be an unacceptable risk that the company is contributing to serious violations of the rights of the individual in situations of war or conflict.

## 5 Recommendation

The Council on Ethics recommends that Ashtrom Group Ltd be excluded from investment by the Norwegian Government Pension Fund Global (GPFG) due to an unacceptable risk that the company is contributing to serious violations of the rights of the individual in situations of war or conflict.

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Johan H. Andresen Chair	Hans Chr. Bugge	Cecilie Hellestveit	Trude Myklebust	Brit K. S. Rugland
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)