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To Norges Bank

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**Recommendation to exclude Adani
Ports & Special Economic Zone Ltd
from investment by the Norwegian
Government Pension Fund Global**

Summary

The Council on Ethics recommends that Adani Ports & Special Economic Zone Ltd (APSEZ) be excluded from investment by the Norwegian 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.

APSEZ is an Indian logistics company that engages, among other things, in vessel management, the operation of ports and port services. APSEZ is part of the Adani group of companies. At the close of 2022, the Government Pension Fund Global (GPF) owned 0.3 per cent of APSEZ's shares, worth approx. USD 63.4 million.

APSEZ has been under observation since March 2022 due to its business association with the armed forces in Myanmar in the development of Ahlon International Port Terminal in Yangon. APSEZ had announced that it would pull out of the business in Myanmar. Due to the uncertainty surrounding whether and when it would be possible to accomplish this, the Council recommended that the company be placed under observation.

The Council has reassessed the company following the disclosure that APSEZ had sold its port-related operations in Myanmar to Solar Energy Ltd in May 2023. No information on the buyer is available, and APSEZ has stated that it cannot share any such information on the grounds of confidentiality.

The Council attaches importance to the fact that the company has failed to help shed light on the matter, that no other information is to be found about the company that is said to have acquired APSEZ's operations in Myanmar, and that APSEZ's auditor did not have sufficient information to assess whether the sale to Solar Energy was a transaction between related parties. This lack of information means that the Council cannot establish whether APSEZ has links to the enterprise concerned. In a situation in which extremely serious norm violations are taking place, this constitutes an unacceptable risk that the GPF's investments in APSEZ may breach its ethical guidelines.

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1 Introduction

In March 2022, Adani Ports & Special Economic Zone Ltd (APSEZ)¹ was placed under observation pursuant to the criterion concerning serious violation of the rights of individuals in situations of war and conflict set out in the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (the ethical guidelines).² The observation concerned APSEZ's business association with the armed forces in Myanmar in the development of the Ahlon International Port Terminal in Yangon.³

The Council on Ethics has reassessed the company against this criterion, following information that APSEZ has sold its business in Myanmar.

APSEZ is an Indian logistics company, whose operations include vessel management, port operations and services, goods handling, storage and transport. APSEZ is part of the Adani Group.

APSEZ is based in Ahmedabad, India. The company is listed on the Bombay Stock Exchange and the National Stock Exchange in India. At the close of 2022, the Government Pension Fund Global (GPF) owned 0.3 per cent of APSEZ's shares, worth approx. USD 63.4 million.

1.1 Matters considered by the Council

The Council has assessed the GPF's investment in APSEZ against section 4(b) of the ethical guidelines "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."

When assessing what may constitute serious violations of the rights of individuals in situations of war or conflict, the Council relies on internationally recognised conventions and authoritative interpretations thereof, including the shared Article 3 of the Geneva Conventions which protects civilians in non-

¹ Issuer ID: 11382823

² Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPF), https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05_gpfg_guidelines_observation_exclusion.pdf

³ Council on Ethics, Recommendation to place Adani Ports & Special Economic Zone Ltd under observation, 15 November 2021, <https://etikkradet.no/adani-ports-special-economic-zone-ltd-2/>

international armed conflict,⁴ Articles 6, 7, 9, 21 and 22 of the International Covenant on Civil and Political Rights which protect the right to life, liberty and security, freedom from torture, freedom of association and freedom of expression.⁵

Due to the high risk of contributing to serious norm violations in areas where war and conflict are taking place, the Council considers that any company operating in such an area has a duty to exercise particular care.⁶ Such a heightened requirement for due care follows from several international guidelines⁷ and is reiterated in the Report to the Storting (white paper to the Norwegian parliament) on the GPF for 2021.⁸

In its reassessment of APSEZ, the Council has in particular considered whether the company's sale of its business in Myanmar sufficiently limits the risk of the company contributing to the abuses in question. In this regard, the Council refers to the Report to the Storting (white paper) on the GPF which stated that "a lack of information about a company's behaviour, and not least the willingness of the company to contribute information by itself, can lead to the risk of contribution to unethical conduct being regarded as unacceptably high."⁹ The Report to the Storting (white paper) on the GPF for 2021 maintains that companies'

⁴ ICRC, Treaties, States Parties and Commentaries, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

⁵ The International Covenant on Civilian and Political Rights, and optional protocols, https://lovdata.no/dokument/NL/lov/1999-05-21-30/KAPITTEL_6#KAPITTEL_6

⁶ Council on Ethics, see recommendations regarding Oil & Natural Gas Corp Ltd, Gail India, and PTT pcl and PTT Oil and Retail Business PCL, <https://etikkradet.no/recommendations/serious-violations-of-individuals-rights-in-situations-of-war-or-conflict/>

⁷ 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/PRIs 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.

⁸ Report to the Storting (white paper) No. 24 (2020–2021) on the Government Pension Fund Global 2021, p. 115 <https://www.regjeringen.no/no/dokumenter/meld.-st.-24-20202021/id2843255/>

⁹ Report to the Storting (white paper) No. (2008-2009) on the Government Pension Fund Global 2008, p. 125, <https://www.regjeringen.no/contentassets/88c48b559b4c4b53a0b9b4ca2dc3dc45/no/pdfs/stm200820090020000dddpdfs.pdf>.

willingness and ability to cooperate should be accorded weight in the Council's assessments.¹⁰

1.2 Sources

This recommendation is based on publicly available information from UN organisations, media, civil society, finance institutions and filings to stock exchanges by APSEZ. The company has also commented on a draft recommendation to exclude the company.

2 Background

For years, the armed forces in Myanmar have committed acts of extreme brutality against the country's civilian population, with further gross atrocities being perpetrated since the military coup on 1 February 2021. The Council attached importance to this in its recommendation to place APSEZ under observation.

The situation in Myanmar has subsequently escalated. In a report issued in October 2023, the UN Special Rapporteur describes the human rights situation in Myanmar as follows:

The people of Myanmar continue to suffer from a deteriorating human rights and humanitarian crisis. An illegitimate military junta would like the world to believe that only it can restore peace and stability to the country. The opposite is true. The coup of February 2021 has been followed by ever greater levels of human rights violations, violence, oppression, lawlessness, and poverty.

Junta forces have responded to losses on the ground with a widespread campaign of violence against civilians that includes an escalation of airstrikes on villages and the burning of tens of thousands of homes. Displacement and human suffering continue on a massive scale, exacerbated by the landfall of Cyclone Mocha and the junta's shameless restrictions on humanitarian aid. Nearly 20,000 political prisoners are now behind bars where many endure torture and appalling conditions. Rohingya continue to face systematic human

¹⁰ Report to the Storting (white paper) No. (2020-2021) on the Government Pension Fund Global 2021, p. 140, which discusses the Ethics Committee's report Values and Responsibility – The Ethical Framework for the Government Pension Fund Global (NOU 2020: 7, <https://www.regjeringen.no/contentassets/524ad2307e424c3b9a9ff52b06569e24/no/pdfs/stm202020210024000dddpdfs.pdf>).

*rights violations in Myanmar and rapidly deteriorating conditions in refugee camps in Bangladesh.*¹¹

The Special Rapporteur also describes how the armed forces and groups which they control have escalated their attacks on civilian targets *“while continuing a campaign of mass arson targeting villages and towns it perceives to be aligned with opposition groups. Reports of mass killings, beheadings, torture, sexual and gender-based violence, forced labor, and the use of human shields have continued to mount, with no accountability for perpetrators or justice for victims.”* This situation is worsened by an economy in free fall and the blocking of emergency relief after the cyclone that had a particularly devastating impact on the Rohingya ethnic minority, whose position was already dire.¹²

Inquiries made by UN Independent Investigative Mechanism for Myanmar have found that children are among those who have been tortured, called up for military service and detained without cause *“including as proxies for their parents”*.¹³ The annual report, which covers the year from July 2022 to July 2023, concludes that *“there is strong evidence that the Myanmar military and its affiliate militias have committed three types of combat-related war crimes with increasing frequency and brazenness: (a) indiscriminate or disproportionate targeting of civilians using bombs; (b) killings of civilians or combatants detained during operations; and (c) large-scale and intentional burning of civilian dwellings and other civilian buildings.”*¹⁴ Reference is also made to the fact that *“reliable evidence has been collected of the commission of other war crimes, such as rape, murder, mutilation and cruel treatment. There is also strong evidence that crimes against humanity have been committed, including rape in detention; persecution; enforced disappearance;*

¹¹ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar – Advance Unedited Version, 12 October 2023, A/78/527, <https://www.ohchr.org/en/documents/country-reports/a78527-report-special-rapporteur-situation-human-rights-myanmar-advance>

¹² See footnote 11 and the UN Office of the High Commissioner for Human Rights, 50th Session of the Human Rights Council Oral update on Myanmar, 14 June 2022, <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-counciloral-update-myanmar>

¹³ UN News, Myanmar: Crimes against humanity committed systematically, says UN report, 9 August 2022, <https://news.un.org/en/story/2022/08/1124302> and the UN Special Rapporteur on Human Rights in Myanmar, A/HRC/50/CRP.1. <https://www.ohchr.org/en/documents/thematic-reports/ahrc50crp1-conference-room-paper-special-rapporteur-losing-generation>

¹⁴ UN Human Rights Council, Report of the Independent Investigative Mechanism for Myanmar, A/HRC/54/19, para 26, <https://iimm.un.org/wp-content/uploads/2023/08/G2312500-1.pdf>

and imprisonment, the passing of sentences and the carrying out of executions without having upheld fundamental fair trial rights and judicial guarantees.”¹⁵

On the basis of the abuses perpetrated against the Rohingya in 2017 and 2018, military leaders are currently the subject of legal proceedings in the International Court of Justice for violation of the Genocide Convention¹⁶ and in the International Criminal Court for crimes against humanity.¹⁷

In its recommendation to place APSEZ under observation, the Council emphasised that companies operating in areas of conflict must exercise heightened due diligence, and that any business partnership with the military-owned conglomerate Myanmar Economic Corporation (MEC) brings with it a high risk of contributing to serious norm violations.

The basis for the Council recommendation was the fact that APSEZ’s subsidiary Adani Yangon International Terminal Company Limited had signed a Build-Operate-Transfer (BOT) agreement with MEC to develop the Ahlon International Port Terminal in Yangon. The agreement had a term of 50 years, after which the port would revert to MEC, unless the agreement was extended by two times 10 years.¹⁸ The project was scheduled for completion in 2021. When the Council originally assessed the case, the company had already paid MEC USD 90 million as well as an annual leasehold payment of USD 20,000. The full cost of the project was estimated at USD 290 million.

In October 2021, APSEZ announced that it had decided to pull out of Myanmar. It also stated that it had stopped making payments to MEC after MEC was sanctioned by the EU and USA in 2020.¹⁹

The Council considered that APSEZ had not exercised the particular care expected in situations of war or conflict, and that the company’s collaboration

¹⁵ See footnote 14, para 31.

¹⁶ 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>

¹⁷ 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>

¹⁸ Business Standard, *Adani Ports to set up container terminal in Myanmar worth \$290 mn by 2021*, 23 May 2019 https://www.business-standard.com/article/pti-stories/adani-ports-to-set-up-first-container-terminal-outside-india-in-myanmar-119052300858_1.html

¹⁹ 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/>, and Official Journal of the European Union, 19 April 2021.

with MEC could contribute to strengthening the armed forces' economic and logistical capacity. Although APSEZ had announced that it was going to exit its investment in Myanmar, the Council nevertheless considered that there was a significant uncertainty with respect to when such a withdrawal would be possible to implement. The Council therefore recommended that the company be placed under observation.

3 The Council's observations

On 4 May 2023, APSEZ announced that it had sold its port-related business. According to a filing sent to the national stock exchange, APSEZ had sold the business to Solar Energy Ltd for USD 30 million. APSEZ subsequently reported that the sale has been completed.²⁰ Solar Energy is incorporated in Anguilla.²¹ There is no other information available about the buyer.

In January 2023, allegations of financial misconduct were levelled at Adani. These included accusations of stock price manipulation, fraud and the creation of secret offshore shell companies in tax havens by associates of Adani family members.²² Further allegations were reported in August, stating that specific associates of the Adani family had used offshore shell companies and funds to build up and secretly trade large positions in shares of the Adani Group. Apparently, this could indicate a scheme intended to circumvent Indian regulations that limit the holdings of corporate insiders at 75 per cent.²³ Adani has denied the allegations.

²⁰ APSEZ filing to the stock exchange: Divestment of 100% equity stake held in Coastal International Terminals Pte Limited to Solar Energy Limited, 4 May 2023, <https://www.adaniports.com/-/media/Project/Ports/Investor/corporate-governance/Corporate-Announcement/other-intimation/Media-Release-4.pdf?la=en> . According to Bloomberg the sale is pending.

²¹ Deloitte, Haskins & Sells LLP's letter to APSEZ regarding the auditor's resignation 12 August 2023. The letter is included in APSEZ's letter to BSE Ltd and the National Stock Exchange of India concerning "Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - Resignation of Statutory Auditor Ltd," 12 August 2023, <https://www.adaniports.com/-/media/Project/Ports/Investor/corporate-governance/Corporate-Announcement/other-intimation/IntimationtoSE.pdf?la=en>

²² Hindenburg research: Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History, 24 January 2023, <https://hindenburgresearch.com/adani/>

²³ Financial Times: Secret paper trail reveals hidden Adani investors, 31 August 2023, <https://www.ft.com/content/8d46b435-9725-46d4-80be-2cb3e276c4c9>

In August 2023, APSEZ's auditing firm resigned because Adani had not commissioned an independent investigation into the allegations of financial irregularities mentioned above. The auditor said that this limited its ability to determine whether certain transactions, including the sale to Solar Energy, were related-party transactions.²⁴

4 Information from the company

The Council contacted APSEZ to request information about Solar Energy, including information about the owners of the company, where it is registered and based, and details of APSEZ's business relationship, if any, with Solar Energy. APSEZ did not respond to the Council's initial inquiry, but has commented on a draft version of the Council's recommendation to exclude it from investment by the GPF. Here, the company rejects the Council's assessment.²⁵

The company states that it took 18 months to conclude the sale and that it was difficult to find a buyer. Obtaining the local authorities' consent to the sale was also challenging. APSEZ writes that *"we worked hard to ensure that the ownership transfer was in the right hands and the port asset is used for the overall development of the people of Myanmar. However, despite our best efforts, we took a write-off of INR 12.73 billion on the transfer of ownership."*

APSEZ further refers to the stock exchange announcement of 4 May 2023, in which it affirms that *"we have clearly stated that Solar Energy Limited, the buyer of the Myanmar Port asset, is not a related party to APSEZ."* The company further discloses that, due to the sensitivity surrounding shareholding in Myanmar, it has been agreed with the buyer *"to limit our disclosures on the counterparty as per the statutory requirements of the country."*

5 The Council on Ethics' assessment

The situation in which Myanmar's civilian population has found itself in the past year is significantly worsened. The abuses are widespread, extremely serious and well documented. They also constitute serious violations of humanitarian law and human rights.

²⁴ APSEZ letter to BSE Ltd and the National Stock Exchange of India concerning "Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - Resignation of Statutory Auditor Ltd," 12 August 2023, in which Deloitte, Haskins & Sells LLP's letter to APSEZ regarding the auditor's resignation is included, <https://www.bseindia.com/xml-data/corpfiling/AttachLive/024e4563-18b9-49b7-b5e4-bf2a4442ad6f.pdf>

²⁵ APSEZ' letter to the Council on Ethics, 12 October 2023.

The Council notes that APSEZ has announced the sale of its business in Myanmar. Yet apart from its name, APSEZ has provided no further information about the acquiring company. APSEZ has justified this on the grounds of confidentiality. According to APSEZ, Solar Energy is not a related party.

The Council accords weight to the fact that APSEZ’s auditor did not have sufficient information to assess whether the sale to Solar Energy and certain other transactions were between related parties. The Council also emphasises the company’s lack of ability or will to share information. Given that APSEZ has provided no further assistance in clarifying the matter, and that it has proved impossible for the Council to discover any other information about the company that purchased APSEZ’s business in Myanmar, the Council is unable to establish whether APSEZ is still associated with this business.

The Council concludes that the lack of information, the auditor’s handling of the matter and the reports of an absence of transparency in the company’s transactions, particularly in a situation where extremely serious norm violations are taking place, means that the risk of the GPF’s investment in APSEZ violating the Fund’s ethical guidelines is unacceptable. The Council therefore recommends that APSEZ be excluded from investment by the GPF under the ethical guidelines’ criterion relating to serious violation of the rights of individuals in situations of war or conflict.

6 Recommendation

The Council on Ethics recommends that Adani Ports & Special Economic Zone Ltd be excluded from investment by the Government Pension Fund Global (GPF) pursuant to the ethical guidelines’ criterion on the serious violation of the rights of individuals in situations of war or conflict.

Svein Richard Brandtzæg Chair	Siv Helen Rygh Torstensen	Cecilie Hellestveit	Vigdis Vandvik	Egil Matsen
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)