

To Norges Bank

10 May 2022

UNOFFICIAL TRANSLATION

**Recommendation to exclude PTT PCL and PTT Oil and Retail Business PCL
from investment by the Norwegian Government Pension Fund Global (GPF)**

Summary

The Council on Ethics recommends that the Thai company PTT PCL (PTT) and its subsidiary PTT Oil and Retail Business PCL (PTTOR) be excluded from investment by the Norwegian Government Pension Fund Global (GPF) due to an unacceptable risk that the companies are contributing to serious violation of the rights of individuals in situations of war and conflict. The recommendation relates to the companies' activities in Myanmar.

At the close of 2021, the GPF owned 0.35 per cent of the shares in PTT, worth NOK 998.8 million, and 0.11 per cent of the shares in PTTOR, worth NOK 96.4 million. The companies are listed on the Stock Exchange of Thailand.

PTT is a fully integrated oil and petrochemical company which, through its subsidiary PTT Exploration and Production PCL is partnering with the state-owned oil company Myanmar Oil and Gas Enterprise (MOGE) in three offshore gas fields in Myanmar. PTTOR engages in the distribution of petroleum products and retail sales, and is a partner in a joint venture which, in 2019, entered into a Build Operate and Transfer (BOT) agreement with the military-owned conglomerate Myanmar Economic Corporation (MEC) for the construction and operation of an oil terminal and a liquid natural gas (LNG) filling facility. Both MOGE and MEC are controlled by the Myanmar armed forces and are subject to sanctions by the EU and several other countries, including Norway.

In February 2021, the armed forces in Myanmar staged a coup d'état, after which armed conflicts in the country have intensified. At least 1,600 people have been killed and more than 12,500 have been interned. The UN High Commissioner for Human Rights has stated that the armed forces' actions could qualify as crimes against humanity and war crimes. Assaults on the civil population are ongoing and there is a substantial risk of new, extremely serious abuses by the military.

When assessing the companies' contribution to such abuses, the Council takes the position that companies must demonstrate particular care and due diligence when operating in situations of war or conflict. As in previous recommendations, the Council attaches importance to whether the companies' business operations in Myanmar help to strengthen the armed forces' financial capacity and to the fact that business partnerships with military-owned entities represents a particularly high risk of contributing to the armed forces' abuses. The Council finds it material that the UN High Commissioner for Human Rights advises against financial cooperation with military entities, that sanctions have been imposed on MOGE and MEC precisely because revenues from these companies increase the armed forces' ability to commit serious norm violations, and that PTT and PTTOR cannot point to any initiatives that reduce this risk.

In accordance with the Council's previous practice, PTTOR's business partnership with MEC, which receives revenues through the BOT agreement, would not by itself lead to its exclusion from the GPF. However, since the military coup in 2021, the oil and gas industry constitutes the largest source of revenue for the armed forces. In the Council's view, therefore, PTT's engagement in this area constitutes the most important element in the company's contribution to the serious abuses for which the armed forces are responsible.

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1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPFG) has assessed the fund's investments in PTT PCL (PTT)¹ and its subsidiary PTT Oil and Retail Business PCL (PTTOR)² against the war and conflict criterion in the Guidelines for Observation and Exclusion from the GPFG (the ethical guidelines).³ The recommendation relates to the companies' business partnerships with the armed forces in Myanmar.

PTT is a fully integrated oil and petrochemical company, which engages in oil and gas exploration and production, as well as the refining and sale of petrochemical products. The company has operations in more than 35 countries.⁴ In Myanmar, it operates through the subsidiaries PTT Exploration and Production Public Company Limited (PTTEP, 63.8 per cent shareholding) and PTTOR (77.5 per cent shareholding). The Thai state owns 51 per cent of PTT's shares.

PTTOR engages in the distribution of petroleum products and retail sales. Among other things, the company operates petrol stations, cafes and supermarkets. PTTOR has operations in ten countries.⁵

PTT and PTTOR are headquartered in Bangkok and are listed on the Stock Exchange of Thailand. At the close of 2021, the GPFG owned 0.35 per cent of the shares in PTT, worth NOK 998.8 million, and 0.11 per cent of the shares in PTTOR, worth NOK 96.4 million.

1.1 Matters considered by the Council

The Council as assessed the GPFG's investment in PTT and PTTOR against section 4(b) of the Guidelines for Observation and Exclusion from the GPFG: "Companies may be excluded or placed under observation if there is an unacceptable risk that the company contributes to or is responsible for [...] serious violations of the rights of individuals in situations of war or conflict."

Due to the risk of contributing to extremely grave violations in situations of armed conflicts, the Council expects companies operating in such contexts to exercise particular care and due diligence. This heightened duty of care follows from a number of international guidelines.⁶ and is confirmed in the 2021 white paper submitted to the Norwegian Parliament on the

¹ Issuer ID: 173847

² Issuer ID: 12197912

³ Guidelines for Observation and Exclusion from the Norwegian Government Pension Fund Global (GPFG), <https://files.nettsteder.regjeringen.no/wpuploads01/sites/275/2021/11/Guidelines-for-Observation-and-Exclusion-GPFG-29-November-2021.pdf>

⁴ Offering Memorandum PTT PCL, U.S.\$2,000,000,000 Global Medium Term Note Program, 8 July 2020, [https://links.sgx.com/FileOpen/PTT%20Public%20Company%20Limited%20and%20PTT%20Treasury%20Center%20Company%20Limited%20-%20US\\$2b%20GMTN%20Program%20Offering%20Memorandum%20dated%20July%202020.ashx?App=Prospectus&FileID=45929](https://links.sgx.com/FileOpen/PTT%20Public%20Company%20Limited%20and%20PTT%20Treasury%20Center%20Company%20Limited%20-%20US$2b%20GMTN%20Program%20Offering%20Memorandum%20dated%20July%202020.ashx?App=Prospectus&FileID=45929)

⁵ PTTOR Annual Report 2020 (56-1 One Report) <https://or.listedcompany.com/misc/one-report/20210323-or-one-report2020-en.pdf>.

⁶ See, for example, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, <https://undocs.org/en/A/75/212> and Global Compact/PRI's *Guidance on Responsible Business in Conflict Affected and High-Risk Areas: A Resource for Companies and Investors*, https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FPeace_and_Business%2FGuidance_RB.pdf.

Government Pension Funds. It has also formed the basis for previous recommendations under this criterion.⁷

This duty to exercise a particular degree of due diligence means that the Council may conclude that there is an unacceptable risk of contributing to norm violations, even though the company's links thereto are weaker than the Council would otherwise deem grounds for recommending exclusion or observation. This approach is restricted to cases involving extremely serious norm violations.

When assessing what constitutes serious violations of the rights of individuals in situations of war or conflict, the Council relies on internationally recognised conventions and authoritative interpretations thereof. Of particular importance is the common Article 3 of the Geneva conventions, which regulates the protection of victims of war in conflicts not of an international character. Human rights law apply regardless of whether there is an ongoing armed conflict. Relevant provisions include, for example, articles 6, 7, 9, 21 and 22 of the International Covenant on Civil and Political Rights, protecting the right to life, liberty and security, as well as freedom from torture and freedom of assembly and expression.⁸

When assessing a company's contribution, the Council emphasises that there must be a tangible link between the company's operations and the abuses concerned. Furthermore, the company must either have contributed actively to the norm violations or known about them but made no adequate attempt to prevent them. In the Council's opinion, if it is not possible to prevent the norm violations the company must withdraw from the business. According to NOU 2020:7 Values and Responsibility, an official report on the GPF's ethical framework that was submitted to the Norwegian parliament (Storting), the ethical guidelines are "intended to cover contribution to serious abuses perpetrated by parties other than the company. Companies may be said to contribute to abuses by, for example, supplying goods or services to or entering into business relations with parties in a conflict which perpetrate serious abuses."

The ethical guidelines are also forward-looking and norm violations must therefore be ongoing or there must be an unacceptable risk that abuses may occur in the future. When assessing the risk of new abuses, previous norm violations may give an indication of future patterns of behaviour.

1.2 Sources

The Council on Ethics has relied on publicly available information from sources such as international courts, UN bodies, the media, civil society and public authorities. The Council has also received information from PTT and PTTOR.

⁷ See the Council on Ethics' recommendations with respect to Kirin Holdings, Oil & Natural Gas Corp and Adani Ports & Special Economic Zone Ltd, <https://etikkradet.no/tilradninger/alvorlige-krenkelses-av-individets-rettigheter-i-krig-og-konflikt/>

⁸ ICRC, Treaties, States Parties and Commentaries, [Treaties, States parties, and Commentaries - Geneva Conventions of 1949 and Additional Protocols, and their Commentaries \(icrc.org\)](https://www.icrc.org/eng/treaties-states-parties-and-commentaries-geneva-conventions-of-1949-and-additional-protocols-and-their-commentaries)

2 Background

2.1 The situation in Myanmar

On 1 February 2021, the armed forces in Myanmar (Tatmadaw) staged a coup d'état and announced that Commander-in-Chief Min Aung Hlaing and the State Administrative Council had taken power in the country. Afterwards, hundreds of thousands of civilians showed their opposition to the coup by means of boycotts, strikes and demonstrations nationwide. The armed forces responded to this opposition with violence and over a thousand people have been killed since the coup.⁹

In September 2021, the UN High Commissioner for Human Rights described the situation as follows in Myanmar in his report to the Human Rights Council:

“When nationwide peaceful protests began, military authorities initially used less-lethal weapons in an unnecessary and disproportionate manner and conducted neighbourhood raids, creating an atmosphere of terror. This evolved into systematic targeted killings and mass arrests, with torture and ill-treatment causing additional deaths in custody. Progressively, armed resistance emerged, as people formed self-defence groups or started to organize to conduct attacks against the military. Simultaneously, armed conflict in Myanmar’s border areas has continued and resurged. In both contexts, the Tatmadaw has conducted both targeted and indiscriminate attacks against civilians. Combined with a freefalling economy and worsening COVID-19 pandemic, the situation in Myanmar has become a human rights catastrophe.”¹⁰

One year after the coup, the High Commission reported that the security forces in Myanmar had killed at least 1,600 people and interned more than 12,500 since they took power.¹¹ Many of those interned (“*hundreds if not thousands*”) have been subjected to torture. Almost half a million people have been driven from their homes and 14 million people are in urgent need of humanitarian aid. Despite this, aid supplies are being blocked by the military. The High Commissioner maintains that the actions of the armed forces could qualify as crimes against humanity and war crimes.¹² In his recommendations, the High Commissioner has called on “businesses that operate in Myanmar to cease working with entities owned by or affiliated with the military, [...] and ensure that such businesses are not involved in joint ventures or

⁹ UN High Commissioner for Human Rights, *Myanmar: UN report calls for urgent action to end human rights catastrophe*, 23 September 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27521&LangID=E>

¹⁰ UN Human Rights Council, *Written updates of the Office of the United Nations High Commissioner for Human Rights on the Situation of human rights in Myanmar*, 15 September 2021, <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Pages/ListReports.aspx>.

¹¹ UN Human Rights Council, *Situation of human rights in Myanmar since 1 February 2021, Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/72, para. 63, <https://news.un.org/en/story/2022/03/1113972>.

¹² See also: Report of the Independent Investigative Mechanism for Myanmar, “*The available information indicates that security forces have carried out a widespread and systematic attack on the civilian population. In this context, the reports of murders, sexual assaults, arbitrary detentions, enforced disappearances, torture and persecution collected by the Mechanism, if substantiated, would amount to crimes against humanity.*”; 5 July 2021, para. 35, <https://undocs.org/A/HRC/48/18>, and the Statement of Nicholas Koumjian, Head of the Independent Investigative Mechanism for Myanmar, on the anniversary of the military’s seizure of power in Myanmar, 1 February 2022, <https://iimm.un.org/statement-of-nicholas-koumjian-head-of-the-independent-investigative-mechanism-for-myanmar-on-the-anniversary-of-the-militarys-seizure-of-power-in-myanmar/>.

other revenue-sharing arrangements with the military of Myanmar or businesses under their influence.”¹³

For years, the armed forces in Myanmar have committed acts of extreme brutality against the country’s civilian population. Atrocities are reported to include the killing of children and adults, gang rape, torture and the torching of entire villages.¹⁴ A great many of the victims belong to the Rohingya minority. On account of these abuses, legal proceedings are underway before the International Criminal Court¹⁵ for war crimes and the International Court of Justice for crimes against humanity.¹⁶

2.2 Myanma Oil and Gas Enterprise

Myanmar’s state-owned oil and gas company is the largest source of revenue for the Myanmar government. Since the coup, Myanma Oil and Gas Enterprise (MOGE) has been controlled by the Tatmadaw. MOGE participates in joint ventures with foreign companies which produce oil and gas in Myanmar. MOGE’s revenues derive from the sale of oil and gas as well as royalties that the joint venture partners must pay.

According to the Extractive Industries Transparency Initiative (EITI), Myanmar’s oil and gas sector generated total revenues of almost USD 727 million in the 2017–2018 fiscal year. This corresponded to 72 per cent of government revenues from the resource extraction sector. At the close of the same fiscal year, MOGE had USD 4.6 billion in separate bank accounts that were kept out of the national budget.¹⁷ Most of the revenues derive from gas exports, which account for around 50 per cent of Myanmar’s foreign currency earnings. In 2021–2022, the Ministry of Planning, Finance and Industry forecast that MOGE’s revenues from offshore and pipeline projects would come to USD 1.5 billion.¹⁸

The EU imposed sanctions on MOGE on 21 February 2022, on the grounds that MOGE “is controlled by and generates revenue for the Tatmadaw, therefore contributing to its capabilities to carry out activities undermining democracy and the rule of law in Myanmar/Burma.”¹⁹

2.3 Myanmar Economic Corporation

Myanmar Economic Corporation (MEC) is a conglomerate with subsidiaries and affiliated companies in diverse sectors of the economy, including banking, insurance, construction,

¹³ See footnote 11, para. 76e.

¹⁴ UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, 12 September 2018, <https://undocs.org/en/A/HRC/39/64>.

¹⁵ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, <https://www.icj-cij.org/en/case/178>

¹⁶ International Criminal Court, *Bangladesh/Myanmar, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, <https://www.icc-cpi.int/bangladesh-myanmar>

¹⁷ Extractive Industries Transparency Initiative (EITI), *EITI Myanmar, Report 2017-2018*, January 2019 https://eiti.org/files/documents/meiti_reconciliation_report_2017-2018_final_signed_31st_march_2020.pdf

¹⁸ Publish what you pay, Policy brief June 2021: *Financing the Military in Myanmar: Analysis of Gas Revenues*, <https://www.pwyp.org/wp-content/uploads/2021/06/Financing-the-Military-in-Myanmar.pdf>

¹⁹ Council Implementing Regulation (EU) 2022/239 of 21 February 2022 implementing Regulation (EU) No 401/2013 concerning restrictive measures in view of the situation in Myanmar/Burma, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.040.01.0010.01.ENG&toc=OJ%3AL%3A2022%3A040%3ATOC

trade, transportation and mining.²⁰ The company is owned and controlled by the Myanmar Ministry of Defence, which is in turn controlled by the armed forces. Within the armed forces, it is the Quartermaster General's Office, which is responsible for military logistics and procurements, that controls MEC.²¹ MEC's board of directors is made up of high-ranking military officers.

In 2019, the Independent International Fact-Finding Mission on Myanmar (IIFMM) published a report on the armed forces' economic interests in Myanmar.²² The report mapped out the armed forces' economic activity, including through MEC, and documented that MEC was a direct source of revenue for the Tatmadaw. MEC owns real estate in Myanmar, whose rental income provides the armed forces with a substantial revenue stream. PTTOR operates on land leased from MEC.

The IIFMM stated that, through its business partnerships, the Tatmadaw "substantially enhances its ability to carry out gross violations of human rights with impunity"²³ and that "any foreign business activity involving the Tatmadaw and its conglomerates MEHL and MEC poses a high risk of contributing to, or being linked to, violations of international human rights law and international humanitarian law."²⁴

After the coup, the EU and USA imposed sanction on MEC.²⁵ The EU stated that this was because "MEC and its subsidiaries generate revenue for the Tatmadaw, therefore contributing to its capabilities to carry out activities undermining democracy and the rule of law and to serious human rights violations in Myanmar/Burma."²⁶ Several countries, including Canada, the UK and Norway, have imposed similar sanctions.²⁷

3 The companies' business links with the Tatmadaw

3.1 PTT and PTTEP's business links with MOGE

Through its subsidiary PTTEP, PTT has been involved in oil and gas activities in Myanmar since 1989. The company is a partner in three offshore gas producing fields in Myanmar –

²⁰ Official Journal of the European Union, 19 April 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2021:132I:FULL&from=EN>

²¹ UN Human Rights Council, *Independent International Fact-Finding Mission on Myanmar, Economic interests of the Myanmar military*, 5 August 2019, UN High Commissioner for Human Rights, para. 55.

<https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

²² UN High Commissioner for Human Rights, 5 August 2019.

²³ UN High Commissioner for Human Rights, *UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions and arms embargoes*, 5 August 2019

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24868&LangID=E>

²⁴ UN Human Rights Council, 5 August 2019, para. 145

²⁵ US Department of State, *Sanctions on Two Burmese Entities in Connection with the Military Regime*, 25 March 2021, <https://www.state.gov/sanctions-on-two-burmese-entities-in-connection-with-the-military-regime/>

²⁶ Official Journal of the European Union, 19 April 2021.

²⁷ Government of Canada, *Canadian Sanctions Related to Myanmar*, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng, UK Government, *UK announces further sanctions on Myanmar military-linked companies*, <https://www.gov.uk/government/news/uk-announces-further-sanctions-on-myanmar-military-linked-companies>, Norwegian Ministry of Foreign Affairs, *Regulations relating to restrictive measures in light of the situation in Myanmar/Burma*, <https://lovdata.no/dokument/SF/forskrift/2003-07-04-895>

Yadana, Yetagun and Zawtika – as detailed in the table below. The company has also planned a USD 2 billion investment in a Gas-to-Power project in the country.²⁸

Companies engaging in Myanmar’s petroleum sector must enter into joint ventures with MOGE. The joint venture agreements in which PTT is a participant have two parts, one part relating to upstream activities with a production-sharing agreement, and one part relating to the transport of gas via pipeline, which is performed through a limited company in which MOGE and the other joint venture partners are shareholders.²⁹

Table 1: Overview of PTTEP’s joint ventures with MOGE

Project	Joint venture partners and shareholdings (%)	Operations	Estimate of payments to MOGE
Yadana project	PTTEP (25.5) TotalEnergies (31.2, operator) ³⁰ Chevron (28.3) MOGE (15.0)	Gas production, pipeline transport of gas to Thailand	PTTEP’s share of the payments was estimated at USD 500 million in 2015–2019. ³¹
Yetagun project	PTTEP (19.3) Petronas (40.9, operator) Nippon Oil Exploration (19.3) MOGE (20.5)	Gas production, pipeline transport of gas to Thailand	MOGE is thought to have earned USD 200 million in 2017–2018. ³²
Zawtika project	PTTEP (80.0, operator) MOGE (20.0)	Gas production, pipeline transport of gas to Thailand	PTTEP’s share of the payments was estimated at USD 52 million in 2017–2018.

MOGE’s revenues derive from the sale of gas (in accordance with its percentage share in the joint venture) and production fees (royalties) from the joint venture partners.³³ Neither PTT nor PTTEP have provided any information about the payments to MOGE. EITI’s latest report on Myanmar states that PTTEP paid USD 41 million in royalties and USD 11 million for MOGE’s share in the Zawtika project in the 2017–2018 fiscal year.³⁴ Based in part on EITI’s data, Reuters has estimated that PTTEP’s payments to MOGE from the Yadana project came to USD 500 million in the period 2015–2019.³⁵

According to EITI, MOGE earned USD 159 million from gas sales and USD 41 million in royalties from the Yetagun project in the 2017–2018 fiscal year. In a report to the State

²⁸ PTTEP Management Discussion and Analysis (MD&A) for the second quarter of 2021. The company states that the project has been facing delay due to the *coup d’etat* and the current political situation in the country.

²⁹ EITI (2019) and Publish what you pay (2021).

³⁰ TotalEnergies has announced that the company will pull out of the Yadana project with effect from 20 July 2022. PTTEP will then take over as operator.

³¹ Reuters, Factbox: Oil majors in Myanmar in spotlight after UN call for sanctions, 9 March 2021. <https://www.reuters.com/article/us-myanmar-politics-energy-factbox-idUSKBN2B11XX>

³² EITI (2019).

³³ Publish what you pay (2021).

³⁴ EITI (2019).

³⁵ Reuters (2021).

Administration Council in October 2021, MOGE estimated revenues of USD 22.3 million from the Yetagun gas field in the period October 2021 to 2022.³⁶

Imports from Myanmar account for approx. 15 per cent of Thailand's gas consumption. PTT buys gas for the Thai market from the joint ventures. In 2021, PTT purchased almost 75 per cent of the gas produced by the Yadana field,³⁷ 80 per cent of the gas from the Zawtika field and all the gas from the Yetagun field before it was temporarily shut down in April 2021.³⁸ The revenues are apportioned pro rata to the joint venture partners on the basis of their shareholding.

In May 2021, TotalEnergies announced that the company responsible for the pipeline transport of gas from the Yadana field to Thailand (the Moattama Gas Transportation Company Limited (MGTC)) would not pay out a dividend to shareholders, including MOGE, due to the situation in the country.³⁹

On 21 January 2022, PTT's business partners TotalEnergies and Chevron announced that they would withdraw from the Yadana field within six months because of the human rights situation in the country and stop paying revenues to the Myanmar state. On 16 March 2022, TotalEnergies announced that it would be out of the joint venture by 20 July 2022 and that PTTEP would then take over as operator of the Yadana field.⁴⁰ TotalEnergies' shareholding will be transferred pro rata to the other joint venture partners. PTT's shareholding will then increase from 25.5 per cent to 37.1 per cent. Chevron's shareholding will increase from 28.3 per cent to 41.1 per cent, while MOGE's shareholding will rise from 15 per cent to 21.8 per cent. Chevron has not disclosed when it will exit the joint venture. In this connection, PTTEP announced that it placed great importance on maintaining the continuity of energy supplies in Thailand and Myanmar.⁴¹

On 29 April 2022, PTTEP and Petronas announced their decision to pull out of the Yetagun project. PTTEP wrote that "The withdrawal is part of the company's portfolio management to refocus on projects that support the energy security for the country."⁴² On 2 May 2022, JX Nippon Oil & Gas Exploration Corporation also announced that it intended to pull out of the project.⁴³

³⁶ Republic of the Union of Myanmar, Ministry of Electricity and Energy, Myanma Oil and Gas Enterprise, 5 November 2021 [61bb2e8ce9c0acecc885d3a3_4_MOGE report on gas production & transportation 10.11.pdf \(webflow.com\)](https://www.moge.gov.mm/61bb2e8ce9c0acecc885d3a3_4_MOGE_report_on_gas_production_%26_transportation_10.11.pdf).

³⁷ Euro Petrole, PTTEP : Changes in joint venture partner of the Yadana project in Myanma, 25 January 2021 <https://www.euro-petrole.com/pttep-changes-in-joint-venture-partner-of-the-yadana-project-in-myanmar-n-i-23334>.

³⁸ Petronas, PETRONAS' Upstream Operations in Myanmar Declares Force Majeure On Its Yetagun Field, 2 April 2021 <https://www.petronas.com/media/press-release/petronas-upstream-operations-myanmar-declares-force-majeure-its-yetagun-field>.

³⁹ Total Energies, Myanmar: Shareholders of Moattama Gas Transportation Company Limited vote to suspend all cash distributions, 26 May 2021, <https://totalenergies.com/media/news/press-releases/myanmar-shareholders-moattama-gas-transportation-company-limited-vote>

⁴⁰ [TotalEnergies implements its responsible withdrawal from Myanmar | TotalEnergies.com](https://www.totalenergies.com/totalenergies-implements-its-responsible-withdrawal-from-myanmar).

⁴¹ PTTEP Change of operator in the Yadana project in Myanmar, Press release, 14 March 2022, <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Changeofoperatorintheyadanaprojectinmyanmar.aspx>

⁴² PTTEP withdraws from Yetagun project in Myanmar, Press release, 29 April 2022. <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Pttep-With-Draws-From-Yetagun-Project-In-Myanmar.aspx>

⁴³ JX Nippon Oil & Gas Exploration Corporation, Withdrawal from Block M12/M13/M14 of the Republic of the Union of Myanmar, Press release 2 May 2022,

3.2 PTTOR's business partnership with MEC

At the start of 2019, PTTOR entered into a joint venture with three Burmese individuals⁴⁴ to build a jetty, a fuel storage oil terminal and an LPG filling facility in the Thilawa area. PTTOR owns 35 per cent of the joint venture, which is named Brighter Energy Company Limited.⁴⁵

The Thilawa project will be performed under a Build Operate and Transfer (BOT) agreement between the joint venture and MEC, which owns the land on which construction will take place and which will take over the project after 50 years. More than USD 200 million will be invested in the project.⁴⁶ According to PTTOR, the joint venture paid MEC a leasing fee of USD 1,685 million in 2019. No payments were made in 2020 and 2021. When construction is complete, the annual leasing fee will come to USD 808,800.⁴⁷

The terminal will be the largest in the country, with a storage capacity of 1 million barrels of oil and 4,500 tonnes of LPG.⁴⁸ The project was originally scheduled for completion in 2021. In 2021, PTTOR reported that constructions had been delayed “due to the political unrest in Myanmar”, and “with the progress of terminal at 69% and jetty at 88% of completion.”⁴⁹ According to PTTOR, construction is still underway.

4 Information from the companies

The Council on Ethics has communicated with PTT and PTTOR on several occasions since June 2021. The companies have also commented on a draft recommendation.

PTT underlines that respect for human rights is one of the company's fundamental values, that the company “has consistently promoted, protected and respected human rights” and that it is deeply concerned about the atrocities perpetrated in Myanmar since the coup in 2021. PTT adds that the company's Human Rights Statement is included in its compliance policy, which applies across the group and to the company's joint venture partners.

PTT emphasises that it complies with sanctions laws: “We hereby re-affirm that we are presently and have always been in compliance with U.S., EU, UK, UN, and other relevant sanctions laws and regulations.”⁵⁰ The company has not commented on its collaboration with MOGE after sanctions were imposed on that company in February 2022.

https://www.nex.jx-group.co.jp/english/newsrelease/2022/withdrawal_from_block_m12m13m14_of_the_republic_of_the_union_of_myanmar.html

⁴⁴ One of these individuals is the owner of Kanbawza Group of Companies, which, in 2019, the IIFFMM suggested should be investigated for international crimes as a result of its financial contribution to the abuses inflicted on the Rohingya.

⁴⁵ PTTOR Annual Report 2020 (56-1 One Report).

⁴⁶ The Myanmar Times, KBZ Group, PTT partner to develop oil terminal, 10 June 2019, <https://www.mmtimes.com/news/kbz-group-ptt-partner-develop-oil-terminal.html> and Allen & Gledhill 16 December 2019, Joint venture between Kanbawza Group and PTT Public Company to build an oil terminal and expand retail, <https://www.allenandgledhill.com/mm/perspectives/articles/13744/joint-venture-between-kanbawza-group-and-ptt-public-company-to-develop-an-oil-terminal-and-expand-retail-business>

⁴⁷ Letter from PTTOR to the Council on Ethics, dated 29 July 2021.

⁴⁸ The Myanmar Times, PTTOR aims to open first petrol station in Myanmar next year, 10 June 2019, <https://www.phnompenhpost.com/business/pttor-aims-open-first-petrol-station-myanmar-next-year>

⁴⁹ PTTOR 2021, Management Discussion & Analysis 2Q/21 <https://or.listedcompany.com/misc/mdna/20210811-or-mdna-2q2021-en.pdf>

⁵⁰ Letter from PTT to the Council on Ethics, dated 11 January 2022.

With respect to the BOT agreement and relations with MEC, both PTT and PTTOR maintain that they have performed due diligence assessments to ensure that the partners are not subject to sanctions. Furthermore, PTTOR writes that the agreement with MEC was signed under the former lawfully elected government and underlines that the company “does not and will not have any dealings with persons or entities that are the subject of U.S., EU, UK or UN sanctions against Myanmar. OR’s [PTTOR] participation in the Brighter Energy joint venture does not violate any applicable sanctions laws or regulations.”⁵¹

The company adds that it has never made, nor will it make, any payments to MEC. If sanctions should affect the project and the contract with MEC, PTTOR will strive “to maintain the status and manage our contractual obligation while observing good sanction measurements.” It is not clear to the Council whether this means that the joint venture will cease to pay leasing fees to MEC if MEC remains under sanctions when the project is completed.

PTTOR has established a board subcommittee “to advise the Board on additional measures it might take to ensure that its dealings in Myanmar remain consistent with international standards and strike the appropriate balance between its existing contractual obligations and the interests of the global community, as well as the Burmese people.”⁵² The report is scheduled for completion in 6–8 months’ time.

5 The Council’s assessment

The Council on Ethics has assessed the GPF’s investment in PTT and PTTOR against the ethical guidelines’ criterion concerning serious violations of the rights of individuals in situations of war or conflict.

The abuses perpetrated against the civilian population in Myanmar are well documented and constitute extremely serious violations of humanitarian law and human rights. Since the military coup, many civilians have been killed and many more detained. In parallel with these serious abuses, the armed conflicts between military forces and rebel groups have intensified. Countless reports indicate that the behaviour of the Tatmadaw is the same as before, but that the scale of the brutality inflicted on the country’s own population has increased significantly. The Council considers that there is a substantial risk that the Tatmadaw will continue to commit new and extremely serious abuses.

When considering the companies’ contribution to these abuses, the Council takes the view that companies must exercise particular care and due diligence when operating in situations of war or conflict. In keeping with previous recommendations, the Council attaches importance to whether the companies’ business activities in Myanmar help to strengthen the armed forces’ financial capacity and to the fact that business partnerships with military-owned entities involves a particularly high risk of contributing to the military’s abuses. Through its participation in the Thilawa project, PTTOR has a direct business partnership with MEC, which receives revenues through the BOT agreement. The project may also have strategic significance. In line with the Council’s previous practice, this in itself could lead to exclusion from investment by the GPF.

⁵¹ Letters from PTTOR to the Council on Ethics, dated 29 July 2021 and 10 January 2022.

⁵² Letter from PTTOR to the Council on Ethics, dated 11 January 2022.

Since the military coup, any ability the civilian leadership may have had to keep the military in check has disappeared. Rebellion and armed resistance to the coup has been met with intensified use of force and rights abuses, which have increased in both scale and severity.

The oil and gas industry represents the largest source of revenue for the armed forces, without any form of civilian oversight. The Council therefore considers PTT's business relationship with MOGE to be the most important factor when assessing the company's contribution to the serious abuses for which the armed forces are responsible. Through its activities in the country, PTT provides the armed forces with substantial revenue streams that can finance military operations and abuses.

PTT maintains that the company's activities in the country are important for the supply of energy to Thailand and Myanmar. The Council has a certain understanding for this. Although the situation is not directly comparable, the Council notes, however, that two major oil companies have announced their intention of withdrawing from the joint venture with MOGE due to the human rights situation in the country, at the same time as PTT is set to take over as operator and increase its shareholding in the joint venture.

In their communications with the Council, PTT and PTTOR have emphasised that they are complying with sanctions linked to the situation in Myanmar. Nevertheless, in the context in which the companies are operating, the Council considers that, by itself, compliance with the sanctions regulations has little impact on the risk of contributing to serious norm violations. The Council attaches importance to the fact that, apart from this, the companies have not pointed to any tangible initiatives to reduce the risk of contributing to the armed forces' abuses. On the contrary, PTT has strengthened its partnership with MOGE.

The Council does not consider that doing business in Myanmar is censurable in and of itself. However, direct business partnership with military-controlled companies constitutes a particularly high risk of contributing to serious norm violations. The Council attaches importance to the fact that the UN High Commissioner for Human Rights advises against any such partnerships, and that sanctions were imposed on MOGE and MEC precisely because revenues from these companies boost the armed forces' ability to perpetrate serious norm violations. In the Council's view, PTT and PTTOR's business partnerships with MEC and MOGE represent a risk of contributing to such extremely serious abuses in the future. Although PTT may have limited room for manoeuvre with respect to its participation in gas production in Myanmar, this cannot be accorded decisive weight. The Council therefore finds that the risk of contributing to norm violations is unacceptable and recommends that the companies be excluded from investment by the GPF. G.

6 Recommendation

The Council on Ethics recommends that PTT PCL and its subsidiary PTT Oil and Retail Business PCL be excluded from investment by the Norwegian Government Pension Fund Global (GPF) due to an unacceptable risk that the companies are contributing to serious violations of the rights of individuals in situations of war or conflict.

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(Sign.)

(Sign.)

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