



Annual report 2010

Council on Ethics for the Government Pension Fund Global



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for the Government Pension Fund Global

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Introduction

Introduction

The Council on Ethics for the *Government Pension Fund Global* (GPFG) is an independent council that makes recommendations to the Ministry of Finance on the exclusion of companies from the Fund on the basis of actions or omissions that are in contravention of the criteria in the Fund's ethical guidelines. The Council was established by the Council of State on 19 November 2004, at which time the ethical guidelines were also laid down. Following an evaluation process, the Ministry of Finance adopted a revised set of guidelines for the activities of the Council on Ethics on 1 March 2010, the so-called "Guidelines for observation and exclusion from the Government Pension Fund Global's investment universe" (hereinafter the ethical guidelines). The Council on Ethics has five members and a secretariat with a staff of eight.

Revised guidelines

The Council on Ethics discussed the revised guidelines in last year's annual report. So far, the changes have led to the Council on Ethics contacting a larger number of companies than previously. Under the former guidelines the Council contacted companies through Norges Bank, usually only to present them with a draft recommendation. Under the revised guidelines the Council on Ethics now informs companies at a relatively early stage that the Council is examining aspects of their operations and requests information. This sometimes leads to companies offering information or asking to meet with the Council. The Council on Ethics thus has closer contact than before with companies that are being assessed. The objective of the Council's dialogue with companies is to gather information to assess whether there are grounds for excluding them.

Development of international standards

Views on ethical considerations in asset management and corporate social responsibility have changed greatly in recent years and are still evolving. While in 2004 the Government Pension Fund Global was one of the first large funds to introduce ethical guidelines in its management, it has now become a matter of course for many investors to follow the principles of ethical investment management, including endorsement of the UN principles for responsible investment (UN-PRI). The article on page 21 discusses the latest developments for some of these instruments. The Council on Ethics is happy to provide input to such processes wherever they have relevance for its work. The Council has provided input both to the UN Guiding Principles for Business and Human Rights and the UN Global Compact's principles for how companies can operate responsible businesses in war and conflict situations.

Published recommendations

The Ministry of Finance announces the Council on Ethics' recommendations when the Ministry has taken a decision and any purchase or sale of securities has been completed. Since the last annual report, five new recommendations have been made public. The

Israeli company Africa Israel Investments Ltd. and its subsidiary Danya Cebus Ltd. were excluded under the criterion of “serious violations of individuals’ rights in situations of war or conflict”. Danya Cebus built settlements on the West Bank. Both the International Court of Justice in The Hague and the UN Security Council have determined that the construction of such settlements is illegal under the Fourth Geneva Convention, which provides protection to civilians during war and occupation.

Two of this year’s recommendations concern the exclusion criterion “severe environmental damage” and involve the illegal logging of tropical rainforests. The Council emphasized that the logging operations of the Malaysian forestry company Samling Global Ltd. and its subsidiary, Lingui Developments Berhad, were in conflict with national law and their licence terms in, among other places, Sarawak in Borneo.

Most companies excluded in accordance with the Fund’s ethical guidelines are excluded because they produce a specific kind of weapons or tobacco. Under the product criteria, the American company L-3 Communications Holding Inc. was reinstated in the portfolio because it no longer produces cluster munitions. Meanwhile, the Chinese company Shanghai Industrial Holdings Ltd. was excluded because a wholly-owned subsidiary produces tobacco.

This annual report also contains a letter from the Council on Ethics to the Ministry of Finance about the company Siemens AG, which the Ministry put on a watch-list in 2009 for a period of up to four years. Both the Council on Ethics and Norges Bank are required to report on developments in the company’s anti-corruption efforts as long as the company is on this list.

Identifying violations of standards

The Council on Ethics uses external consultants to carry out daily Internet searches for news items about the companies in the portfolio. These searches are done in several languages, including English, Spanish, Russian and Mandarin.¹ The Council receives monthly reports about companies accused of complicity in human rights violations, or of being responsible for corruption, severe environmental damage or other factors encompassed by the ethical guidelines. Among these, the Council selects the cases that appear to be the most serious for further assessment. There is a special monitoring system for the weapons and tobacco criteria.

To a somewhat greater extent than previously, the Council is currently assessing special types of operations that are not in the news, such as companies that exploit a particular natural resource or do business in a particularly problematic geographic area. Both approaches are necessary. Without continuous monitoring of the portfolio, the Council would clearly be unaware of many matters concerning companies in the portfolio. At the same time the amount of news varies both geographically and in terms of topics, and news monitoring does not capture all relevant issues.

Table 1 below summarises the Council of Ethics’ surveys of companies in 2010 and compares them with the figures for 2008 and 2009. The number of cases flagged in the monthly news reports have almost doubled in the past year. This is partly because

improvements in news searches that were made in 2009 became evident in 2010, but also because the same incident is reported several times by various consultants. Of the more than 800 cases captured by the monitoring system in 2010, 70 cases were considered further. This is a significant decline from last year and is because the product-based exclusion, particularly for tobacco, has now largely been implemented. It was evident relatively quickly that there was no basis for excluding five of these companies, while 65 of the companies were studied further. Many of these are still being assessed.

Table 1. Overview of the Council on Ethics' activities

Year	2008	2009	2010
Total no. of excluded companies at year-end	32	48	52
No. of companies on the official observation list at year-end	0	1	1
No. of companies excluded during the year	5	19	5
No. of recommendations published	6	6	5
No. of companies reinstated during the year	0	3	1
Companies in GPFGB at year-end	7800	8300	8500
No. of cases flagged in monthly consultants' reports	360	450	830
No. of cases where initial assessments were carried out	130	170	70
No. of companies under further assessment	30	55	65
No. of Council meetings	10	9	11
No. of people in the secretariat	7	7	8
Budget	NOK 9.6 million	NOK 11.3 million	NOK 11 million

Ongoing assessments

In 2010 the Council on Ethics carried out assessments of, among other things, corruption cases, mining operations in Africa and Latin America, working conditions in coal mines, oil operations in the Amazon and the Niger Delta, illegal logging of tropical forests, companies with operations in the Democratic Republic of the Congo and in Burma and the acquisition of phosphate from Western Sahara.

Only a small part of the Council on Ethics' work concludes with recommendations and is published. Below is a brief description of some issues on which the Council has spent considerable resources in addition to the contents of published recommendations. Even so, the Council on Ethics' annual report cannot provide a complete picture of the Council's activities.

The Council on Ethics has invested considerable effort in identifying companies that extract natural resources in conflict areas in the Democratic Republic of Congo. While the Council's surveys show that few companies in which the Fund invests have operations in these areas, it found reason to take a closer look at the activities of a couple of companies

in the portfolio. The Council will continue to monitor companies that commence operations in the area.

The Council also regularly follows infrastructure investments in Burma in line with its letter of 11 October 2007 to the Ministry of Finance. Given the situation in Burma, the Council finds that it will be almost impossible for a company to implement major infrastructure investments in the country without leading to human rights violations such as forced displacement and forced labour. Nevertheless, it is often difficult to assess the role that companies in the Fund actually play in such projects. It can also be challenging to identify corporate structures and ownership. Furthermore, the Council is aware of several projects that have long been planned, but do not appear to have commenced.

In the area of environmental protection, the Council is in the process of identifying and mapping some key areas for further assessment. This is described in a separate article on page 21 of this annual report. The work will provide further basis for prioritising the issues that the Council should address in the future. The Council on Ethics has begun similar analyses with respect to labour rights. The challenge in this area is both to assess where to set the threshold for exclusion, and to assess the association of companies in the portfolio with gross violations of labour rights. The aim is that the analysis should provide a decision-making basis for the prioritisation of specific companies and issues where there is a particular risk of serious violations of workers' rights.

As in past years, the Council on Ethics experienced great interest in its work in 2010 from journalists, NGOs, researchers and investors. During the year, Council members and the secretariat gave numerous presentations both in Norway and abroad to provide information about the ethical guidelines and the Council on Ethics' work. We are also receiving feedback that investors are benefiting from the Council's recommendations in their efforts to influence companies. This indicates that the Council's work is noticed.

We see that 2011 will also place many challenging issues on the Council's table. The biggest challenge will undoubtedly continue to be obtaining the basis for the Council's assessments: documentation. We maintain that cases must be well researched, and that recommendations must be thorough and well-documented. This is necessary for ensuring the credible implementation of the ethical guidelines for the Fund.

Gro Nystuen
Chair

(sign.)

Ola Mestad

(sign.)

Bente Rathe

(sign.)

Dag Olav Hessen

(sign.)

Ylva Lindberg

(sign.)

Notes

- 1 For more information about media monitoring, see the Council on Ethics' 2009 Annual Report, p. 15.

Members of the Council and of the Secretariat

The Council on Ethics



From left:

Ylva Lindberg, Managing director of SIGLA.

Dag Olav Hessen, Dr. philos and Professor at the University of Oslo.

Bente Rathe, Economist, MBA.

Gro Nystuen (Chair), Dr. juris and Associate Professor at The Norwegian Defence Staff College and Senior Partner at the International Law and Policy Institute.

Ola Mestad, Dr. juris and Professor at the Centre for European Law, University of Oslo.

Andreas Føllesdal and **Anne Lill Gade** were members of the Council until December 2010. New members of the Council are Dag Olav Hessen and Bente Rathe.

The Secretariat

The Council has a Secretariat that assesses and prepares cases for the Council.

The Secretariat has the following employees:

Pia Rudolfsson Goyer (Cand. jur, LL.M)

Svein Erik Hårklau (Cand. agric.)

Hilde Jervan (Cand. agric.)

Eli Lund, executive head of Secretariat, (Economist)

Charlotte Hafstad Næsheim (Master of Law)

Aslak Skancke (Graduate Engineer)

Pablo Valverde (Master in War Studies)

Marthe Johanneson (Senior Executive Officer)

Guidelines for observation and exclusion from the Government Pension Fund Global's investment universe

Adopted by the Ministry of Finance on 1 March 2010 pursuant to Act no. 123 of 21 December 2005 relating to the Government Pension Fund, section 7

Section 1. Scope

(1) These guidelines apply to the work of the Ministry of Finance, the Council on Ethics and Norges Bank concerning the exclusion and observation of companies.

(2) The guidelines cover investments in the Fund's equity and fixed income portfolio, as well as instruments in the Fund's real-estate portfolio issued by companies that are listed in a regulated market.

Section 2. Exclusion of companies from the Fund's investment universe

(1) The assets in the Fund shall not be invested in companies which themselves or through entities they control:

- a) produce weapons that violate fundamental humanitarian principles through their normal use;
- b) produce tobacco;
- c) sell weapons or military material to states mentioned in section 3.2 of the guidelines for the management of the Fund.

(2) The Ministry makes decisions on the exclusion of companies from the investment universe of the Fund as mentioned in paragraph 1 on the advice of the Council on Ethics.

(3) The Ministry of Finance may, on the advice of the Council of Ethics, exclude companies from the investment universe of the Fund if there is an unacceptable risk that the company contributes to or is responsible for:

- a) serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation;
- b) serious violations of the rights of individuals in situations of war or conflict;
- c) severe environmental damage;
- d) gross corruption;
- e) other particularly serious violations of fundamental ethical norms.

(4) In assessing whether a company shall be excluded in accordance with paragraph 3, the Ministry may among other things consider the probability of future norm violations; the severity and extent of the violations; the connection between the norm violations and the company in which the Fund is invested; whether the company is doing what can reasonably be expected to reduce the risk of future norm violations within a reasonable time frame; the company's guidelines for, and work on, safeguarding good corporate governance, the environment and social conditions; and whether the company is making a positive contribution for those affected, presently or in the past, by the company's behaviour.

(5) The Ministry shall ensure that sufficient information about the case has been obtained before making any decision on exclusion. Before deciding on exclusion in accordance with paragraph 3, the Ministry shall consider whether other measures may be more suitable for reducing the risk of continued norm violations or may be more appropriate for other reasons. The Ministry may ask for an assessment by Norges Bank on the case, including whether active ownership might reduce the risk of future norm violations.

Section 3. Observation of companies

(1) The Ministry may, on the basis of advice from the Council on Ethics in accordance with section 4, paragraphs 4 or 5, decide to put a company under observation. Observation may be chosen if there is doubt as to whether the conditions for exclusion have been fulfilled, uncertainty about how the situation will develop, or if it is deemed appropriate for other reasons. Regular assessments shall be made as to whether the company should remain under observation.

(2) The decision to put a company under observation shall be made public, unless special circumstances warrant that the decision be known only to Norges Bank and the Council on Ethics.

Section 4. The Council on Ethics for the Government Pension Fund Global – appointment and mandate

(1) The Ministry of Finance appoints the Council on Ethics for the Government Pension Fund Global. The Council shall consist of five members. The Council shall have its own secretariat.

(2) The Council shall monitor the Fund's portfolio with the aim of identifying companies that are contributing to or responsible for unethical behaviour or production as mentioned in section 2, paragraphs 1 and 3.

(3) At the request of the Ministry of Finance, the Council gives advice on the extent to which an investment may be in violation of Norway's obligations under international law.

(4) The Council gives advice on exclusion in accordance with the criteria stipulated in section 2, paragraphs 1 and 3.

(5) The Council may give advice on whether a company should be put under observation, cf. section 3.

Section 5. The work of the Council on Ethics

(1) The Council deliberates matters in accordance with section 4, paragraphs 4 and 5 on its own initiative or at the behest of the Ministry of Finance. The Council on Ethics shall develop principles that form the basis for the Council's selection of companies for closer investigation. The principles shall be made public.

(2) The Council shall obtain the information it deems necessary and ensure that the case has been properly investigated before giving advice on exclusion from the investment universe.

(3) A company that is being considered for exclusion shall be given the opportunity to present information and viewpoints to the Council on Ethics at an early stage of the process. In this context, the Council shall clarify to the company which circumstances may form the basis for exclusion. If the Council decides to recommend exclusion, its draft recommendation shall be presented to the company for comment.

(4) The Council shall describe the grounds for its recommendations. These grounds shall include a presentation of the case, the Council's assessment of the specific basis for exclusion and any comments on the case from the company. The description of the actual circumstances of the case shall, insofar as possible, be based on material that can be verified, and the sources shall be stated in the recommendation unless special circumstances indicate otherwise. The assessment of the specific basis for exclusion shall state relevant factual and legal sources and the aspects that the Council believes ought to be accorded weight. In cases concerning exclusion pursuant to section 2, paragraph 3, the recommendation shall, as far as is appropriate, also give an assessment of the circumstances mentioned in section 2, paragraph 4.

(5) The Council shall routinely assess whether the basis for exclusion still exists and may, in light of new information, recommend that the Ministry of Finance reverse a ruling on exclusion.

(6) The Council's routines for processing cases concerning the possible reversal of previous rulings on exclusion shall be publicly available. Companies that have been excluded shall be specifically informed of the routines.

(7) The Ministry of Finance publishes the recommendations of the Council on Ethics after the securities have been sold, or after the Ministry has made a final decision not to follow the Council on Ethics' recommendation.

(8) The Council shall submit an annual report on its activities to the Ministry of Finance.

Section 6. Exchange of information and coordination between Norges Bank and the Council on Ethics

(1) The Ministry of Finance, the Council on Ethics and Norges Bank shall meet regularly to exchange information about work linked to active ownership and the Council on Ethics' monitoring of the portfolio.

(2) The Council on Ethics and Norges Bank shall have routines to ensure coordination if they both contact the same company.

(3) The Council on Ethics may ask Norges Bank for information about how specific companies are dealt with through active ownership. The Council on Ethics may ask Norges Bank to comment on other circumstances concerning these companies. Norges Bank may ask the Council on Ethics to make its assessments of individual companies available.

Section 7. Notification of exclusion

(1) The Ministry of Finance shall notify Norges Bank that a company has been excluded from the investment universe. Norges Bank shall be given a deadline of two calendar months to complete the sale of all securities. Norges Bank shall notify the Ministry as soon as the sale has been completed.

(2) At the Ministry's request, Norges Bank shall notify the company concerned of the Ministry's decision to exclude the company and the grounds for this decision.

Section 8. List of excluded companies

The Ministry shall publish a list of companies that have been excluded from the investment universe of the Fund or put under observation.

Section 9. Entry into force

These guidelines come into force on 1 March 2010. The Ethical Guidelines for the Government Pension Fund – Global, adopted by the Ministry of Finance on 19 November 2004, are repealed on the same date.

Overview of recommendations issued by the Council on Ethics in 2010

Published by March 2011

- 16.09.2009** **Recommendation to exclude Africa Israel Investments Ltd. and Danya Cebus Ltd.**
Recommendation to exclude the Israeli company Africa Israel Investments Ltd., including its subsidiary Danya Cebus Ltd., because of their activities in the building of Israeli settlements in the West Bank.
(Published 23 August 2010)
- 22.02.2010** **Recommendation to exclude Samling Global Ltd.**
Recommendation to exclude the Malaysian forest company Samling Global Ltd. because of illegal logging and severe environmental damage in Sarawak (Malaysia) and Guyana.
(Published 23 August 2010)
- 15.09.2010** **Recommendation to exclude Lingui Development Berhad**
Recommendation to exclude the Malaysian forest company Lingui Developments Berhad because of illegal logging and environmental damage in Sarawak (Malaysia). Lingui is a subsidiary of Samling Global Ltd.
(Published 16 February 2011)
- 15.11.2010** **Recommendation to exclude Shanghai Industrial Holdings Ltd.**
Recommendation to exclude the Chinese company Shanghai Industrial Holdings Ltd. because one of its wholly owned subsidiary produces tobacco.
(Published 15 March 2011)
- 15.11.2010** **Recommendation to reverse the exclusion of L-3 Communications Holdings Inc.**
Recommendation to reverse the exclusion of the American company L-3 Communications Holdings Inc. because its subsidiary L-3 Communications Corp. no longer produces cluster munitions.
(Published 15 March 2011)

Companies the Ministry of Finance has decided to exclude from the Government Pension Fund Global

Cluster Munitions

- Alliant Techsystems Inc.
- General Dynamics Corp.
- Hanwha Corp.
- Lockheed Martin Corp.
- Poongsan Corp. - New
- Raytheon Co.
- Textron Inc.

Nuclear Weapons

- BAE Systems Plc.
- Boeing Co.
- EADS Co., including its subsidiary EADS Finance BV
- Finmeccanica Sp. A.
- GenCorp Inc.
- Honeywell International Corp.
- Northrop Grumman Corp.
- Safran SA.
- Serco Group Plc.

Antipersonnel Landmines

- Singapore Technologies Engineering Ltd.

Companies supplying arms or military equipment to Burma

- Dongfeng Motor Group Co. Ltd.

Tobacco

- Alliance One International Inc.
- Altria Group Inc.
- British American Tobacco BHD
- British American Tobacco Plc.
- Gudang Garam tbk pt
- Imperial Tobacco Group Plc.
- ITC Ltd.
- Japan Tobacco Inc.
- KT&G Corp.

- Lorillard Inc.
- Philip Morris Int. Inc.
- Philip Morris Cr AS
- Reynolds American Inc.
- Shanghai Industrial Holdings Ltd.
- Souza Cruz SA
- Swedish Match AB
- Universal Corp VA
- Vector Group Ltd.

Human Rights

- Wal-Mart Stores Inc., including its subsidiary Wal-Mart de Mexico

Violations of the rights of individuals in situations of war or conflict

- Africa Israel Investments Ltd.
- Danya Cebus Ltd.

Severe Environmental Damage

- Barrick Gold Corp.
- Freeport McMoRan Copper & Gold Inc.
- Lingui Developments Berhad
- MMC Norilsk Nickel
- Rio Tinto Plc. and Rio Tinto Ltd.
- Samling Global Ltd.
- Vedanta Resources Plc., including its subsidiaries Sterlite Industries Ltd. and Madras Aluminium Company Ltd.

Other particularly serious violations of fundamental ethical norms

- Elbit Systems Ltd.

Companies the Ministry of Finance has decided to put under observation

Gross corruption

- Siemens AG

The Council on Ethics' annual report to the Ministry of Finance on Siemens

Date: 12 april 2010

As a result of the Council on Ethics' recommendation of 15 November 2007 to exclude Siemens AG, the Ministry of Finance decided to place the company on an observation list on March 2009 for up to four years. The Council on Ethics and Norges Bank are required to keep Siemens under special observation during this period, and to submit annual reports to the Ministry of Finance on the company's development. In this letter, the Council on Ethics summarizes the main elements of Siemens' anti-corruption efforts during the last year, and points out key events related to the after-effects of the exposure to corruption. No reason has been found in this period to resubmit the recommendation that Siemens be excluded from the GPFG.

Settlement with U.S. authorities

Siemens AG has been listed on the New York Stock Exchange since 2001. In 2007 this caused U.S. authorities to initiate an investigation, as it came to light that the company was involved in widespread corruption. In December 2008 the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) announced that Siemens had pleaded guilty to two charges pursuant to the internal controls and books and records provisions of the Foreign Corrupt Practices Act (FCPA). The U.S. authorities pointed out that Siemens' former top management had systematically ignored the German law of 1999, which bans corruption in connection with public contracts abroad, and that several other former managers of Siemens had remained passive in the face of overwhelming indications of corruption. As part of the settlement Siemens paid the biggest fine that has ever been imposed in an FCPA suit, i.e. USD 800 million to U.S. authorities. The company's close cooperation with the authorities from the very start of the investigation caused the fine to be considerably reduced.¹

The settlement with U.S. authorities also implied that Siemens accepted Dr. Theodor Waigel, Germany's former Minister of Finance, as the company's compliance monitor for the following four years. His mandate is to assess the effectiveness of Siemens' recently implemented anti-corruption system; to inform Siemens' General Council or Audit Committee of any irregularities he may discover; and to submit annual reports of his assessments and recommendations to the SEC and the DOJ.

Key events in 2009 relating to the exposure of corruption

In November 2009, the World Bank excluded Siemens' Russian subsidiary from contracts for four years because the company's employees had bribed government officials in Moscow to secure a road project. The sums involved were in the order of USD 3 million, paid between 2005 and 2006. Siemens then reached a settlement with the World Bank whereby the company will pay 100 million USD over 15 years to nonprofit organizations worldwide that promote business integrity and fight corruption. The company also

agreed to refrain from projects commissioned and financed by the World Bank until December 2010.

In 2009, Siemens reached a settlement with nine former managers and board members, including former CEO Klaus Kleinfeld and former CEO and Chairman of the Board Heinrich von Pierer. They were required to pay EUR 2 million and EUR 5 million respectively for allowing systematic corruption to take place by failing to control operations. Furthermore, Siemens has filed a civil suit for damages against two former senior managers at Siemens who were unwilling to reach a settlement. These will be sued for EUR 5 million and EUR 15 million respectively due to deficient control of the operations. The case is expected to be tried in Munich in 2010.

The company still faces a series of ongoing corruption investigations in countries such as Argentina, Switzerland, Germany, Brazil and Hungary. These, however, are related to corrupt practices committed before 2007. In the last year, no information has come to light regarding new instances of corruption linked to the company.

In cooperation with the World Bank, Siemens launched a sector-wide initiative against corruption in 2008 called *Collective Action Guide*. The initiative refers to individual projects, sectors or areas with the aim of creating corruption-free competition through i.a. integrity agreements with competitors and clients. In 2009 Siemens worked on the implementation of the proposed measures, reporting that competing companies have shown great interest in carrying out sector-wide cooperation.

The Council on Ethics' meetings with Siemens

A meeting was held in May 2009 between the Council on Ethics and compliance managers at Siemens in Munich, during which representatives from Siemens Norway were also present. The Council on Ethics was presented with the company's new compliance system, with particular focus on Siemens' implementation and monitoring of the programme. Siemens pointed out that recent or previous isolated incidents of corruption could emerge, but the new compliance system will prevent the widespread and systematic use of corruption. In order to be kept updated on new cases of corruption and the compliance work being carried out at Siemens, the Council on Ethics was offered to initiate a dialogue with Theodor Waigel. A meeting was consequently held in December 2009 between representatives of the Council on Ethics and compliance managers at Siemens, as well as Theodor Waigel and some of his staff. The subject of the meeting was Siemens' anti-corruption efforts, as well as the effectiveness of the newly-implemented compliance system.

Siemens' Chief Compliance Officer, Andreas Pohlmann, presented Siemens' internal compliance programme and the measures taken to implement it. This new and extensive programme was developed in 2007 and 2008 as a result of the demands of German and U.S. authorities in connection with the settlement. This programme is described in greater detail in the Council on Ethics' letter of 3 September 2008 to the Ministry of Finance. Today the programme is fully developed, and work is being done to implement it in all company divisions. In 2009 Siemens had a compliance budget of some 100 million as well as 600 employees in compliance positions. One of the priority areas in the past year has been employee training programmes. In order to motivate managers to prioritise compliance, new incentive

structures have been introduced so that compliance results make up 20 per cent of their variable salary. Moreover, a series of surveys have been conducted among employees, so-called *Compliance Perception Surveys*, aimed at mapping their knowledge about and attitude towards compliance. Siemens stressed that the top-level management sends a clear message to the rest of the organisation about its zero-tolerance towards corruption.

In his task of monitoring Siemens' compliance system, Dr. Theodor Waigel is assisted by, among others, Joseph Warin of the law firm Gibson, Dunn & Crutcher LLP. Warin acts as U.S. counsel and aids Waigel in the efforts to comply with the rules relating to the FCPA, as well as the conditions linked to the settlement with U.S. authorities.² Waigel's staff also includes various lawyers specialized in financial systems, the internal audit at Siemens working independently and firewalled from the company, and U.S. authorities. During their first working year, they have had a number of meetings with company employees at several levels and in a number of countries. They have reviewed relevant documents and watched Siemens' compliance procedures in practice by participating in the company's operations as observers. They have also carried out different tests of the system.

Waigel and his staff make use of methods that differ from the procedures Debevoise & Plimpton used when they investigated Siemens from 2006 to 2008. Instead of carrying out individual interrogations of employees, Waigel has organised a number of meetings with smaller groups in which employees are encouraged to talk about compliance-related issues and the solutions to these. Based on a thorough examination of the compliance system and the meetings that Waigel and his staff have held at Siemens in the last year, they describe a compliance system that is robust and well implemented in most countries. They have not come across any new instances of gross corruption in the company and have issued recommendations that in their opinion imply small adjustments of a good system. For example, they have proposed facilitating better career opportunities for compliance managers, as well as further developing the training programme from general training to more specific training aimed at particularly vulnerable positions, for instance in accounting or procurement. Waigel reports that Siemens is acting on his recommendations. This year Waigel and his staff will look at a small sample of countries, but will probe more deeply into each one. The finance system in particular will be subject to investigation.

The Council on Ethics will continue its monitoring of Siemens as concerns its anti-corruption efforts through maintaining a dialogue with the company's compliance managers and the SEC and DOJ monitor, Dr. Theodor Waigel. The Council on Ethics will also pay attention to whether information regarding any new incidents of gross corruption in the company should emerge from other sources.



Ola Mestad
Acting Chair of the Council

Notes

- 1 <http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html>
- 2 <http://www.justice.gov/opa/documents/siemens.pdf>

Preliminary assessment of environmental problems

1 Background

The revised guidelines on exclusion and observation from the Government Pension Fund Global, March 2010, maintained the criterion that companies may be excluded if there is an unacceptable risk that the companies contribute to or are responsible for severe environmental damage. At the end of 2010, nine companies operating mainly in the mining and smelting industries were excluded under the environmental criterion. These industries are frequently represented in the Council's media monitoring of possible violations of the Fund's guidelines.¹

In previous recommendations the Council on Ethics described the elements that are emphasized in assessments of what constitutes severe environmental damage. They include comprehensive and long-lasting damage to the environment, and damage that could have major negative consequences for human life and health. The company must have caused or contributed to the damage. Whether the company's operations are in conflict with national laws and international frameworks is also taken into consideration.

On this basis, the Council conducted an initial review in 2010 of the global environmental problems and sectors where there may be particular reasons for further assessment as a supplement to the ongoing monitoring of the media.

2 Some key areas

Particularly relevant areas currently include: some forms of oil production with major local pollution problems, certain types of mining activity where the disposal of waste or tailings involves special risks, illegal and other particularly destructive forms of logging, illegal and other particularly destructive fishing activities, some forms of particularly polluting coal-fired power production, particularly polluting plants for smelting and processing minerals and metals, certain types of chemical industries with emissions of particularly harmful pollutants, and highly destructive dam projects. In addition, activities with major consequences for particularly valuable conservation areas (e.g. World Heritage Sites) should be assessed further.

Technology has made it possible to operate with high environmental standards in most industries involving natural resource extraction and processing, significantly reducing damage to nature and humans. The thresholds for observation and exclusion from the Fund shall continue to be high. It is therefore an important task for the Council on Ethics to identify companies in risk sectors and areas that are far from practising acceptable environmental standards in their operations.

The extent and magnitude of environmental damage depend on the location of a company's activities in relation to, among other things, important natural and environmental assets, population concentrations and vulnerable groups, legislation and governance in the country in question, as well as the company's procedures and, not least, practices. The Council considers all of these factors.

It can be difficult to obtain solid documentation, particularly from those parts of the world with limited¹ openness and transparency, an underdeveloped civil society or limited media coverage. Difficulties in establishing the factual basis can sometimes lead to uncertainty and risk in and of itself. In some cases this must be taken into account when the Council on Ethics considers whether certain investments represent an unacceptable risk of contributing to severe environmental damage, or other potential violations of the ethical guidelines.

In 2011, the Council on Ethics will continue to build on the preliminary assessments of key environmental problems and further delimit problem areas and companies where there may be a particular risk of violating the ethical guidelines. These assessments can help to define priorities and company assessments in the area of environmental damages over the next two to three years.

Notes

1 For more information about the Council's media monitoring, see the Council on Ethics's 2009 Annual Report, p. 15.

Overview of the development of international standards for corporate conduct

From their inception in 2004, the ethical guidelines for the Government Pension Fund have been based, among other things, on international standards. The guidelines from 2004 refer explicitly to the UN Global Compact and the OECD guidelines for multinational enterprises.¹ This is also true for the new guidelines from 2010 for Norges Bank's responsible management and exercise of ownership rights. Both of these sets of voluntary principles for responsible business conduct were established in 2000 and list obligations which international companies should comply with in their operations. Since then, other voluntary principles aimed at investors have been established: the UN Principles for Responsible Investment (UN PRI), which were laid down in 2006, and the Santiago Principles for Sovereign Wealth Funds from 2008. The latest development of standards which may affect the interpretation of the ethical guidelines is the UN Guiding Principles for Business and Human Rights.

What these sets of standards have in common is that they are voluntary and thus not enshrined in international conventions or national legislation *per se*, nor are there any specific sanctions against companies or members who do not comply with the principles. The principles are usually followed up by participants reporting on their own compliance, as is the case for both the UN-PRI and the Global Compact. Many of the expectations are based on the obligations that states have undertaken in international conventions regarding for example human rights or corruption, and these will normally also be implemented in national legislation. Although no direct reference is made to any of these principles in the Guidelines for the Observation and Exclusion of Companies from the Fund, such principles are nevertheless important to the work of the Council on Ethics. For example, the OECD Guidelines for Multinational Enterprises formulate expectations for companies that are clearly linked to the ILO Core Conventions and the OECD Anti-Bribery Convention. Activities in violation of the OECD guidelines in this area will therefore often be in conflict with the ethical guidelines. Other principles have less direct impact on the Council on Ethics' work, but they still contribute both to the understanding of what it is reasonable to expect of international companies and to the understanding of what constitutes best practice for a financial investor.

Below is a very brief presentation of these principles with a main emphasis on developments over the past year.

As the Special Representative of the United Nations Secretary-General for business and human rights, John Ruggie is in the process of completing his work on submitting a draft Guiding Principles for Business and Human Rights.² The draft will be presented to the UN Human Rights Council for final consideration at its June 2011 session. The preliminary draft is based on the tripartite framework that the Human Rights Council endorsed in 2008: the "Protect, Respect and Remedy" framework, which comprises three core principles: 1) the State's duty to protect against human rights abuses by third parties, including business; 2) the corporate responsibility to respect human rights; and 3) the

need for more effective access to remedies. One of the key purposes of formulating this tripartite framework has been the achievement of a much stronger coordination of the various initiatives regarding companies and human rights that exist in the world today.

The draft guiding principles are characterized by the equal emphasis placed on the States' duty to protect against corporate conduct that leads to human rights violations, and the corporate responsibility to respect human rights. This upholds the States' primary duties in the area of human rights. The most important innovation in terms of corporate responsibility is that the principles are based on an obligation for companies to implement what is called *Human Rights Due Diligence* at regular intervals. Under the principles companies must analyse the implications of their operations on human rights, particularly when new projects are planned or companies enter new areas. The requirements of such human rights reviews include requirements for systematic processes, restructuring – if applicable – of the business and the mitigation of adverse human rights impacts. The fundamental point of doing this review in advance, rather than just invoking rules concerning sanctions after the fact, is to avoid or prevent human rights violations instead of punishing them.

The other ongoing project is the OECD's current revision of its guidelines for multinational enterprises.³ The current version is from 2000. Much has happened since then in both the development of international investments and the discussion about the role of multinational enterprises. The OECD aims to finalize its revision in 2011. As described above, Ruggie's work only concerns the field of human rights. On the other hand, the OECD guidelines apply to all four criteria for conduct-based exclusion provided for in the Council's mandate, i.e., human rights, war and conflict, protection of the environment and corruption. Ruggie's work is one of the starting points of the OECD revision process. Among other things, the OECD will consider whether the idea of human rights reviews can also be used in its guidelines. The OECD will also consider further development of the guidelines with respect to climate change, responsibility for supply chains and the specification of corruption provisions.

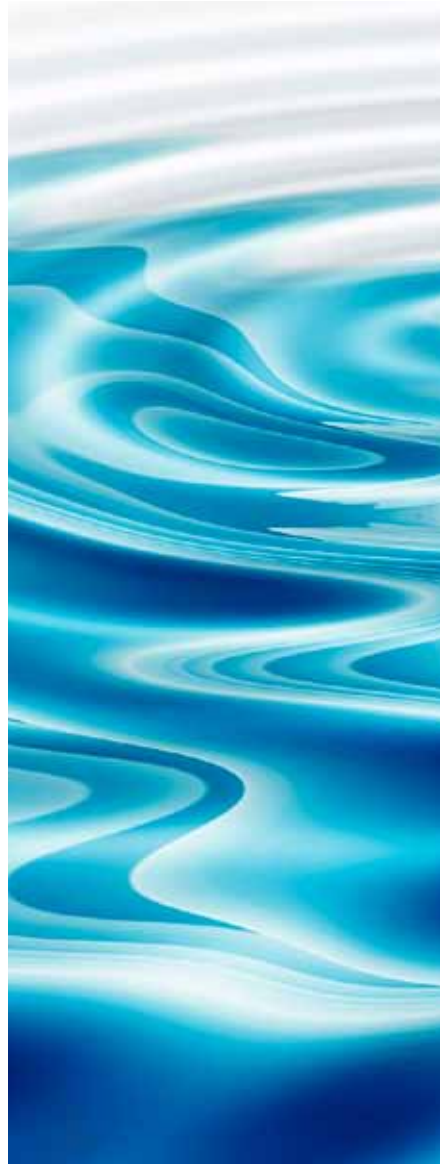
The third set of norms that has been under development in the past year is the UN Global Compact (GC)'s Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors. The guidelines presented in June 2010 will pave the way for companies to also apply the GC's ten principles in conflict areas. Business activities in conflict areas present major challenges for companies, and the guidelines provide guidance on how they should operate in order to minimize risks and ensure that their presence contributes to long-term peace and development. The initiative also allows for companies in conflict areas to be able to utilize the knowledge and assistance of local Global Compact networks established around the world.

While these principles are aimed at international companies, the next set of principles is aimed at investors. The UN Principles for Responsible Investment (UN PRI)⁴ are helping to build a common platform and understanding of how investors can focus on factors related to corporate governance, environmental and social issues in investment management. PRI's basis is that such factors can affect financial returns, and it follows that investors should take such factors into consideration. Norges Bank helped formulate the principles, and both the Bank and the Ministry of Finance have signed the PRI.

The Santiago Principles were established in 2008 by a working group in which Norway participated under the auspices of the IMF. These principles apply to *Sovereign Wealth Funds*, and thus the Government Pension Fund Global. Their purpose is to establish sound principles for the management of sovereign wealth funds and to create clarity and transparency about the role such funds should play as financial investors in other countries. Implementation of the Santiago Principles will be monitored by a special institution, the International Forum of Sovereign Wealth Funds (IFSWF), in which Norway participates through the Ministry of Finance.⁵ Among other things, the principles govern investment decisions subject to ethical considerations. They require that such reviews “should be clearly set out in the investment policy and publicly disclosed” (subprinciple 19.1). This is met through the Norwegian guidelines, which are publicly available and in the fact that the recommendations to exclude companies are also made public once the Ministry of Finance has made its decision.

Notes

- 1 For the Global Compact, see www.unglobalcompact.org.
- 2 For updated news about this work, see www.business-humanrights.org/SpecialRepPortal/Home.
- 3 For information about the OECD Guidelines for Multinational Enterprises and the revision process, go to www.oecd.org.
- 4 See <http://www.unpri.org>
- 5 See www.ifswf.org with link to the Santiago Principles.



**The
recommendations
and letters on
exclusion**

To the Ministry of Finance

Oslo, 16 November, 2009

(Published 23 August, 2010)

Recommendation on the exclusion of Africa Israel Investments Ltd. and Danya Cebus Ltd.

1 Introduction

The Norwegian Government Pension Fund Global (GPF) holds equities issued by the Israeli company Africa Israel Investments Ltd. As of December 31st, 2008, the market value of this investment was NOK 5.5 million. The company is listed on the Tel Aviv stock exchange.

Africa Israel Investments' subsidiary, Dania Cebus Ltd., is involved in the building of settlements in the West Bank. Both the International Court of Justice and the UN Security Council consider that the construction of such settlements is illegal. The Council on Ethics finds that the Fund's investments in Africa Israel Investments Ltd. constitutes an unacceptable risk of the Fund contributing to serious violations of individuals' rights in situations of war or conflict, and that the investment is in breach of the Fund's Ethical Guidelines.

The Council recommends that the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. be excluded from the investment universe of the Government Pension Fund Global.

2 Background

2.1 AFRICA ISRAEL INVESTMENTS LTD. AND DANYA CEBUS LTD.

Africa Israel Investments Ltd. is listed on the Tel Aviv stock exchange. Africa Israel Investments Ltd. owns 73 per cent of its subsidiary Danya Cebus Ltd.¹ Danya Cebus Ltd. is also listed on the Tel Aviv stock exchange. However, the Fund's ownership of Danya Cebus Ltd. is only through its ownership of Africa Israel Investments Ltd.

2.2 THE FUND'S INVESTMENTS IN AFRICA ISRAEL PROPERTIES LTD.

Africa Israel Investments Ltd. owns 68 per cent of the shares of its subsidiary company Africa Israel Properties Ltd.²

The Fund is directly invested in equities issued by Africa Israel Properties Ltd. As of December 31st 2008, the value of this investment was NOK 1,2 million.

Africa Israel Properties Ltd. is a real estate company which owns and leases office buildings and other commercial properties in Israel and Europe.³ There is no indication that the company has properties or other activities in the occupied territories.

2.3 ISRAELI SETTLEMENTS IN THE WEST BANK

Israeli settlements in the West Bank⁴ range from a few temporary houses (so-called out-posts), to larger communities with several thousand inhabitants, commercial businesses, schools, etc.

Some of the settlements function as suburbs for Israelis who work in Tel Aviv or Jerusalem.

Common to all settlements is that they are geographically located east of the demarcation line of 1948, on the territory which was occupied by Israel during the Six-Day War in 1967. Some settlements are located close to the demarcation line, others are far into the West Bank. There are also settlements on the Golan Heights, which were also occupied in 1967. There have previously been settlements in the Sinai and Gaza, but these have been abandoned.

The settlement population has increased significantly since the 1970s. The reasons for this are partly the influx of new settlers, and partly the natural growth of the settlement population. From 1972 to 2007, the population in the West Bank settlements increased from 1 500 to 270 000. During the period from 1995 to 2006, the number of settlers there doubled, from 133 000 to 265 000.⁵ In addition to this there are approximately 200 000 settlers in East Jerusalem, which was formally annexed by Israel in 1980.⁶

An example of natural population growth in settlements is found in Modi'in Illit, where annual growth in 2007 and 2008 were 10,3% and 9,5%, respectively. This is mainly due to high birth rates; 48 percent of the population in this settlement is under nine years of age.⁷

The Israeli government accommodates for the building of settlements by developing infrastructure which connects the settlements to Israel. Israel's military presence in the West Bank is to a large extent there to protect the settlements, and the same purpose is to some extent served by the separation barrier which Israel is building on the West Bank.

According to the UN body OCHA, the settlements and their infrastructure inflict great harm upon the Palestinian population. A control regime with several hundred road blocks and check points obstructs movements between Palestinian areas and is a great hindrance towards economic development in the West Bank. The separation barrier, which is partly constructed to protect the settlements, restricts movement in Palestinian areas and access to agricultural land. The same goes for a system of restricted roads which have been built to serve the settlements. Also other issues, such as the settlements' use of the limited water resources, cause negative effects on the Palestinian population and on the economic situation in the West Bank.⁸

2.4 DANYA CEBUS' ROLE IN CONSTRUCTION OF SETTLEMENTS

Danya Cebus is involved in the construction of several settlements in the West Bank. Documents obtained by the Council link the company to construction activities in the settlements Modi'in Elit and Ma'aleh Adumim:

- A press release from Danya Cebus, dated 16.08.04, states that the company is to build the "Green Park" complex in Modi'in Elit. According to the press release, the project has a cost frame of 230 million USD and comprises 3000 housing units. It further states

that this real estate project, marketed by Africa Israel, will consist of five-story buildings with 26 apartments each.

- A sales contract for a housing unit in Green Park in Mod'in Elit, between the real estate company Green Park International INC and a private buyer, dated 08.05.05., states Danya Cebus as the responsible contractor for the property.
- An injunction from the Jerusalem District Court, dated 07.07.08, by which Danya Cebus is committed to complete construction projects in the settlements Har Homa and Malleh Ha'adumim following the collapse of the real estate company Hefsiba.

2.5 THE COUNCIL'S COMMUNICATION WITH THE COMPANY

Norges Bank has written to Africa Israel Investments Ltd. on behalf of the Council and asked the company to clarify whether the company or its subsidiaries are involved in the construction of settlements in the West Banks and if so, what the nature of this involvement is and whether there are plans for future activities in this area. The company has not responded to the initial letter, nor to subsequent enquiries.

3 International bodies' view on the settlements

Internationally, there is broad consensus that the Israeli settlements in the West Bank are illegal.

The discussion below refers to a statement from the International Committee of the Red Cross (ICRC),⁹ which states that the construction of settlements is in violation of the IV Geneva Convention. Resolutions by the UN Security Council and an advisory opinion from the ICJ, both of which state that the settlements are illegal, are also referred to.

3.1 THE IV GENEVA CONVENTION

The main purpose of the IV Geneva Convention is to protect civilians during war and occupation. The convention's provisions lay down, *inter alia*, the obligations and rights of an occupying power in an occupied territory.

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

The scope of the Convention is provided 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."

Protected persons are defined by the Convention's Article 4:

"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 of the Convention states, *inter alia*:

*"[...] The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."*¹⁰

3.2 STATEMENT FROM THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

The ICRC has expressed opinions regarding the legality of the Israeli settlements in the West Bank on several occasions.

In 2001, the ICRC repeated previous statements that the Israeli settlements are in violation of international humanitarian law. According to the ICRC, Israel has introduced practices which contravene the IV Geneva Convention. These practices have been incorporated into laws and administrative guidelines and have been sanctioned by the highest Israeli judicial authorities. The ICRC also highlights the humanitarian consequences for the Palestinian population arising from the settlements, and especially from the measures taken to extend the settlements and to protect the settlers, entailing the destruction of houses, land requisitions, the sealing-off of areas, roadblocks and the imposition of long curfews.¹¹

3.3 ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE

In its 2004 advisory opinion on the legality of Israel's separation barrier on the West Bank, the ICJ also considered the legality of the settlements.¹²

The ICJ finds that the IV Geneva Convention is applicable for Israel's occupation of the West Bank¹³ and, furthermore, that the establishment of settlements in the West Bank is in violation of the Convention:

*"The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."*¹⁴

3.4 SECURITY COUNCIL RESOLUTIONS

The UN Security Council has adopted several resolutions stating the illegality of the settlements, including resolutions 446 (1979), 452 (1979), 465 (1980), 471 (1980), and 476 (1980).

Security Council resolution 465, which was approved unanimously on 1 March, 1980, states that Israel's policy and practice of constructing settlements on occupied territory constitutes a flagrant violation of the IV Geneva Convention.¹⁵

3.5 ISRAEL'S VIEW

Israel contests that the settlements are illegal, and views statements to this effect to be politically motivated.

Among other things, the Israeli Ministry of Foreign Affairs points to the fact that movement to the settlements is voluntary, and that this is not the form of deportation or transfer that the provisions of the IV Geneva Convention are meant to prohibit. Furthermore it contends that the settlements do not displace the population of the West Bank.¹⁶

Israel maintains that it in any case has valid rights to the title to the territory, and that agreement on territorial claims, including the final status of the settlements, must be achieved through negotiations.

4 What the Council will consider

The Fund's Ethical Guidelines' section 4.4. entails that the Council shall issue recommendations on the exclusion of companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to serious violations of individuals' rights in situations of war or conflict.¹⁷

In the Government White Paper (NOU 2003:22), the groundwork for the Fund's Ethical Guidelines is discussed in appendix 7:

*“International conventions specify the limits of international consensus as concerns the minimum standards which should be guaranteed in matters of fundamental global rights, as well as the standards which should be applicable for the protection of the environment, human life and health .”*¹⁸

It also states that:

“International conventions prohibiting the use of certain types of weapons and regulating the conduct of hostilities in war and conflict may provide a relevant foundation for ethical guidelines. The basis of legal constraints in the use of arms, munitions and the means through which warfare is conducted is primarily formed by humanitarian considerations. This is why this part of international law is referred to as international humanitarian law; protecting civilians and soldiers from unnecessary suffering is the reason why these rules have been developed. One can therefore view ethical considerations and legal norms as overlapping on this matter.

*This legal framework – enshrined in the four Geneva Conventions of 1949, their two additional protocols of 1977 and a number of specific conventions regulating various types of weapons and munitions – is mainly directed towards states but also, to a certain degree, towards non-state actors in a conflict. As with other examples of international law, it is not directed towards companies. To the extent that these rules aim to protect individuals from harm, it is nevertheless possible to claim that companies should endeavor to act in such a way that they are not co-responsible for violating international humanitarian law.”*¹⁹

In its preparatory work, the Geneva Conventions are specifically mentioned as part of the basis for the Fund's Ethical Guidelines. The Council therefore assumes that companies' contributions to States' violations of the Geneva Convention may form the basis for a recommendation to exclude companies from the Fund. The degree of contribution by the company to the violation of the conventions must be considered for each separate case. If there is a close link between a company's action and a State's violation of the IV Geneva Convention, the investment in the company could be seen as constituting an unacceptable risk of the Fund contributing to serious violations of individuals' rights in situations of war or conflict.

As discussed in previous recommendations, it is the role of the Council to assess whether investments in companies constitute a risk of contributing to breach of the Fund's Ethical Guidelines. The Council is to consider subjective matters related to companies, not the possible breaches of norms by states or other actors.

5 The Council's assessment

The Council has established that the ICRC, the ICJ, and the UN Security Council all find that the settlements in the West Bank have been built in violation of the IV Geneva Convention and must therefore be considered illegal.

The purpose of Article 49 of the IV Geneva Convention is to provide protection to the civilian population of an occupied territory by preventing the occupying power from carrying out large demographic changes in the territory. Whether such changes occur by displacement of the original population or by settling in unpopulated areas is not decisive.

Israel maintains, *inter alia*, that the settlements are not in violation of the IV Geneva Convention because movement to the settlements is voluntary. However, the civilian population of the occupying power are not protected persons under the IV Geneva Convention (article 4), so the purpose of the convention's article 49 is not to protect the population of the occupying power from being moved to the occupied territory. Nor is it out of consideration for the rights of the settlements' population that numerous claims of Israel's violation of the IV Geneva Convention have been put forward.

Several companies in the Fund's portfolio can probably be said to support the settlements in different ways and to various degree. In addition to the actual construction of the settlements and their infrastructure, companies may be involved in e.g. the supply of electricity and telecommunications, the sale of goods and fuel, industrial activity or the sale of real estate in settlements. In addition there may be companies in the Fund which supply construction materials and other resources used for building the settlements and their associated infrastructure. However, the Council does not consider that all forms of economic activity associated with the settlements necessarily constitute unacceptable contributions to breaches of the Fund's Ethical Guidelines, and that an assessment of the degree to which each company contributes must form the basis for the Council's decisions. Construction activities related to the building of real estate in the settlements, i.e. the physical building of houses in the settlements, is, in the view of the Council, the most significant contribution to the further expansion of West Bank settlements.

The mechanism of excluding companies from the Fund is not intended as a penalty for previous breaches of norms, but as a means of preventing the Fund's contribution to present and future breaches of norms. However, a company's previous pattern of behaviour can give some indications of its future course of action. As Africa Israel Investments Ltd. has not responded to the Council's enquiries nor clarified any plans for continued building of settlements in the West Bank, the Council concludes the following:

Generally, the Council assumes that a construction company's activities related to building projects will vary over time. Normally, large scale projects will be planned,

initiated and executed over the course of some years. Construction companies will often be involved simultaneously in several projects at different stages of their completion. The company Danya Cebus is currently executing several construction projects related to the building of settlements in the West Bank. As long as Israeli authorities do not ban all forms of construction of settlements or expansion of existing settlements, there is reason to assume that Danya Cebus will be involved in such activity also in the future, but that the degree of involvement may vary over time. The Council therefore finds that the Fund's investment in the company constitutes an unacceptable risk of future contribution to serious violations of individuals' rights in situations of war and conflict and, consequently, that the investment violates the Fund's Ethical Guidelines.

6 Recommendation

Based on the above, and according to section 4.4. of the Fund's Ethical Guidelines, the Council on Ethics recommends that the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. be excluded from the investment universe of the Government Pension Fund Global.

Gro Nystuen
Chair
(sign.)

Andreas Føllesdal
(sign.)

Anne Lill Gade
(sign.)

Ola Mestad
(sign.)

Notes

- 1 Danya Cebus Annual Report 2007: <http://www.danya-cebus.co.il/Eng/downloads/AnnualReport2007.pdf>
- 2 Africa Israel Properties Ltd: Corporation's Business Description, section 1, p 5. http://www.afigroup-global.com/nechasim/PDF/5_5_report_corp_Eng.pdf
- 3 See the company's homepage: <http://www.afigroup-global.com/nechasim/>
- 4 Israeli authorities refer to the West Bank as the areas Judea and Samaria.
- 5 Israeli Central Bureau of Statistics, *Statistical Abstract of Israel*, http://www1.cbs.gov.il/shnaton59/st02_06x.pdf
- 6 "Basic Law – Jerusalem": http://www.mfa.gov.il/MFA/MFAArchive/1980_1989/Basic%20Law-%20Jerusalem-%20Capital%20of%20Israel
- 7 Israeli Central Bureau of Statistics: http://www.cbs.gov.il/publications/local_authorities2007/pdf/552_3797.pdf
- 8 OCHA: "The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank" (2007): http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWest-Bank_full.pdf and
OCHA: "Five Years after the International Court of Justice Advisory Opinion: A Summary of the Humanitarian Impact of the Barrier" (2009): http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2009_august_english.pdf
- 9 ICRC (International Committee of the Red Cross)
- 10 IV Geneva Convention, : <http://www.icrc.org/IHL.NSF/FULL/380?OpenDocument>
- 11 Section 5, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001: "[...] *In the course of its activities in the territories occupied by Israel, the ICRC has repeatedly noted breaches of various provisions of international humanitarian law, such as the transfer by Israel of parts of its population into the occupied territories, the destruction of houses, failure to respect medical activities, and detention of protected persons outside the occupied territories. Certain practices which contravene the Fourth Geneva Convention have been incorporated into laws and administrative guidelines and have been sanctioned by the highest judicial authorities. While acknowledging the facilities it has been granted for the conduct of its humanitarian tasks, the ICRC has regularly drawn the attention of the Israeli authorities to the suffering and the heavy burden borne by the Palestinian population owing to the occupation policy and, in*

line with its standard practice, has increasingly expressed its concern through bilateral and multilateral representations and in public appeals. In particular, the ICRC has expressed growing concern about the consequences in humanitarian terms of the establishment of Israeli settlements in the occupied territories, in violation of the Fourth Geneva Convention. The settlement policy has often meant the destruction of Palestinian homes, the confiscation of land and water resources and the parcelling out of the territories. Measures taken to extend the settlements and to protect the settlers, entailing the destruction of houses, land requisitions, the sealing-off of areas, roadblocks and the imposition of long curfews, have also seriously hindered the daily life of the Palestinian population. [...]

Find the full statement here: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo_print

- 12 ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 4th, 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf>
- 13 Ibid, section 95.
“The object of the second paragraph of Article 2 is not to restrict the scope of application of the Convention, as defined by the first paragraph, by excluding therefrom territories not falling under the sovereignty of one of the contracting parties. It is directed simply to making it clear that, even if occupation effected during the conflict met no armed resistance, the Convention is still applicable.
This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power. Whilst the drafters of the Hague Regulations of 1907 were as much concerned with protecting the rights of a State whose territory is occupied, as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories, as is shown by Article 47 of the Convention.” [...] The drafters of the second paragraph of Article 2 thus had no intention, when they inserted that paragraph into the Convention, of restricting the latter’s scope of application. They were merely seeking to provide for cases of occupation without combat, such as the occupation of Bohemia and Moravia by Germany in 1939.”
- 14 Ibid section 120.
- 15 *”The Security Council [...] Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”, <http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7DS>*
- 16 Israel Ministry of Foreign Affairs, Israeli Settlements and International Law, May 2001: *“[...] The provisions of the Geneva Convention regarding forced population transfer to occupied sovereign territory cannot be viewed as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been ousted. Nor does it prohibit the movement of individuals to land which was not under the legitimate sovereignty of any state and which is not subject to private ownership. In this regard, Israeli settlements have been established only after an exhaustive investigation process, under the supervision of the Supreme Court of Israel, designed to ensure that no communities are established on private Arab land.*
It should be emphasised that the movement of individuals to the territory is entirely voluntary, while the settlements themselves are not intended to displace Arab inhabitants, nor do they do so in practice.
Repeated charges regarding the illegality of Israeli settlements must therefore be regarded as politically motivated, without foundation in international law. Similarly, as Israeli settlements cannot be considered illegal, they cannot constitute a “grave violation” of the Geneva Convention, and hence any claim that they constitute a “war crime” is without any legal basis. Such political charges cannot justify in any way Palestinian acts of terrorism and violence against innocent Israelis. Politically, the West Bank and Gaza Strip is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations. Israel has valid claims to title in this territory based not only on its historic and religious connection to the land, and its recognized security needs, but also on the fact that the territory was not under the sovereignty of any state and came under Israeli control in a war of self-defense, imposed upon Israel. At the same time, Israel recognizes that the Palestinians also entertain legitimate claims to the area. Indeed, the very fact that the parties have agreed to conduct negotiations on settlements indicated that they envisage a compromise on this issue.” <http://www.mfa.gov.il/mfa/peace%20process/guide%20to%20the%20peace%20process/israeli%20settlements%20and%20international%20law>
- 17 Ethical Guidelines for the Government Pension Fund Global: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277
- 18 NOU 2003: 22, section 7.3.2: <http://www.regjeringen.no/nb/dep/fin/dok/nouer/2003/nou-2003-22/15.html?id=371861> (This links to the original Norwegian language text. The English translation provided in this document is unofficial.)
- 19 *Supra*, section 7.3.2.2

To the Ministry of Finance

9 March, 2010

The Council on Ethics for the Norwegian Government Pension Fund Global (“GPF”) makes reference to the Ministry of Finance’s letter dated 18 February, 2010, where the Ministry requests additional information on some aspects concerning the Council’s recommendation to exclude the companies Africa Israel Investments Ltd (“AII”) and Danya Cebus Ktd (“DC”) from the Fund. The recommendation was submitted on 16 November, 2009.

The recommendation assesses whether companies building Israeli settlements on the West Bank should be excluded under the provision in the Fund’s ethical guidelines concerning companies which contribute to serious violations of individuals’ rights in situations of war or conflict.

In its letter, the Ministry of Finance highlights that this is the first recommendation submitted where said criterion is applied and requests further elaboration on the issues that the Council will consider in cases of this nature. The Ministry refers to the case of the company Total SA from 2005, in which the Council assessed whether the company Total SA should be excluded from the GPF because of alleged contributions to human rights violations in connection with the company’s construction of a pipeline in Burma. In the Total-case, the Council presented an overview of the various aspects it took into consideration in its assessment of whether a company should be excluded from the GPF because of its contribution to serious or systematic violations of human rights.

The point of departure for all of the Council’s recommendations is the existence of a clear connection between a company’s activities and the existing violation of norms. In the case of Total, it was not the company’s action (the construction of the pipeline) that was considered unethical *per se*, but rather the resulting violations of norms conducted by others. Consequently, a thorough discussion of the extent to which a company may be held accountable for violations taking place in the area where it operates was provided. Different criteria were considered to determine the company’s contribution to the violations of norms, including the company’s knowledge of the violations and in whose interest these had occurred.

The Council has also used resources to assess other companies with activities in areas where violations of norms occur, such as oil companies with activities in Sudan and mining companies with activities in D.R. Congo. The subject of the Council’s considerations here is similar to that of the Total-case, as it is not necessarily the companies’ own activities that are problematic but rather the fact that violations take place where the companies operate. The degree to which the companies possibly contribute towards the violations of norms must be considered in each individual case.

In the case of the recommendation at hand, however, the Council considers that the contribution by the companies to the violations of norms is very direct: *the companies’ own physical actions, i.e. the construction of settlements in the West Bank, is at the core of the breach of norms*. Consequently, in the view of the Council, a further, more general assessment of the companies’ contribution to the violations of norms is unnecessary.

As the Ministry points out, the Council finds that if a company contributes to a State’s violation of the IV Geneva Convention, this may form the basis for an exclusion from the

GPF without the further identification of affected individuals. Here, the recommendation refers to the preparatory work of the Ethical Guidelines (NOU 2003: 22, appendix 7, para. 3.2) which, *inter alia*, states:

“International conventions prohibiting the use of certain types of weapons and regulating the conduct of hostilities in war and conflict may provide a relevant foundation for ethical guidelines. The basis of legal constraints in the use of arms, munitions and the means through which warfare is conducted is primarily formed by humanitarian considerations. This is why this part of international law is referred to as international humanitarian law; protecting civilians and soldiers from unnecessary suffering is the reason why these rules have been developed. One can therefore view ethical considerations and legal norms as overlapping on this matter.

This legal framework – enshrined in the four Geneva Conventions of 1949, their two additional protocols of 1977 and a number of specific conventions regulating various types of weapons and munitions – is mainly directed towards states but also, to a certain degree, towards non-state actors in a conflict. As with other examples of international law, it is not directed towards companies. To the extent that these rules aim to protect individuals from harm, it is nevertheless possible to claim that companies should endeavor to act in such a way that they are not co-responsible for violating international humanitarian law.” [Unofficial English translation].

The requirement that individual victims be identified is not present here. Several hundred thousand Palestinians can be said to be suffering as a result of the Israeli settlements on the West Bank. It would neither be practicable nor necessary for the Council’s deliberations to refer to named individuals who are directly affected by the activity of the companies recommended for exclusion from the GPF.

The Ministry of Finance asks for a more detailed account of the extent to which the nature of the proprietor of the settlement is relevant to the Council’s deliberations.

The areas of the West Bank where Israeli settlements are built are either under Israeli military control or annexed by Israel (East Jerusalem). It is not disputed that Israel is responsible for the maintenance of the provisions of the IV Geneva Convention in these areas. The Council has referred to statements from the International Court of Justice (ICJ), the UN Security Council and the International Committee of the Red Cross (ICRC) in its recommendation, all of whom have expressed that the building of Israeli settlements in the West Bank is in violation of the IV Geneva Convention. Companies undertaking the construction of said settlements are, in the Council’s view, directly involved in the Israeli government’s violation of norms. This applies regardless of who ordered the construction or what knowledge the companies may have of the circumstances.

Further, the Ministry asks whether it may be considered relevant to study the extent to which the activities of the company also benefit those whose rights have been violated.

When the Council has previously considered whether a company’s activities can also be said to benefit those whose rights have been violated, it has not been in cases where it is the company’s own activities which constitute the core of the violation. Generally, such considerations may be relevant when assessing the company’s presence and activities in oppressing regimes or conflict areas, but not in cases where the company is itself directly involved in the violation of norms.

In its recommendation, the Council has referred to the UN body OCHA's report "*The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank*" (2007). The report describes, *inter alia*, how over 38% of the West Bank is comprised of Israeli settlements, outposts, military bases, infrastructure, and other areas where admission to the Palestinian population is either prohibited or tightly regulated. The settlements are connected to each other and to Israel via a network of roads to which the Palestinian population has limited access. This fragmentation of the West Bank has had severe negative economic and social consequences for the majority of the Palestinian population. The report concludes: "*The consequences of settlements and related infrastructure on Palestinian life are severe, and if current trends continue, socio-economic conditions in the West Bank are likely to worsen.*" Neither this nor any other report that the Council is aware of describes any positive contributions from the Israeli settlements in the West Bank for the Palestinian population.

The Ministry of Finance asks whether any other companies carrying out construction-related activities in connection with the building of settlements should be excluded from the GPF. In its recommendation, the Council takes the view that companies that build Israeli settlements in the West Bank may be recommended for exclusion from the Fund. Consequently, this applies to any other company with similar activities. In its assessment of a company's involvement, the Council will consider the specific actions of individual companies; a sub-contract for a construction project may be considered less significant than the main enterprise for the project.

Lastly, the Ministry of Finance enquires about the current status of AII's and DC's construction projects in the West Bank. The Council has made repeated attempts to contact the companies via Norges Bank in order to have this clarified. The companies have not responded.

The information at hand, in the form of sales contracts and court documents, shows that the companies - at least until recently - have been, and probably still are, involved in the construction of Israeli settlements in the West Bank.

Based on the information which has been obtained on the companies' past and present construction projects in the West Bank, and considering the Israeli policy of building settlements, the Council finds that there is an unacceptable future risk that the companies will continue to carry out the construction of Israeli settlements in the West Bank.

In the view of the Council, this risk will be present as long as Israeli authorities do not halt ongoing construction projects and ban the future construction of new settlements in the West Bank and East Jerusalem or their expansion, or until the companies clarify that their role in such activities has ceased.

With regards,



Ola Mestad
Acting Chair,
Council on Ethics, Government Pension Fund Global

To the Ministry of Finance

Oslo, 22 February, 2010

(Published 23 August, 2010)

Recommendation on the exclusion of Samling Global Ltd.

1 Introduction

At a meeting held on 2 March 2008, the Council on Ethics for the Government Pension Fund Global (GPF) decided to assess whether the investments in the Malaysian logging company Samling Global Ltd. may imply a risk of the Fund contributing to severe environmental damage under the Ethical Guidelines, point 4.4.

As of 31 December 2009, the Government Pension Fund Global held a total of 16,060,000 shares in the company.

Producing timber, plywood and veneer, Samling Global Limited is a Malaysian forest resource company with logging concessions, plantations and freehold land in Malaysia, Guyana, New Zealand and China. All logging concessions are located in natural tropical rainforests, covering an area of 1.4 million hectares in Sarawak, Malaysia and 1.6 million hectares in Guyana. Samling harvests more than 2.3 million m³ of timber a year, over 80 per cent of which is felled in Malaysia.

Seeing as there is little information available on how Samling Global runs its operations, the Council has carried out its own assessments of the company's forestry activities in Sarawak, Malaysia and Guyana. In Sarawak the company has a total of 15 logging concessions. Five of these have been selected for further examination, including field surveys and analyses of satellite images. The assessment of the operations in Guyana is primarily based on publicly accessible sources. The Council has focused its assessment on illegal logging and the environmental damage that occurs when laws and regulations are not being observed. The term 'illegal logging' designates felling, transport, purchase and sale of timber in contravention of national legislation.

The Council on Ethics' own assessment of Samling's logging operations have documented what seems to be extensive and repeated breaches of the licence requirements, regulations and other directives in all of the six concession areas that have been examined. Some of the violations constitute very serious transgressions, such as logging outside the concession area, logging in a protected area that was excluded from the concession by the authorities in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments. Other violations which, seen in isolation, may appear less serious are aggravated because they seem to be a systematic part of the company's logging operations. Moreover, the Council attaches importance to the fact that the Malaysian Auditor-General has documented illegal logging in another two of Samling Global's concessions and that Samling Global's subsidiary Barama has been fined several times for irregularities related to logging operations in Guyana.

The Council has contacted the company twice. In January 2009, the Council made an enquiry requesting copies of the timber licences and the forest management plans for the concessions in Malaysia and Guyana, as well as information on the company's logging operations. Samling rejected the Council's request in a letter dated 2 February 2009.¹ Following further surveys another letter was sent to Samling on 17 December 2009, providing the company with an opportunity to comment on the Council's draft recommendation, as prescribed by the Ethical Guidelines, point 4.5. The Council received the company's reply on 12 February 2010.² Samling denies any involvement in illegal logging, stressing that the logging operations comply with government requirements. However, Samling fails to offer sufficient information to indicate that the Council's recommendation is based on a faulty foundation. An account of Samling's reply is given in Chapter 5 and under relevant sections of the recommendation.

According to the preparatory work for the Fund's Ethical Guidelines, illegal logging may be in contravention of the Guidelines. When assessing the company, the Council has placed particular importance on the extent of illegal logging in Samling's concessions and on the extent to which this practice shows signs of being systematic, as well as the risk that it will continue in the future. The Council finds that the violations detected in the surveyed concessions in Malaysia and Guyana are extensive and, in part, severe. Even if the violations are of a varying character, the seriousness is reinforced by their recurrence, which, in the Council's view, indicates systematically irresponsible behaviour on the part of the company. This is inconsistent with Samling's assurances that its logging operations are sustainable, environmentally sound and in line with the regulations.

In light of the lack of transparency relating to all aspects of Samling's forestry operations, the fact that the company has not presented documentation showing the Council's information on illegal logging to be wrong, and that there seems to be few incentives for change, the Council finds reason to believe that there is an unacceptable risk that the company's illegal and destructive forestry operations will continue in the future.

The Council concludes that, under subsection 4.4, of the Ethical Guidelines, there are grounds to recommend that Samling Global Ltd. be excluded from the investment universe of the Government Pension Fund Global due to an unacceptable risk of contributing to ongoing and future severe environmental damage.

2 Sources

The available information on the environmental performance of Samling Global's operations is very limited. The company does not disclose any substantial information on its forest operations in the concessions. Forest management plans or the specific requirements that the company has to comply with are not available either, as neither the company nor the Sarawak authorities disclose such information.

The Council therefore contacted Samling Global - through Norges Bank - requesting copies of the official timber licences and forest management plans for the various concession areas operated by Samling Global and its subsidiaries in Malaysia. The company declined the Council's request in a letter dated 2 February 2009.

To be able to assess the company's operations, the Council commissioned its own research targeted at evaluating the legal and environmental performance of Samling Global's forestry operations in Sarawak, Malaysia. Earthsight Investigations³ carried out the research in the period from April 2008 until December 2009. This included a field study into four of Samling's logging concessions in Sarawak, as well as information gathering and numerous interviews with Sarawak government officials, labour unions, local NGOs and residents in the concession areas. The field studies were conducted in April and September 2009.

In addition, the most recent available Landsat imagery for the relevant concession areas have been obtained, analysed and compared with earlier images.⁴ Landsat imagery of 15-30 m spatial resolution is sufficiently detailed to clearly show logging roads, forest degradation and recent clearances. This information was used to help identify locations of recent logging activity within Samling's concession areas and to assess whether logging is occurring in prohibited zones within and outside of licence areas.

The Council has obtained timber licences for four of Samling's timber logging concession areas in Sarawak, and a Forest Management Plan for one of these areas (though this has expired). The Council has also had access to the Environmental Impact Assessments (EIAs) for the re-entry logging of three of Samling's timber logging concession areas and for all six of Samling's forest plantation (clearance) licence concessions. Furthermore, the Council has obtained maps showing land use planning within the concessions, including routes of logging roads, areas reserved as green belts, community forests and riparian buffers, classified steep Class IV terrain and areas permitted to be selectively logged or cleared.⁵ These documents, as well as documents pertaining to Sarawak forest and environment legislation, have been used as a basis for assessing the company's operations.

Regarding Samling's operations in Guyana, the Council has for the most part relied on publicly available sources.

This recommendation is mainly based on the Council's own research. Other sources are referred to in footnotes.

3 The Council's considerations

The Council on Ethics decided to assess Samling Global at a meeting on 3 March 2008, shortly after the company was included in the Fund's portfolio. The Council was already aware of the serious allegations against the company regarding illegalities in its forest operations in several countries. The Council has also received requests from the Swiss NGO Bruno Manser Fund and the Norwegian Rainforest Foundation to investigate Samling Global's operations with regard to breaches of human rights and severe environmental damage within its forest concessions.

The Council is aware of the more than 20 year old - and still ongoing - conflict between Samling and indigenous communities in Sarawak over its logging operations in what the indigenous peoples claim as their customary lands. The most famous case relates to the Penan People of the upper Baram area of central Borneo, close to the border with

Indonesia.⁶ Concessions in this area are claimed to have been granted to Samling and other logging companies in the early 1980s, without consulting indigenous peoples and local communities. As the logging progressed, the Penan found that the logging had a dramatic detrimental impact on the forest and thus on their livelihoods. Since 1998, indigenous communities situated within the timber concessions have filed three lawsuits against four of Samling's subsidiaries and the State Government over land rights. The legal cases are still pending in Malaysian courts.⁷ In December 2009 five Penan communities filed two new lawsuits against two of Samling's subsidiaries, also these over land rights issues and compensation for damage caused by the company in the course of their past operations.⁸

The Council has not assessed allegations pertaining to indigenous peoples' rights.

With reference to the Ethical Guidelines, point 4.4, second clause, the Council has considered whether the Fund's investment in Samling Global constitutes an unacceptable risk of the Fund contributing to severe environmental damage.⁹

In previous recommendations regarding environmental damage, the Council has placed particular emphasis on whether:

- the damage is significant;
- the damage causes irreversible or long-term effects;
- the damage has considerable negative impact on human life and health;
- the damage is a result of violations of national laws or international norms;
- the company has neglected to act in order to prevent the damage;
- the company has not implemented adequate measures to rectify the damage;
- it is probable that the company's unacceptable practice will continue.

The present recommendation refers to commercial logging in tropical rainforests and is therefore different from other environment-related cases that the Council has assessed, in which pollution has been the primary cause of severe environmental damage. Commercial logging is carried out by timber companies that are given access to forest resources through government-awarded concessions. Such logging, as well as the conversion of natural forests into plantations, is considered to be a major cause of deforestation and degradation of tropical rainforests, owing to factors such as destructive logging methods and a lack of consideration for the environmental value of the forest.¹⁰ Moreover, logging and deforestation release large quantities of greenhouse gases. Nevertheless, in the present recommendation the Council has not assessed either logging, logging methods or plantation forestry as such, but focused its assessment on illegal logging and the environmental damage that occurs when laws and regulations are not being observed.

Many countries, including Malaysia, have introduced laws and regulations as a means to limit the environmental damage related to forestry. The legislation lays down a series of rules on how forestry activities are to be carried out, establishing requirements regarding logging methods, logging cycles, road construction, measures to prevent erosion and the pollution of water systems, etc. Logging outside the concession area, in preservation areas and in the habitats of protected species is not allowed, nor is it permitted to exceed the harvest quota stipulated in the timber licence agreement. The failure to comply with such

requirements poses a significant risk that the logging operation may lead to more extensive and severe environmental damage, as well as contributing to deforestation and forest degradation, increasing the loss of biodiversity and the emission of greenhouse gases. In addition to the environmental damage, illegal logging may harm or destroy the land and livelihoods of people who are directly or indirectly dependant on the forest.

In its elaboration of what may constitute severe environmental damage, the preparatory work for the Ethical Guidelines explicitly addresses the issue of illegal logging. *‘Illegal logging means harvesting, transporting, buying and selling timber in violation of national laws. This includes corrupt methods for gaining access to forest areas, logging in protected areas, logging of protected species, or that the timber harvest exceeds permissible quotas. Illegalities also occur when timber is processed or exported illegally, customs declarations are erroneous, and taxes are not paid.’* And further: *‘If it is disclosed that companies in which the Fund is invested are involved in such activities, this may qualify for use of the exclusion mechanism.’*¹¹

Other than logging taking place in contravention of national laws, there is no internationally agreed definition of what illegal logging implies. The Graver Committee’s definition and interpretation are, however, in accordance with those that other international entities, including the EU¹², apply in their initiatives. The Council has therefore used the definition above as a point of departure in its assessment of whether Samling’s practices fall under the criterion of ‘severe environmental damage’. This notwithstanding, the Council regards this specification of what illegal logging includes as exemplary and not exhaustive.

It is *existing* and *future* violations that are covered by the Guidelines. This implies that the Council must assess whether there is a risk that the company’s unacceptable practice will continue in the future. The company’s previous actions may give an indication as to how it will behave in the future, and thus form a basis for the assessment of whether there is an *unacceptable risk* that unethical actions will occur henceforth.

4 About Samling’s operations

4.1 COMPANY BACKGROUND

Samling Global Limited is an integrated forest resource and wood-products company with forest resources, processing facilities and distribution networks situated in different regions around the world. The company produces timber, plywood and veneer. It is incorporated in Bermuda, listed on the Hong Kong stock exchange and headquartered in Malaysia. Samling’s operations in Malaysia are located in the state of Sarawak, in the Malaysian part of the island of Borneo.¹³

Samling has undergone a number of major restructurings since the first of the group’s companies was founded in Sarawak in 1976. The most recent restructuring occurred in 2006 to create an overall group, Samling Global Ltd., which was floated on the Hong Kong stock exchange through an initial public offering (IPO) in 2007.¹⁴ Samling Global’s timber harvesting operations appear to be organized through its subsidiaries Barama Company Limited, Syarikat Samling Timber Sdn. Bhd. and Lingui Developments Berhad.

The former are wholly-owned subsidiaries of Samling, while Samling holds a 67.23 per cent share in Lingui.¹⁵ The forest concessions are owned and managed by wholly owned subsidiaries of Samling Global's subsidiaries.

Samling claims 'a long track record of developing, investing in and operating forest concessions and downstream wood products processing operations of over 30 years.'¹⁶ As Sarawak's forests have dwindled, in the last 20 years Samling has expanded its operations to other countries while also diversifying into the development of plantations, particularly oil palm.

As of 2009, Samling Global reports that it has forest assets, mainly as forest concessions, plantation licenses, and freehold land in Malaysia, Guyana, New Zealand and China. All the forest concessions are in natural tropical forests and cover an area of 1.4 million hectares (14,000 km²) in Sarawak, Malaysia, and around 1.6 million hectares (16,000 km²) in Guyana. The company's plantations are located in Malaysia (430,000 ha), New Zealand (35,000 ha) and China (1,000 ha).¹⁷ Samling's log production amounts to more than 2.3 million m³ annually; over 80 per cent of the logs are cut in Malaysia.

4.2 SAMLING GLOBAL'S OPERATIONS IN SARAWAK, MALAYSIA

According to Samling's IPO Prospectus, the company has 15 selective timber logging licences in Sarawak, covering an area of approximately 1.4 million hectares of natural rainforest (see Figure 1).

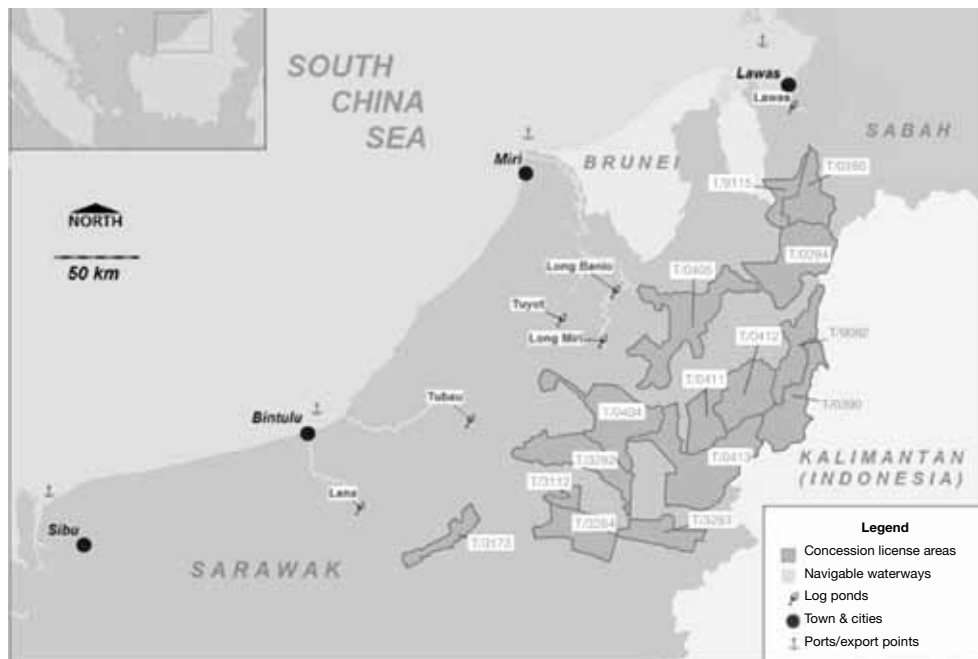


Figure 1: Samling's logging concession areas in Sarawak ¹⁸

The independent technical review commissioned by Samling in advance of its IPO in 2007 estimated that of the net operable area of the company's concessions in Sarawak, 82 per cent has already been logged over at least once.¹⁹ Some of the timber logging concessions are now subsumed under overlapping plantation forest licences (LPF) where the forest is being cleared.

Current activity

Indications of areas of current logging activity within Samling's concessions were obtained by an analysis of 2007 and 2009 Landsat satellite imagery, and by comparison with slightly older imagery on Google Earth.²⁰ This showed recent clearance within Samling's plantation forest areas (LPF); it also showed logging going on in specific areas within timber licences T/0411, T/0413, T/0390, T/9082 and T/0294. While the clearance logging in the LPF areas continues apace, Samling has recently halted logging in the least accessible concessions located furthest upriver (T/9082, T/0390). Re-entry selective logging continues in T/0411 and T/0294, and first-round logging is ongoing in T/0413. A full list of information on current activity in the timber licence areas in the Miri and Limbang Divisions is provided in Table 1.

Table 1: Current status of logging in Samling forest concession licences in the Miri & Limbang divisions, Sarawak, Malaysia (per 2009)

Licence	Current and recent activity	Licence valid until ²¹
T/9115	Satellite imagery from 2007 shows that re-entry logging is ongoing.	2015
T/0280	Almost the entire concession is now licensed for clearance as part of plantation licence LPF 0005. Clearance does not appear to have reached this area yet.	T/0280 – 2009 LPF 0005 – 2058
T/0294	Satellite imagery from 2007 and 2009 shows intense re-entry logging in south-east corner of concession around Batu Lawi, in and around an extension of Pulong Tau National Park.	2015
T/0405	The northern half of the concession is licensed for clearance as part of plantation licence LPF 0020. Satellite images from 2007 and 2009 show initial clearance and wide-ranging re-entry logging in this part of the concession still ongoing as of 2009. No evidence of recent selective harvesting activity in southern part of concession.	2013
T/9082	This concession is the farthest upstream of the Baram River basin and is the last to be reached by the loggers. It contains some of the only areas within the entire Samling forest concession estate which have not already been logged once. First-round selective logging was occurring in this concession recently, but is reported to have been largely halted by the company in late 2008. 2009 satellite imagery shows that some more recent clearance and logging have occurred in connection with the construction of a logging road to Bario.	2011
T/0390	The northern arm of this concession near the Indonesian border saw first-round logging activity in 2005-2007, but to the Council's knowledge this was brought to a halt in late 2008. The southern half of the concession has already been heavily logged.	2012
T/0412	The southern half of this concession was heavily logged in the 1990s, but has not seen recent activity. The northern sector is certified under the Malaysian forest certification scheme, MTCC, 22 but there appears to be no current activity.	2013
T/0411	This concession was logged for the first time in the early 1990s, and re-entry logging was started in 2002. Currently, re-entry logging is ongoing in the southern coupes.	2013

T/0413	There has been first-round logging in the middle sector of this concession, to the south of T/0411 (see Figure 1), since at least 2007 and it is still ongoing. 2007 and 2009 satellite imagery shows intense logging.	2018
T/0404	Almost the entire concession is now licensed for clearance as part of plantation licence LPF 0021. Clearance of primary and degraded tropical forest is currently ongoing in this area and is clearly visible in 2007 satellite images. This concession is a major source of logs.	2013

4.3 FOREST MANAGEMENT IN SARAWAK

The state of Sarawak is autonomous with regard to managing its forest resources. The forest resources of Sarawak are administered by two government agencies, the *Forest Department of Sarawak*, responsible for licensing and administrative functions,²³ and the *Sarawak Forestry Corporation*, which is in charge of operational functions, including the enforcement of compliance with all requirements governing the operations of licensees, subcontractors and other operators.²⁴

Timber licences are granted by the Forest Department. Each forest timber licence covers a specific *concession* area. The timber licence stipulates the requirements the company has to comply with. The timber licence requires a series of general and annual plans which the licence holder must produce and have approved, including the Forest Management Plan. The Forest Management Plan details how harvesting in a concession should be carried out, i.e. which species are to be cut, minimum diameter cutting limits, annual allowable harvest areas (so-called coupes) maximum volume of harvest, road construction, etc. It is normally valid for 5-10 years.

Generally, concessions are harvested according to a cutting cycle of 25 years. Once the licence is issued, the licensee has to submit a *General Harvesting Plan* to the Forestry Corporation, showing the coupe layout and road network for the entire concession.²⁵ Following approval of the General Harvesting Plan by the Corporation, annual harvesting plans for each coupe have to be developed and approved. This Detailed Harvesting Plan shows harvesting block layout, harvesting method to be used, road network and conservation areas, and critical resources and sites. Then the licensee must obtain a *Permit to Enter Coupe* before any logging activity can start. The Permits to Enter Coupe are approved in five phases, from initial demarcation planning and surveying, through road construction and eventually to actual harvesting.

In Samling's IPO Prospectus this process is described in detail: '*The trees selectively harvested from the coupes must be of a prescribed minimum diameter and must be species that are not protected for harvesting. Logs harvested from individual concessions will be tagged by us with log identification tags for identification and tracking and will then be delivered to locations designated by the Sarawak Forestry Corporation for royalty marking. The log identification tags contain information on species, concession, coupe and block number.*'²⁶

Timber licences in Sarawak are valid for a certain period of time, normally 20 to 25 years. The Sarawak Forest Department decides on the renewal. Normally it will be reissued to the same licensee unless the concession is converted to plantation development or the licence requirements have not been met. Very serious non-compliance can potentially affect the renewal of the licence and provide justification for the licence to be revoked.

However, according to information obtained by the Council, it is rare or unheard of for the Sarawak Forest Department to revoke or fail to renew a logging licence as a result of infractions of legislation.²⁷ Samling's IPO Prospectus notes that since the company was issued its first timber logging licence in 1976 it has never lost access to a concession area because of requirements not being fulfilled.²⁸

The *Forestry Corporation* is tasked with enforcing requirements.²⁹ According to the Corporation's website, enforcement involves intelligence gathering, detection of illegal activities, investigation of offences, and prosecution of offenders in court.

The Forestry Corporation has been criticised for weak enforcement. According to the Sarawak State Attorney-General, *'the state suffers economic loss through illegal logging, unlawful occupation of State land and false land claims... The State government's enforcement unit does not have the manpower, and logistical and intelligence procurement ability of the police.'*³⁰ In the annual report for 2008, Malaysia's Auditor-General describes Sarawak's forestry management as unsatisfactory.³¹ The report notes that poor enforcement and monitoring has led to illegal logging and contributed to environmental degradation, especially river pollution, erosion, landslides, mud deposits and floods. In a sample of three timber licence areas surveyed by the Auditor-General's office during April 2009, logging was found to have been conducted illegally on slopes exceeding 35 degrees and close to riverbanks – two of these areas (T/3112 and T/3284) are licensed to Samling.³² A review of re-entry logging permits for timber licences carried out by the Auditor-General's office also found that many such areas were being re-entry logged without first completing an Environmental Impact Assessment as required under legislation³³ – something confirmed by the Council's own research detailed below to have been the case over many years for at least two Samling licence areas. The Sarawak state authorities have questioned some aspects of the Auditor-General's findings and have claimed that the report does not reflect the overall situation. The Sarawak Forestry Department has requested amendments to the report and the Auditor-General has agreed to review its content.³⁴

4.3.1 Regulations and specific requirements for logging operations

Based on the documents that the Council has had access to,³⁵ relevant legislation and interviews with forest department employees and others who have detailed knowledge of the forestry operations in Sarawak, as well as open sources, the Council has established a basis for assessing Samling's forestry operations. The Council's research has revealed activities that in all probability constitute non-compliance with the requirements. The table below describes the grounds for this assessment.

Table 2: Relevant requirements for the alleged violations that have been revealed by the Council's research

Logging and road construction outside the licence boundary	The T/0390 logging licence area extends along the border with Indonesia. The concession map accompanying Timber Licence T/0390 shows that the boundary of the licence area runs at least 1 km inside the border (see Figure 1 and below). An EIA report for another area to the south, which also runs along the border, refers to an official requirement for a 'buffer zone' of 1 km to be left untouched along the international border. ³⁶ Logging outside of the boundary of a licence area is prohibited under the Timber Licence.
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Harvesting of protected tree species	The two most common protected tree species, Engkabang ³⁷ and Tapang (<i>Koompassia excelsa</i>) ³⁸ , are listed in Schedule 2 of the Wildlife Protection Ordinance, which makes it an offence to cut them unless a special permit is issued by the Wildlife Controller. Individual permits are normally required for each tree to be cut and have to be renewed annually if unused. The permits are expected to be displayed at the office of the licensee. To the Council's knowledge, such permits are normally issued in exceptional circumstances only, for instance if a tree blocks a crucial logging road or presents a danger.
Re-entry logging without an Environmental Impact Assessment	According to the Natural Resources and Environment (Prescribed Activities) (Amendment) Order, 1997, First Schedule, Article 2 (i), since 2005 it has been a requirement in Sarawak that companies must have completed an Environmental Impact Assessment approved by the Natural Resources and Environment Board (NREB) before undertaking re-entry logging in areas larger than 500 ha. The NREB is an independent government agency without ties to the Forest Department. Logging without an Environmental Impact Assessment carries a penalty of up to 10,000 Malaysian ringgit (NOK 17,000) in fines and/or five years in prison.
Clearance of forest for construction of logging roads	Specific limits are contained in the Forest Management Plans (FMP). In the expired FMP for the T/0390 concession, there are limits for the total width of the road clearance: 60 m for 'main' roads, 50 m for 'secondary' roads and 40 m for 'feeder' roads. The Timber Licence for T/0390, which remains valid, further states that the minimum cutting diameter limits defined in the FMP are only exempted for roads to a distance of 30 m on either side of the centre line. Thus, it is highly likely that clearing of forest for more than 20-30 metres from either side of a logging road is illegal. The FMP also states that 'the licensee must ensure that when constructing roads and skid trails and when harvesting, erosion and siltation of streams and rivers are kept to a minimum' and that 'logging methods causing excessive damage to the forest and its ground cover will not be permitted'. According to Forest Department officials, FMPs are much standardised and have changed little over the years.
Logging and clearance near streams and rivers	The Forest Management Plan mentioned above includes the requirement that 'the licensee must ensure that when constructing roads and skid trails and when harvesting, erosion and siltation of streams and rivers are kept to a minimum', but no specific details are given. According to the EIA for re-entry logging in T/0411, harvesting and clearance shall be limited to areas more than 20 metres from small streams, and greater for larger rivers. This requirement corresponds with a report on the Evaluation of the Malaysian Timber Legality Assurance System (TLAS) which states that 'The harvesting of trees growing in buffer zones intended to protect permanent water courses (20 m either side) are prohibited' ³⁹ According to information from Sarawak government officials, a limit of 20 metres is a very likely requirement for Samling's concessions.
Land-based logging and road construction in steep terrain	The Forest Management Plan referred to above states that 'those forested areas confirmed to be terrain IV by ground survey during the detailed planning stage of each coupe will not be allowed to be harvested'. It also defines Class IV terrain as areas with slopes in excess of 35 degrees. The EIA for the T/0411 licence area repeatedly states that conventional ground-based logging is prohibited in so-called Class IV terrain, however helicopter logging is permitted in such areas. This is also evident in a presentation by the Forest Corporation, which states that the use of tractors is not allowed in terrain IV areas. Helicopter logging may be permitted, though. ⁴⁰ General concession maps and detailed Permits to Enter Coupe included in the re-entry logging Environmental Impact Assessments for licences T/0411 and T/0298 clearly show the boundaries of Class IV terrain. These boundaries were used in the analysis shown in Figure 7, Figure 14, and Figure 15.

Pollution of streams and rivers caused by road construction

The Forest Management Plan, which the Council has had access to, states that the licensee must 'locate roads to minimise risk of earth material entering the streams and rivers', requiring that 'debris and excess earth material associated with road construction shall be deposited in stable areas and in such a manner as to prevent entry into streams and rivers', and also that 'all drainage channels shall be cleared of wood debris generated during road construction'.

Cutting undersize trees

The Timber Licences available to the Council state that no trees with a diameter below the prescribed limits defined by the Forest Management Plan should be cut. The aforementioned FMP gives limits of 60 cm diameter at breast height (dbh) for dipterocarp tree species⁴¹ and 45 cm for non-dipterocarps. According to the timber licences, smaller trees can be harvested during road construction, provided that they are no more than 30 metres from the centre line. The EIA for T/0411 repeats the same diameter limits defined above. The minimum cutting limits correspond with information given in a presentation by the Forestry Corporation.⁴² According to government officials, these limits are standard in all forest management plans. Diameter limits do not apply in areas licensed for clearance as plantation forests.

4.4 THE COUNCIL'S ASSESSMENTS OF ILLEGAL LOGGING AND SEVERE ENVIRONMENTAL DAMAGE WITHIN SAMLING'S TIMBER LICENCE AREAS IN SARAWAK

Selection of licence areas

In order to obtain information about Samling's forestry operations, five of the licence areas listed in Table 1 were selected for further field investigations: T/9082, T0390, T/0411, T/0413, and T/0404, which has now been converted into plantation licence LPF/0021. The Council has made a point of prioritizing logging licences rather than concessions for plantation activities, as there are few requirements for operations involving forest clearance for conversion into plantations. T/0404 was nevertheless included because it had to be passed on the way to the other areas. Analyses of satellite imagery showed that logging had recently taken place in the concessions of the Baram catchment area, in the eastern part of Sarawak. The initial investigation commissioned by the Council in April 2009 also indicated that illegal logging had taken place in several concessions in this area. A field investigation was thus planned for the Baram region, including these areas. Figure 2 shows the five adjacent concessions that were surveyed more closely.

Through the research carried out from April 2009, the Council also received information that Samling had probably been logging in an area reserved for a national park. The concession T/0294 was therefore included in the Council's further investigations. The assessments here are mainly based on analysis of satellite imagery and other information gathering.

The Council's investigations in each individual area are described below.

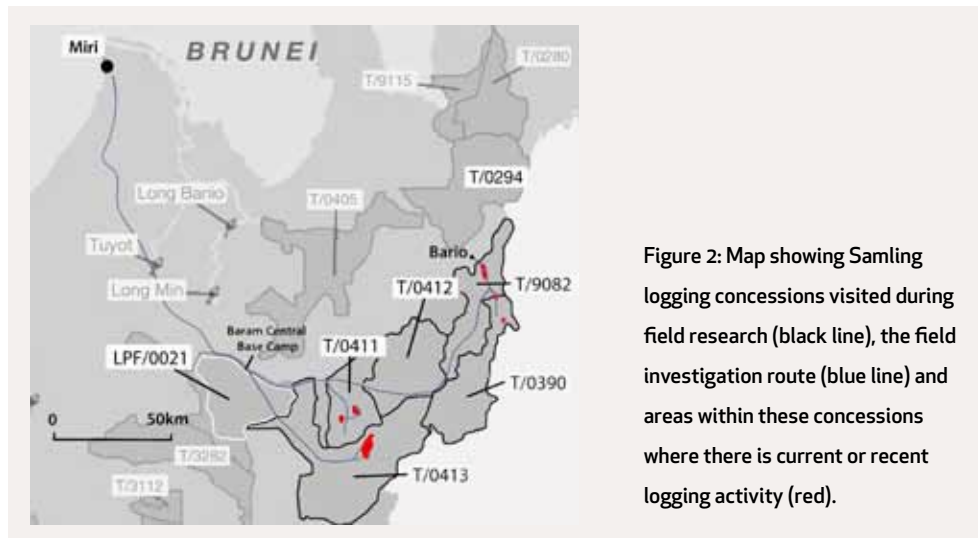


Figure 2: Map showing Samling logging concessions visited during field research (black line), the field investigation route (blue line) and areas within these concessions where there is current or recent logging activity (red).

4.4.1 Concession T/0294 – Ravenscourt Sdn. Bhd.

From as early as the mid-1990s, discussions had been ongoing between the Sarawak government and international donors regarding the establishment of a new National Park in the upper Baram. After more than ten years of negotiations and millions of dollars in funding from the Swiss and US governments funnelled through a large project run by the International Tropical Timber Organisation (ITTO), the Pulong Tau National Park was finally gazetted in 2005. Since then the ITTO has also been involved in the efforts to expand the National Park to include an area around the Batu Lawi Mountain, north of the existing National Park,⁴³ which is part of concession area T/0294 belonging to Ravenscourt Sdn. Bhd.⁴⁴

Re-entry logging without Environmental Impact Assessment

The re-entry logging EIA for the T/0294 licence, published in November 2008, states that Samling, through its subsidiary Ravenscourt, has been re-entry logging in the area since 2003 without having assessed the environmental impact.⁴⁵ Inasmuch as this is a statutory requirement of the *Natural Resources & Environment Ordinance*, it is reasonable to presume that the logging activity in the concession area has been in contravention of the ordinance since it was introduced in 2005. In its letter to the Council, Samling claims that the forestry authorities did not enforce this requirement until 2008, and that the company had been given permission to log (*Permit to Enter Coupe*); see also section 5.1 for further description.⁴⁶

Logging within an area officially approved as an extension of a National Park Satellite images from 2007 and 2009 reveal that Samling’s subsidiaries have recently been logging intensively around the Batu Lawi Mountain (see Figure 4 and Figure 6). This particular area has been described as the most ecologically important “core area” of any extension of the National Park (Figure 3).

In the two years between May 2007 and May 2009, Samling has expanded the logging in the core area (see Figure 4). Analyses using terrain data from Google Earth indicate that

some of the areas currently being logged are very steep (in excess of 35 degrees). One particular area of very intense logging extends about 1,000 feet up the mountain's eastern side.

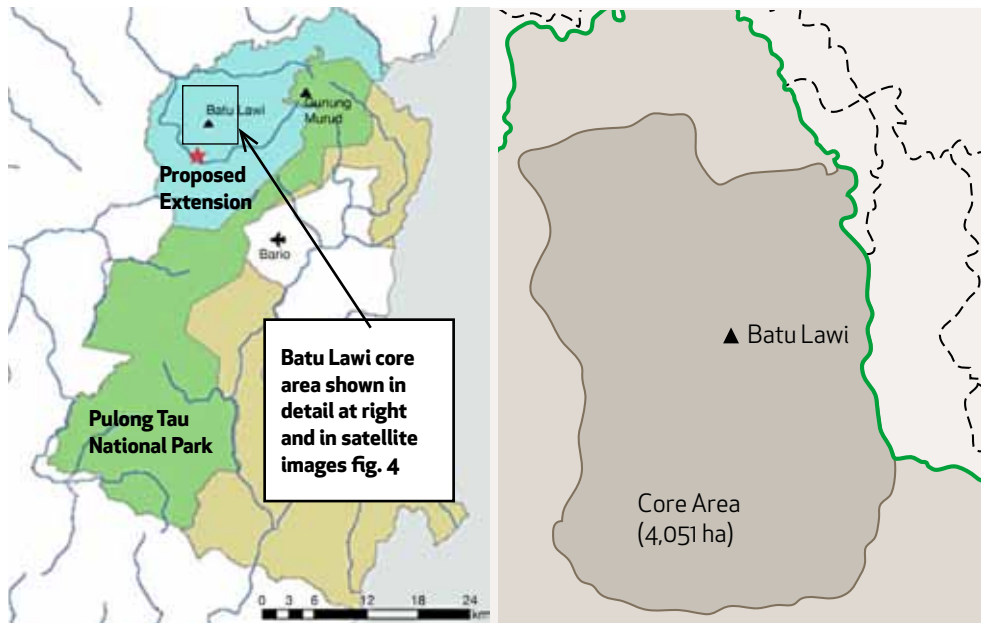


Figure 3: : Left: Map of Pulong Tau National Park (green), showing proposed extension to the north around Batu Lawi (blue).⁴⁷ Right: Map showing the high-priority core area at Batu Lawi, within Samling's concession T/0294, proposed for urgent protection in 2006.⁴⁸



Figure 4: Left: Landsat satellite image of the same core area shown in Figure 15 (note the matching logging roads on the right) in May 2007, showing intense new logging by Samling subsidiary Ravenscourt within the core area. Right: Landsat image from May 2009, 2 years later, showing how logging has extended further into the area far up the eastern slopes of the massif (logging areas and roads are coloured red).

According to documents appended to the Environmental Impact Assessment for re-entry logging in T/0294, the Batu Lawi area was officially established as an extension of the National Park on 13 May 2008. A letter from the Sarawak Director of Forests to Ravenscourt, dated 23 May 2008, is worded to this effect, also informing the company that the area in question would be excluded from the concession: “YAB Pehin Sri Ketua Menteri Sarawak has approved the extension area of Pulong Tau National Park on 13 May 2008. The extension area affects part of Coupes 10A, 13A & 14A of Licence T/0294 [] and it will have to be excluded from the Licence.”⁴⁹

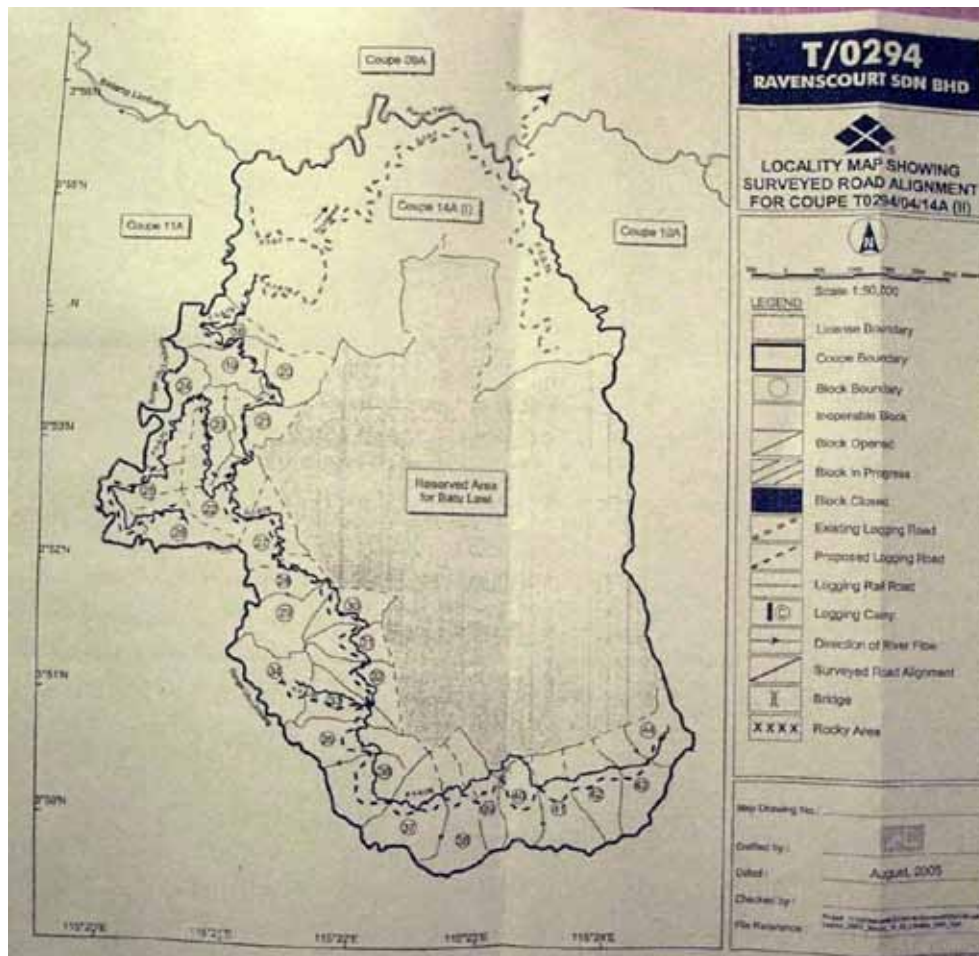


Figure 5: Coupe map appended to the Permit to Enter Coupe for Coupe 14A within Timber Licence T/0294

The Environmental Impact Assessment, published in November 2008, repeatedly confirms that the relevant areas of the licence will not be logged.⁵⁰ Approved concession maps and Permits to Enter Coupe, which the Council has had access to, show the exact boundaries of the area of the licence involved. The map for Coupe 14A, which includes the Batu Lawi massif, clearly shows that the area is to be preserved and that no logging must be carried out here (see Figure 5). Despite all the above, satellite imagery from May 2009 (see Figure 4) shows recent and intensive logging still taking place inside the same area a whole year after the area was officially declared off-limits. This gives reason to believe that

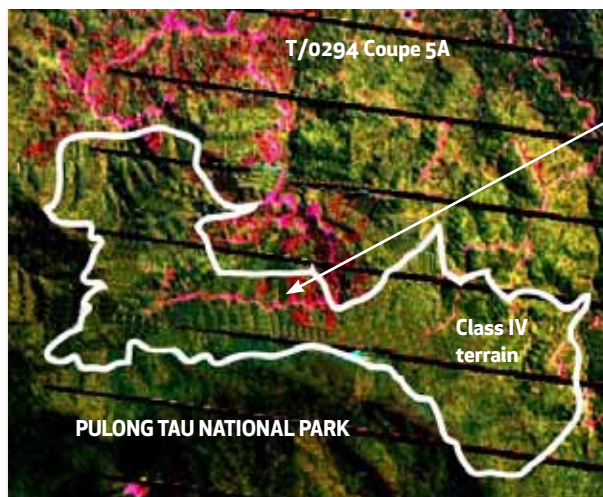
logging has been conducted without official logging permission in the form of a Permit to Enter Coupe. When the boundaries of the ‘reserved area’ shown in the Permit to Enter Coupe map are overlaid on the satellite images, the extent of this illegal logging becomes clear (see Figure 6).



Figure 6: Satellite image from May 2009 showing intensive logging inside the Batu Lawi reserved area. (Reserved area marked with white line). Logging areas are coloured red.

Road construction and logging in steep terrain

The Council has not carried out a full comparison of logging activity as shown on satellite images with boundaries of Class IV terrain. Nevertheless, a few areas within the concession have been examined, including the southern sector of Coupe 05A, where a large swathe of steep terrain adjoins the border with the existing Pulong Tau National Park. An overlay of Class IV terrain boundaries for this area reveals that a logging road has recently been cut for a distance of approximately 3 kilometres into the Class IV terrain zone. Intensive logging activity can also be seen (see Figure 7).



Logging road and logging in prohibited Class IV terrain

Figure 7: Illegal logging road and logging in prohibited Class IV steep terrain, Coupe 5A, T/0294 (Class IV terrain boundaries are marked with a white line).

In the Council's opinion, there can be little doubt that Samling has acted illegally in several ways in this concession, including carrying out re-entry logging for four years without the required Environmental Impact Assessment, logging in an approved National Park which has been excluded from the official licence area and where logging is prohibited, and illegally constructing roads and conducting land-based logging in areas of steep Class IV terrain where such logging normally is banned. The Council finds it highly probable that the logging activities performed in this concession are devastating to the forest and the local biodiversity, causing extensive soil erosion and reducing the area's value as a national park.

4.4.2 Concession T/0390 – Merawa Sdn. Bhd.

Satellite images show that during 2006-2007, and possibly as late as early 2009, new logging was occurring in the northern sector of Samling's T/0390 logging licence, which runs along the Indonesian border. The timber licence belongs to Merawa Sdn. Bhd.⁵¹

Clear-cutting along roads and rivers, cutting inside river buffers and polluting rivers with logging debris

At the northernmost end, the boundary between T/0390 and neighbouring Samling licence area T/9082 is defined by the Kelapang River. Between this river and the nearby village of Pa Dalih, widespread recent destruction along the route of a new road joining Pa Dallih with Pa Mada to the north (see Figure 8 for location) was observed during the field visit. Analysis of satellite images shows that the southern section of the new road was complete by March 2009, while the northern section was not started until May 2009. Logging activity in the area had halted by the time of the field visit.

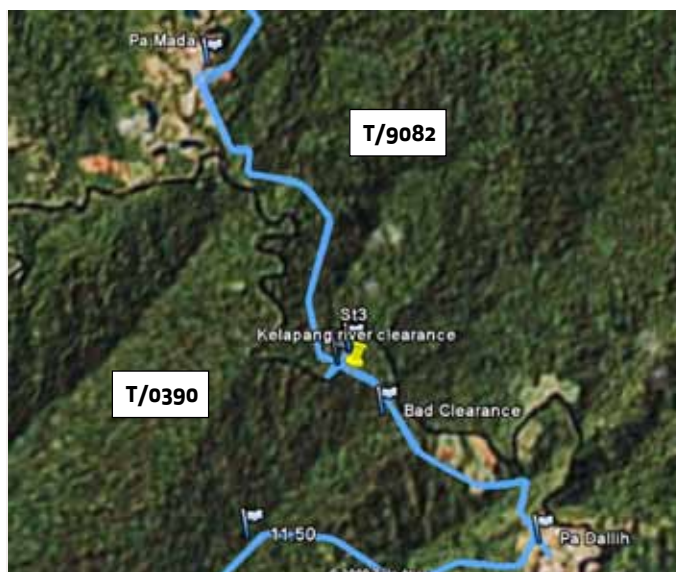


Figure 8: Satellite image showing route, the villages of Pa Mada and Pa Dalih, and the location of the Kelapang River bridge (researcher's route is in blue)

Widespread damage was seen near and around the bridge that had been built by the company across the Kelapang River. Forest had been cleared on both sides of the road,

in many places in swathes wider than the 20-30 metres which constitute the probable normal requirement. The buffer area on either side of the river had also been encroached upon. In some areas the vegetation had been completely destroyed. In other areas with remnant forest, stumps were found within 20 metres of the river, some of which were under the minimum cutting diameter. Though only the immediate area around the bridge was surveyed, stumps were found close to the river more than 100 metres from the road, and could not therefore be justified by the bridge construction. Masses of logging debris, including whole trunks, were seen polluting the river.

According to a villager from Pa Dallih, logging in the river buffers has occurred in a number of places. He said that as a result the river had been polluted with silt, and that it was now difficult to find fish. The villager also claimed that the company had illegally taken trees from an area reserved for the community.⁵²



Figure 9: Road leading to the Kelapang River bridge (left) and logging debris and cutting along the Kelapang River (right)

In its letter to the Council, Samling commented on both the road and the bridge construction. According to the company, the road (known as the Bario Road) was built at the request of local communities and the government in order to improve transport possibilities and the access to schools, hospitals and markets. In this context it was necessary to build a bridge across the Kelapang River: *'Samling had to clear the right of way. Stumps were cleared to make way for the bridge crossing. This was not a harvesting operation to cut logs for commercial purposes. The road was built at the request of the indigenous communities and the government to improve accessibility. We are disappointed that your investigators did not make the distinction between social assistance to the communities and commercial harvesting.'*⁵³ The Council does not question the actual construction of the road and the bridge. As described above, the Council's investigations, however, do indicate that the logging both along roads and in the buffer zone are in contravention of the requirements and have caused considerable damage to the forest, something that can hardly be justified by arguing that the road and the bridge were built for social purposes. The Council notes that Samling does not comment on this damage in its letter to the Council (see also section 5.1).

Logging outside the concession area and in the buffer zone along the Indonesian border

South of Pa Dallih, satellite images from May 2007 and again from March 2009 show a new logging road stretching all the way up to the Indonesian border. According to interviews with Sarawak forest department officials and EIA reports, there is a general requirement for a 1 km buffer zone to be left untouched along the international border. The T/0390 timber licence and associated concession map show that the perimeter of the licence area runs at least 1 km from the border along the whole length. Yet the satellite images clearly reveal that the new logging road extends for up to 5 kilometres outside the licence area and into the buffer zone near the border with Indonesia (see Figure 10).

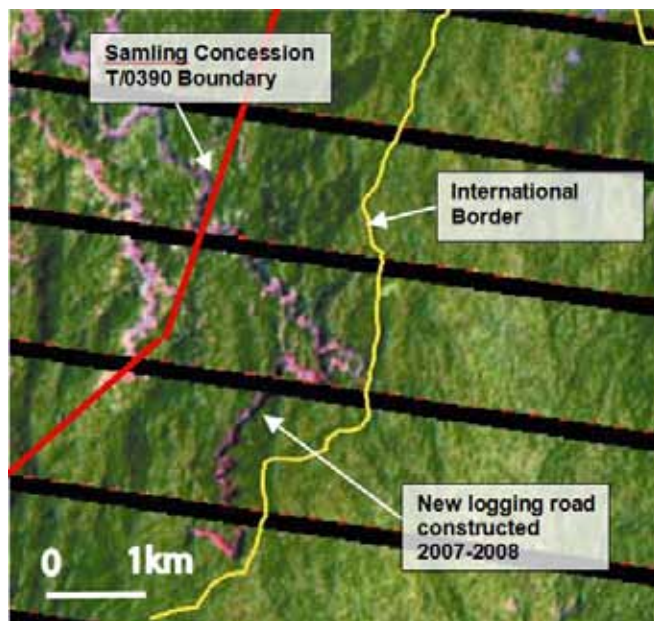


Figure 10: Landsat satellite image from 3 March 2009 showing logging road outside the licence area and within the buffer zone

Satellite imagery from a much earlier date, available from Google Earth, demonstrates that this is not the first time that the company has logged outside the concession boundaries and in the buffer zone along the border with Indonesia. Google Earth images from a location some 30 kilometres further south, near the community of Long Sekuan, show evidence of past logging in the buffer zone (see Figure 11). It is unclear when this logging occurred, but recent satellite images show the disturbed areas as already being well covered by new vegetation, indicating that it most likely occurred 5-10 years ago.

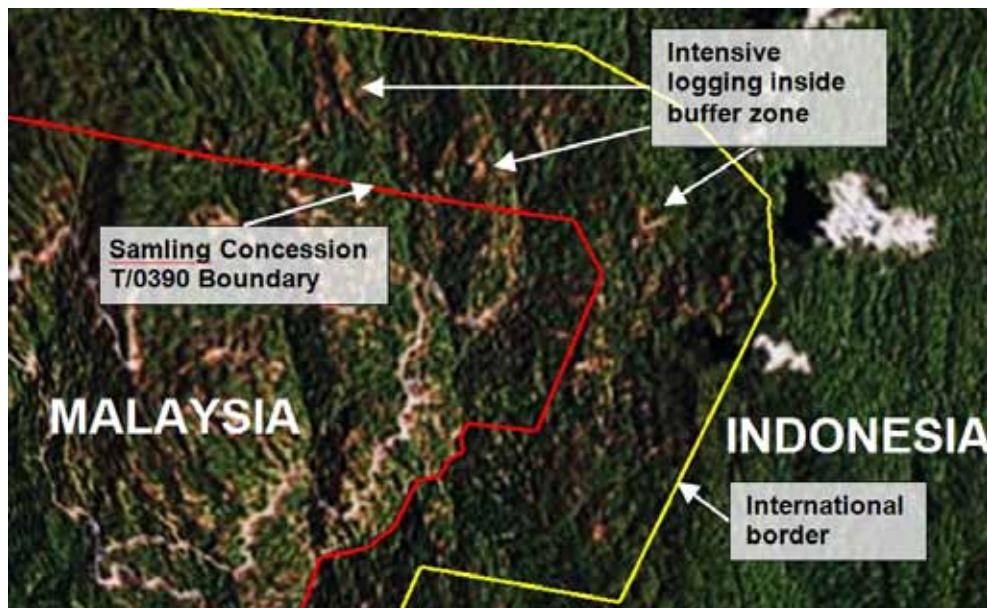


Figure 11 : Google Earth satellite image (date unknown) showing evidence of logging outside T/0390 licence boundary in buffer zone along Indonesian border⁵⁴

It is clearly illegal for a company to log outside the licence boundary. This is also stated in the Timber Licence.

In its reply to the Council, Samling declares that it is common knowledge that families residing on both sides of the Sarawak/Indonesia border often cross this border. The Council does not find it probable that the logging and the roads in the buffer zone, as they appear in the satellite images, are a result of local inhabitants' movements. Section 5.2 provides further details in this respect.

4.4.3 Concession T/0411 – Samling Plywood (Baramas) Sdn. Bhd.

Satellite imagery from 2007 and 2009 shows that Samling has recently been logging in licence area T/0411, to the north of the Baram River and T/0413. The licensee is Samling Plywood (Baramas) Sdn. Bhd., while the logging is being carried out under contract by Syarikat Samling Timber Sdn. Bhd.⁵⁵

Re-entry logging without Environmental Impact Assessment

The area was first logged by the company in the 1990s, and Samling has been conducting re-entry logging since 2002 in various coupes within the licence area. The Council's research indicates that Samling started the re-entry logging without the necessary Environmental Impact Assessment required by the Natural Resources and Environment (Amendment) Ordinance since 2005.⁵⁶ An approved EIA does exist for the re-entry logging taking place in the T/0411 concession, but the EIA was only issued in January 2009.⁵⁷ The EIA states that of the ten coupes in the concession, three had already been re-entry logged and a further three were being re-entry logged at the time the report was being prepared. It therefore seems as if the company had been conducting re-entry

logging in T/0411 without a required EIA for more than 3 years. Re-entry logging without an approved EIA appears to be a breach of the law,⁵⁸ and was also highlighted in the Malaysian Auditor-General's recent critical assessment of the State's forest management practices.⁵⁹ In its letter to the Council, Samling denies having acted illegally; see a more detailed account in section 5.1.

Cutting and road construction in steep terrain

Satellite images show that Samling is currently logging in steep terrain in two areas within the concession (see Figure 12). Through the first field visit to the concession in April 2009, new information came to light about a new logging road, located in an area of Block 78H, Coupe 04A (within the "Image 1" area in Figure 12). This particular area is classified as Class IV steep terrain, where the construction of logging roads normally is prohibited.⁶⁰ The construction had caused extensive landslides and erosion, which are very likely to have resulted in serious sediment pollution of the associated streams and rivers.

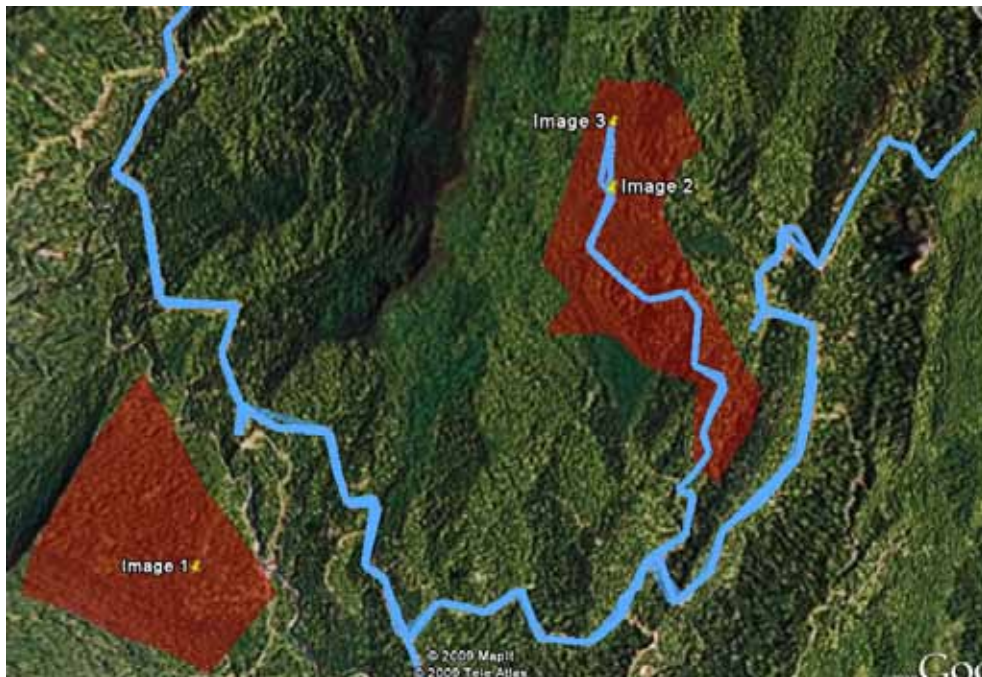


Figure 12: Diagram showing the two areas of recent (2009) and current logging in concession T/0411 (red areas), with route of investigation team (blue line).

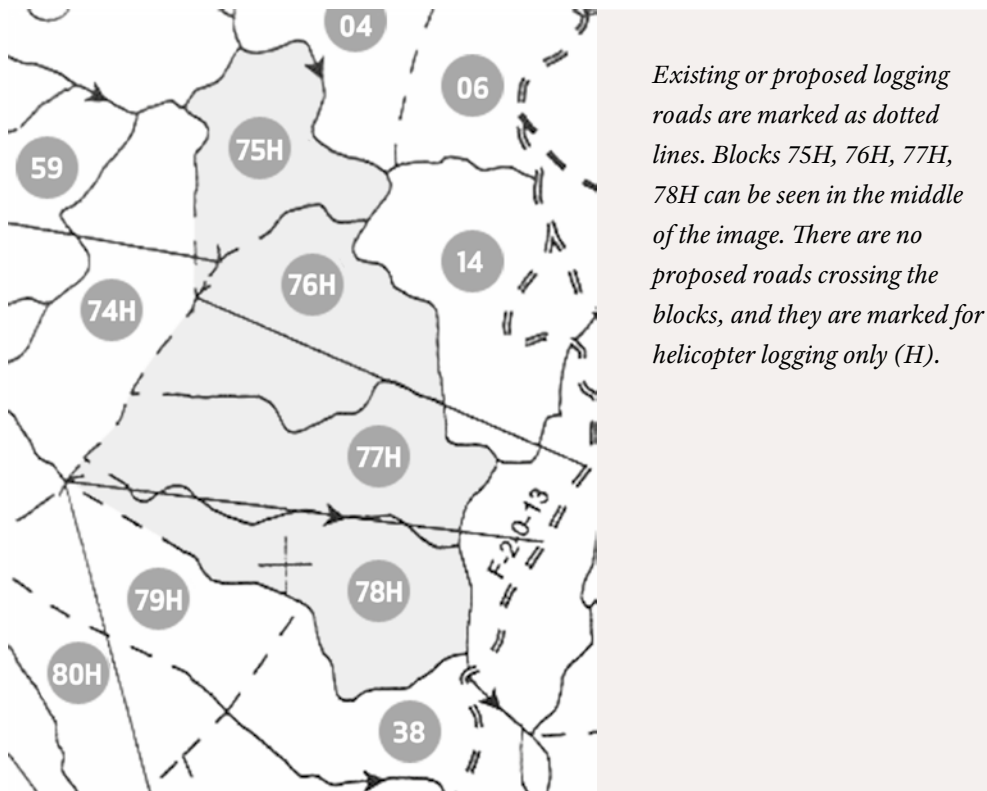


Figure 13: Extract from official coupe map for Coupe 4A of T/0411, covering the same area shown in the satellite image of Figure 14 below.

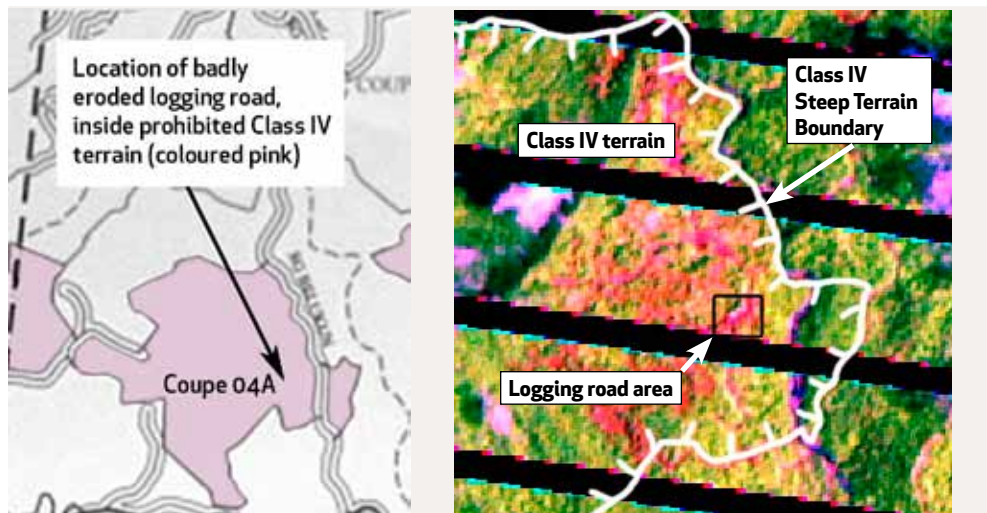


Figure 14: Logging roads in Class IV steep terrain in Block 77H, Coupe 4A, T/0411 (3° 4'58.98"N, 114°55'13.94"E). The white line indicates the boundary for Class IV terrain in the picture to the right. Recent road construction and logging activity show up as red in the satellite image, taken on 3 March 2009. The red areas cover approximately 2 square kilometres, encompassing Blocks 75-78H, all of which were only licensed to be harvested using low-impact helicopter logging. From the satellite image it is apparent that intensive logging and road construction have been conducted within Class IV steep terrain.

Satellite imagery for August 2009 shows that this is not the only road being built in the area. The images reveal extensive logging roads in steep terrain in an area covering approximately 2 km² (see Figure 14), which indicates conventional land-based logging where the logs are pulled out by bulldozer. Nevertheless, the official logging block maps⁶¹ show that only helicopter logging is permitted in this area. According to the map included in the *Permit to Enter Coupe*, no roads are proposed in this area (see Figure 13 above). The block map and road plan were approved in February 2006, and no changes were noted in January 2009 when the EIA was published. As of January 2009, permission had yet to be granted for the company to begin logging operations in blocks 75H-78H. All the available information therefore suggests that land-based logging and road construction in this area are illegal.

Analyses of recent satellite images show that much of the recent logging in the second area, which appears in red on the right-hand side of Figure 12 (marked as "Image 2" and "Image 3") above, is also going on within areas classified as steep Class IV terrain where only helicopter logging is supposed to be permitted. This area is shown in Figure 15 below. Though the first part of the road into the area is included in the official plans, sections of the road seen in the satellite images are not, including one branch that extends into Block 65H in Coupe 4A, which is also only licensed for helicopter logging.

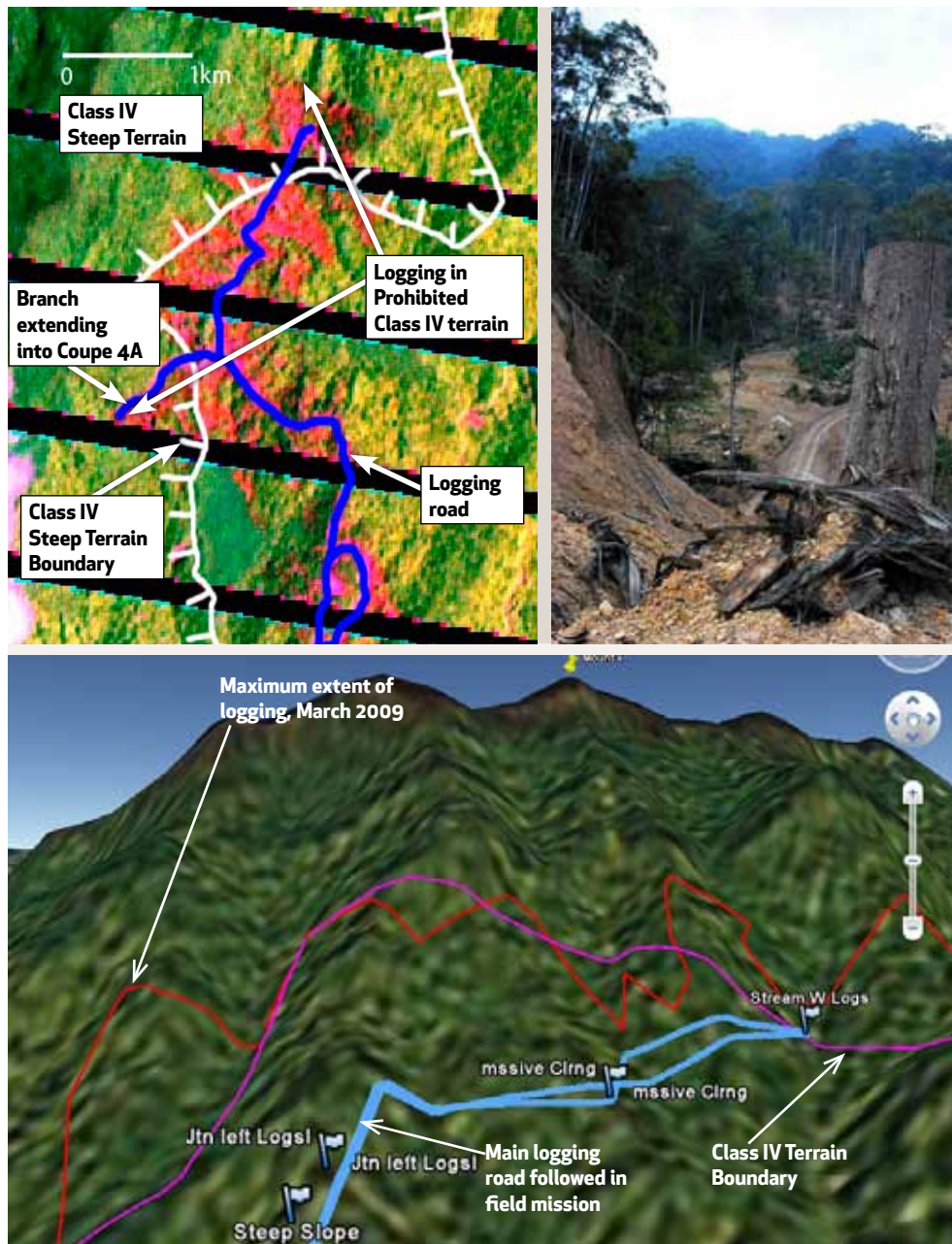


Figure 15 : Satellite image (with route of main logging roads added in blue) and diagram showing the two areas of logging inside Class IV prohibited steep terrain and mountain in T/0411⁶².

The area, shown in the satellite image in Figure 15, was visited during the field investigation in September 2009. It was observed that new roads were being built, and that the road construction had caused extensive erosion and pollution of streams, as well as the complete removal of all trees within buffer zones along rivers and roads. It was also confirmed that land-based logging with bulldozers was occurring within an area classified in official documents as Class IV terrain.

The EIA points out that erosion and subsequent siltation of rivers is the most serious potential environmental issue associated with the project, repeatedly stating that two key

measures will serve to mitigate this risk – the re-use of existing logging roads, and the exclusion of steep Class IV terrain from anything other than helicopter logging: *‘areas that are too steep (>35 degrees) should be preserved [and] should be clearly marked to ensure that the logging activities do not inadvertently encroach into these areas.’*⁶³

Normally, land-based logging and road construction are not permitted in Class IV terrain. The logging activity that has been observed has undoubtedly had a detrimental effect on the environment, and the Council finds it probable that Samling’s operation in this part of the concession is in violation of the official requirements.⁶⁴ In its letter to the Council, Samling indeed admits that an illegal road has been built in an area where only helicopter logging is permitted, but it does not specify in which area: *‘On the matter of road construction in areas earmarked for Heli blocks, Samling admits that there was indeed such a road built. However it was built without the permission of Samling’s planning unit and represents a breach of procedures. The management issued a stern and final warning letter to the camp management for the infraction. They expressed regret and stated it was done to facilitate helicopter logging; otherwise, it would be difficult to evacuate heli-logs. To rehabilitate areas damaged by road construction, we have planted trees from our nursery.’*⁶⁵

Clear-cutting along roads

In the same area one could see completely clear-cut forest on both sides of the road for distances of up to 50 metres, and sometimes significantly more (see Figure 16).

The Council has not had access to the current Forest Management Plan for this licence area, but the Forest Management Plan for T/0390 lays down many established logging requirements which, according to Sarawak forest department officials, are standard in all licences.⁶⁶ This Forest Management Plan states that forest can only be cleared to a total maximum width of 40 metres for a ‘feeder’ road and 50 metres for a ‘secondary’ road. The Timber Licence for T/0390 also prohibits harvesting of undersize trees more than 30 metres from the centre line of any logging road. In its letter to the Council, Samling claims that this is not necessarily correct, arguing that for operational and security reasons the road corridor may be wider; see section 5.1 for a more detailed account.

Cutting inside river buffer zones and polluting rivers with logging debris

Forest within river buffers had been cleared in large areas, and in many places where forest had not been completely cleared, it was so denuded of trees that bare earth could be seen (see Figure 17). Logging debris was observed clogging rivers and streams throughout the area.

Riparian buffers of at least 20 metres should be retained alongside all rivers and streams, and normally it is prohibited to cut trees within the buffer zone.⁶⁷ The Council presumes that this is applicable also here. With regard to polluting rivers and streams, the Environmental Impact Assessment lists a number of measures to prevent this, such as:

- ‘Keep waterways clear of blockages.
- Do not throw vegetative debris into waterways.
- Ensure there is no encroachment into the river bank area. Retain riparian vegetation.
- Minimise damage to surrounding vegetation during felling.

- Do not litter waterways with vegetative debris. If any debris gets into waterways accidentally, it should be removed.⁶⁸

If not illegal, the failure to remove logging debris seems to be contrary to the conditions on which the approval of the Environmental Impact Assessment is based.



Figure 16: Forest completely cleared for up to 50 metres at the side of the road, in breach of normal limits. See Figure 12 for location.



Figure 17: Forest cleared in excess of limits, no buffer zone left alongside stream (the stream is just outside the picture, in the slope in the foreground). The stream clogged with logging debris can be seen towards the bottom of the picture. See Figure 12 for location.

4.4.4 Concession T/0413 – Samling Plywood (Miri) Sdn. Bhd.

Satellite images from August 2009 reveal that intensive logging has been conducted in the north-central region of Samling timber licence T/0413, which belongs to Samling Plywood (Miri) Sdn. Bhd.⁶⁹ Due to poor road conditions, time and logistical constraints, a field investigation in these logging areas was not possible. Instead, an area that had been logged in 2003-2004 was selected (see Figure 18 for route and key locations).

Polluting rivers with logging debris, felling protected trees and cutting inside river buffers

Also in this area it was obvious that logging debris had not been removed from the river (the Semariang River), and stumps on the bank of the river indicated cutting within the buffer zone. One of the stumps was a protected Engkabang tree. The logging debris and run-off from exposed ground had polluted the stream. Local villagers confirmed that these findings were not isolated cases, reporting that the company had cut trees all along the river bank for some kilometres, polluted streams and cut numerous Engkabang trees. In the surrounding area, large swathes of completely cleared forest, in many places extending for more than 50 metres from the logging road, were seen.⁷⁰

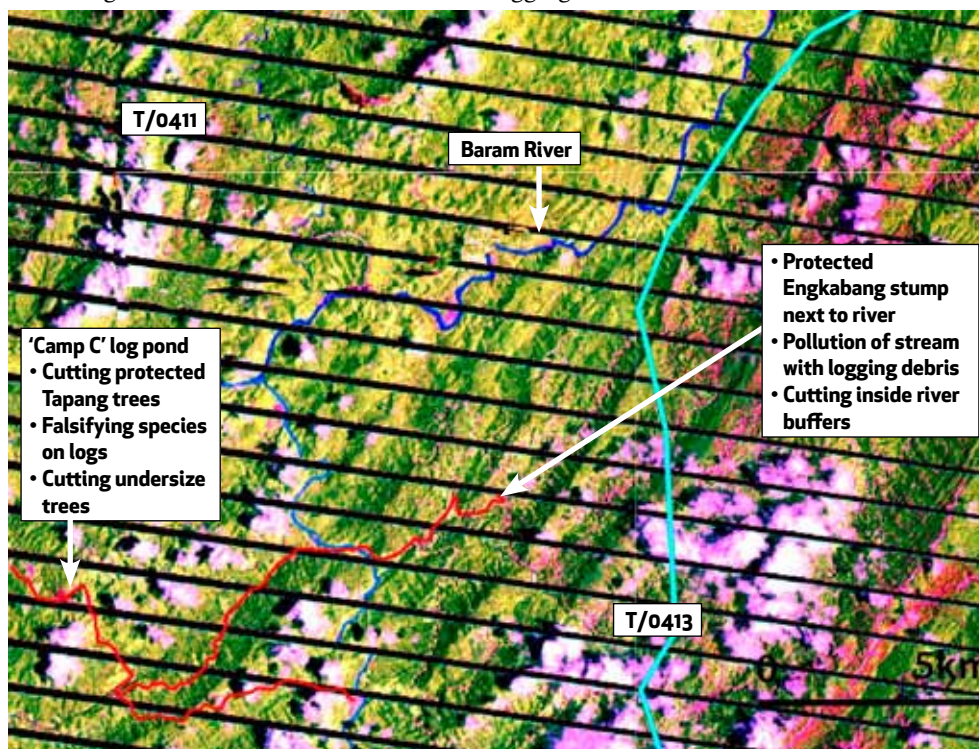


Figure 18: Satellite image showing team's route in Samling logging licence T/0413 (red line). Intensive recent logging as of August 2009 is visible to the right (red areas).

Incorrect log tagging and logging of undersize trees

Adjoining the so-called Camp C⁷¹ (see Figure 18 for location) is the main log collection area (log pond) for the concession. Here logs are measured, recorded and tagged. The authorities may also carry out inspections of the log pond. According to local residents,

however, there is another area situated behind Camp C that is hidden from the main road and is used for collecting illegally logged timber. During the field investigation, no timber was stored here, but according to a local resident, there were large quantities of the protected tree species Tapang (*Koompassia excelsa*) here in May 2008.⁷²

A worker at the ‘Camp C’ log pond told the researchers that protected Tapang and Engkabang logs are regularly brought to the log pond and that log pond managers instruct scalers (whose job it is to measure and tag the logs with labels stating the species, size and origin) to falsify the species code on the tags and in the records. Such falsification is illegal and would not be occurring if the trees had been cut under permit. The worker explained that protected tree logs were being brought to the log pond in particularly large quantities in May 2008, which concurs with the observations mentioned above.



Figure 19: Samling’s log pond at Camp C in T/0413. Undersize logs can be seen at the bottom of the picture on the right and in the left picture.

At the back of the ‘hidden’ log pond, small undersize logs had been thrown away down a hill slope. A small pile of very small-diameter logs were also seen in the main log pond at Camp C (see Figure 19). The worker explained that illegal undersize logs are regularly brought to the log pond and hidden there. He stated that about ten trucks a month make special trips at night to transport the illegal logs to the sawmill at Tebanyi, where they are chipped for fuel.

4.4.5 Concession T/9082 – SIF Management Sdn. Bhd.

Clear-cutting along roads and logging debris in streams

The Samling logging licence area in the headwaters of the Baram River (T/9082) is licensed to subsidiary SIF Management Sdn Bhd.⁷³ This has been a relatively inaccessible area, which has only been opened up in recent years. Satellite images from March 2009 show extensive clearance going on in large swathes of forest up to one kilometre on either side of a new road being cut through the area to connect with the hill town of Bario to the north (see Figure 20). At the time of the field investigation, however, no logging was being

carried out in the area. On the site visited during the field survey, the forest had been cleared for more than 30-50 metres to either side of the road, in excess of normal limits defined in the Forest Management Plans and Timber Licences. Logging debris was also seen clogging streams in a number of locations.

In its letter to the Council, Samling argues that the logging shown in satellite pictures may have been the doing of others rather than of the company. The Council does not find this very likely. The logging is on such a scale that it requires the use of forest machinery. Furthermore, there are no other roads that lead into the concession, meaning that the logs could hardly have been moved out without Samling's knowledge. This is described in more detail in section 5.2.

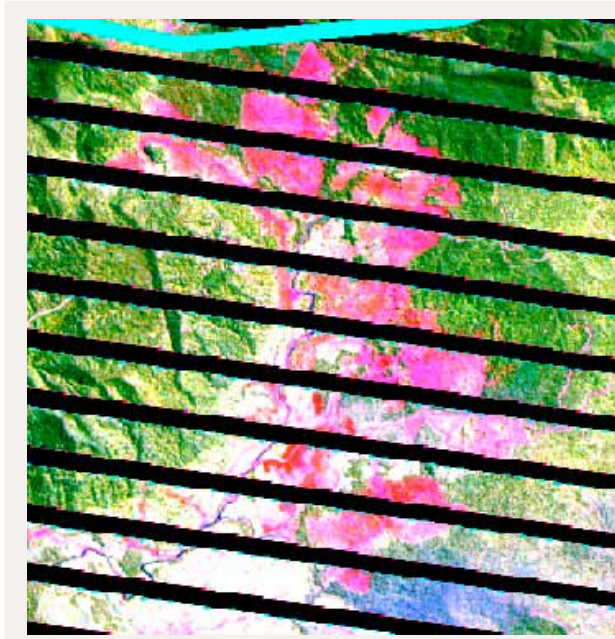


Figure 20: Satellite image from March 2009; route of field investigation (along new logging road) is shown in blue. Intensive logging (visible in red) can be seen occurring up to 1 km on either side of the new road in T/9082.

4.4.6 Licence for planted forest LPF 0021 - Samling Reforestation (Bintulu) Sdn. Bhd.

The majority of the old Samling selective logging licence area T/0404 has now been licensed for total clearance and replacement with planted tree crops.⁷⁴ Planted forests licences allow for the complete clearance of natural forest, meaning that undersize trees and some protected trees could be expected to be cut, and that in some instances forest on steep slopes would be cleared. The government does, however, require the companies to carry out an Environmental Impact Assessment (EIA) in order to identify and predict the potential impacts during the various stages of the plantation development. Slope stability and possible soil erosion is one of the key issues addressed in the Environmental Impact Assessment for this concession.⁷⁵ Nevertheless, cleared and recently planted steep slopes of more than 35 degrees, as well as resultant landslides and associated erosion, were seen

during the field visit in this area. Samling's forest operations do not seem to be in compliance with the standard requirements for road construction and logging in steep terrain that are normally included in the licence agreement.



While not being a major priority for the field investigation, a limited investigation of an area within LPF 0021 was conducted. This area had been cleared and planted during 2006-2007, clearly visible on the satellite image (marked with red). The area has later been planted.

Figure 21: Forest clearance in Samling concession LPF0021, Landsat May 2007. Cleared areas are coloured red.

4.5 BARAMA'S LOGGING OPERATIONS IN GUYANA

Samling's Guyanese subsidiary, Barama Company Limited, was established in 1991, and was granted a natural forest logging concession the same year.⁷⁶ Located in the North-West of Guyana, the concession covers 1.611 million ha and is the largest in the country. It runs until 2016, being renewable for a further 25 years until 2041.

Forest Management in Guyana

The Guyana Forestry Commission is responsible for the administration and management of all Guyana's state forest land, including developing and enforcing standards for forest sector operations and developing and implementing forest protection and conservation strategies.⁷⁷

As in Sarawak, there is little information available about which requirements the logging companies have to comply with. The Forests Act of 1953, the associated Forest Regulations, and the specific terms of the licence agreement (TSA number 04/91) legally provide the regulations for the timber harvesting in the concession. Barama is subject to an annual allowable harvesting volume determined by the Guyana Forestry Commission, which also imposes restrictions on minimum tree diameter cutting limits. Forests are harvested according to a 40-year cutting cycle, and harvesting plans are approved by the Forestry Commission.⁷⁸ According to the company website, Barama's timber operations are in compliance with the Guyana Code of Practice for Timber Harvesting, but the actual requirements are not further detailed.⁷⁹ The Code of Practice sets guidelines and standards for the logging operations, but is apparently not obligatory for the company.⁸⁰

Absence of required forest management and operational plans

Medium-term and long-term logging concessions are required to have approved forest management plans. The Forestry Commission also requires annual operation plans as a precondition for the issuing of timber tags and log removal passes.⁸¹

In early 2006 Barama was awarded certification by the Forest Stewardship Council (FSC)⁸² for two 'forest management units' within its concession in Guyana (Compartments 4 and 5), according to FSC criteria for sustainable forest management. In November the same year an independent audit confirmed numerous serious breaches of FSC's criteria.⁸³ As a result, the FSC certification of the concession was suspended. The audit revealed the following:⁸⁴

- The company had failed to produce a forest management plan for one of the 378,000 hectare large compartments.
- Poor oil and diesel disposal had caused severe pollution.
- No measures were put in place to prevent erosion and protect water sources during the construction of logging roads.
- The company had failed to carry out Environmental Impact Assessments prior to major activities, resulting in significant environmental impacts.
- The company was unable to provide evidence that harvesting rates were not exceeding sustainable supply.
- The company had failed to adequately attend to basic health and safety requirements for workers.
- Logging activities were carried out in indigenous lands without prior informed consent of local communities.⁸⁵

In addition to the obviously environmentally harmful logging practices, the audit confirmed the absence of a forest management plan for one of the two compartments, something that appears to be a clear breach of the law. Barama's FSC certificate was withdrawn in January 2007 and has still not been reinstated.⁸⁶

In its letter to the Council, Samling comments on this, accusing the Council of not attaching importance to the company's efforts in improving the forest operations, something that is necessary in order to be recertified.⁸⁷ The company informs that in this respect it has sought the assistance of the WWF and the Guyana Forestry Commission.⁸⁸ However, the Council is aware that in January 2009 the WWF made an official statement saying that the organization had cancelled the agreement with Barama, and that this had happened some time ago. According to the WWF, Barama does not have "*the managerial or technical capabilities and the company does not seem to be making a serious attempt to deal with the issues.*"⁸⁹ Reference is made to an excessive number of issues that have not been addressed, and the WWF doubts that Barama will manage to reclaim the certificate. Thus, the Council finds it misleading that Samling refers to a cooperation which was ended more than a year ago, and where it seems evident that it is the company's insufficient capability or determination to improve the forestry operations that has been decisive for its termination.

Moreover, the company argues that the main reasons why the FSC certificate was withdrawn were related to "*staff issues, amenities, buildings and non-timber activities*

conducted by third parties (mining operations).” Based on the conclusion in the independent investigation of Barama’s concession areas, as described above, the Council does not subscribe to this view.

Fines issued by Guyana Forestry Commission for illegal logging

In October 2007, the Guyana Forestry Commission announced that it had fined Barama 96.4 million Guyanese dollars (USD 474 000) for illegal logging within three of the concessions adjacent to its own, where for some years it has conducted harvesting operations on behalf of third parties.⁹⁰ The official investigation brought to light that the company had:

- failed to declare to the government a portion of the logs that the company harvested and removed from the Barakat concession during July 2007;
- harvested without permission a large quantity of logs in an adjacent concession (the Mazaharally concession) and falsely labelled stumps in this concession with tags provided by the Forestry Commission for use in another area; and
- removed logs from the Sukul concession without the Forestry Commission’s permission.

Barama later admitted that there had been a mixing of tree tags between different areas, though it claimed this had been unintentional. It also admitted that it had conducted logging without permits, though it stressed that the relevant permits were being processed by the Forestry Commission at the time.⁹¹ The company claimed that such anomalies were “*part and parcel of the operational realities and practices in any dynamic and geographically challenging industry such as the timber industry where operations take place in deep jungle.*”⁹² Barama believed the fines to be “*severe, undeserved and arbitrary,*”⁹³ but eventually agreed to pay them.⁹⁴

In January 2008 Guyanese news articles reported that Barama had been issued with two more fines. The first fine, of 50 million Guyanese dollars (USD 255,000), was said to be for breaches in third party concessions, but no additional details were provided. The most recent fines were issued to a total of 12 logging companies, including Barama, for logging in concession blocks without approved annual harvesting plans. The fines issued totalled 275 million Guyanese dollars (USD 1.4 million). The share of these fines which was issued to Barama has not been made public, nor have specific details of Barama’s failures.⁹⁵

Logging on behalf of other concession holders

Samling Global’s 2007 IPO Prospectus disclosed that Barama at that time conducted harvesting operations on behalf of other concession holders in an additional 0.445 million hectares.⁹⁶ According to Guyanese legislation, subcontracting forest concessions belonging to other concessionaires is not permitted, unless it is specifically approved by the President and the Forestry Commissioner.⁹⁷ The Commissioner has argued that Barama is acting in the confines of the law when it harvests timber from outside its own concession.⁹⁸ To the Council’s knowledge, however, no such permission from the President and Commissioner for these subcontractual agreements (under which Barama harvests 72 per

cent of its logs) has ever been made public. When Barama was fined in 2007, the company was also instructed to immediately stop all forestry operations in concession areas of third parties (Mazaharally, Sukul and Barakat).⁹⁹

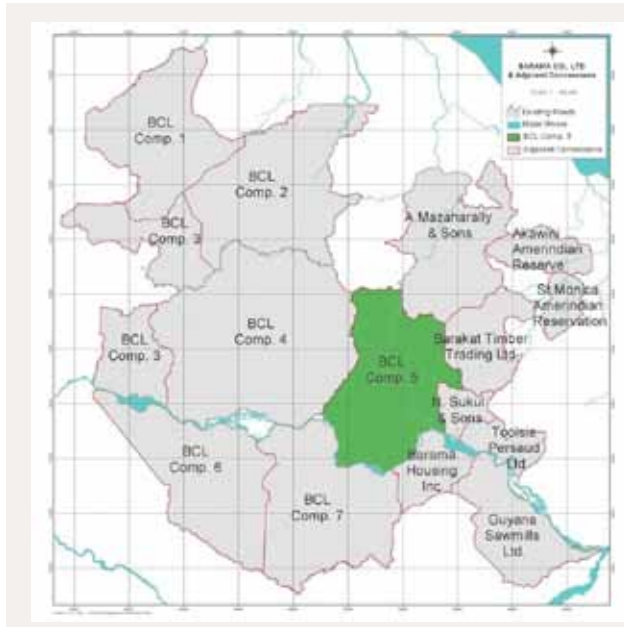


Figure 22: Map of Barama (Samling) concession and adjacent subcontracted harvesting areas in Guyana. As of early 2007, of the adjacent concessions in the map above, harvesting agreements had been signed for all except Barama Housing Inc, which was in process.¹⁰⁰

In its letter to the Council, Samling states that all subcontractual agreements were terminated by the end of 2007, due to a “change in policy of the Government of Guyana. Prior to that, all subcontractual arrangements were undertaken with the full knowledge and support of the Guyana Forestry Commission (GFC) the regulatory authority. BCL [Barama] acted at all times under the guidance and approval of the GFC. The change in policy was that the GoG no longer wished to allow subcontractual arrangements, and forest concession holders are required to make more direct investment into their forest concession operations instead of outsourcing parts of their operations.” The Council notes that Samling attributes the ending of the subcontractual agreements to a change in government policy, which in this case may imply that the authorities have enforced the legal provision. Samling does not provide information as to whether it has had the necessary presidential approval for renting concessions.

It is, however, not clear whether Barama continues to be involved in illegal subcontracting of concessions. The Council has been informed that Barama in 2008 paid the fine imposed on Toolsie Persaud (see map) after this company refused to pay. Since the fine was imposed because of the logging by Barama in that concession, in blocks which had not been approved by the Forestry Commission, it seems likely that Barama was renting this concession.¹⁰¹

Barama is said to also have failed in the past to pay a 2 per cent export tax on logs harvesting in third party concessions. It is thought that the company’s initial 1991 agreement with the Guyanese government exempted it from paying these taxes, but that this exemption does not cover logs harvested outside its own concession. Reports from the Commissioner of Forests to the Board of Directors of the Forestry Commission apparently stated that such taxes were outstanding.¹⁰²

5 Samling's response to the Council

5.1 SAMLING'S LETTER TO THE COUNCIL

As mentioned above, the Council has made inquiries to the company on two occasions. On 9 January 2009 the Council wrote a letter to Samling requesting copies of the timber licences and forest management plans for the concessions in Malaysia and Guyana, and, if possible, also a map of the concession areas and annual plans for logging and road construction. In its reply to the Council, dated 2 February 2009, Samling denied the Council's request. The company states that the documents requested by the Council are *"highly confidential in nature and it is not in the interest of the Company or of its shareholders that any part thereof is shared with any individual whether shareholder or not or the public particularly its competitors... It is our obligation to ensure that all information which is not publicly announced or disclosed be kept confidential. As there is no question of the information you requested being made public for the reason stated, it follows that we are unable to comply with your request."* Samling further states: *"We also fully understand that it is likely that not being able to obtain the documents and information asked for, you would not be able to comply with those Guidelines and would have to divest yourselves of your holdings in our securities. We would regard such divestment as being inevitable in the circumstances which we understand but regrettably have to regard as inevitable."*¹⁰³

Following further investigations, the Council wrote another letter to the company on 17 December 2009, providing it with the opportunity to comment on the Council's draft recommendation. The Council received the company's reply on 12 February 2010. In this letter the company points out that the Council's recommendation does not provide a correct picture of the circumstances, seeing as it was drafted without input from the company: *"Samling thus questions the integrity of the Draft Recommendation about the company's conduct and practices produced entirely from outside sources, some of which are far from credible or accurate. We are of the view that the Council's approach does not meet the requisite standard of fair play nor satisfy the basic principles of natural justice."*

Moreover, in its reply to the Council, Samling states that the company complies with all requirements and regulations in its forestry operations: *"The company takes the stand that it conducts harvesting operations in accordance with the rules and regulations as set by the relevant forestry authorities. All logs harvested are legal and endorsed as such by the relevant governmental agencies."* Samling also states that it takes the accusations of severe environmental damage caused by the company very seriously, because it goes against the company's corporate practice of sustainable forestry operations.

Samling's criticism of the Council's methods

Samling mentions the use of satellite imagery which, in the company's view, is difficult to interpret correctly, arguing that the images are not suitable to prove that the company is guilty of forest degradation. The company also claims that this may be attributed to others who reside in the concession area: *"In your report, evidence of forest degradation is being attributed to Samling when it could be the acts of others living in concessions areas."*

Furthermore, Samling accuses the Council on Ethics of having illegally obtained confidential documents, but does not specify any further which documents it refers to. The company also claims that the Council's consultants have violated security regulations by entering the concession areas, which are private property, and by trespassing on the company's timber camps.¹⁰⁴ Samling does not provide any more details as to how the security regulations are supposed to have been infringed.

Samling's criticism of the Council's findings and assessments

Samling is of the opinion that the Council on Ethics is not up-to-date on which government requirements are in force, arguing that the forestry sector is constantly subject to alterations in policy and requirements from the authorities: "*Samling keeps abreast of all regulatory requirements, which sometimes have different time-frames of implementation between concessions.*" In this context the company specifically raises the questions of re-entry logging without Environmental Impact Assessments and illegal concession subcontracting in Guyana (the latter is mentioned in section 4.5 and is not further commented on here).

Regarding Environmental Impact Assessments, Samling states that only in 2008 did the Sarawak Forest Department order the company to prepare these for re-entry logging. According to Samling, this is also the case for the Ravenscourt concession (T/0294), which is mentioned specifically, and incidentally is the company's sole comment on the irregularities that the Council has uncovered in the said concession.

With regard to road construction, Samling informs that it is common for logging companies in Sarawak, with the government's knowledge, to cut down the forest in swathes of up to 60 m on either side of the road to improve visibility "*when the topography results in dangerous blind corners along these roads*", and for the roads to dry more quickly after rainfall "*to ensure that main logging roads (which are unsealed) are always in a safe and motorable condition.*" According to Samling, the roads are inspected by the Forest Department once they are finished.

Samling also stresses that the Council has not considered new measures undertaken by the company to improve the local population's living conditions and the environment, specifically citing efforts to ensure clean water for villages, as well as road and bridge construction to improve accessibility and transport between villages and towns (the latter is discussed in section 4.4.2). The company also mentions that it is implementing measures to protect the fauna, as well as development programmes for local communities, and briefly comments on the conflict with some indigenous peoples in the concession.

5.2 THE COUNCIL'S VIEW OF SAMLING'S REPLY

The Council's draft recommendation was sent to Samling on 17 December 2009, precisely to give the company the opportunity to comment and to contribute with information regarding the case at hand. Samling has therefore had the chance to transmit input and documentation which are relevant to the matters discussed in the recommendation. However, the Council has not received any documentation from the company that substantiates its points of view or indicates that the Council's assessments are based on faulty grounds. The recommendation has been adjusted vis-à-vis the draft that Samling received

for review, and an element that Samling also comments on in its letter has been removed because the Council discovered that it lacked a sound foundation.

The Council does not share Samling's view regarding the use of satellite imagery. The satellite pictures used in the recommendation have a resolution of 15-30 m and are sufficiently detailed to render both roads and logging distinct in the images. There is no doubt that the close-knit road network which is visible within Samling's concessions consists of logging roads. This was also confirmed through the field survey. There is only one main road leading into the concession areas, and it is hardly likely that it was built by anyone else than the concessionaire, not least because the construction of such roads takes a long time and demands heavy machinery. The Council is aware that Samling's personnel travel on these roads regularly to supervise the logging. There are also living quarters for Samling's workers near larger crossroads in the concession areas. The company's presence in the concession areas makes it unlikely that anyone other than Samling would have been able to build roads without the company's knowledge.

Moreover, the damage on the forest along the roads and in the concession areas is on such a scale that it hardly can be caused by anything else than the use of logging machinery. It is not probable that local inhabitants equipped with machetes or chain saws would be able to cause the kind of damage shown in the satellite images and observed in the field. It is also improbable that the forest degradation could be caused by local inhabitants clearing the forest for agriculture, as Samling claims. In the pictures, areas with small-scale farming can clearly be identified, and these are typically situated near the villages, not along the logging road or in the heart of Samling's concessions. Erosion and landslides cannot be ascribed to slash-and-burn cultivation either, which is another of Samling's allegations. Such areas are identifiable in the satellite images, at the same time as the field investigation confirmed that the damage revealed in the concession areas are a result of logging, as described in section 4.4. Even if other operators should be logging in Samling's concession areas, it is still the company's responsibility to make sure that illegal logging does not take place within its own concessions.

Furthermore, the Council would like to stress that the documents at the basis of the recommendation stem from public sources and have been obtained legally. As previously mentioned the *Permit to Enter Coupes*, the correspondence with the authorities, maps and other documents related to the concessions and appended to the Environmental Impact Assessment for re-entry logging have all been made public and are available in the library of the Natural Resource and Environment Board in Kuching. In addition to this, we have received documents regarding certain concessions from the Bruno Manser Fonds, an NGO in Switzerland.

The Council is puzzled by Samling's allegation that the Council's consultants have violated security regulations in concession areas, finding it hard to comment on this as the company does not specify what it is alluding to. The Council will, however, point out that there are thousands of people who live and move within the concession areas, using the roads on a daily basis. The indigenous peoples also have a right to exploit the forest resources for their own subsistence. During the field survey the Council's consultants visited several local villages and were also guided by locals during the field survey, which occurred

along the roads in the concession areas. To the Council's knowledge, these roads are also used by tourists, and no special permit is required for this. At the entrance to the concession areas, though, one is informed that any transit takes place at one's own risk. During the field survey the Council's consultants have not been inside any of the company's timber camps. The consultants did, however, survey the log pond T/0413, which is situated close to what is referred to as Camp C in section 4.4.4. The log pond is adjacent to the road, was not fenced in or marked, and there was no clear demarcation vis-à-vis the road (which led to the village that was visited), as is also shown in the picture in Figure 19.

Samling's criticism of the Council's findings and assessments is partly referred to under the relevant paragraphs in the recommendation and are not further discussed here. The Council takes as its point of departure that the requirement regarding the preparation and approval of Environmental Impact Assessments for re-entry logging entered into force in 2005.¹⁰⁵ Samling claims that the forest department only started requiring this in 2008 and that the company then complied with the demand. The lack of Environmental Impact Assessments was, however, an issue pointed out in the Malaysian Auditor-General's evaluation of the forest management in Sarawak, and the Council therefore presumes that it is a violation of existing regulations.¹⁰⁶

When it comes to Samling's information that the maximum requirement regarding the width of road corridors may be deviated from for security reasons, the Council presumes that this is an exemption from the regular requirements which is applicable only in special cases. Road corridors more than 120 m wide would mean that a large portion of the concession area allocated to selective logging in practice will be clear-felled.¹⁰⁷ The Council also takes it that the requirements normally made (60 m width) are formulated precisely to guarantee traffic safety, both when it comes to visibility and drying. Samling does not provide any further details as to where these exemptions have been applied and where the Council possibly has erred in its assessment. The Council accepts as a fact that the field survey detected several locations of straight stretches of road and good visibility (e.g. in T/0411; see Figure 16) where the logging corridor exceeds 60 m, but where there do not seem to be safety reasons that justify this.

The Council is criticized for not attaching importance to the positive measures that Samling implements for the local communities. The reason why the Council does not mention this specifically is not that such measures fail to be positive, but primarily because they are not considered relevant to the issues that the Council has surveyed. In the Council's view, improved water supply and communication cannot counterbalance violations of the law and environmental damage.

The Council notes that Samling in its reply barely discusses the specific irregularities that the Council has detected. This is the case with the illegal logging in the area which should be integrated into the Pulong Tau National Park, as well as logging and road construction outside the concession area and into the buffer zone towards the Indonesian border. The company also fails to mention the logging of protected species, in buffer zones and of undersize trees. Moreover, the Council finds that Samling at certain points in its reply falls short of being reliable, for instance by referring to a partnership with the WWF in Guyana, which, according to the WWF, was terminated more than a year ago.

6 The Council's assessment

Based on the information presented above, the Council has assessed whether Samling's operations are in breach of point 4.4 of the Ethical Guidelines under the criterion for environmental damage.

Illegal logging refers to the harvesting, transporting, selling or buying of timber in contravention of national law. According to the preparatory work for the Ethical Guidelines, illegal logging may be in breach of the Ethical Guidelines. The Council will also stress that illegal logging, particularly in natural forests, often results in far-reaching and lasting damage to the forest and the environment, in addition to the degradation and loss of livelihood for people living in and off the forest. Internationally, comprehensive efforts have been made to combat illegal logging in Asia and elsewhere, under the auspices of the EU, the World Bank and individual States, including Norway.¹⁰⁸ In this context it is also relevant to stress the Norwegian and international initiatives aimed at preventing deforestation and forest degradation in tropical rainforests as part of reducing greenhouse gas emissions and loss of biodiversity.¹⁰⁹

In its assessment of the company, the Council has emphasised the extent of illegal logging in Samling's concessions in Sarawak, whether the violations appear to be systematic, and the risk that the company's behaviour will continue in the future.

The Council's own surveys of Samling's forestry operations in Sarawak have documented what seems to be extensive and repeated breaches of licence terms, regulations and other requirements in all the six concession areas that were surveyed. Some of the violations are very serious, such as logging outside the concession area, logging in a protected area that had been officially excluded from the concession in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments. Other practices which, seen in isolation, may appear less serious are aggravated because they seem to be a systematic part of the company's forestry operations. In the investigated concessions clear-cutting had been carried out along the roads across wider sections than what is permitted, clear-cutting had occurred in riparian buffer zones, and rivers and streams were polluted by logging debris; roads had also been built and conventional logging taken place in areas of steep terrain where only helicopter logging is allowed. Furthermore, instances of logging of protected species and of undersized-diameter trees were detected. Local residents reported on additional irregularities, such as erroneous tagging of timber, but this could not be verified in the field survey. Moreover, the Council attaches importance to the fact that Barama, a Samling Global subsidiary, has been fined repeatedly because of irregularities in the forestry operations in Guyana, where officials have uncovered lacking logging licences, erroneous timber tagging and insufficient reporting of felled timber to the authorities.

The Council's own surveys are very limited in scope, covering only a small area of the concessions that were visited. Nevertheless, the field surveys have revealed several practices in all five concession areas that the Council presumes are illegal, as well as in a sixth concession examined by means of satellite imagery. These six licences are among a total of 15 that the company has in Sarawak, and it has been logging in all of these areas for

16 years. Given the large scale of presumed irregularities and that many of the same violations occur in nearly all of the investigated concessions, the Council finds it reasonable to believe that similar violations also would have been revealed in other Samling concessions. In this respect, the Council attaches importance to the fact that the Malaysian General-Auditor has documented illegal logging in another two of Samling's concessions, located in the Rejang River basin, an area that has not been surveyed by the Council. Here illegal logging was detected on steep slopes and in buffer zones along rivers, in addition to erosion, landslides and pollution of rivers at the company's Baram Base Camp¹¹⁰ In the Council's view this indicates systematic conduct on the part of the company, where regulatory breaches appear to be a normal part of daily operations.

In the Council's opinion, the company's assurances that it is committed to sustainable and environmentally sound forestry do not seem credible. On the contrary, the Council's surveys show that Samling's logging practices have caused extensive damage to forests and the environment, something that does not corroborate Samling's assertions.

In its reply to the Council, Samling raises doubts about the Council's methods and sources, but fails to provide specific information that contributes to shed light on or rectify the matters discussed in the Council's recommendation. The Council would like to point out that the company does not comment on the logging in the protected area, the logging outside the concession boundaries, the logging of protected species, nor on the logging of undersize trees. The company acknowledges one instance of illegal logging and road construction in steep terrain without specifying where this has occurred, whereas with regard to the other irregularities that have come to light, it denies any wrongdoing without substantiating this with documentation. Thus, the Council finds that Samling's reply does not provide grounds for altering the Council's conclusion that the company is involved in illegal logging.

Finally, the Council has assessed whether *the company's unacceptable practice may be expected to continue in the future*. Samling's 15 timber licences in Sarawak are all in operation. Two of them have recently been renewed, while the others are due for renewal in 2-8 years. The concession in Guyana will probably run until 2041. This means that Samling will be logging for many years to come in both Sarawak and Guyana.

The company provides little information about its concessions and forest operations. Forest management plans and legal requirements that the company has to comply with are regarded as confidential information in Sarawak and in Guyana. In the Council's view, this lack of transparency regarding Samling's operations, in addition to weak law enforcement generally, provides little incentive for the company to change its practices. The consequences of non-compliance are minor and appear to be of little significance to the company. Samling's belief that its forestry operations are sustainable and carried out in a lawful manner indicates that from the point of view of the company there is no need for change. The Council therefore deems it probable that the company's unacceptable practice will continue.

7 Recommendation

The Council recommends the exclusion of Samling Global Ltd from the investment universe of the *Government Pension Fund Global* due to an unacceptable risk of contributing to current and future severe environmental damage.

Gro Nystuen Chair (sign.)	Andreas Føllesdal (sign.)	Anne Lill Gade (sign.)	Ola Mestad (sign.)	Ylva Lindberg (sign.)
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Notes

- 1 Letter from Samling to Norges Bank and Council on Ethics, 2 February 2009.
- 2 Letter from Samling to the Council on Ethics, 12 February 2010.
- 3 www.earthsight.org.uk
- 4 The most recent imagery for the area of plantation forest licence LPF/0021 and logging licences T/0411, T/0413 and T/0390 dates from 3 March 2009, while that for the northern part of T/9082, T/0390 and T/0294 dates from 20 May 2009.
- 5 The Council has had access to the following official documents pertaining to the concessions: Environmental Impact Assessments for re-entry logging of : T/0411 (from 2009) including the Timber Licence, coupe maps, harvesting plans and Permit to Enter Coupe (PEC) documents; T/0294 (from 2008),) including the Timber Licence, coupe maps, harvesting plans and Permit to Enter Coupe (PEC) documents, and letter from the Director of Forest to Samling regarding the extension of Pulong Tau National Park; T/0298 (from 1996; now part of T/9115) and T/0299 (from 1996; now part of T/9115) including coupe maps. For T/0390 the Council has obtained the Timber Licence, the Forest Management Plan (though expired) and coupe maps, and for T/0412 the Timber Licence. Moreover, the Council has obtained the EIAs for all of Samling's 6 licences for planted forest (LPF/0004, LPF/0005, LPF/0007, LPF/0008, LPF/0020, LPF/0021), where all forest will be cleared for plantations.
- 6 This case has been investigated by the Human Rights Commission of Malaysia, Suhakam; see Suhakam 2007: Penan in Ulu Belaga: Right to Land and Socio-Economic Development.
- 7 Samling Global Limited Annual Report 2008, p. 146; available at www.samling.com.
- 8 <http://www.bmf.ch/en/news/?show=185>
- 9 In previous recommendations, the Council has elaborated on, and specified, the criteria of *severe environmental damage*. See recommendations regarding Freeport McMoRan Inc., Barrick Gold, Vedanta Plc.; available at www.etikkkradet.no.
- 10 So-called selective logging is normally applied. Selective logging is the harvesting of a few trees from an area based on the species and specified limits of minimum tree size. When a tree is harvested, the surrounding vegetation is damaged in an area the equivalent of the tree's height and the width of the tree crown. The log is then moved by bulldozer to a log pond for further transport. The main damage is related to the close-knit network of roads and skid trails, which may be 5-6 m wide, as well as the detrimental effect on the remaining trees (normally 40 per cent), other vegetation and soil. Logging methods may influence the scope of the damage. The logging makes the forest fragmented and open, leaving it more exposed to fire and further degradation of the ecosystems. See i.e. Putz, F.E. et al. 2008: Reduced-impact logging: Challenges and opportunities. *Forest Ecology and Management*. 266, pp. 1427-1433; Asner, G.P. et al. 2005: Selective logging in the Brazilian Amazon, *Science*. 310, pp. 480-482, Shearman, P et al. 2009: Forest Conversion and Degradation in Papua New Guinea 1972–2002, *Biotropica*. 41, pp. 379 – 390.
- 11 NOU 2003:22: *Management for the Future: proposed ethical guidelines for the Government Petroleum Fund*, p. 167.
- 12 http://www.illegal-logging.info/uploads/FLEGT_briefing3_en.pdf,
- 13 Company website: www.samling.com.
- 14 Samling Global Ltd. Global Offering February 23, 2007, hereinafter Samling IPO Prospectus; available at <http://202.66.146.82/listco/hk/samling/prospectus/pro070223.pdf>.
- 15 <http://www.samling.com/eng/aboutus/group.htm>
- 16 See footnote 14, p. 122.
- 17 http://www.samling.com/eng/ir/factsheet/factsheet_09.pdf.
- 18 Samling IPO Prospectus; Appendix VI, Independent Technical Report, p. VI-43.
- 19 See footnote 18, p. VI-44.
- 20 Google Earth does not provide information about the time when the pictures from this area were taken, but they are probably 5-10 years old. This is based on comparisons with satellite imagery from 1990 and 2007, collated with damage visible in the images which was caused by widespread forest fires in 1998.
- 21 Samling IPO Prospectus; Business section, pp. 98-99.

- 22 Malaysian Timber Certification Council; see <http://www.mtcc.com.my/>
- 23 <http://www.forestry.sarawak.gov.my/forweb/homepage.htm>
- 24 <http://www.sarawakforestry.com/htm/aboutus.html>, Samling IPO prospectus, p. 95.
- 25 The concession is divided into areas known as coupes. Each coupe is further subdivided into logging blocks. See <http://www.forestry.sarawak.gov.my/forweb/sfm/fplan/engplan.htm>
- 26 Samling IPO Prospectus; Business section, p. 140.
- 27 According to interviews with Sarawak Government forestry employees and ex-employees conducted during 2009.
- 28 Samling IPO Prospectus; Appendix VI Technical report, p VI-43. The IPO prospectus, however, provides no information on whether any infractions have been identified by Sarawak forestry authorities within Samling's concessions since Samling started its logging operations in 1976.
- 29 The Forestry Corporation is responsible for enforcing the Forests Ordinance 1958 (Cap. 126), the Forest Rules 1973, the National Parks and Nature Reserves Ordinance 1998, the Wild Life Protection Ordinance 1998 and its subsidiary regulations; www.forestry.sarawak.gov.my
- 30 The Borneo Post Online Wednesday, 9 May 2007: *NGOs do illegal logging while Penans close roads: Resident* http://www.bmf.ch/files/news/borneo_post.pdf
- 31 The Malaysian Auditor-General's Report 2009: *Laporan Ketua Audit Negara, Aktiviti Kementerian/Jabatan/Agensi Dan Pengurusan Syarikat Kerajaan Negeri Sarawak, Tahun 2008*, pp. 68-91; on file with the Council.
- 32 See footnote 31, section 5.5.1 (f), pp. 81-82.
- 33 See footnote 31, section 5.5.1 (e), pp. 80-81.
- 34 MySinchew 16.11.09: *Amendment to Auditor-General's Report to give balanced perspective to Sarawak's forestation*, <http://www.mysinchem.com/node/31566>
- 35 See footnote 5.
- 36 Ecosol Consultancy Sdn Bhd: *Plantacia Sdn Bhd, Environmental Impact Assessment Report for Tree Planting under Licence for Planted Forests LPF/0010 in the Sibul and Kapit Divisions*, Sarawak, Sept 1999; on file with the Council.
- 37 The Wildlife Protection Ordinance lists 7 species of Engkabang (also known as Meranti): *Shorea splendida*, *Shorea helmsleyana*, *Shorea siminis*, *Shorea pinanga*, *Shorea macrophylla*, *Shorea stenoptera* and *Shorea stenoptera*. The last three are listed on the International Union for Conservation of Nature (IUCN) red list of threatened species, classified respectively as vulnerable, endangered and critically endangered.
- 38 Tapang is a protected species because it is rare and because it is an important nesting tree for honey bees. In accordance with the *Wildlife Protection Ordinance of 1998* felling Tapang trees is prohibited. The ordinance lists the tree as a protected species. Cutting such trees carries a maximum penalty of one year in prison or a fine of 10,000 Malaysian ringgit (NOK 17,000).
- 39 EFI FLEGT Facility 2009: *Joint Technical Evaluation of Malaysian Timber Legality Assurance System (TLAS)*; available at http://www.euflegt.efi.int/item_detail.php?item=document&item_id=651.
- 40 Liew Chin Fah, Deputy General Manager, 17 January 2007: *Sustainable Forest Management in Sarawak, Sarawak Forestry Corporation*; presentation available at http://www.sarawaktimber.org.my/timber_issue/1205742000-SFM_to_EU.pdf
- 41 *Dipterocarpaceae* is a large family of primarily evergreen broadleaf trees that are dominant in the rainforests of Malaysia. The trees may grow very old and normally reach a height of 40-70 m. Many of the species have considerable economic value as timber, but are also used in the production of ethereal oils, balsam and plywood.
- 42 See footnote 40.
- 43 See <http://www.itto-pulongtau.com/contacts.htm> and Inter Cooperation (Swiss Foundation for Development and International Cooperation), ITTO Project Supervisory Mission: 1-6th March 2006 – PD 224/03: *Transboundary Biodiversity Conservation: The Pulong Tau National Park, Sarawak State, Malaysia* - http://www.tropicalforests.ch/files/reports/Report_Mission_Pulong_mar06.pdf.
- 44 Ravenscourt Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Timber Sdn. Bhd., which again is a subsidiary of Samling Global Ltd.
- 45 Ecosol Consultancy Sdn Bhd/Tamex Timber Sdn Bhd: *Environmental Impact Assessment for the Re-entry Hill Logging under Timber License No. T/0294 in the Ulu Batang Trusan-Ulu Sg Limbang-Ulu Sg Kubaan area, Limbang and Miri Divisions, Sarawak* November 2008. The logging is being carried out by Tamex Timber Sdn Bhd, a subsidiary of Samling's Lingui Developments, acting as a contractor to Ravenscourt Sdn. Bhd.
- 46 Samling's letter to the Council, dated 12 February 2010.
- 47 Bruno Manser Fonds, Tong Tana Newsletter, July 2006 - http://www.bmf.ch/files/tongtana/TT_juli_2006_e.pdf
- 48 Chai P. 2008: *Transboundary Biodiversity Conservation: The Pulong Tau National Park, Phase I, Presentation of 3* November 2008 - http://www.tropicalforests.ch/files/projects/PD_224_03_presentation08.pdf
- 49 Letter from the Sarawak Director of Forests to Ravenscourt Sdn, Bhd dated 13 May 2008 regarding the extension of Pulong Tau National Park in areas within Licence No T/0294. The letter is appended to the EIA for re-entry logging in T/0294 (see footnote 45).
- 50 See footnote 45, for example pp. ES-2, ES-6 and ES-7 in Executive Summary of the EIA.

- 51 Merawa Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Timber Sdn. Bhd., which again is a subsidiary of Samling Global Ltd.
- 52 Interview with a villager from Pa Dallih conducted during field investigation, September 2009.
- 53 Samling's letter to the Council, dated 12 February 2010.
- 54 The Google Earth image is undated, but compared with satellite images from 1990, and collated with widespread forest fires in 1998 that are visible in the Google Earth imagery, it is presumed that the picture was taken between 1999 and 2005.
- 55 Samling Plywood (Baramas) Sdn.Bhd. is a wholly owned subsidiary of Lingui Developments. Lingui and Syarikat Samling Timber are subsidiaries of Samling.
- 56 The Natural Resources and Environment (Prescribed Activities) (Amendment) Order, 1997, First Schedule, Article 2 (i); see also table 2.
- 57 Ecosol Consultancy Sdn Bhd: *Environmental Impact Assessment for Samling's re-entry hill logging under timber licence No. T/0411 at the Pelutan area, Miri division, Sarawak*, January 2009; on file with the Council.
- 58 Despite the fact that no EIA has been approved, the Sarawak Forestry Corporation issued and approved Permits to Enter Coupe (PECs) for the coupes which the company re-logged in T/0411 between 2002 and 2008. Copies of these PECs are appended to the T/0411 EIA; see footnote 57.
- 59 See footnote 31.
- 60 Visit to location in April 2009, analysis of GPS readings, and comparison with satellite imagery and concession maps and Permits to Enter Coupe.
- 61 Logging block maps are attached to the Permit to Enter Coupe for the re-entry logging, which is appended to the EIA for T/0411; see footnote 57. This area covers the coupes 75H, 76H, 77H and 78H, where only helicopter logging is permitted.
- 62 Base image in bottom figure is from Google Earth and precedes logging activity. The red line shows the extent of logging from March 2009 and is based on Landsat satellite images. The pink line shows Class IV terrain boundary and is based on the concession map which is included in the Re-Entry Logging EIA; see footnote 57.
- 63 Ecosol Consultancy Sdn Bhd: *Environmental Impact Assessment for Samling's re-entry hill logging under timber licence No. T/0411 at the Pelutan area, Miri division, Sarawak*, January 2009; on file with the Council.
- 64 See table 2.
- 65 Samling's letter to the Council, dated 12 February 2010.
- 66 Interviews conducted during the field investigation in 2009.
- 67 EFI FLEGT Facility 2009: *Joint Technical Evaluation of Malaysian Timber Legality Assurance System (TLAS)*; available at http://www.euflegt.efi.int/item_detail.php?item=document&item_id=651
- 68 See footnote 63, pp. ES-8 and ES-9.
- 69 Samling Plywood (Miri) SDN. Bhd. is a wholly owned subsidiary of Lingui Developments, Which again is a subsidiary of Samling Global.
- 70 Interviews with villagers from Long Makaba conducted during the field investigation in September 2009.
- 71 Within the concession Samling has built timber camps comprising works buildings, offices and workmen's sheds.
- 72 Interviews conducted during the field investigation in September 2009.
- 73 SIF Management Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Sdn. Bhd., which again is a subsidiary of Samling Global.
- 74 Under Samling licence no. LPF0021, issued to Samling Reforestation (Bintulu) Sdn Bhd., subsidiary of Syarikat Samling Sdn. Bhd. T/0404 is licensed to Samling Plywood (Lawas) Sdn. Bhd., subsidiary of Lingui Developments.
- 75 See footnote 68, p. ES-7.
- 76 Samling Global IPO Prospectus, p. 144 and p. VI-68.
- 77 <http://www.forestry.gov.gy/index.html>.
- 78 Samling IPO Prospectus, section on Business, p. 144.
- 79 <http://www.baramaguyana.com/eng/about/overview.htm>.
- 80 The Code of Practice (second edition 2002) could be made obligatory but the President (as Minister of Forests) has not amended the Forest Regulations to do this. Communication with John Palmer, 16 December 2009; on file with the Council. See also Trevin, J. og R. Nasi 2009: *Forest Law Enforcement and Governance and Forest Practices in Guyana*. CIFOR and Iwokrama International Center for Rainforest Conservation. Commissioned by the Norwegian Ministry of Environment's Climate and Forest Initiative.
- 81 Bulkan, Janette and John Palmer, 14 February 2008: *Illegal logging by Asian-owned enterprises in Guyana, South America*. Briefing paper for Forest Trends, 2nd Potomac Forum on Illegal Logging & Associated Trade, House Washington D.C.; available at http://www.illegal-logging.info/approach.php?a_id=135.
- 82 According to its website, the Forest Stewardship Council is an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world's forests. FSC is a *certification system* that provides internationally recognized standard-setting, trademark assurance and *accreditation* services to companies, organizations, and communities interested in responsible forestry; see www.fsc.org.

- 83 Barama was evaluated by SGS Qualifor and awarded a combined forest management / chain of custody certificate under the Forest Stewardship Council (FSC) in February 2006. This award was protested by civil society. Accreditation Services International GmbH (ASI) carried out a field inspection audit of SGS Qualifor's certification of Barama for FSC in November 2006, issuing a critical public summary report in January 2007. SGS Qualifor subsequently suspended the FSC certificate for Barama.
- 84 Accreditation Services International, FSC Annual Surveillance of SGS for 2006, Forest Management Audit to Barama Co Ltd (BCL), Guyana (SGS-FM/COC-2493), Date of audit: 20 to 25 November 2006, http://www.fsc-watch.org/docs/SGS_suspends_Barama_certificate_ASI_report.pdf.
- 85 See footnote 84.
- 86 <http://www.baramaguyana.com/eng/ec/certification.htm>.
- 87 Samling's letter to the Council, dated 12 February 2009.
- 88 The company here refers to Barama Company Ltd's FSC Certification dated 30 April 2007; available at http://www.panda.org/who_we_are/wwf_offices/suriname/?100160/WWF-Statement-on-Barama-Company-Ltds-FSC-Certification.
- 89 <http://www.stabroeknews.com/2009/stories/01/11/wwf-has-%e2%80%98disconnected%e2%80%99-from-barama/>
- 90 Guyana Chronicle, 23 Oct 2007: *Barama fined \$96.4M – forestry staffers dismissed, sanctions imposed on three firms*. The three concessions were issued to A. Mazaharally & Sons, N.Sukul & Sons, and Barakat Timbers Ltd. See also Samling Global Ltd, 26 Oct 2007: *Clarification of matters in respect of sanctions imposed on Barama Company Ltd by the Guyana Forestry Commission*; <http://www.hkexnews.hk/listedco/listconews/sehk/20071026/LTN20071026004.pdf>
- 91 Stabroek News, 25 Oct 2007: *Barama: Fines will send workers home*; <http://guyanaforestryblog.blogspot.com/2007/10/barama-fines-will-send-workers-home.html>
- 92 Samling Global Ltd, 26 Oct 2007: *Clarification of matters in respect of sanctions imposed on Barama Company Ltd by the Guyana Forestry Commission*, <http://www.hkexnews.hk/listedco/listconews/sehk/20071026/LTN20071026004.pdf>
- 93 See footnote 92.
- 94 Stabroek News, 15 Nov 2007: *Barama agrees to pay \$96.4M forestry breaches fine*; <http://guyanaforestryblog.blogspot.com/2007/11/barama-agrees-to-pay-964m-forestry.html>
- 95 Stabroek News, 15 Feb 2008: *Loggers to mount legal challenge to Forestry Commission fines: source*; <http://www.stabroeknews.com/2008/business/02/15/loggers-to-mount-legal-challenge-to-forestry-commission-fines%E2%80%A6source/>
- 96 Samling IPO Prospectus: Business section, p. 145. Annex VI of the prospectus (p. VI 70) shows that logging on rented concessions amounted to 72 per cent of Barama's total logging volume for the budget year 2005-2006.
- 97 Bulkan, Janette and John Palmer 8 June 2007: *Lazy days at international banks: how Credit Suisse and HSBC support illegal logging and unsustainable timber harvesting by Samling/Barama in Guyana, and possible reforms*; available at http://www.illegal-logging.info/uploads/Samling_Barama.pdf. Logging in subcontracted concessions is illegal under Article 12 of the Forest Regulations of 1953, Condition 13 of Timber Sales Agreements and Condition 2 of State Forest Permissions.
- 98 Stabroek News, 8 July 2007: *Barama harvesting legally outside its concession – Commissioner of Forests*; <http://guyanaforestryblog.blogspot.com/2007/07/barama-did-not-sub-lease-from-other.html>.
- 99 See footnote 92.
- 100 Map extracted from from Barama Company Ltd (BCL), Forest Management Plan Public Summary for Compartment 5 (2004-2008), p. 6, <http://www.baramaguyana.com/eng/ec/compartment5.pdf>
- 101 E-mail from John Palmer, 11 December 2008 and 16 December 2009; on file with the Council; see also <http://www.stabroeknews.com/2008/stories/08/30/tpl-to-pay-80m-forestry-fine-timber-operations-to-resume/>
- 102 Stabroek News, 30 Jan 2007: *Letter to the editor* from Janette Bulkan, http://www.illegal-logging.info/item_single.php?it_id=1907&it=news.
- 103 Samling's letter to NBIM and the Council, dated 2 February 2009.
- 104 In the concession area the company has established so-called timber camps, which include works buildings, offices and workmen's sheds. These areas are normally fenced in and locked.
- 105 See table 2 for requirements regarding EIAs.
- 106 See footnote 31.
- 107 See table 2 for requirements regarding logging along roads.
- 108 Such initiatives include the EU Forest Law Enforcement, Governance and Trade (FLEGT), and regional FLEG processes supported by the World Bank and the Asia Forests Partnership (AFP), as well as numerous national initiatives aimed at halting the trade of illegal timber and wood products. Malaysia is partner to both EU Flegt and AFP. See for example <http://ec.europa.eu/environment/forests/flegt.htm> and <http://www.asiaforests.org/>.
- 109 See for example the Norwegian Government's Climate and Forests project, <http://www.regjeringen.no/nb/dep/md/tema/klima/klimaogskogprosjektet.html?id=548491>.
- 110 See footnote 31. The Auditor-General's report shows that proof has been found for such practices in three concession areas of which two (T/3112 and T/3284) belong to Samling subsidiaries. With regard to the requirements that have been made and that the Auditor-General has examined, such practices are illegal.

To the Ministry of Finance

Oslo, 15 September, 2010

(Published 16 February, 2011)

Recommendation on the exclusion of Lingui Developments Berhad

1 Introduction

The Council on Ethics has assessed whether the Malaysian company Lingui Developments Berhad's forest operations in Sarawak, Malaysia, cause severe environmental damage.¹

Lingui Developments Berhad² is a listed Malaysian integrated forest and wood-products company. Its operations include logging and forest management of natural forest in Malaysia as well as palm oil plantations.³ As of 2 August 2010 the Norwegian Government Pension Fund Global held 1,584,100 shares in the company.

Lingui is a subsidiary of Samling Global Limited, and Samling has a 67.23 per cent share in the company.⁴ On 22 February 2010 the Council on Ethics submitted a recommendation to exclude Samling Global⁵ from the Government Pension Fund on the grounds that the company's illegal logging may cause severe environmental damage.

The Ministry of Finance published the Council's recommendation on 23 August 2010 after the Fund had divested from the company. The recommendation was mainly based on the Council's own investigations of Samling's forest operations in Sarawak (Malaysia) and Guyana. The investigations documented what appeared to be extensive and repeated breaches of the licence requirements, regulations and other directives in all of the six concession areas that were examined in Sarawak. Some of the violations were very serious transgressions, such as logging outside the concession area, logging in a protected area that was excluded from the concession by the authorities in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments.

Two of the concessions which were examined belong to wholly-owned subsidiaries of Lingui. In a third concession, a further Lingui subsidiary carries out the logging operations for another of Samling's tier-subsiidiaries. Thus the Council considers Lingui to be equally responsible for the illegal logging and severe environmental damage which were disclosed in these concessions.

The Council wrote a letter to Lingui on 25 August 2010, giving the company an opportunity to comment on the Council's draft recommendation. Lingui has not responded to the Council's letter.

The Council recommends the exclusion of Lingui Developments Berhad from the investment universe of the Government Pension Fund Global due to an unacceptable risk of the company contributing to ongoing and future severe environmental damage.

2 Background

Lingui's parent company, Samling Global Ltd., is an integrated forest and wood products company with forest resources, processing facilities and distribution networks in Guyana, New Zealand and China. Samling has 15 selective timber logging licences in Sarawak, Malaysia, covering an area of approximately 1.4 million hectares of natural rainforest.

Samling's timber harvesting operations appear to be organized through its subsidiaries Barama Company Limited, Syarikat Samling Timber Sdn. Bhd. and Lingui Developments Berhad. The two first-mentioned are wholly owned subsidiaries of Samling, while Samling holds a 67.23 per cent share in Lingui.⁶ Lingui is listed on the Malaysian stock exchange. The forest concessions are owned and managed by wholly owned subsidiaries of Samling Global's subsidiaries.

The Council on Ethics' recommendation on the exclusion of Samling Global shows that Lingui Developments is directly involved in three of Samling's concessions in Sarawak that were examined by the Council. A short summary of the Council's findings is provided below.⁷

Concession T/0294 – Ravenscourt Sdn. Bhd.

The timber licence belongs to Ravenscourt Sdn. Bhd., a wholly-owned tier-subsiary of Samling Global. The logging operations, however, are carried out by Tamex Timber Sdn. Bhd., a subsidiary of Lingui. Tamex Timber is acting as a contractor for Ravenscourt Sdn. Bhd.

Extensive and intensive logging has been conducted under this license from May 2007 to May 2009 in an ecological core area around the Batu Lawi Mountain, north of the existing *Pulong Tau National Park*. In May 2008 the Sarawak forest authorities excluded this particular area from the timber licence, meant to be included in the existing national park. Satellite imagery reveals that the logging has been carried out more than one year after Ravenscourt was duly informed by the authorities that the area in question would be excluded from the concession, and that logging should be stopped.⁸

Analyses using terrain data from Google Earth indicate that some of the areas currently being logged are so steep (in excess of 35 degrees), that conventional land-based logging normally is not permitted.⁹ One particular area of very intense logging extends about 300 m up the mountain's eastern side. Illegal logging in steep terrain also occurs in another part of the concession, Coupe 05A, where a large swathe of steep terrain adjoins the border with the existing national park. A logging road has recently been cut for a distance of approximately 3 kilometres into the Class IV terrain zone.¹⁰ Intensive logging activity has been carried out here, and extensive erosion was observed.

Concession T/0411 - Samling Plywood (Baramas) Sdn. Bhd.

The licensee in this concession is Samling Plywood (Baramas) Sdn. Bhd., a wholly owned subsidiary of Lingui, while the logging is being carried out under contract by Samling Global's subsidiary Syarikat Samling Timber Sdn. Bhd.

The Council's research indicated that Samling has performed re-entry logging in T/0411 for more than three years without the Environmental Impact Assessment (EIA) required

by the *Natural Resources and Environment (Amendment) Ordinance* of 2005.¹¹ Furthermore, satellite images reveal ongoing logging and extensive road construction in two areas within the concession's Coupe 4A. These areas are classified as Class IV steep terrain in maps of the licence area and in permits to enter coupes.¹² In Class IV areas, only helicopter logging is permitted. As of January 2009 permission had yet to be granted for the company to begin logging operations in two blocks (75H-78H). All the available information therefore suggests that the land-based logging and road construction in this area are illegal.

Completely clear-cut forest on both sides of the road for distances of up to 50 metres or more, including the removal of undersized trees was observed during the field investigation. Also the forest within river buffers had been cleared in large areas, and logging debris was seen clogging rivers and streams throughout the area. Such logging practises appear to be in violation of the official standard regulations, which normally impose stricter requirements for logging along roads and rivers than what was seen in this area.

Concession T/0413 - Samling Plywood (Miri) Sdn. Bhd.

Concession T/0413 belongs to Samling Plywood (Miri) Sdn. Bhd. which is a wholly owned subsidiary of Lingui.

In this concession, an area that had been logged in 2003-2004 was examined. In the area, which was visited during the field investigation, stumps on the bank of the river (the Semariang river) indicated cutting within the buffer zone, including cutting of protected tree species (Engkabang trees¹³) and logging of undersized trees. Logging debris had not been removed from the river. A hidden log pond was found, which according to local residents was used for storing illegally logged timber (protected tree species and undersized trees). Local villagers asserted that these findings were not isolated cases, reporting that the company had cut trees along the river for several kilometres, and that numerous Engkabang trees had been logged in the area.¹⁴

3 The Council on Ethic's letter to Lingui

In accordance with point 5.3 of the Guidelines for observation and exclusion from the Government Pension Fund Global's investment universe, the Council wrote a letter to Lingui, dated 25 August 2010, providing it with the opportunity to comment on the recommendation. The company has not responded to the Council's letter.

4 The Council's assessment

Illegal logging refers to the harvesting, transporting, selling or buying of timber in contravention of national law. According to the preparatory work for the Ethical Guidelines, illegal logging may be in breach of the Ethical Guidelines.

In its assessment of Samling, the Council emphasised the extent of illegal logging in Samling's concession areas, whether the violations appeared to be systematic, and the

probability that the company's behaviour will continue in the future. The Council also stressed that illegal logging, particularly in natural forests, often results in far-reaching and lasting damage to the forest and the environment. Finally, the Council highlighted the comprehensive international and national efforts to combat illegal logging in Asia and elsewhere, under the auspices of the EU, the World Bank and individual States, including Norway.¹⁵ In this context, the Norwegian and international initiatives aimed at preventing deforestation and forest degradation in tropical rainforests as part of the work to reduce emission of greenhouse gases and loss of biological diversity are also relevant.¹⁶

In the recommendation on Samling, the Council's investigation of the company's forestry operations in Sarawak documented extensive and repeated breaches of the terms of licence, regulations and other requirements in all the six concession areas that were surveyed. The Council found some of the violations to be very serious, such as logging in a protected area that had been officially excluded from the concession in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments. These offences occurred in concessions where Lingui is the licensee or is conducting logging operations on behalf of the parent company. Other practices which, seen in isolation, appeared to be less serious are aggravated because they seemed to be a systematic part of Samling's forestry operations. In the concessions investigated, clear-cutting had been carried out along the roads across wider sections than what is permitted, clear-cutting had occurred in riparian buffer zones, and rivers and streams were polluted by logging debris; roads had also been built and conventional logging taken place in areas of steep terrain where only helicopter logging is allowed. Furthermore, instances of logging of protected species and of undersized diameter trees were detected. Such practices were also revealed in the concessions where Lingui is involved. It does not, therefore, appear to be any different from how forest operations are carried out in the other Samling concessions.

Samling commented on the Council's draft recommendation on the exclusion of the company. In its comments, Samling raised doubts about the Council's methods and sources, but failed to provide any specific information or documentation that illuminated or countered the basis for the Council's recommendation. Regarding the concessions where Lingui is involved, Samling did not comment either on the logging in the protected area, the cutting of protected tree species or the logging of undersized trees. Samling acknowledged one instance of illegal logging and road construction in steep terrain without specifying where this has occurred, whereas with regard to the other irregularities that have come to light, it denied any wrongdoing without substantiating this with documentation. Thus, the Council found that Samling's reply did not provide grounds for altering the Council's conclusion that the company is involved in illegal logging.

The Council considers that Lingui, as licensee and logging contractor for the parent company, Samling Global, is directly involved in the illegal logging and severe environmental damage which has been disclosed through the Council's investigations of Samling Global's forest operations in Sarawak. The Council on Ethics therefore recommends the exclusion of Lingui from the Fund.

5 Recommendation

The Council recommends the exclusion of Lingui Developments Berhad from the investment universe of the Government Pension Fund Global due to an unacceptable risk of contributing to current and future severe environmental damage.

Gro Nystuen
Chair
(sign.)

Andreas Føllesdal
(sign.)

Anne Lill Gade
(sign.)

Ola Mestad
(sign.)

Ylva Lindberg
(sign.)

Notes

- 1 According to the Guidelines for Observation and Exclusion from the Government Pension Fund Global's Investment universe, Section 2, paragraph 3, letter C.
- 2 Hereafter also referred to as Lingui.
- 3 <http://www.lingui.com.my/home.html>
- 4 <http://www.samling.com/eng/aboutus/group.htm>
- 5 Hereafter also referred to as Samling.
- 6 <http://www.samling.com/eng/aboutus/group.htm>
- 7 See the Council on Ethics' recommendation on Samling Global for a comprehensive account of the circumstances.
- 8 Letter from the Sarawak Director of Forests to Ravenscourt Sdn., Bhd. dated 13 May 2008 regarding the extension of Pulong Tau National Park in areas within Licence No T/0294. The letter is appended to the EIA for re-entry logging in T/0294, both on file with the Council. Approved concession maps and Permits to enter Coupe show the exact boundaries of the area of the licence involved. The map for Coupe 14A, which includes the Batu Lawi-massif, clearly shows that the area is to be preserved, and that no logging must be carried out here.
- 9 The so-called Class IV terrain areas refer to slopes in excess of 35 degrees. In general, conventional land-based logging and road construction are not permitted in these areas.
- 10 See footnote 10.
- 11 The Natural Resources and Environment (Prescribed Activities) (Amendment) Order, 1997, First Schedule, Article 2 (i); see also table 2.
- 12 This area covers logging blocks 75H, 76H, 77H and 78H, and also 68H. On-site investigations in April 2009, analysis of GPS readings, and comparison with satellite imagery and concession maps and Permits to Enter Coupe.
- 13 The Wildlife Protection Ordinance lists 7 species of Engkabang (also known as Meranti): *Shorea splendida*, *Shorea helmsleyana*, *Shorea siminis*, *Shorea pinanga*, *Shorea macrophylla*, and *Shorea stenoptera*. The last three are listed on the International Union for Conservation of Nature's (IUCN) red list of threatened species, classified respectively as vulnerable, endangered and critically endangered.
- 14 Interviews with villagers from Long Makaba conducted during the field investigation in September 2009.
- 15 Such initiatives include the EU Forest Law Enforcement, Governance and Trade (FLEGT), and regional FLEG processes supported by the World Bank and the Asia Forests Partnership (AFP), as well as numerous national initiatives aimed at halting the trade of illegal timber and wood products. Malaysia is partner to both EU Flegt and AFP. See for example <http://ec.europa.eu/environment/forests/flegt.htm> and <http://www.asiaforests.org/>.
- 16 See for example the Norwegian Government's Climate and Forests project, <http://www.regjeringen.no/nb/dep/md/tema/klima/klimaogskogprosjektet.html?id=548491>.

To the Ministry of Finance

Oslo, 15 November, 2010

(Published 15 March, 2011)

Recommendation on the exclusion of Shanghai Industrial Holdings Ltd.

1 Background

According to the Ethical Guidelines of the Government Pension Fund Global, paragraph 2(1) letter b: “*The assets in the Fund shall not be invested in companies which themselves or through entities they control: [...] produce tobacco*”.¹

In October 2009, the Council submitted a recommendation to exclude 17 tobacco-producing companies from the Fund.² These were all companies which were classified as tobacco producers by the Fund’s index providers. The recommendation noted that there could be companies which are involved in several industries, amongst them tobacco production, and that these companies would not necessarily be classified in the Fund’s indices as tobacco producers. The Council has surveyed the Fund’s portfolio with the aim of identifying such companies. The survey showed that the Chinese industrial company **Shanghai Industrial Holdings Ltd.**³ could be involved in tobacco production.

2 Contact with the company

The Council wrote to Shanghai Industrial Holdings Ltd. in September 2010 to enquire whether the company itself or entities under its control produces tobacco.⁴ The company’s response clarified that its wholly owned subsidiary, Nanyang Brothers Tobacco Company Ltd., produces tobacco.⁵

3 Recommendation

Based on the information provided above, the Council recommends that the company Shanghai Industrial Holdings Ltd. be excluded from the investment universe of the Government Pension Fund Global.

Gro Nystuen
Chair
(sign.)

Andreas Føllesdal
(sign.)

Anne Lill Gade
(sign.)

Ola Mestad
(sign.)

Ylva Lindberg
(sign.)

Notes

- 1 Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277
- 2 The Council's recommendation to exclude tobacco producers: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations-on-tobacco/Recommendation-of-october-22nd-2009-on-exclusion-of-tobacco-companies.html?id=591204
- 3 Sedol: 6810010.
- 4 Letter from Council to Shanghai Industrial Holdings Ltd., September 16, 2010.
- 5 "*Shanghai Industrial Holdings Limited acknowledges that through its wholly-owned subsidiary, Nanyang Brothers Tobacco Company, Limited, engages in the production of tobacco.*", E-mail from Shanghai Industrial Holdings Ltd to Council, September 20, 2010.

To the Ministry of Finance

Oslo, 15 November, 2010

(Published 15 March, 2011)

Recommendation to reverse the exclusion of L-3 Communications Holdings Inc.

1 Background

On 16 June, 2005, the Council on Ethics for the Norwegian Government Pension Fund Global submitted a recommendation on the exclusion of companies that produce cluster munitions.¹ Among the companies recommended for exclusion was the American company L-3 Communications Holdings Inc. The Council had contacted the company through Norges Bank Investment Management (NBIM) and enquired as to whether the company produced cluster munitions or key components thereof.² In its reply to NBIM, L-3 Communications Corp. confirmed that it did produce such key components. L-3 Communications Corp. is a wholly owned subsidiary of L-3 Communications Holdings Inc.

The Council routinely assesses whether the grounds for exclusion of companies are still valid. In connection with this the Council has received information that L-3 Communications Corp. no longer produces key components for cluster munitions.

2 Contact with the company

The Council wrote to L-3 Communications Corp. in September 2010 and asked the company to clarify whether it or any of its subsidiaries or companies under its control, still produces cluster munitions or components thereof.

In its response to the Council, the company made it clear that L-3 Communications Corp. is no longer involved in the production of cluster munitions.³ Subsequent correspondence with the company clarified that this also applies to L-3 Communications Holdings Inc.⁴

3 Council's assessment

L-3 Communications Holdings Inc. was excluded from the Government Pension Fund Global because of production which took place in its wholly owned subsidiary, L-3 Communications Corp. As L-3 Communications Corp. no longer is involved in the production of cluster munitions, the Council finds that the grounds for the exclusion of L-3 Communications Holdings Inc. no longer are valid.

4 Recommendation

Based on the information provided above, the Council recommends that the company L-3 Communications Holdings Inc. no longer be excluded from the investment universe of the Government Pension Fund Global.

Gro Nystuen
Chair
(sign.)

Andreas Føllesdal
(sign.)

Anne Lill Gade
(sign.)

Ola Mestad
(sign.)

Ylva Lindberg
(sign.)

Notes

- 1 The Council's recommendation, 16 June 2005: <http://www.regjeringen.no/pages/1661742/Tilrådning%20klausvåpen%20eng%2015%20juni%202005.pdf>
- 2 Letter from L-3 Communications Corp to NBIM, June 2, 2005.
- 3 E-mail from L-3 Communications Corp to Council on Ethics, September 20, 2010.
- 4 E-mail from L-3 Communications Corp to Council on Ethics, October 29, 2010.



Excluded companies

Summary of the recommendations on excluded companies

Recommendations to exclude companies that produce cluster munitions

- 16.06.2005** **Companies producing cluster munitions**
The companies General Dynamics Corp., L3 Communications Holding Inc., Raytheon Co., Lockheed Martin Corp., and Alliant Techsystems Inc. are excluded on the basis of production of components for cluster munitions.
(Published 2 September 2005)
- 06.09.2006** **Poongsan Corp. - New**
The South-Korean company Poongsan Corp. - New is excluded on the basis of production of cluster munitions.
(Published 6 September 2006)
- 15.05.2007** **Hanwha Corp.**
The South-Korean company Hanwha Corp. is excluded on the basis of production of cluster munitions.
(Published 11 January 2008)
- 26.08.2008** **Textron Inc.**
The US company Textron Inc. is excluded on the basis of production of cluster munitions.
(Published 30 January 2009)

Recommendations to exclude companies that produce key components to nuclear weapons

- 19.09.2005** **Companies developing and producing key components for nuclear weapons**
The companies BAE Systems Plc., Boeing Co., Finmeccanica Sp. A., Honeywell International Inc., Northrop Grumman Corp., and Safran SA are excluded on the basis of the development and production of key components for nuclear weapons.
(Published 5 January 2006)
- 18.04.2006** **EADS Co.**
The Dutch company EADS Co. (European Aeronautic Defence and Space Company) is excluded in 2005 on the basis of production of cluster

munitions. In 2006, this was no longer the case, but as the company was producing key components for nuclear weapons, the decision to exclude the company was upheld.

(Published 18 April 2006)

15.11.2007 GenCorp Inc.

The US-company GenCorp Inc. is excluded on the basis of the production of key components for nuclear weapons.

(Published 11 January 2008)

15.11.2007 Serco Group Plc.

The British company Serco Group Plc. is excluded on the basis of the production of key components for nuclear weapons.

(Published 11 January 2008)

Recommendations to exclude companies that produce antipersonnel landmines

22.03.2002 Singapore Technologies Engineering Ltd.

The company Singapore Technologies Engineering Ltd. is excluded because of production of antipersonnel landmines based on a recommendation from the Council on International Law, which preceded the Council on Ethics.

(Published 26 April 2002)

Recommendations to exclude companies that supply weapons and military equipment to Burma

14.11.2008 Dongfeng Motor Group Co. Ltd.

The Chinese company Dongfeng Motor Group Co. Ltd. is excluded because it supplies military trucks to the Burmese Government.

(Published 13 March 2009)

Recommendations to exclude companies that produce tobacco

22.10.2009 Companies producing tobacco

The companies Alliance One International Inc., Altria Group Inc., British American Tobacco BHD, British American Tobacco Plc., Gudang Garam Tbk pt., Imperial Tobacco Group Plc., ITC Ltd., Japan Tobacco Inc., KT&G Corp, Lorillard Inc., Philip Morris International Inc., Philip Morris Cr AS., Reynolds American Inc., Souza Cruz SA, Swedish Match AB, Universal Corp VA, and Vector Ltd Group are excluded due to production of tobacco.

(Published 19 January 2010)

15.11.2010 Shanghai Industrial Holdings Ltd.

The Chinese company Shanghai Industrial Holdings Ltd. is excluded because a wholly owned subsidiary produces tobacco.

(Published 15 March 2011)

Recommendations to exclude companies that contribute to violations of human rights

15.11.2005 Wal-Mart Stores Inc.

The US-retailer Wal-Mart Stores Inc. and its subsidiary Wal-Mart de Mexico are excluded because of unacceptable working conditions both in some of the company's own stores and among its global suppliers.

(Published 6 June 2006)

Recommendations to exclude companies that contribute to violations of the rights of individuals in situations of war or conflict

16.09.2009 Africa Israel Investments Ltd. og Danya Cebus Ltd.

The Israeli company Africa Investments Ltd., including its subsidiary Danya Cebus Ltd., are excluded because of their activities in the building of Israeli settlements in the West Bank.

(Published 23 August 2010)

Recommendations to exclude companies that contribute to severe environmental damage

15.02.2006 Freeport McMoRan Copper & Gold Inc.

The US mining company Freeport McMoRan Copper & Gold Inc. is excluded due to severe environmental damage caused by the company's practice of riverine tailings disposal at the Grasberg Mine in Indonesia.

(Published 6 June 2006)

15.05.2007 Vedanta Resources Plc.

The British metals and mining company Vedanta Resources Plc., including its subsidiaries Sterlite Industries Ltd. and Madras Aluminium Company Ltd., are excluded on the grounds of causing severe environmental damage associated with pollution and irresponsible waste disposal at the companies' copper and aluminium works in India, as well as human rights violations, including the abuse and forced displacement of tribal peoples.

(Published 6 November 2007)

15.02.2008 Rio Tinto Plc. and Rio Tinto Ltd.

The British/Australian mining group Rio Tinto is a joint venture partner to the Grasberg Mine operated by Freeport McMoRan in Indonesia. Freeport McMoRan was excluded from the Fund in 2005 due to environmental damage caused by the company's riverine tailings disposal. Rio Tinto was

excluded because the company is regarded to be directly involved in the severe environmental damage caused by the mining operation.

(Published 9 September 2008)

15.08.2008 Barrick Gold Corp.

The Canadian mining company Barrick Gold Corp. is excluded on the grounds of severe environmental damage caused by the company's riverine tailings disposal from the Porgera Mine in Papua New Guinea.

(Published 30 January 2009)

16.02.2009 MMC Norilsk Nickel

The Russian company MMC Norilsk Nickel has been excluded because its nickel plant on the Taymyr Peninsula is causing serious damage to the environment.

(Published 20 November 2009)

22.02.2010 Samling Global Ltd.

The Malaysian forest company Samling Global Ltd. carries out forest operations in tropical rainforest. Samling is excluded on the grounds of illegal logging and severe environmental damage in Sarawak (Malaysia) and Guyana.

(Published 23 August 2010)

15.09.2010 Lingui Developments Berhad

The Malaysian forest company Lingui Developments Berhad carries out forest operations in tropical rainforest. Lingui is excluded on the grounds of illegal logging and severe environmental damage in Sarawak (Malaysia). Lingui is a subsidiary of Samling Global Ltd. The exclusion of Samling was partly based on violations in Lingui's operations.

(Published 16 February 2011)

Recommendations to exclude companies that violate fundamental ethical norms

15.05.2009 Elbit Systems Ltd.

The Israeli company Elbit Systems Ltd. is excluded because its supplies surveillance systems to the separation barrier on the West Bank.

(Published 3 September 2009)



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