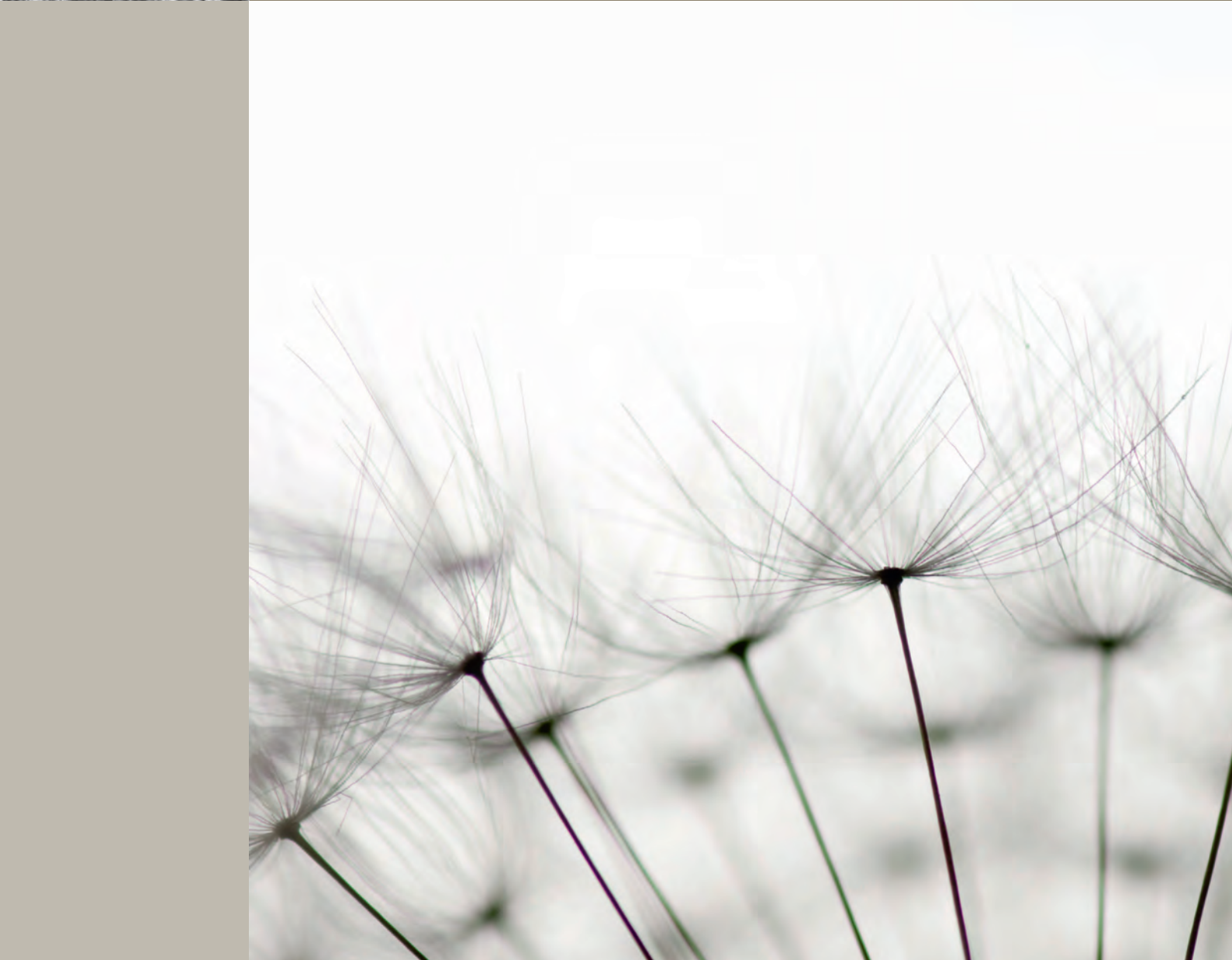




Annual Report 2012

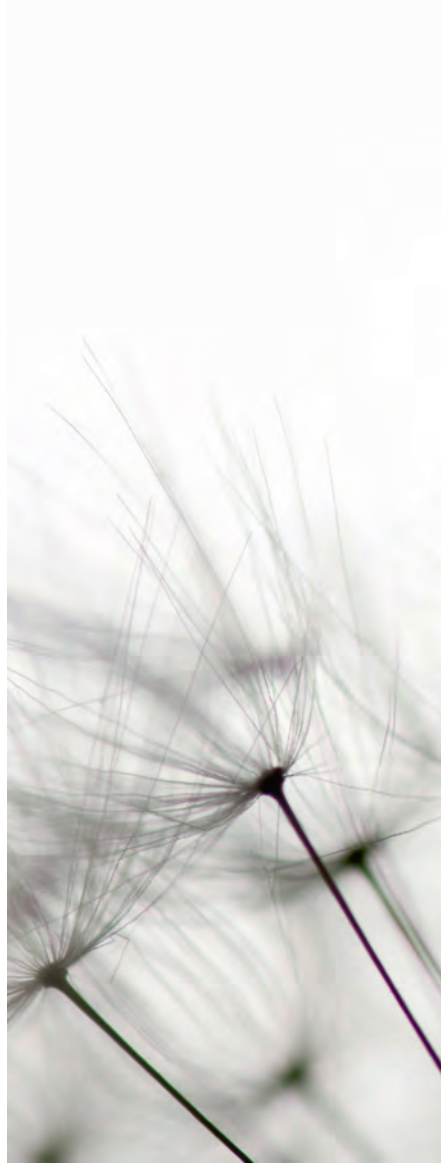
Council on Ethics for the Government Pension Fund Global



Annual Report 2012 | Council on Ethics
for the Government Pension Fund Global

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Introduction

The work of the Council on Ethics

The Council on Ethics for the Government Pension Fund Global (GPF Global) is an independent council that makes recommendations to the Ministry of Finance to exclude companies from the Fund or to place companies under observation. The Council makes its recommendation after carrying out a concrete assessment of a company's activities against the guidelines for the Fund laid down by the Ministry of Finance. It is the Ministry that decides whether to exclude a company or place it under observation. The Council on Ethics has five members and a secretariat with a staff of eight.

Published recommendations

Since the last annual report, the Ministry of Finance has published decisions concerning seven companies based on recommendations from the Council on Ethics. In these recommendations, the Council on Ethics recommended that three companies be excluded and that the exclusion of three companies be reversed. The Council on Ethics also recommended discontinuing the observation of one company. The Ministry of Finance followed all of the Council on Ethics' recommendations.

Company	Recommendation date	Made public	Decision	Criterion
Shikun & Binui Ltd.	21 Dec. 2011	15 June 2012	Excluded	Serious violations of individuals' rights in situations of war or conflict
Siemens AG	15 June 2012	11 Jan. 2013	Observation discontinued	Gross corruption
The Babcock & Wilcox Co.	31 Aug. 2012	11 Jan. 2013	Excluded	Production of nuclear weapons
Jacobs Engineering Group Inc.	31 Aug. 2012	11 Jan. 2013	Excluded	Production of nuclear weapons
BAE Systems plc.	31 Aug. 2012	11 Jan. 2013	Exclusion reversed	Production of nuclear weapons
Finmeccanica Sp.A	31 Aug. 2012	11 Jan. 2013	Exclusion reversed	Production of nuclear weapons
FMC Corp.	31 Aug. 2012	11 Jan. 2013	Exclusion reversed	Other particularly serious violations of fundamental ethical norms

The first recommendation concerns the Israeli contractor Shikun & Binui Ltd., which is building a settlement in occupied East Jerusalem, that is, east of the Armistice Demarcation Line agreed to in 1948. In its assessment, the Council on Ethics attached importance to statements by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which establish that the building of Israeli settlements in East Jerusalem is contrary to the Fourth Geneva Convention.

In its second recommendation, the Council on Ethics recommended that Siemens be removed from the Ministry of Finance's observation list because the Council found it

unlikely that there was a higher risk of corruption in Siemens than in other comparable companies. This was based on an assessment of the company's compliance system, the company's clear message that corruption will not be tolerated, and the way in which the company has dealt with recent cases of corruption.

In the third recommendation, the US company The Babcock & Wilcox Co. and the British company Jacobs Engineering Group Inc. were recommended for exclusion on the grounds that they produce central components of nuclear weapons.

Two recommendations concern the reversal of exclusion rulings. In 2005, the British company BAE Systems plc. and the Italian company Finmeccanica Sp.A. were excluded because, through a joint venture, they had a controlling interest in the company MBDA, which produced the nuclear missile ASMP-A for the French Ministry of Defence. Both companies have stated that the production of ASMP-A has been concluded and that they are no longer involved in the production of nuclear weapons. The Council on Ethics therefore recommended that the exclusion be reversed.

The US company FMC Corp. was excluded in 2011 because it purchased phosphates from Western Sahara from the Moroccan stateowned company OCP. Western Sahara is a non-self-governing territory without a recognised administering power. In practice Morocco controls most of the area. FMC has confirmed in a letter to the Council on Ethics that the company no longer purchases phosphates from OCP, and the Council on Ethics therefore recommended that the exclusion be reversed.

This annual report also contains a letter from the Council on Ethics to the Ministry of Finance about the French company Alstom SA, which the Ministry put on the observation list in 2011 for a period of up to four years. In its recommendation one year earlier, the Council on Ethics had recommended excluding the company on grounds of the future risk of gross corruption. The Council on Ethics is required to report each year on developments in the company for as long as the company is on this list. The Council's observations in 2012 indicate that the company has made some improvements to its compliance system, but that it is currently under investigation for corruption in more countries than when the recommendation was made.

For many years the Council on Ethics has followed companies that have operations in Myanmar. In a letter to the Ministry of Finance in 2007, the Council on Ethics announced that it would recommend excluding companies that enter into agreements on, for example, the construction of oil pipelines in Myanmar, because of the widespread violations of human rights linked to major infrastructure projects. Normally the Council on Ethics assesses on-going norm violations against the guidelines for the Fund, but in this case, the Council on Ethics held that the risk of contributing to human rights violations was unacceptable already at the outset. This meant that the Council on Ethics would recommend excluding companies from the date a contract is signed and not wait for human rights violations to occur. On 22 February 2012, the Ministry of Finance enquired about the Council on Ethics' general assessment of companies operating in Myanmar in light of the changed political circumstances in that country. The Council on Ethics' answer is included in this annual report. The Council stated that hereafter it will evaluate corporate activities in Myanmar in the same manner as it evaluates activities elsewhere, and will

pay particular attention to companies' possible contribution to human rights violations in relation to large infrastructure projects.

Overview of activities in 2012

The Council on Ethics works to identify companies that ought to be excluded from the Fund or put under observation, regardless of their size, the Fund's ownership interests or the companies' country of domicile. Companies are identified through systematic reviews of problem areas, reports from interest groups and media monitoring.

In 2010 the Council on Ethics decided to review the GPF's investments in companies involved in nine types of activity that can cause serious environmental problems.¹ The work on these sector studies is described on page 17 of this annual report. The Council's observations concerning damage to protected areas are described on page 20.

Since 2006, the Council on Ethics has monitored the production of hybrid cottonseed in India because of the widespread use of child labour in this sector. This is discussed in more detail on page 26. The Council on Ethics is currently studying the use of forced labour in various types of activities with a view to identifying companies with an especially high risk of forced labour. Among other things, the Council is assessing forced labour in connection with mineral extraction in Eritrea.

The Council has also mapped oil companies that extract oil in Equatorial Guinea. The Council is assessing whether the production of oil can be considered to constitute a violation of fundamental ethical norms because the extraction of the country's main natural resources appears only to benefit the governing elite, whereas living conditions for the majority of the population are among the poorest in the world.

The Council on Ethics assesses new companies that engage in types of activity that have previously resulted in exclusion. In these cases, the Council on Ethics often receives information from interest groups. Examples include the building of settlements in the West Bank and the extraction of mineral resources in Western Sahara.

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, and the Council receives monthly reports about companies that may be linked to human rights violations, corruption, severe environmental damage or other factors encompassed by the ethical guidelines. In 2012 the Council concluded its assessment of a number of mining and metal companies that were identified through its media monitoring. The Council also uses an external consultancy to monitor companies that may have operations in violation of the criteria for weapons and tobacco.

Table 1 below summarises the Council on Ethics' assessments of companies in 2012 compared with the figures for 2011 and 2010.

Table 1. Overview of the Council on Ethics' activities

Year	2010	2011	2012
Number of companies in GPFPG at year-end (rounded)	8,400	8,000	7,500
Total number of excluded companies at year-end	51	55	56
Number of companies on the official observation list at year-end	1	2	2
Number of companies excluded during the year	20	5	1
Number of companies reinstated during the year	1	1	0
Number of recommendations issued	8	4	11
Number of companies the Council has contacted	26	31	64
Number of companies the Council has had meetings with	6	9	9
Assessments			
New cases that the Council has assessed (rounded)	50	140	60
Total number of companies assessed during the year (rounded)	110	230	230
Total number of company assessments concluded during the year (rounded)	20	50	110
Meetings			
Number of Council meetings	11	10	10
Number of people in the secretariat	8	8	8
Budget	NOK 11.3 mill.	NOK 11.6 mill.	NOK 12.0 mill.

In the past, the Council on Ethics has published the number of companies excluded at the time the annual report was published. This year, the Council has changed this, so that the table reflects the situation at year-end. The change has also been applied to the data for 2010 and 2011. This means that the companies in recommendations that were made public in 2013 and are presented in this annual report are not included in this table.²

In 2012 the Council on Ethics assessed fewer new cases than in 2011. This is primarily because several sector studies were in the start-up phase in 2011. These sector studies may initially identify quite a large number of companies, whereas this number is reduced as the study progresses. This is reflected in the fact that a large number of cases were concluded in 2012.

Most of the exclusions (36 of 56 companies excluded) were due to the companies' involvement in the manufacture of specific types of weapons or tobacco.

The Council on Ethics has contacted 64 companies in 2012 and held meetings with nine of these. The Council contacts companies once a preliminary assessment indicates that they may require more in-depth assessment. Most meetings with companies take place after the Council on Ethics has sent them a draft recommendation for comment. It is generally the companies themselves that request a meeting with the Council. Only a small proportion of the companies that are assessed are recommended for exclusion.

The Council on Ethics no longer reports the number of news items from its portfolio monitoring, nor how many companies are subject to either a preliminary assessment or a more thorough assessment as a result of a news item. The Council on Ethics' working methods have changed with time, and these indicators no longer provide a useful picture of the Council's work. Media monitoring now plays a less significant role, while sector studies and other initiatives have become more important.

Work in 2013

With regard to the environment and human rights, the Council on Ethics will continue to give priority to work on companies that have previously been identified through sector studies. In addition, the Council may initiate sector studies that have been announced but not yet started.

The Council on Ethics will continue to monitor companies that operate in areas where there is a heightened risk of the company contributing to conflicts or being complicit in human rights violations. Examples of such areas include mineral extraction in the Democratic Republic of Congo, investments in infrastructure in Myanmar, the building of settlements in the West Bank, and the extraction of mineral resources in Western Sahara and Eritrea.

In its work on corruption, the Council on Ethics will look more systematically at companies with operations in countries and sectors which according to international rankings have a particularly high risk of corruption.

Norges Bank Investment Management (NBIM) and the Council on Ethics meet on a quarterly basis to exchange information, *inter alia* concerning which companies the institutions are planning to contact. In the past, these two institutions have largely looked at different companies and issues. In November 2012, however, NBIM included tropical deforestation in its expectation document on climate change. The Council on Ethics has assessed the consequences of logging and converting tropical forests into plantations over several years, and has submitted various recommendations to exclude companies that contribute to severe environmental damage through deforestation. The fact that the Council on Ethics and Norges Bank now both consider the same issues may yield interesting experiences concerning the interaction between the instruments intended to ensure responsible investment.

There has been a substantial international development concerning the way in which corporate social responsibility and the role of the investors to promote responsible business operations are viewed in the almost ten years since the ethical guidelines were adopted. Among other things, new international mechanisms have been developed for both investors and companies. For the Council on Ethics, the most prominent example is the United Nations' guiding principles for business and human rights and the implementation of these principles in the OECD guidelines for multinational enterprises.

In 2013 the Ministry of Finance has asked a Strategy Council to write a report on the general strategy for the Fund's responsible investment. The report will be presented by the end of October 2013.³

A review of the overall strategy may also provide an opportunity to take a closer look at the organisation of responsibilities. The Council on Ethics believes that the fact that the Council on Ethics is independent of both the Ministry of Finance and Norges Bank has been important to build confidence in the Council's work. The publication of recommendations has given the public an insight into this work and provided an opportunity to assess how well the ethical guidelines address ethical considerations. It is the Council on Ethics' understanding that making well-founded recommendations public also helps turn the international spotlight on ethical aspects of companies' business operations. Too many

stakeholders in a decision-making process can, however, make it more cumbersome and time-consuming. It is important that the Fund's processes for exclusion do not take too long; achieving collaboration between institutions with their own purpose and mandate, also when they operate under a general strategy, can be challenging. The Council on Ethics therefore welcomes the process that has been initiated to consider possible improvements to the system.

Ola Mestad
Chair

(sign.)

Dag Olav Hessen

(sign.)

Ylva Lindberg

(sign.)

Marianne Olsson

(sign.)

Bente Rathe

(sign.)

Notes

- 1 Recommendations are made public once the Ministry of Finance has reached a decision and any shares are sold. It may take many months before an issued recommendation is made public.
- 2 See the Council on Ethics' Annual Report 2010 p. 21–22.
- 3 The Ministry of Finance's press release: <http://www.regjeringen.no/nb/dep/fin/aktuelt/nyheter/2013/strategirad-skal-se-pa-ansvarlig-investe.html?id=712024>.

Members of the Council and of the Secretariat

The Council on Ethics

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

Bente Rathe, Master in Business Administration.

Marianne Olsson, Attorney and partner at the lawfirm Mageli ANS.

(Replaced Gro Nysuen from 1 January 2013)

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

Ylva Lindberg, BA, Managing director of SIGLA.



The Secretariat

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

The Secretariat has the following employees:

Eli Lund, Executive Head of Secretariat, (Economist)

Pia Rudolfsson Goyer (Cand. jur., LLM)

Svein Erik Hårklau (Cand. agric.)

Hilde Jervan (Cand. agric.)

Aslak Skancke (Graduate Engineer)

Irmela van der Bijl Mysen (Cand. jur.)

Pablo Valverde (Master in War Studies)

Marte Johannesson, Secretary (BA)

Overview of the recommendations included in this Annual report

- 21.12.2011** **Recommendation to exclude the company Shikun & Binui Ltd.**
The Israeli company Shikun & Binui Ltd. was recommended for exclusion because of its activities in the building of Israeli settlements in East Jerusalem. The Council bases its opinion on statements made by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which state that the building of Israeli settlements on the West Bank and in East Jerusalem is contrary to the IV Geneva Convention. The purpose of the IV Geneva Convention is to protect civilians in situations of war and occupation. The Council considers that an investment by the Government Pension Fund Global (GPF) in the company would be contrary to the Fund's Ethical Guidelines because the company's activities entail an unacceptable risk that it will contribute to serious violations of the rights of individuals in situations of war or conflict.
(Published 15 June 2012)
- 15.06.2012** **Recommendation to end the observation of Siemens AG**
The German company Siemens AG was placed under observation in 2009 due to the risk of gross corruption. In 2012 the Council on Ethics found that there was no longer a higher risk of corruption in Siemens than in other comparable companies and recommended ending the observation of the company. This was based on an assessment of the company's compliance system, the company's clear message that corruption would not be tolerated, and the way recent cases of corruption had been dealt with in the company.
(Published 11 January 2012)
- 31.08.2012** **Recommendation to exclude the companies The Babcock & Wilcox Co. and Jacobs Engineering Group Inc.**
The American companies The Babcock & Wilcox Co. and Jacobs Engineering Group Inc. were recommended for exclusion because of their involvement in the production of nuclear weapons.
(Published 11 January 2013)

31.08.2012 Recommendation to revoke the exclusion of the companies BAE Systems plc. and Finmeccanica Sp.A

The Council recommended that the exclusion of the British company BAE Systems plc. and the Italian company Finmeccanica Sp.A be revoked. The companies were excluded from the GPF's investment universe in 2005 because of their controlling interests in the company MBDA which produced the ASMP-A nuclear missile for the French military. As the production of ASMP-A has ceased, there are no longer grounds for the exclusion.

(Published 11 January 2013)

31.08.2012 Recommendation to revoke the exclusion of FMC Corp.

The Council has recommended revoking the exclusion of the company FMC Corp. The Council submitted its recommendation to exclude the company on 15 November 2010 because of its purchase of phosphate from Western Sahara. This purchase has ceased and there are no longer grounds for the exclusion.

(Published 11 January 2013)

Companies the Ministry of Finance has excluded from the Government Pension Fund Global at year-end 2012

Cluster Weapons

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

Nuclear Weapons

- 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.

Anti -Personnel 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., including its subsidiary
 - Philip Morris Cr. AS
- Reynolds American Inc.
- Souza Cruz SA
- Swedish Match AB
- Universal Corp. VA
- Vector Group Ltd.
- Shanghai Industrial Holdings Ltd.
- Grupo Carso SAB de CV

Human Rights

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

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

- Africa Israel Investments Ltd., including its subsidiary
 - Danya Cebud Ltd.
- Shikun & Binui Ltd.

Environmental Damage

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

Other particularly serious violations of fundamental ethical norms

- Elbit Systems Ltd.
- FMC Corp.
- Potash Corp. of Saskatchewan

Companies under formal observation at year-end 2012

Gross corruption

- Siemens AG
- Alstom SA

Environmental studies

In the 2010 Annual Report, the Council informed that it would assess the following sectors and types of activities where the risk of severe environmental damage is considered particularly high:

- some forms of oil production that cause major local pollution problems
- certain types of mining activities where waste disposal entails particular risks
- illegal logging and other particularly damaging forms of logging
- illegal fishing and other particularly damaging fishing activities
- some forms of particularly polluting coal-fired power production
- particularly polluting operations for smelting and processing minerals and metals
- certain kinds of chemical industries with emissions of pollutants that are particularly harmful to the environment and to public health
- particularly damaging dam projects
- activities with severe impacts on particularly valuable conservation areas (such as World Heritage Sites)

In the 2011 Annual Report, the Council presented the status of the different studies as of December 2011. The following sections provide an update of our work as of December 2012.¹

The purpose of these studies is both to identify issues that constitute a particular environmental risk, and to identify companies in the Government Pension Fund Global (GPF) with activities in these sectors. Some studies result in the Council on Ethics submitting recommendations on exclusion or observation, while for other studies it is not yet known whether the Council will submit recommendations. The threshold for exclusion is high; only a small proportion of the Council's work results in recommendations and is made public. During 2012, the Council carried out further research in a number of areas, including: certain forms of oil production that cause major local pollution problems; mining activities where waste disposal involves particular risks; illegal logging and other particularly damaging forms of logging; illegal fishing and other particularly damaging fishing activities; particularly damaging dam projects; and activities with severe impacts on particularly valuable conservation areas. These assessments will be continued in 2013. In addition to these studies, a number of individual companies are under assessment for environmental issues.

Oil production and pollution

In 2012, the Council continued its assessments of oil pollution in Nigeria's Niger Delta, where the Council is evaluating, and is in a dialogue with, a limited number of companies that are involved in onshore oil production. Over a number of years, onshore oil production has resulted in frequent oil spills and major impacts on the environment and local communities in numerous valuable and vulnerable areas.

The Council also carried out initial assessments of the more than 30 companies in the

GPFG that are involved in projects for oil production based on oil sands. Through a step-by-step process that considered a wide range of issues (including land take, pollution of air, soil and water) the Council has prioritised a small group of operations for further assessment at this stage.

Mining activities where waste disposal involves particular risks

The handling of waste such as tailings and waste rock is a very important environmental challenge for mining activities. The Council provided information about its work in this area in the Annual Report for 2011 with an emphasis on riverine disposal, sub-marine disposal and uranium mines.² The Council on Ethics is currently not aware of any companies in the GPFG's portfolio that practice large-scale riverine disposal. The Council is still assessing companies that practice large-scale sub-marine disposal of waste rock or tailings. The assessments and dialogue with companies include impacts on marine ecosystems (for example coral reefs, fish, bottom dwelling fauna and water quality).

The Council on Ethics' considerations of several uranium mines continued in 2012. There is a striking unwillingness on the part of several companies in this particular industry to share information, compared to what the Council experiences in other parts of the mining industry. The absence of information is itself a risk factor. Many environmental issues are shared by various types of mines, but the management of radioactivity involves some unique and potentially serious risks. This requires additional measures to prevent radioactive material from coming into contact with the environment and local communities. Some of these issues are described in the 2011 Annual Report.³ In 2013, the Council will continue work on 5-10 companies under the issues described above.

Illegal logging and other particularly damaging forms of logging

In 2011, the Council carried out studies which have identified companies in the Fund that are involved in logging or the conversion of tropical forests to plantations in Southeast Asia and Africa. In 2012 the Council's work has primarily focused on obtaining detailed information about the individual companies' operations. The Council seeks to clarify to what extent the companies actually are involved in operations that may cause severe damage to tropical forests, the scale of these operations and their associated environmental impacts, such as impacts on biodiversity. This work will continue in 2013. Many companies do not wish to provide information to the Council, so the process of assessing their operations requires time and resources. In 2012 NBIM included the deforestation of tropical forests in its Investor Expectations for Climate Change Risk Management. In 2012, the GPFG has divested from a number of companies involved in the development of oil-palm plantations in Indonesia and Malaysia. The number of companies in this industry has been reduced from more than 40 in 2011, to around 15 by year-end 2012.

Illegal fishing and other particularly damaging fishery activities

In 2012, the Council has carried out further research on companies that may be involved in particularly damaging fishery activities. In this context fishery activities are defined

as encompassing the whole value chain, from fishing, to the transportation, purchasing, selling and processing of fish. More concretely it includes companies that own fishing vessels or vessels for the transshipment and transport of fish from fishing grounds to ports, port companies and buyers of fish such as fish-processing companies. The Council has so far assessed to what extent fishing companies in the Fund are involved in illegal, unreported and unregulated fishing (IUU-fishing), but also other forms of environmentally damaging fishing, such as the catch of endangered fish stocks, will be considered.

Particularly damaging dam projects

The Council on Ethics continued assessments of a range of dam projects in 2012 and has identified a limited number of companies for further consideration. The Council will focus on environmental impacts on upstream and downstream ecosystems, including forests, freshwater and fish stocks, wetlands, protected areas and threatened species. Impacts on people living in these areas will also be considered, for instance how involuntary resettlement is implemented and to what extent people's livelihoods are preserved.

Most large dam projects are hydropower dams and the strategic importance of the energy sector means that the government is an important actor in development companies in several countries. This also results in some challenges for the Council on Ethics' dialogue with companies on these projects. The work on a limited number of companies continues in 2013.

Impacts on particularly valuable conservation areas

In 2011, the Council continued assessments of more than 20 companies that were alleged to be responsible for, or contribute to, damages to UN World Heritage Sites for natural heritage. For the majority of these companies, the assessments were closed in 2012 without uncovering sufficiently serious issues; a few companies will be considered further in 2013. Parts of the Council's work are described in more detail on pages 20–26 in this Annual Report.

Notes

- 1 See the Council's 2011 Annual Report, pp. 17–19.
- 2 See Council on Ethics' Annual Report 2011, pp. 19–23.
- 3 See Council on Ethics' Annual Report 2011, pp. 21–22.

Damage to protected areas

In the 2010 Annual Report, the Council on Ethics informed that it would review a selection of sectors and types of operations where the risk of severe environmental damage was considered particularly high. One of the selected areas was activities that cause damage to particularly valuable conservation areas. The Council's work in 2011 and 2012 focussed on UNESCO's World Heritage Sites for natural heritage; more than 20 companies were identified for further assessment. Some of the Council's experiences from the work on World Heritage Sites are summarised below.

Protected areas and important environmental values

In many instances protected areas conserve the world's most important nature and environmental values. The establishment of a protected area represents a choice by society that excludes some forms of resource exploitation in an area in order to protect these values deemed important for the society. As any societal allocation of resources, such a choice has costs and benefits for various interests. This results in conflicts and challenges that also investors must consider.

There are more than 130,000 protected areas globally. The large majority of protected areas are located on land territories. Despite a major increase in the total area of marine protected areas during the last decade, there are still relatively few marine protected areas. Protected areas are established with different objectives, such as protection of nature and environmental values (biodiversity, ecosystem services such as water supply, recreational value, etc.) or the protection of cultural heritage. Some areas have a stronger protection regime where society has prioritised conservation over exploitation and therefore introduced extensive restrictions on the use of an area. In other protected areas certain forms of use are accepted because such uses do not contradict the conservation objective or because sustainable use is explicitly part of the conservation objective (such as in protected landscapes shaped by a traditional resource use). The majority of the protected areas in the world are categorised in a system composed of six categories depending on conservation and management objectives, ranging from strict protection (category I) to gradually less strict protection with increasing elements of multiple use (category VI).

A few protected areas are formally recognized at the international level as being the highest priority conservation sites and therefore benefit from an international status. For example, sites designated under UNESCO's World Heritage Convention are recognised for their outstanding universal value.¹

The Council on Ethics' work so far

The Council on Ethics assesses negative impacts caused by listed companies on particularly important protected areas under the criterion "severe environmental damage" in the ethical guidelines for the Norwegian Government Pension Fund Global (GPF Global). Due to the large number of protected areas and variations in the objectives of their establishment, the Council chose to start by assessing a small and clearly defined group of globally

particularly valuable protected areas, namely UNESCO's World Heritage Sites for natural heritage. As per September 2012, there are 188 World Heritage Sites recognised for their natural heritage values and 29 mixed sites recognised for both their natural and cultural heritage values. These 217 sites cover a total area of 2.7 million km² in 91 countries, corresponding to 0.5 percent of the Earth's surface area. They cover more than 10 percent of the global protected area estate. The areas represent some of the most exceptional nature and environmental values on the planet, supply ecosystem services that are extremely valuable for millions of people and are protected both through national legislation and international agreements like the World Heritage Convention. Among the World Heritage Sites we find the Serengeti National Park in Tanzania, the Great Barrier Reef in Australia, the Galapagos Islands in Ecuador and Yellowstone National Park in USA.

The Council has considered projects and operations where listed companies in the GPF's portfolio are involved. Thus far, the Council has identified more than 20 companies allegedly causing damages to a total of 15 World Heritage Sites. The Council has contacted eight of these companies, most of which have activities outside the World Heritage Sites. A larger number of cases have been concluded without any contact with the companies. The Council has mainly assessed activities that require substantial areas or extensive infrastructure such as roads, pipelines or transmission lines. The Council has mainly evaluated whether there is an unacceptable risk that the companies contribute to or are responsible for severe damage to the outstanding universal value of the World Heritage Sites.

The Council's considerations have covered projects inside World Heritage Sites and projects outside such sites where the projects may violate the conservation objective or damage the outstanding universal value within the site substantially. The Council has also considered indirect impacts by the companies' activities, for instance damages to the sites due to an influx of human population following the companies' operation, as well as what the companies do to prevent and mitigate such damages. In addition to the companies, the Council has also had contact with various experts and organisations, including UNESCO's World Heritage Centre.

Some lessons

There is increasing pressure on protected areas in a resource-constrained world. Parts of the pressure come from listed companies that the GPF and others have invested in. Nature and environmental values in protected areas are becoming increasingly important as such values are gradually destroyed or reduced outside protected areas where the protection is weaker. The following lessons can be summarised based on the work of the Council on Ethics with World Heritage Sites:

- World Heritage is a category of internationally particularly-important protected areas that investors can relate to specifically.

The Council on Ethics has found that World Heritage Sites for natural heritage are a group of internationally particularly-important protected areas that are relatively easy to relate to in specific ways, often easier than for other environmental issues. They consist of few sites where a large amount of information and knowledge are available and they are subject to clear requirements on their protection and management. The areas are protected through national legislation and an international convention. Financing activities which damage such areas will usually violate various international guidelines, for instance of the World Bank Group/IFC and the Equator Principles. Avoiding investments in activities that damage World Heritage Sites is a relatively simple but important measure to integrate environmental and biodiversity concerns in a responsible investment practice.

- Very few listed companies have, or plan to have, activities inside World Heritage Sites.

The research conducted by the Council on Ethics has shown that there are very few listed companies that have, or plan to have, activities inside World Heritage Sites. With some very few exceptions, World Heritage Sites appear to be highly respected among listed companies.

An important aspect of the World Heritage Sites is that the establishment of such a site is based on nomination by the state party where the area is located. There are independent scientific assessments of the conservation values to review whether a nominated area qualifies compared to the criteria under the World Heritage Convention. The Convention requires that the proposing state party consults with all relevant stakeholders during the nomination process, so different interested parties should have the opportunity to raise possible conflicts as well as suggest changes in the delineation of a site or request that a site not be inscribed at all. Conflicts may therefore be clarified prior to an area potentially being inscribed on the list of World Heritage Sites by UNESCO with the final delineation. This process also clarifies the State's obligations, which activities that may be acceptable in the site and frameworks for its management. Once inscribed, the State must participate in a periodic reporting process with UNESCO. The sites are subject to monitoring under the Convention and this information is publicly available. The thorough process prior to the inscription of sites on the list of World Heritage and the international monitoring they benefit from once inscribed contributed to the Council on Ethics prioritising this group of sites at an early stage of the work on damage to protected areas.

- Many companies with projects near World Heritage Sites implement additional measures to avoid damages to the conservation values.

Nearly all of the companies where there are allegations of damage to World Heritage Sites have their projects outside the site, but it is alleged that these cause damages to the values for which the site was inscribed. Many companies implement additional measures to avoid damage to the conservation values and to a varying degree can document that these measures have the desired effects. The Council on Ethics' research has shown that for several of the companies identified so far, severe impacts are not documented or sufficiently substantiated

to justify exclusion from the GPFG considering the high threshold provided by the ethical guidelines. In some cases, companies have withdrawn from projects or avoided to use parts of their concession areas that entail particular risks of damaging the outstanding universal value.

It is worth noting that UNESCO maintains a list of World Heritage Sites that are particularly exposed or threatened and where the values are in danger of being severely damaged.² Currently, there are 18 natural heritage sites on this “danger” list. Inscription of sites on this list is an encouragement to the international community to cooperate in efforts to protect these sites. Companies’ potential negative impacts and additional pressure on this group of particularly vulnerable sites is very unfortunate and should receive particular attention by investors.

- Buffer-zone management around World Heritage Sites is variable.

Damage to the outstanding universal value of World Heritage Sites is highly undesirable, irrespective of whether the causes lie inside or outside the site. For instance, serious pollution emitted near a site can result in severe damage inside the protected area. Damage can also arise through the blocking of migration routes for species that move between a protected area and other areas that are very important or essential for the species to complete its life cycle and survive. Sound management of buffer zones³ around World Heritage Sites is therefore often important for conservation of their outstanding universal value. Awareness among authorities and companies in terms of buffer zones varies strongly, and consequently so do the establishment and management of such zones. Some countries have defined buffer zones with separate management regimes that seek to protect the outstanding universal value inside the World Heritage Site. Some sites have no buffer zone at all and potentially damaging activities take place right up to the boundary of the site. This may increase the risk of damages. While some companies only marginally appear to contribute to a sound management of buffer zones, other companies identify clear strategies and implement measures even where buffer zones are not established.

- There are major differences between different industries’ positions on World Heritage Sites.

Various industries and companies have adopted different positions when it comes to particularly-important protected areas such as World Heritage Sites. Many of the world’s largest mining and metals companies have committed themselves through the International Council on Mining and Metals (ICMM) to neither explore nor mine in World Heritage properties.⁴ The companies have also committed to take all possible steps to ensure that activities outside sites are not incompatible with the outstanding universal value. ICMM has also acknowledged that other categories of protected areas can become “no-go” areas.⁵ There are also mining companies that are not members of ICMM that have withdrawn from projects that could damage World Heritage Sites. The intergovernmental World Heritage Committee considers the ICMM commitment as “industry best practice” when dealing with extractive industry projects and World Heritage.

Other groups of companies in other industries have been unwilling to commit to avoid activities that can damage World Heritage Sites. For example, the oil industry has been unwilling to commit to avoid oil and gas exploration and production in World Heritage Sites. Still, a few petroleum companies have committed themselves not to explore or produce in World Heritage Sites as a general policy or withdrawn from or modified projects to avoid damage to individual sites.

- There are major differences between countries' follow-up of international obligations and national legislation.

The Council on Ethics' research has shown that there are major differences in how different countries follow-up their international obligations under the World Heritage Convention and their relevant national legislation. In some cases it appears that sector interests' desire to develop projects in World Heritage Sites affects the authorities' follow-up of the Convention. At times there is inadequate coordination between relevant ministries. This is particularly the case for projects that are developed after a site was inscribed on the World Heritage List and hence were not considered during the nomination and evaluation of the site. There is not always consistency and harmonisation of legislation and frameworks between sectors. This can be observed both in terms of formal requirements and the follow-up and enforcement of these on the part of authorities. For instance, there are cases where environmental authorities and mineral or petroleum authorities neither share information, competence nor perspectives on protected areas and development interests. Encouragements from UNESCO and the international community on improved follow-up of the Convention in order to prevent severe damage on the outstanding universal value appear to have varying effects on such conflicts. UNESCO can remove sites from the list of World Heritage when the outstanding universal value is lost, something that has only happened once for natural heritage sites.⁶

- There are varying degrees of monitoring of damages.

Monitoring of relevant environmental conditions to confirm the absence or presence of damage to World Heritage Sites is important, but such monitoring varies greatly both for companies and authorities. Such information is rarely made public or not at all, and often there is not even publicly available information on whether such monitoring exists. This undermines the credibility of companies' or authorities' claims that activities do not damage World Heritage Sites. Monitoring is also important to assess the effects of measures that should prevent or reduce damage to World Heritage Sites. In addition, it is important that methods for data collection and analysis are directed purposely at identifying potential impacts and that information is made available in a way that ensures adequate transparency and confidence in the data, conclusions and measures.

Further work

The Council on Ethics assesses and has dialogues with a limited number of companies on damage to World Heritage Sites. The Council monitors some projects which may damage World Heritage Sites in the future, but where it is not clear which companies will be involved or whether activities will be initiated. The Council will also closely follow possible new cases where companies are responsible for or contribute to severe damage to World Heritage Sites, also where the company's activities take place outside such sites. The Council also considers initiating reviews of the potential damages of companies to other internationally particularly-important protected areas with emphasis on a small number of protected areas in IUCN categories I–IV.

Notes

- 1 Based on the World Heritage Convention, 1972, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) can inscribe areas on the list of World Heritage if these areas qualify according to a range of criteria (Available at: <http://whc.unesco.org/en/nominations/>). World Heritage Sites can be established for natural or cultural heritage, alternatively be mixed sites for natural and cultural heritage. These are areas that are of “outstanding universal value”.
- 2 UNESCO's List of World Heritage in Danger (Available at: <http://whc.unesco.org/en/danger/>).
- 3 Buffer zones around World Heritage Sites are at times defined and delineated areas, for instance a protected area with another status. In other instances there are no defined buffer zones and the concept of buffer zone is used for a vaguely defined area in the vicinity of the World Heritage Site. More recently, there are introduced requirements for buffer zones for new sites through the Convention's Operational Guidelines.
- 4 ICMM commitment no. 2 (see: ICCM 2003. “Mining and protected areas - position statement”. Available at: <http://www.icmm.com/document/43>).
- 5 ICMM commitment no. 3 (see: ICCM 2003. “Mining and protected areas – position statement”).
- 6 In 2007 UNESCO decided to remove the Arabian Oryx Sanctuary in Oman from the list of World Heritage due to the state party's unilateral reduction in the size of the Sanctuary and plans to proceed with hydrocarbon prospecting (see: UNESCO 2007. “Oman's Arabian Oryx Sanctuary: first site ever to be deleted from UNESCO's World Heritage List”. Available at <http://whc.unesco.org/en/news/362>).

Child labour in the seed industry

According to the Fund's ethical guidelines, investments in companies that contribute to, or themselves are responsible for, the worst forms of child labour, should be avoided.

Shortly after its establishment, the Council identified areas where companies in the Fund's portfolio could be connected to child labour. Based on this, the Council has over a period of several years mapped the occurrence of child labour in hybrid seed production in India.

The large, multinational companies involved in the industry have come under scrutiny from civil society and investors concerning the use of child labour. Not least the GPF's manager, NBIM, has raised this issue with several of the major companies. NBIM's engagement began after the Council on Ethics recommended the exclusion of the company Monsanto Co. from the Fund in 2006 because of the use of child labour in the company's seed production. The Council's assessments from the 2008-2009 season showed a significant reduction in the use of child labour in production among large, multi-national companies.

Despite the increased attention given to the problem in recent years, there is still widespread use of child labour in the Indian seed industry. A survey conducted in 2009-2010 estimated that some 380,000 children, of whom roughly 170,000 are under the age of 14 years, work in the production of hybrid cottonseed in India. In addition, children also work in the production of other types of hybrid seeds.

The cultivation of hybrid seed is extremely labour-intensive when plants have to be pollinated manually, as is the case in hybrid cottonseed production. Working conditions are generally poor with long working days, physically demanding work and continuous exposure to pesticides. In a number of cases, children work under slavery-like conditions as a result of their parents' debts.

The Council on Ethics first began working on this issue in 2005. Since then there have been developments in several areas that to varying degrees have affected both the scope of the use of child labour, and various aspects linked to production in general.

The Indian government, and especially the National Commission for Protection of Children's Rights (NCPR), has implemented a number of measures to reduce the scope of the problem. In 2006, UNICEF initiated a programme to reduce the use of child labour in the seed industry.

Since 2007, the area under hybrid-cottonseed cultivation in India has increased by over 60 per cent, from about 24,000 to 40,000 hectares. The area under cultivation by the companies in which the GPF is invested constitutes roughly one-third of this.

Much of this expansion has been in areas where production of this kind has not taken place in the past, often in remote areas where there is a plentiful supply of lowcost labour and where limited attention is given to the issue child labour. In the states of Gujarat and Tamil Nadu, the entire expansion has taken place in less developed areas of this kind.

There has also been a shift from production on large plantations to smaller, family-run farms, due to increased production costs, primarily wages. The high supply in the market has meant that the price of finished products has not risen in line with increases in costs.

This has made it difficult for plantation owners to maintain production, and production has shifted in the direction of smaller, family-run farms.

At the same time, there has been an increase in the Fund's investments in smaller, national companies involved in hybrid seed production. This may typically be companies that have not participated in programs to reduce the use of child labour. The Council has initiated further surveys for the 2012-2013 season in order to map the occurrence of child labour in these companies. The Council will continue to follow up on this work. If widespread and systematic use of child labour is found in these companies' production of seeds, the Council may recommend their exclusion from the Fund.



**The
recommendations
and letters on
exclusion and
observation**

To the Ministry of Finance

Recommendation 21 December 2011

(Published 15 June 2012)

Recommendation on the exclusion of Shikun & Binui Ltd. from the Government Pension Fund Global (GPFG)

Summary

The Israeli company Shikun & Binui Ltd.¹ is involved in building Israeli settlements in East Jerusalem and has also previously been involved in building settlements in the occupied territories on the West Bank and in East Jerusalem.

The Council has sent the company its questions by letter as well as sent it a draft of this recommendation for comments. The Council has not received any response.

The Council bases its opinion on statements made by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which state that the building of Israeli settlements on the West Bank and in East Jerusalem is contrary to the IV Geneva Convention. The purpose of the IV Geneva Convention is to protect civilians in situations of war and occupation.

The Council considers that the investment made by the Government Pension Fund Global (GPFG) in the company is contrary to the Fund's Ethical Guidelines because the company's activities entail an unacceptable risk that it will contribute to serious violations of the rights of individuals in situations of war or conflict. The Council therefore recommends the exclusion of Shikun & Binui Ltd. from the investment universe of the GPFG.

1 Introduction

In the fall of 2011, the Council decided to assess whether it should recommend the exclusion of the Israeli company Shikun & Binui Ltd. from the GPFG because it is involved in building Israeli settlements in East Jerusalem. At the end of 2010, the GPFG owned shares in the company worth NOK 13.8 million.

1.1 WHAT THE COUNCIL ON ETHICS HAS CONSIDERED

The GPFG's Ethical Guidelines section 2.3(b) states that:

“The Ministry of Finance may, on the advice of the Council on Ethics, exclude companies from the investment universe of the fund if there is an unacceptable risk that the company contributes to or is itself responsible for: [...] serious violations of the rights of individuals in situations of war or conflict”²

The Geneva Conventions are specifically referred to in the preparatory documents of the GPF's Ethical Guidelines as part of the basis for an evaluation of companies' activities in situations of war or conflict.³ The purpose of the IV Geneva Convention is to protect civilians during war and occupation. The Council has previously found that the participation of companies in government's breaches of the Geneva Conventions may constitute grounds for their exclusion from the Fund. In this regard the Council has previously recommended the exclusion of companies that build Israeli settlements on the West Bank and in East Jerusalem.⁴

The Council has considered whether Shikun & Binui Ltd. contributes to violations of the IV Geneva Convention by building an Israeli settlement in East Jerusalem and, if so, whether this should lead to the exclusion of the company from the GPF.

1.2 SOURCES

The Council has relied on the company's own website for information about the company and its construction work.

2 Background

Shikun & Binui Ltd.⁵ is one of the largest companies in Israel's construction industry. It has several subsidiaries whose activities include the construction of roads and houses as well as property sales. The company operates both in Israel and abroad. Its wholly owned subsidiaries include Shikun & Binui Real Estate Development and Solel Boneh.⁶

Shikun & Binui Ltd. is listed on the Tel Aviv stock exchange. The company is 57 per cent owned by the private Israeli investment company, Arison Group.

The residential project *Ramat Rachel Dreams* in the East Talpiyyot area of East Jerusalem is included in the list of ongoing and completed projects on Shikun & Binui Real Estate Development's website. According to its sales prospectus this project is due to be completed in January 2013.⁷

The Council has obtained information showing that the company has previously been involved in other construction projects in East Jerusalem and on the West Bank:

- The construction of 102 dwellings in the Israeli settlement of Ma'aleh Edumim by Shikun & Binui Real Estate Development's in 1994 as detailed in documents concerning legal proceedings against the authorities on a tax issue. Ma'aleh Edumim is one of the largest Israeli settlements on the West Bank.
- Solel Boneh has been lead contractor for several settlements on the West Bank. In 2006, interest groups approached the Ministry of Housing and Construction with a query under the Israeli Freedom of Information Law as to which companies have been awarded contracts for the construction of settlements. In the Ministry's response, Solel Boneh is mentioned as, among other things, the principal contractor for the construction of the Homat Shmuel settlement in Har Homa in East Jerusalem.

- Solel Boneh has a factory for the production of ready-mixed concrete in Kyriat Sefer, adjacent to the Israeli settlement of Modi'in Illit on the West Bank. The company refers to this itself on its website.⁸

In 2004 the Israeli authorities also announced that Solel Boneh had won the tender for a split contract to erect the West Bank separation barrier.⁹

3 Legality of the Israeli settlements on the West Bank and in East Jerusalem

3.1 THE IV GENEVA CONVENTION

The main purpose of the IV Geneva Convention is to protect civilians during war and occupation. The convention determines, amongst other things, the rights and obligations of the occupying power in an occupied territory.

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

Article 49 of the IV Geneva Convention states:

“[...] The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.”¹⁰

3.2 VIEWS OF THE INTERNATIONAL BODIES ON THE SETTLEMENTS

Regarding the legality of the settlements, the Council makes reference to statements by the International Court of Justice (ICJ) in The Hague, the UN Security Council and the International Committee of the Red Cross (ICRC), all of which establish that the building of Israeli settlements on the West Bank and in East Jerusalem is in breach of the IV Geneva Convention.

Security Council resolutions

The UN Security Council has adopted a string of resolutions which establish that the settlements are illegal, including resolutions 446 (1979), 452 (1979), 465 (1980), 471 (1980) and 476 (1980).

UN Security Council resolution 465, which was adopted unanimously on 1 March 1980, establishes among other things that Israel's policy and practices of building settlements on occupied territory, including East Jerusalem, have no legal validity and “constitute a flagrant violation” of the IV Geneva Convention.¹¹

The ICJ's advisory opinion

In its 2004 advisory opinion¹² on the legality of Israel's separation barrier on the West Bank, the ICJ also considered the legality of the settlements:

“The Court concludes that the Israeli settlements in the Occupied Palestinian

Territory (including East Jerusalem) have been established in breach of international law.¹³

Here, the ICJ found that Israel's establishment of settlements on the West Bank and in East Jerusalem is illegal.

Statements by the International Committee of the Red Cross (ICRC)

The ICRC has on several occasions made statements about the legality of the Israeli settlements.

A statement in 2001 says, *inter alia*, that the ICRC has repeatedly pointed to the fact that the Israeli settlements have been established in breach of international humanitarian law. The ICRC emphasises that in connection with the settlements, the Israeli state has introduced laws and administrative guidelines which contravene the IV Geneva Convention in a number of respects.¹⁴

Statement by the UN Secretary-General

In August 2011, the UN Secretary-General commented on plans to build further settlements in East Jerusalem as follows:

“The Secretary-General is deeply disappointed by the recent approval by the Government of Israel to build more than 900 housing units in East Jerusalem. He reiterates that settlement activity in the West Bank, including East Jerusalem, is contrary to international law, and he is concerned by provocative actions on the ground.”¹⁵

Here, again, the illegality of constructing settlements on the West Bank and in East Jerusalem is underlined.

3.3 THE STATUS OF EAST JERUSALEM

Israel asserts that East Jerusalem has a different status to the rest of the West Bank. Israel resolved to annex East Jerusalem in 1980 by adopting the “Basic Law: Jerusalem, Capital of Israel”.¹⁶ In 1980 the UN Security Council adopted Resolution 478 which establishes, among other things, that Israel's annexe of East Jerusalem is illegal and does not change the area's status as an occupied territory.¹⁷

4 The company's position

The Council has written to Shikun & Binui Ltd. asking whether it, or any of its subsidiaries or the companies it controls, are involved in or have future plans to participate in the construction of Israeli settlements on the West Bank (*Judea and Samaria*) or in East Jerusalem, and, if so, what the nature of these activities is and what plans the company has for future activity in said areas.¹⁸

The Council has also sent the company a draft of this recommendation with an invitation to make any comments it may have.¹⁹

The company has not responded to any of the Council's approaches.

5 The Council's assessment

There is wide international consensus that Israel's building of settlements on the West Bank and in East Jerusalem is illegal. In the view of the Council, companies that build such settlements may be excluded from the GPF. In its deliberations of such cases, the Council does not distinguish between the building of settlements in East Jerusalem and in the rest of the West Bank.

As discussed in previous recommendations, the Council on Ethics' role is to assess the GPF's investments in companies under the Fund's Ethical Guidelines. The Council bases its assessment on the company's activities and conduct, not on possible violations committed by states or other parties.

The Council finds that Shikun & Binui Ltd. has been, and probably still is, involved in the construction of settlements in the occupied territories. As the company has not responded to the Council's approaches, it is not possible for the Council to provide the exact status of the company's current and future construction projects in the occupied territories, except to the extent that, according to its sales prospectus, the *Ramat Rachel Dreams* project is due to be completed in 2013.

On the basis of the information available about the company's earlier and current construction projects on the West Bank and in East Jerusalem, the Council finds that there is an unacceptable risk that the company will participate in future violations of ethical norms by undertaking the construction of Israeli settlements there. The Council on Ethics believes that this risk will remain as long as such activities are permitted or until the company makes it clear that such activity has ceased.

6 Recommendation

The Council on Ethics recommends that the company Shikun & Binui Ltd. be excluded from the Norwegian Government Pension Fund because of an unacceptable risk that the company will contribute to serious violations of the rights of individuals in situations of war or conflict.

Ola Mestad
Chair
(sign.)

Dag Olav Hessen
(sign.)

Ylva Lindberg
(sign.)

Gro Nystuen
(sign.)

Bente Rathe
(sign.)

Notes

1 Issuer ID: 350591, SEDOL 6151292.

2 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.

- 3 Norwegian Government White Paper (NOU) 2003: 22, annex 7, para. 3.2, <http://www.regjeringen.no/Rpub/NOU/20032003/022/PDFS/NOU200320030022000DDDPDFS.pdf>.
- 4 Recommendation to exclude the companies Africa Israel Ltd. and Danya Cebus Ltd., 16 November 2009, and the subsequent letter from the Council of Ethics to the Ministry of Finance, 9 March 2010, http://www.regjeringen.no/pages/13898012/Africa_Israel.pdf.
- 5 The company's website: <http://en.shikunbinui.co.il/>.
- 6 The company's website: http://en.shikunbinui.co.il/category/solel_boneh_about.
- 7 According to the company's website and sales description (in Hebrew), the building is in an area which lies at the junction of Eliyahu Lankin and Korch streets http://en.shikunbinui.co.il/category/residential_projects.
- 8 The company's website: http://en.shikunbinui.co.il/category/solel_boneh_logistics.
- 9 Israel Security Fence, 10 February 2004 (in Hebrew) <http://www.securityfence.mod.gov.il/Pages/Heb/hadashot.htm#news18>.
- 10 Article 49, IV Geneva Convention: <http://www.icrc.org/ihl.nsf/WebART/380-600056?OpenDocument>.
- 11 "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 IV 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/0/5AA254A1C8F8B1CB852560E50075D7D5>.
- 12 ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 4 July 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf>.
- 13 Ibid para. 120.
- 14 Para 5, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001, http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo_print.
- 15 Statement by UN Secretary-General, August 6, 2011: <http://unispal.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/c4bb7721a06a99dc852578e6004a5728?OpenDocument>.
- 16 Israeli Ministry of Foreign Affairs: "Basic Law: Jerusalem, Capital of Israel
1) Jerusalem, complete and united, is the capital of Israel.[...]", http://www.mfa.gov.il/MFA/MFAArchive/1980_1989/Basic%20Law-%20Jerusalem-%20Capital%20of%20Israel.
- 17 "The Security Council [...]
2) Affirms that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;
3) Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith"; <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/399/71/IMG/NR039971.pdf?OpenElement>.
- 18 Letter from the Council on Ethics to Shikun & Binui Ltd, 5 September 2011. A subsequent enquiry was sent on 14 October 2011.
- 19 Draft recommendation sent to Shikun & Binui Ltd. 15 November 2011. The Council on Ethics requested any comments by 9 December 2011.

To the Ministry of Finance

Recommendation 15 June 2012

(Published 11 January 2013)

Recommendation to remove Siemens AG from the observation list of the Norwegian Government Pension Fund Global

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1 Summary

The Council on Ethics for the Norwegian Government Pension Fund Global (GPFG) recommends that the German company Siemens AG (Siemens) be removed from the Ministry of Finance's observation list because the Council finds it unlikely that there currently is a higher risk of corruption in Siemens than in other comparable companies. This is based on an assessment of the company's compliance system, the company's clear message that corruption will not be tolerated, and the way recent cases of corruption have been dealt with in the company.

2 Introduction

As a result of the Council on Ethics' recommendation to exclude Siemens from the GPFG in November 2007, the Ministry of Finance decided to place the company under observation for up to four years in March 2009. The Council on Ethics had recommended excluding the company because of the risk of gross corruption in the company's operations.¹ The Council on Ethics and Norges Bank are required to keep Siemens under special observation during this period and report annually to the Ministry of Finance on developments in the company.

In both 2010 and 2011, the Council submitted observation reports to the Ministry of Finance in which no grounds were found to resubmit the recommendation for Siemens' exclusion from the GPFG. Following an overall assessment which also includes developments during the last year, the Council finds that there are now grounds to remove Siemens from the watch list.

Below is a summary of the Council's contact with the company throughout the observation period, the main events of relevance for the assessment in 2011, and the latest developments in Siemens' anti-corruption efforts. The report concludes with the Council's assessment and recommendation.

3 Sources

Following the Ministry of Finance's decision to put Siemens under formal observation, the Council on Ethics has monitored the company's operations using the usual monitoring procedures and paying particular attention to developments in the various corruption cases in which Siemens has been, and to some extent still is, involved. Representatives from the Council have also had annual meetings with representatives from Siemens.² The Council has had meetings with the company's main compliance officers, representatives from Siemens Norway, and the independent monitor appointed by U.S. authorities, Dr. Theo Waigel, and his team. In addition to these annual meetings, there has also been verbal and written communication between the Council and compliance officers at Siemens.

In this recommendation, the Council on Ethics has attached importance to information from the public prosecuting authorities and other government agencies, court judgments and coverage of Siemens in the press, in addition to the information provided by Siemens.

4 Report on 2011

4.1 KEY EVENTS IN 2011 CONCERNING PREVIOUS REVELATIONS OF CORRUPTION

In 2009 Siemens filed a civil suit for damages against eleven former board members and corporate executives, charging them with having facilitated systematic corruption through the inadequate control of the company's operations in the period from 2003 to 2006.³ Nine of the former Siemens executives entered into a settlement with the company. The criminal case against one of the two former senior executives who did not wish to enter into a settlement started at the Munich Regional Court (*Oberlandesgericht* or OLG) in spring 2011. The defendant was charged with failure to fulfil his duties as a manager of the company, among other things.⁴ In May 2011, OLG dropped the criminal case against the manager and ordered him to pay compensation of EUR 175,000 to five charities. The court stated it was dropping the case because the accused was less guilty than originally presumed.⁵ In July, the public prosecutor in Munich dropped the case against the other executive in exchange for paying EUR 400,000 to charities.⁶ Although the cases were dismissed, the civil lawsuit is continuing and Siemens is demanding EUR 5 and 15 million respectively in damages from the two former executives.

As mentioned in the Council on Ethics' observation report of 4 May 2011, Siemens entered into a settlement with U.S. authorities in 2008 and paid a fine of USD 450 million.⁷ In December 2011, the Securities and Exchange Commission (SEC) and the U.S. Department of Justice⁸ indicted a number of named individuals with violating the Foreign Corrupt Practices Act (FCPA), including eight former Siemens executives and associated consultants. The defendants are accused of having paid bribes of up to USD 100 million to secure contracts for Siemens in South America.⁹ In this regard, in June 2011 the public prosecutor in Munich also indicted one of the accused who had been a member of Siemens' executive board in the period 2000 to 2007. The public prosecutor in Munich has charged the person in question with using bribery in South America, as the public prosecutor suspects that the accused had knowledge of the bribes paid to Argentinean government officials in the early 2000s.¹⁰

The exposure of corrupt practices at the company's operations in Greece led to the Greek Parliament appointing an investigation committee in 2011¹¹ to examine whether Greek politicians and other public employees involved in the corruption scandal were criminally liable.¹² In January 2011, the parliamentary investigation committee informed Siemens that the Greek state had suffered a financial loss of EUR 2 billion as a result of the company's corrupt practices. Siemens was then informed that the Greek state was going

to claim financial compensation for this loss from the company. In April 2011, Siemens entered into a settlement with the Greek state whereby the company pays a total of EUR 270 million, partly by waiving claims for payment for services rendered, partly by funding measures to, among other things, prevent corruption, and partly by committing to invest in the country.¹³

In 2011, Siemens was contacted by a competitor who claimed that Siemens, through its use of bribery in private and public tenders, had caused them to suffer financial losses as Siemens had unfairly won competitive tenders in which the competitor had participated. A dialogue was carried out throughout the year, ending in a settlement where Siemens has paid the competitor an unspecified amount in damages.¹⁴

4.2 KEY EVENTS IN 2011 CONCERNING NEW CORRUPTION REVELATIONS

In June 2011 various media reported that at the beginning of the year three Siemens employees in Kuwait had entered into an agreement with an intermediary representing a Kuwaiti minister to pay bribes of EUR 1.25 million to secure Siemens a power plant contract worth EUR 180 million, instead of the contract being awarded to a Japanese competitor.¹⁵ Siemens was informed of the planned bribery through an external notification and immediately launched an internal investigation which prevented the payment of the bribe. Shortly thereafter, the management of Siemens dismissed three experienced mid-level managers who had been involved in the case. The company notified the U.S. authorities at the SEC and the public prosecutor in Munich about the incident, and the latter has initiated corruption investigations against the three dismissed executives. The incident resulted in Siemens losing the tender competition, and the company is now considering pressing compensation charges against its former employees based on the loss of reputation and the financial loss that Siemens believes it has incurred.¹⁶

In its statement of 24 January 2012 concerning ongoing litigation during the fourth quarter of 2011, Siemens reports that «The Company remains subject to corruption-related investigations in several jurisdictions around the World».¹⁷

4.3 SIEMENS' ANTI-CORRUPTION EFFORTS IN 2011

Siemens' compliance system is organised on three levels: prevent, detect and respond.¹⁸ The different levels each comprise a number of measures designed to ensure that business operations are conducted in compliance with external and internal rules and regulations. In 2011 the compliance budget was unchanged at approximately EUR 100 million, comprising 600 full-time compliance positions. The Council has described the company's compliance programme in greater detail in its letter of 3 September 2008 and in previous years' observation reports.

Siemens maintains that in recent years the company has developed and strengthened its compliance system so that compliance is now an integral part of the company's standard business processes. To achieve this, the company has among other things a rotating system for compliance officers whereby employees with a business background join the Compliance organization for 3 to 5 years before again taking over positions in the business

group.¹⁹ This rotation system should ensure that the operational Compliance function has a continuous exchange with the enterprise and therefore maintains a sound understanding of business and risk. In addition, the company has given priority to communicating the importance of all managers in all departments being held fully accountable for compliance. This means that responsibility for compliance cannot be shifted to the compliance officers, but must be assumed by everyone. Last year, the executive-leadership team of the global compliance organisation, Chief Compliance Officer, Mr. Josef Winter and the Chief Counsel Compliance, Dr. Klaus Moosmayer, visited Siemens branches in more than 25 countries to inform them about the significance and implications of this responsibility. Mr. Winter and Dr. Moosmayer emphasised in particular that the message of zero tolerance towards corruption must not only come from the top management, but also must be conveyed and implemented by the company's middle managers. The compliance management team emphasises, among other things, that violations of national and international anti-corruption legislation may lead to external investigations being initiated, for example pursuant to the Foreign Corrupt Practices Act (FCPA) or the United Kingdom Bribery Act. They may also lead to exclusion from projects from multilateral development banks, which will have major financial consequences for the company.

Siemens has also conducted surveys among employees in 2011, so-called Compliance Perception Surveys, aimed at mapping the employees' knowledge about – and attitudes towards – compliance. The surveys revealed good fundamental understanding among the employees, and only four per cent think that compliance is not an integral part of the company's business processes.

To achieve a sustainable compliance system, the company says it is going to place greater emphasis on identifying risk factors in the company's commercial operations so that the compliance system can be adapted to the relevant risk profile. In this respect, in the past year Siemens has focused specifically on compliance in Russia, as this market poses a particularly high corruption risk. A separate compliance-investigation department in Moscow has been set up in order to manage this risk better. In recent years, the company's Compliance Investigation departments have delegated certain investigative duties to the Human Resources department, so that the investigation departments can prioritise their resources on high-risk cases such as the Kuwaiti case.

Siemens reports annually on the number of alerts, internal investigations and sanctions against employees. In 2011, the *Ask us* information department²⁰ received 1,740 inquiries from employees, down from 3,077 in 2010. The company says that this decrease is natural, as the employees now know more about compliance than before and have direct and personal contacts with their respective Compliance Officers.²¹ The company's two secure notification channels, the *Tell us* information department and the company's external Ombudsman, received 787 reports of incidents in 2011, compared with 582 the previous year. 683 of the incidents reported in 2011 were considered plausible and were therefore investigated further. A number of notifications now go directly to the compliance officers in the individual departments, which, according to the company, is an indication of the employees' confidence in the company's compliance organisation. In 2011, 306 disciplinary sanctions were imposed on employees, compared with 448 in 2010. Of this year's

sanctions, 77 were dismissals.²² Most of the compliance violations pertain to conflicts of interest, improper handling of confidential information and violations of laws and regulations intended to protect the company against accounting errors.

On the basis of the settlement reached between Siemens and the World Bank in 2009, the company has committed itself to pay USD 100 million over the next 15 years to non-governmental organisations engaged in anti-corruption efforts. The Siemens Integrity Initiative has initially selected 31 projects and funding agreements were signed in 2011, amounting to a total of USD 37 million. Through the Siemens “Collective Action” to promote compliance, «Clean Business» information campaigns have been launched in Brazil ahead of the World Cup in 2014 and the Olympic Games in 2016, among others, while in China studies of compliance and national law have been initiated and a «compliance club» has been established for Chinese executives.

In its third working year, the independent monitoring unit, introduced as part of the settlement between Siemens and the U.S. legal and financial authorities in 2008 and headed by Dr. Theo Waigel, the former Finance Minister of Germany, has monitored the implementation of the unit’s previous recommendations and the company’s risk assessments as well as conducted surveys to determine the sustainability of Siemens’ compliance system. The unit selected eleven countries for closer monitoring, including China, Russia, Nigeria and Indonesia. In view of the unrest in the Middle East, an evaluation of the company’s financial control mechanisms in Bahrain, Egypt and Libya has also been conducted.²³ The monitoring unit has interviewed over 880 employees in 2011, including sales and account managers, compliance officers and financial managers. Each year, the monitoring unit makes recommendations concerning measures to improve Siemens’ compliance system. All of the 114 recommendations from the unit’s first year of operation have now been implemented, and 86 per cent of the 29 recommendations made in the second year have been implemented. In 2011, the monitoring unit has made another nine recommendations. Based on findings from tests and interviews, Dr. Waigel has issued a certificate in which he confirms that Siemens has implemented a comprehensive compliance system capable of detecting and preventing bribery. In 2011, the monitoring unit has not found any instances of corruption that were not captured and dealt with by the compliance system.

This year the monitoring unit is focusing on «the tone from the Middle», the company’s risk analysis and assessment, projects operated from the company’s head office, follow-up of the nine new recommendations, and visits to selected countries, including Austria and Russia. Pursuant to the settlement agreement between the company and the U.S. authorities, in its fourth year the compliance system shall go from being a system that is monitored by Dr. Waigel’s monitoring unit to a sustainable compliance system that no longer requires an external monitoring unit.

5 The Council on Ethics’ assessment

Against this background, the Council on Ethics finds that during the observation period Siemens has shown that it is both willing and able to turn the company’s negative culture

around through the design and implementation of a new compliance system, by following the monitoring unit's recommendations promptly, and by communicating clearly the company's zero tolerance for corruption, both internally and externally. The company operates in sectors and countries where the risk of corruption can be very high. Despite the fact that Siemens now appears to have a robust compliance system, it will therefore be important that the system is monitored and developed in line with changes in the risk-profile. The key to avoiding serious corruption in the future will nevertheless be the development of a pervasive corporate culture based on a policy of zero tolerance for bribery.

In 2009, the Ministry of Finance decided that Siemens should be placed on the watch list for a period of up to four years. The Council on Ethics' understanding is that during the period of observation the Council can both issue a recommendation for exclusion if the elements observed develop negatively, and can issue a recommendation that the company be removed from the observation list if the Council on Ethics judges that there is no longer an especially high risk of the guidelines being breached. After an overall assessment, the Council on Ethics finds that there are now grounds to remove Siemens from the observation list.

6 Recommendation

The Council on Ethics recommends that Siemens AG be removed from the observation list of the Norwegian Government Pension Fund Global.

Ola Mestad Chair (sign.)	Dag Olav Hessen (sign.)	Ylva Lindberg (sign.)	Gro Nystuen (sign.)	Bente Rathe (sign.)
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Notes

- 1 Recommendation: <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/Tilradninger/tilradninger/korrupsjon/tilradning-15-november-2007-om-utelukkel.html?id=549087>. Press release from the Ministry of Finance: <http://www.regjeringen.no/nb/dep/fin/presesenter/pressemeldinger/2009/siemens-settes-under-observasjon-i-korru.html?id=549155>.
- 2 The first meeting between representatives from the Council and Siemens took place in May 2009 in Oslo; the next two meetings were held in Munich in December 2009 and April 2011; the most recent meeting in March 2012 was held in Oslo.
- 3 See the Council's letter dated 4 May 2011.
- 4 Frankfurter Allgemeine, 25 January 2010, "Siemens reicht Klage gegen ehemalige Vorstände ein": <http://www.faz.net/aktuell/wirtschaft/unternehmen/korruption-siemens-reicht-klage-gegen-ehemalige-vorstaende-ein-15104.html>. Munich Regional Court, press release, 19 May 2011: <http://www.justiz.bayern.de/gericht/olg/m/presse/archiv/2011/03062/>.
- 5 Spiegel, 19 May 2011, "Ex-Siemens-Vorstand kommt mit Geldzahlung davon": <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,763651,00.html>.

- 6 Spiegel, 12 July 2011, "Ex-Vorstand Neuburger rechten mit Straffreiheit": <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,774071,00.html>.
- 7 The U.S. Department of Justice, press release dated 15 December 2008: <http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html>.
- 8 The U.S. Department of Justice.
- 9 SEC, 13 December 2011, press release: <http://www.sec.gov/news/press/2011/2011-263.htm>. The U.S. Department of Justice, press release dated 13 December 2011: <http://www.justice.gov/opa/pr/2011/December/11-crm-1626.html>.
- 10 Süddeutsche Zeitung, 11 June 2011, "Anklage gegen früheren Ex-Vorstand": <http://www.sueddeutsche.de/wirtschaft/schmiergeldskandal-bei-siemens-anklage-gegen-frueheren-vorstand-1.1107587>.
- 11 Greek Parliamentary Investigation Committee (GPIC).
- 12 See also the Council's observation letter dated 4 May 2011 for more information on Siemens' use of bribery in Greece.
- 13 Siemens, press release dated 5 April 2012.
- 14 Siemens' website, Legal proceedings, 10 November 2011.
- 15 Der Spiegel, 10 June 2011, "Siemens deckt neue Korruption auf": <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,767774,00.html>.
- 16 Die Welt, 11 June 2011, "Wieder Korruption bei Siemens": http://www.welt.de/print/die_welt/wirtschaft/article13424818/Wieder-Korruption-bei-Siemens.html.
- 17 <http://www.siemens.com/press/pool/de/events/2012/corporate/2012-q1/2012-q1-legal-proceedings-e.pdf>.
- 18 Siemens' Annual Report 2011, «Compliance report», p. 34.
- 19 The Council on Ethics' meeting with Siemens, 26 March 2012.
- 20 Fiskal 2011 (year end 30 September) Siemens' Annual Report 2011. The «Ask us» help desk encourages employees to ask questions about compliance issues.
- 21 Siemens' Annual Report 2011, p. 74.
- 22 Meeting between the Council on Ethics and Siemens, 26 March 2012.
- 23 Meeting between the Council on Ethics and Siemens, 26 March 2012.

To the Ministry of Finance

Recommendation 31 August 2012

(Published 11 January 2013)

Recommendation on the exclusion of the companies The Babcock & Wilcox Co. and Jacobs Engineering Group Inc. from the investment universe of the Government Pension Fund Global

1 Introduction

The Council on Ethics recommends excluding the companies The Babcock & Wilcox Co.¹ (Babcock & Wilcox) and Jacobs Engineering Group Inc.² (Jacobs Engineering) from the investment universe of the Government Pension Fund Global (GPFG) due to the companies' production of key components of nuclear weapons.

2 Background

Paragraph 2, first section letter a of the ethical guidelines for the Government Pension Fund Global states that: "The Fund's assets shall not be invested in companies that themselves or through entities controlled by them: a) produce weapons that violate fundamental humanitarian principles in their normal use."³

In the Government White Paper (NOU:22 2003) and through the subsequent discussion of the guidelines in the Storting (Parliament), the production of key components of nuclear weapons was considered as falling within this category of weapons.

On 19 September 2005, the Council on Ethics made its first recommendation on the exclusion from the fund of companies that produce key components of nuclear weapons.⁴ In this recommendation, the Council on Ethics outlined what is included in the nuclear weapon criterion in further detail. Subsequent recommendations in 2007 provided additional explanations of the criterion. Among other things, the Council considers the development, production and maintenance of nuclear warheads as being covered by the guidelines.

At the end of 2011, the GPFG owned shares in Babcock & Wilcox valued at NOK 188 million, corresponding to a holding of 1.1 per cent of the shares in the company. Also, at the end of 2011, the GPFG owned shares in Jacobs Engineering valued at NOK 208 million, corresponding to a holding of 0.67 per cent of the shares in the company.

3 Information from the companies

3.1 BABCOCK & WILCOX

The Council on Ethics has written to the company and asked it to account for any part of its business that relates to the production of nuclear weapons.⁵ The company has not responded to the Council on Ethics' inquiry.

On its homepage, the company states that it owns and operates the largest facility in the USA for the manufacture of high-enriched uranium, and that it is the manager and operator of the Y-12 National Security Complex and Pantex facilities:

“As the owner and operator of the nation’s largest commercial high-enriched uranium (HEU) processing facility and as manager and operator of the Y-12 National Security Complex and Pantex Plant, B&W safeguards more HEU than any other company in the U.S.”⁶

The Y-12 facility produces fissile material for use in nuclear weapons and maintains and upgrades warheads for nuclear weapons.⁷

Pantex is a facility for the storage, upgrade and maintenance of American nuclear warheads. An important part of its activity consists of extending the lifespan of the warheads.⁸

3.2 JACOBS ENGINEERING

The Council on Ethics has written to the company and asked it to account for any part of its business that relates to the production of nuclear weapons.⁹ The company has not responded to the Council on Ethics' request.

On its homepage, Jacobs Engineering states that it through a joint venture owns one third of the company AWE Management Limited (AWE ML), which is the operating company for the state-owned British company AWE (Atomic Weapons Establishment):

“Jacobs Engineering Group Inc. (NYSE:JEC) announced today that AWE Management Ltd. (AWE ML), in which it has a one third share, has concluded the arrangements for the next pricing period regarding the contract to Manage and Operate the Atomic Weapons Establishment (AWE) plc in the United Kingdom. Formed in 2000, AWE ML is a joint venture between Jacobs, Lockheed Martin and Serco to manage AWE plc. on behalf of the UK Ministry of Defence (MOD).”¹⁰

AWE is responsible for all phases of the development, production and maintenance of Britain's nuclear warheads. The British Ministry of Defence owns AWE, but AWE ML, in which Jacobs Engineering owns a one-third share, operates the business.¹¹ The other partners in the joint venture are the companies Lockheed Martin and Serco.

4 The Council on Ethics' assessment

The most key component of a nuclear weapon is its warhead. In 2005, when the Council on Ethics made its first recommendation on the exclusion of companies that produce key

components for nuclear weapons, the Council assumed that the manufacture of fissile material that can be used in nuclear weapons, and the production of nuclear warheads themselves, only took place in governmental facilities. There has subsequently been a development in which listed companies have assumed the operating responsibility for and are the operators of some of these state-owned facilities.

4.1 BABCOCK & WILCOX

The company states that it is the manager and operator of state facilities that produce fissile materials for nuclear warheads, and that it provides maintenance and upgrades for these. A significant part of its activities consists of extending the lifespan of nuclear weapons. Such upgrades are a prerequisite for keeping the nuclear weapons operational, and the Council has previously considered this form of maintenance and upgrades as a continuous production process that should be considered equivalent to the initial manufacture of key components.¹² It is the Councils' view that the activities at the Y-12 and Pantex facilities are covered by the nuclear weapon criterion in the GPFG's Ethical Guidelines.

The company also states that it owns and operates the largest facility in the USA for the production of high-enriched uranium. The Council assumes that this may also be covered by the nuclear weapon criterion, but as no details have been provided regarding the use of the fissile material, this cannot be fully determined. In any case, Babcock & Wilcox' activities at the Y-12 and Pantex facilities form a sufficient basis by themselves for a recommendation to exclude the company from GPFG.

4.2 JACOBS ENGINEERING

The company states that it is a joint venture partner that owns one third of AWE ML, which is AWE's operating company.

AWE's business is to develop, produce, test and maintain nuclear warheads and it is thus covered by the nuclear weapon criteria in GPFG's Ethical Guidelines. In 2007, the company Serco Group plc. was excluded from GPFG on the basis of its participation (with the same ownership share) in the same joint venture.¹³ Since then, Jacobs Engineering has also become a joint venture partner in AWE after acquiring the ownership of the former state-owned company British Nuclear Fuels Ltd. (BNFL).

5 Recommendation

The Council on Ethics recommends that the companies The Babcock & Wilcox Co. and Jacobs Engineering Group Inc. be excluded from the investment universe of the Government Pension Fund because the companies produce key components of nuclear weapons.

Ola Mestad
Chair
(sign.)

Dag Olav Hessen
(sign.)

Ylva Lindberg
(sign.)

Gro Nystuen
(sign.)

Bente Rathe
(sign.)

Notes

- 1 Issuer ID: 970993.
- 2 Issuer ID: 100820.
- 3 Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe, <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/etiske-retningslinjer.html?id=425277>.
- 4 Council on Ethics, 2005, Recommendation on the exclusion of producers of nuclear weapons: <http://www.regjeringen.no/nb/sub/Styrer-rad-utvalg/etikkradet/Tilradninger/Tilradninger/Tilradning-om-uttrekk.html?id=423836>.
- 5 Letter from the Council on Ethics to Babcock & Wilcox, dated 28 June 2012.
- 6 The company's website: http://www.babcock.com/services/nuclear_operations_management/.
- 7 Y-12's homepage: "Y12's main mission is to ensure the U.S. nuclear arsenal is safe, secure, and reliable. Portions of every weapon in the U.S. nuclear stockpile were manufactured at Y12, and we employ only the most advanced and failsafe technologies to protect the stockpile.", <http://www.y12.doe.gov/about/>.
- 8 Pantex's homepage: "Pantex has a long-term mission to safely and securely maintain the nation's nuclear weapons stockpile and dismantle weapons retired by the military. Much of Pantex's future workload includes life extension programs designed to increase the longevity of weapons in the stockpile.", <http://www.pantex.com/about/index.htm>.
- 9 Letter from the Council on Ethics to Jacobs Engineering, dated 28 June 2012.
- 10 Press release on Jacobs Engineering's homepage, dated 15 May 2012: <http://www.jacobs.com/news.aspx?id=6978>.
- 11 AWE's homepage: "AWE has been central to the defence of the United Kingdom for more than 50 years. We provide and maintain the warheads for the country's nuclear deterrent, Trident. Trident is a submarine-launched, inter-continental ballistic nuclear missile weapons system, carried by Royal Navy Vanguard-class submarines. Our role at AWE is to manufacture and sustain the warheads for the Trident system, ensuring optimum safety and performance, but also to maintain a capability to produce a successor system should the Government require one in the future. Our work at AWE covers the entire life cycle of nuclear warheads; from initial concept, assessment and design, through to component manufacture and assembly, in-service support, and finally decommissioning and disposal. AWE is managed for the Ministry of Defence (MOD) through a contractor-operated arrangement. While our sites and facilities remain in government ownership, their management, day-to-day operations and the maintenance of Britain's nuclear stockpile is contracted to a private company: AWE Management Limited (AWE ML). AWE ML is formed of three equal shareholders – Serco, Lockheed Martin and Jacobs Engineering Group.", http://www.awe.co.uk/aboutus/what_we_do_27815.html.
- 12 See note 4.
- 13 Recommendation on the exclusion of the Serco Group plc, <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/Tilradninger/tilradninger/kjernevapen/Tilradning-15-november-2007-om-uttrekk-a.html?id=496179>.

To the Ministry of Finance

Recommendation 31 August 2012

(Published 11 January 2013)

Recommendation to revoke the exclusion of the companies BAE Systems plc. and Finmeccanica Sp.A. from the investment universe of the Government Pension Fund Global

1 Background

In 2005, the British company BAE Systems plc. and the Italian company Finmeccanica Sp.A. were excluded from the investment universe of the Government Pension Fund Global because the companies, through a joint venture, had a controlling interest in the company MBDA, which produced the nuclear missile ASMP-A for the French military.

2 Information from the companies

The Council on Ethics wrote to the companies in June 2012, asking whether MBDA was still involved in the production of nuclear weapons.¹

Both companies have responded to the Council on Ethics' inquiry.

BAE Systems

BAE Systems state that MBDA's production of ASMP-A has now been completed. Further, BAE Systems states that it is involved in the development of Great Britain's new fleet of strategic submarines, but that the company is not involved in the actual nuclear weapons that these vessels will carry.²

Finmeccanica

Finmeccanica also states that MBDA's production of ASMP-A has concluded, and further states that Finmeccanica is not involved in the production of nuclear weapons.³

3 The Council on Ethics' assessment

As stated in paragraph 5, section five of the GPF's Ethical Guidelines, 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 an exclusion ruling.⁴

As MBDA's production of ASMP-A has ended, this basis for the exclusion of MBDA's owners no longer applies.

With regard to companies that are involved in the development of submarines that can carry nuclear weapons, the Council on Ethics does not consider that all such activities are necessarily affected by the GPFG's Ethical Guidelines. The Council on Ethics distinguishes between companies that are involved in the production of missiles that carry nuclear weapons, and companies that are involved in the production of, for example, submarines that are delivery platforms for the missiles. This is in keeping with the preparatory works for the Ethical Guidelines that do not open for the exclusion of companies on the basis of production of aircraft that can carry nuclear weapons.⁵ The Council on Ethics considers that submarines and other delivery platforms for nuclear missiles must be assessed in the same way. The Council therefore finds that BAE's activities related to the development of submarines are not covered by the nuclear weapon criterion in the Fund's Ethical Guidelines.

On the above basis, the Council on Ethics finds that there are no continued grounds for the exclusion of the companies BAE Systems plc. and Finmeccanica Sp.A.

4 Recommendation

The Council on Ethics for the Government Pension Fund Global recommends that the exclusion of the companies BAE Systems plc. and Finmeccanica Sp.A. from the GPFG's investment universe be revoked.

Ola Mestad Chair (sign.)	Dag Olav Hessen (sign.)	Ylva Lindberg (sign.)	Gro Nystuen (sign.)	Bente Rathe (sign.)
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Notes

- 1 Letter from the Council on Ethics to BAE Systems plc and Finmeccanica SpA, 28 June 2012.
- 2 Email from BAE Systems to the Council on Ethics, 17 July 2012.
- 3 Letter from Finmeccanica SpA to the Council on Ethic, dated 3 August 2012.
- 4 Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe, <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/etiske-retningslinjer.html?id=425277>.
- 5 NOU 2003:22, appendix 9, section 9.4.6, <http://www.regjeringen.no/nb/dep/fin/dok/nouer/2003/nou-2003-22/17.html?id=371890>.

To the Ministry of Finance

Recommendation 31 August 2012

(Published 11 January 2013)

Recommendation to revoke the exclusion of FMC Corp. from the Government Pension Fund Global's investment universe

1 Background

On 15 November 2010, the Council on Ethics recommended the exclusion of two companies based on their purchase of phosphates from Western Sahara. FMC Corp. was one of these companies. The Ministry of Finance decided to exclude the company from the Government Pension Fund Global (GFPG), and the recommendation to this effect was made public on 6 December 2011.¹

Western Sahara is a non-self-governing territory without a recognised administering power. In practice Morocco controls most of the area. The state-owned Moroccan company OCP extracts phosphorus in Western Sahara.

The Council on Ethics believes that mineral extraction in Western Sahara can be acceptable if it takes place in accordance with the interests of the local population and benefits the local population. The Council on Ethics' assessment was that the interests of the local population were not being safeguarded by OCP's activities, and that on this and other grounds, OCP's activity in Western Sahara had to be considered grossly unethical.

The Council on Ethics found that the connection between the companies' purchases of phosphates from Western Sahara and OCP's extraction of the phosphate was of such a nature that the companies must be said to contribute to gross breaches of norms, and on this basis the Council recommended that they be excluded.

Paragraph 5, fifth section of the Government Pension Fund's Ethical Guidelines states:

"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 an exclusion ruling."²

FMC Corp. now states that it no longer purchases phosphate from Western Sahara. The company's exclusion should therefore be reevaluated in light of this change.

2 Information from the company

The Council on Ethics wrote to the company on 12 December 2011, 3 May 2012 and 28 June 2012, asking whether it continues to purchase phosphate from Western Sahara. The

company responded to the Council on Ethics' inquiries in August 2012, and stated the following:

- 1) The business of the subsidiary FMC Foret in Spain, which purchased phosphate from OCP, was terminated in December 2010. Neither FMC Corp., FMC Foret nor any other subsidiary of FMC Corp. now purchases phosphate from any source, including Western Sahara.
- 2) Neither FMC Corporation nor its subsidiaries have any plans or agreements that include future purchases of phosphates from Western Sahara.³

3 The Council on Ethics' assessment

The recommendation on the exclusion of FMC Corp. was tied to the company's purchase of phosphate from Western Sahara. As this activity has ceased and the company has no plans to resume it, there are no grounds for the continued exclusion of the company.

4 Recommendation

The Council on Ethics recommends that the exclusion of FMC Corp. from the investment universe of the Government Pension Fund Global be revoked.

Ola Mestad
Chair

(sign.)

Dag Olav Hessen

(sign.)

Ylva Lindberg

(sign.)

Gro Nystuen

(sign.)

Bente Rathe

(sign.)

Notes

- 1 The Council on Ethics' recommendation of 15 November 2010 to exclude the companies FMC Corp. and the Potash Corp. of Saskatchewan, see <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/Tilradninger/tilradninger/andre-grove-brudd-pa-grunnleggende-etisk/tilradning-15-november-2010-om-utelukkel.html?id=665562>.
- 2 Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe, <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/etiske-retningslinjer.html?id=425277>.
- 3 Letter from FMC Corp. to the Council on Ethic, dated 9 August 2012.

To the Ministry of Finance

21 June 2012

The Council on Ethics' Annual Report to the Ministry of Finance on Alstom SA

As a result of the Council on Ethics' recommendation of 1 December 2010 to exclude Alstom SA, the Ministry of Finance decided on 6 December 2011 to place the company under observation for up to four years. The Council on Ethics is required to keep Alstom under special observation during this period and shall monitor how the company works on and develops its system for combating corruption. Further, the Council shall observe how the company handles the investigation of past cases of corruption and monitor whether allegations of new cases of corruption emerge. The Council shall report annually to the Ministry of Finance on the status of the observation process.

In February 2012, a meeting was held between the Council on Ethics and Alstom to discuss the company's efforts to prevent corruption and the Council's observation of the company. Following the meeting Alstom has provided the Council with additional information in writing about its compliance system.

This is the Council's first annual report on Alstom to the Ministry of Finance, including among other things a summary of developments since the recommendation was issued in December 2010.

Key events since the recommendation was made in December 2010

As stated in the recommendation, the French public prosecutor indicted one of Alstom's subsidiaries for suspected use of bribes in 2010. The subsidiary was Alstom Hydro France and the matter concerned the company's operations in Zambia. Alstom denied culpability in the matter,¹ and on 8 June 2011 the public prosecutor dropped the charges and the case. Authorities in the U.S. and U.K. are still investigating Alstom for foreign bribery, and authorities in Brazil, Latvia, Poland, Malaysia and Slovenia are conducting investigations into suspicions of domestic bribery.

The British investigation of Alstom's subsidiary Alstom Network UK (hereinafter Alstom) resumed July 2011. This investigation, which is being carried out by the Serious Fraud Office (SFO), had been halted for over a year due to a review of the SFO's search warrant against the residential addresses of two Alstom directors in March 2010. The directors had lodged a complaint against the search warrant on several grounds. On 13 July 2011 the Queen's Bench Division Administrative Court dismissed the complaint on all grounds and the SFO was permitted to examine the evidence seized in the directors' homes. SFO is investigating Alstom on suspicion of using bribes to win overseas contracts for the company, money laundering and other related offences.²

On 6 May 2010, Swiss prosecutors indicted Swiss banker Oscar Holenweger for money laundering, bribery, the falsification of documents and the misuse of funds.

Prosecutors argued that Holenweger opened 163 different accounts in his private bank and in commercial banks to help Alstom funnel EUR 66 million to officials in exchange for contracts in South America and Asia. On 21 April 2011, the Federal Criminal Court in Bellinzona acquitted Holenweger of all charges and awarded him more than EUR 340 000 in damages, having found the evidence to be insufficient.³

The remaining Swiss corruption proceedings against Alstom Network Schweiz AG (hereinafter Alstom) were brought to a close on 22 November 2011. The Office of the Attorney General (OAG) issued a summary punishment order under which the company was convicted of violating Article 102 (2), cf. article 322 of the Swiss Criminal Code.⁴ The reason given was that Alstom had failed to implement all necessary and reasonable organizational precautions to prevent the bribery of foreign public officials in Lithuania, Tunisia and Malaysia. The company was fined CHF 2.5 million and ordered to pay CHF 90,000 in proceedings costs as well as a compensatory claim of CHF 36.4 million for the profits obtained by the company. In a press release issued on 22 November 2011, the OAG states that, in cooperation with the Federal Police, it investigated a

“further twelve projects in the power station sector, divided over all continents.

In this regard, it in some part detected additional breaches of internal compliance regulations. Despite considerable investigative efforts however, no additional acts of bribery could be established for the time after article 102 SCC had come into effect.”⁵

The OAG pointed out that the company “had implemented a compliance policy that was suitable in principle, but that it had not enforced it with the necessary persistence.” The OAG also stated that the company “failed to meet the standards” expected of a company with more than 75,000 employees worldwide and its compliance section was understaffed, while those employed in this section had insufficient experience working with compliance. Furthermore, those responsible for compliance worked in the same department as the personnel responsible for conducting sales, procurement and lobbying, which gave them insufficient independence as inspectors. Finally, the OAG highlighted that the company has implemented the necessary measures to ensure that its current compliance system no longer is considered deficient pursuant to article 322 of the Swiss Penal Code. The OAG also announced that Alstom, “in the course of the criminal proceedings now brought to a close, has made considerable efforts to rectify the detected inadequacies in the context of the fight against corruption.” Alstom did not appeal the decision.

As mentioned in the Council’s recommendation, in September 2008 Alstom decided to take legal action against a journalist in the Wall Street Journal, who had written articles about the Swiss investigation of Alstom. The company argued that the articles constituted libel and did not respect the presumption of innocence. On 1 March 2011 the Criminal Court in Nanterre dropped the case and acquitted the reporter of the charge of defamation.⁶

The Malaysian Anticorruption Commission (MACC) announced on 8 December 2011 that, as a result of the Swiss investigation, it had decided to initiate its own investigations of Alstom’s alleged payment of bribes in the country.⁷ According to Malaysian newspapers, the CEO of Alstom, Mr. Patrick Kron, promised to cooperate fully with the commission.⁸

Like the French authorities, the World Bank investigated Alstom Hydro France and Alstom Network Schweiz AG for the use of bribes in connection with a World Bank-financed hydropower project in Zambia. On 22 February 2012, the World Bank announced that it had entered into a settlement with Alstom, which had acknowledged the facts of the case. It concerned a bribe of EUR 110,000 paid by Alstom in 2002 to a company controlled by a former public official in the Zambian government. Under the settlement Alstom had to pay approximately USD 9.5 million in damages and was excluded from World Bank projects for the next three years. The exclusion can be reduced to 21 months provided that the company complies with the terms of the settlement agreement. The company has confirmed to the Council on Ethics that it will cooperate with the World Bank to reduce the exclusion period.⁹ The parent company Alstom SA was not excluded under the condition that the company introduce a compliance system deemed acceptable by the World Bank within a period of three years.¹⁰ As a result of the Agreement for Mutual Enforcement of Debarment Decisions of 8 April 2010, Alstom Hydro France and Alstom Network Schweiz AG are also excluded from the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank.¹¹

In February 2012, the Slovenian Anti-Corruption Commission informed the public about its investigations of a public tender which Alstom Power won in Slovenia in 2008. The Commission claimed to have found a number of reprehensible circumstances, including conflicts of interest and the facilitation of business secrets. The Commission does not go into further detail on account of the ongoing investigation.¹² The European Bank for Reconstruction and Development, which is financing the project together with the European Investment Bank and Slovenian authorities, informed Greenpeace and Bankwatch in a letter in April 2012 that it had frozen all payments towards this project until such a time when it is clear that the conditions for the payments are met.¹³ The Wall Street Journal reported that same month that the European Investment Bank is also investigating this case.¹⁴ The project concerned the expansion and renovation of a coal-driven power plant.

Alstom's anti-corruption work since December 2010

In the Council's recommendation, Alstom's anti-corruption work, particularly its compliance system, was given considerable weight in the assessment of the future risk. The purpose of a company's compliance system is to prevent, detect and react to violations of internal and external laws and regulations. Consequently, such a system may provide information about the risk of future corruption. Since 2009, Alstom's orders in emerging markets have risen from 35 per cent to 60 per cent of its total orders in 2011.¹⁵ Expansion in markets where there is a high risk of corruption requires the implementation of robust anti-corruption systems by the company, and that the top management clearly communicates zero-tolerance towards corruption within the company.

Alstom's compliance programme, "Alstom Integrity Programme," implements all of the company's compliance instructions, procedures and guidelines and is the responsibility of the Senior Vice President (SVP) for Ethics & Compliance (E&C). According to Alstom, the programme has continuously been strengthened since 2001 and in 2010/2011 the E&C

department has added three employees, which means that Alstom has 20 full-time compliance positions.¹⁶ All of the company's main sectors have a compliance officer who reports to the SVP E&C and who is responsible for the implementation of compliance measures in the respective department. In addition, Alstom has today 250 Ethics & Compliance Ambassadors who have been recruited on a voluntary basis and dedicate 10 per cent of their working hours to compliance-related work.¹⁷ While Alstom does not report publicly on its compliance budget, Alstom's SVP for E&C informed the Council that the department has sufficient resources.

In 2011, the company's compliance management discussed the possibility of publicly disclosing non-compliances, but decided not to initiate such reporting at this time.¹⁸

With respect to the training of staff, Alstom has stated that it continues to educate its employees on matters of Ethics and Compliance. In total 5,700 employees have participated in training arranged by Compliance Officers since 2006. In addition to this, 35,000 employees have carried out a web-based training programme on anti-corruption and competition law during this time period.¹⁹

In October 2010, Alstom informed the Council that surveys would be conducted in 2011/12 to assess employee awareness and understanding of the Integrity Programme.²⁰ In its meeting with the Council in February 2012, Alstom said that it will not conduct such a survey at present in light of the many compliance measures the company has initiated over the past year, but that the initiative is still valid for the future.²¹ The company nevertheless informed the Council that it has introduced annual reporting procedures whereby 500 top executives report on the implementation of the Integrity Programme. The purpose is to monitor the programme's performance and contribute to a corporate culture characterised by integrity.²²

There have been no significant changes to the company's alert-procedure for employees who discover violations of laws and regulations. Employees must still notify their immediate supervisor and, if the whistle blower has reason to believe that this will cause problems or that the case will not be investigated, he or she may contact the division's Country President or Legal Counsel in Brazil, China, Germany, India, the U.K. or United States. Alternatively, the employee may send an e-mail to alert.procedure@alstom.com, which will be received and considered by the company's General Counsel and its SVP for Ethics & Compliance in consultation with relevant actors.²³ Between 80 and 90 per cent of all notifications are made using the e-mail address, and the majority of the notifications concern fraud and incompetence. The company has no plans to create an anonymous or external alert line, connected for example to an independent lawyer, which may evaluate the information. Likewise, the company does not have any plans to publicly disclose the notifications it receives along with any subsequent actions.

Until June 2011, Alstom Network in Switzerland and Alstom International Ltd. in the U.K. were responsible for paying consultants once the E&C department had approved their appointment, undertaken due diligence, drafted contracts and checked proof of services. In recent years the E&C departments have been under investigation for corruption in Switzerland and the U.K. Alstom has now centralized the payment process at Alstom's headquarters in Paris.

In September 2011 the Alstom Integrity Programme was certified for two years by the ETHIC Intelligence Certification Committee with assistance from the Swiss auditing firm

SGS, which previously certified the company's handling of external sales consultants. In April and May 2011, the Alstom Power & Transport division and Alstom Grid respectively were certified for two years. The certification implies that Alstom's anti-corruption policies have been designed and implemented to correspond with international best practice.²⁴

The Council's assessment

The Council considers the company's actions such as the centralization of consultant payments to the company's Headquarter, additional anti-corruption training of staff, third-party certification of its compliance system and the creation of several full-time compliance positions, to be appropriate measures in its efforts to improve anti-corruption procedures. The Council considers it particularly positive that the company wishes to cooperate with the World Bank to improve this work.

The company and some of its consultants are still being investigated for suspected bribery, and several new investigations have been opened against the company after the Council on Ethics issued its recommendation. In the last few years, Alstom has expanded its business activities considerably in countries where corruption is widespread. The industry sectors in which Alstom has its core business are also subject to a high risk of corruption. It is essential that the company continue to develop its anti-corruption practices and that the management clearly communicate zero tolerance towards corruption in the company as well as create appropriate incentives to achieve this.

The Council on Ethics will continue the observation of Alstom's anti-corruption work through a dialogue with the company's compliance officers. The Council on Ethics will also monitor whether information on incidents of gross corruption in the company may arise from other sources.

Yours sincerely,

Ola Mestad
Chairman

Notes

- 1 Alstom, "Registration Document 2010/11". Available at http://www.alstom.com/Global/Group/Resources/Documents/Investors%20document/ALS2010_DRF-EN-MEL.pdf.
- 2 Serious Fraud Office, Press release dated 24 March 2010. Available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/directors-of-alstom-arrested-in-corruption-investigation-following-raids-on-nine-properties.aspx>.
- 3 Criminal Court in Bellinzona, Switzerland, "Urteil vom 21. April 2011". Available at http://bstger.weblaw.ch/pdf/20110421_SK_2010_13.pdf (accessed 17 July 2012). Swissinfo (21 April 2011), "Holenweger acquitted of money laundering", available at http://www.swissinfo.ch/eng/swiss_news/Holenweger_acquitted_of_money_launde-ring.html?cid=30061936.
- 4 Swiss Criminal Code Art 102 (2): Liability under the criminal law and Art 322: Bribery of foreign public officials.

- 5 Office of the Attorney General (OAG), Press release dated 22 November 2011, available at <http://www.news.admin.ch/message/index.html?lang=de&msg-id=42300>.
- 6 Alstom, Press release dated 3 March 2011. Available at <http://www.alstom.com/news-and-events/press-releases/Case-against-the-Wall-Street-Journal/>.
- 7 Malaysian Anti-Corruption Commission (MACC), Press release dated 8 December 2011. Available at http://www.sprm.gov.my/images/files/PR_8_Dec_2011___ALSTOM_Issue_ENG.pdf.
- 8 The Star Online (12. March 2012), "Alstom to cooperate with MACC", available at <http://biz.thestar.com.my/news/story.asp?file=/2012/3/12/business/10860809&sec=business>.
- 9 World Bank, Press release dated 22 February 2012. Available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.
- 10 World Bank, "Listing of Ineligible Firms & Individuals". Available at <http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266#cross>.
- 11 See the website of the Asian Development Bank for a helpful overview over mutually enforced debarments as well as the agreement's text at <http://lnadbg4.adb.org/oai001p.nsf/>.
- 12 Commission for the Prevention of Corruption of the Republic of Slovenia. The Commission's interim report can be downloaded at http://www.kpk-rs.si/download/t_datoteke/2724 (in Slovenian). An unofficial English translation is available at <http://bankwatch.org/sites/default/files/StateCommissionReport-corruption-TES6-23Feb2012.pdf>.
- 13 Available at <http://bankwatch.org/documents/response-EBRD-Sostanj-loansuspension-16Apr2012.pdf>.
- 14 The Wall Street Journal (30 April 2012), "Alstom Bid Draws Scrutiny". Available at <http://online.wsj.com/article/SB10001424052702304868004577375923946945092.html?KEYWORDS=alstom+%22European+Investment+Bank%22>.
- 15 Alstom, "Registration Document 2010/11". p. 3.
- 16 Alstom, "Registration Document 2010/11". p. 3.
- 17 For additional information, see the Council on Ethics' recommendation of 1 December 2010.
- 18 Meeting between the Council on Ethics and Alstom February 2012.
- 19 Alstom, "Registration Document 2010/11". p. 51.
- 20 Meeting between the Council on Ethics and Alstom October 2010.
- 21 Meeting between the Council on Ethics and Alstom February 2012.
- 22 Alstom's presentation at its meeting with the Council on Ethics January 2012.
- 23 Alstom's presentation at its meeting with the Council on Ethics January 2012.
- 24 See Alstom's website, <http://www.alstom.com/ethics/ethics-intelligence-certificate/>.

The Ministry of Finance

11 April 2012

Companies in the GPFG with activities in Burma (Myanmar)

We refer to the letter from the Ministry of Finance dated 22 February 2012, in which the Ministry requested the Council on Ethics' assessment of GPFG companies with activities in Burma in light of the changed political circumstances in that country.

Previously, in a letter dated 28 September 2007, the Ministry of Finance asked the Council on Ethics to report on its work on cases related to investments in companies with activities in Burma, and to provide a preliminary assessment of cases in which there might be an unacceptable risk of the companies contributing to serious human rights violations.

In its reply dated 11 October 2007, the Council on Ethics pointed out that there was significant risk of human rights violations in connection with the development of large infrastructure projects in Burma. The Council on Ethics stated unequivocally that if GPFG companies entered agreements on constructing on-shore pipelines in Burma, the Council might advise excluding the companies from the date of the agreement, as such projects in the Council's view involved an unacceptable risk of contribution to human rights violations.

As the Ministry of Finance points out in its letter dated 22 February 2012, on the basis of the recent developments in Burma the Norwegian Government decided in January 2012 to remove its advice to not trade with or invest in Burma. Furthermore, the Government has decided that Burma will no longer be excluded from the general trade preference system (GSP), but that Norway remains aligned with the EU sanction regime, which will be evaluated later this year.

The starting point for the Council on Ethics' work is that the GPFG ethical guidelines apply to all companies in the fund, regardless of where they conduct their business. The role of the Council on Ethics is to evaluate any violations of norms committed by companies rather than by states or other actors. Even if the political situation in Burma improves, for example through the freeing of political prisoners and other democratic reforms, there are multiple areas of the country in which there are significant ethnic conflicts and that have previously witnessed extensive human rights violations. The Council on Ethics will evaluate corporate activities in Burma in the same manner as it evaluates activities elsewhere, and will pay particular attention to companies' possible contribution to human rights violations in relation to large infrastructure projects.

However, the Council on Ethics no longer sees reason to advise that companies be excluded solely on the basis of entering contracts connected to such projects.

Yours sincerely,

Ola Mestad

Chair,

Council on Ethics for the Government Pension Fund Global



Summary of recommendations on excluded companies

Summary of recommendations on excluded companies

Recommendations to exclude companies that produce cluster munitions

16.06.2005 Companies producing cluster munitions

The companies General Dynamics Corp., Raytheon Co., Lockheed Martin Corp., and Alliant Techsystems Inc. are excluded on the basis of the production of components for cluster munitions.

(Published 2 September 2005)

06.09.2006 Poongsan Corp.

The South-Korean company Poongsan Corp. is excluded on the basis of the 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 the production of cluster munitions.

(Published 11 January 2008)

26.08.2008 Textron Inc.

The US company Textron Inc. is excluded on the basis of the production of cluster munitions.

(Published 30 January 2009)

Recommendations to exclude companies that produce key components for 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) was excluded in 2005 on the basis of the 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)

31.08.2012 The Babcock & Wilcox Co. and Jacobs Engineering Group Inc.

The American companies The Babcock & Wilcox Co. and Jacobs Engineering Group Inc. were recommended for exclusion because of their involvement in the production of nuclear weapons.

(Published 11 January 2013)

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 the 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 the 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)

15.02.2011 Grupo Carso SAB de CV

The Mexican company Grupo Carso SAB de CV is excluded because of its involvement in the production of tobacco.

(Published 25 August 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. and Danya Cebus Ltd.

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

(Published 23 August 2010)

21.12.2011 Shikun & Binui Ltd.

The Israeli company Shikun & Binui Ltd. was recommended for exclusion because of its activities in the building of Israeli settlements in East Jerusalem.

(Published 15 June 2012)

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 using 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 is excluded because its nickel plant on the Taymyr Peninsula causes 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 it supplies surveillance systems to the separation barrier on the West Bank.
(Published 3 September 2009)

15.11.2010 Potash Corp. of Saskatchewan and FMC Corp.

The Canadian company Potash Corp. and the American company FMC Corp. are excluded because of their purchase of phosphate minerals extracted in Western Sahara.
(Published 6 December 2011)

Guidelines for the observation and exclusion of companies 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 that are affected by investment restrictions on government bonds as described in the management mandate for the Government Pension Fund Global Section 3-7 (10).
- (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.

