

From: [Anne-Maree O'Connor](#)
To: [Catherine Etheredge](#)
Cc: [Katie Beith](#); [Isabelle Brunton](#)
Subject: RE: FYI
Date: Thursday, 31 May 2018 1:21:00 PM
Attachments: [image003.jpg](#)
[image004.png](#)
[image005.jpg](#)

Hi Catherine

I am a bit confused as to which publication this story has run in and therefore how much attention to give it. But as a reminder:

On the OPT, the companies we are excluding at those that are the actual firms owning and developing the settlements construction and where we don't see engagement as the best option (either we don't think it would be effective or we don't believe it is worth the resource/effort). This is because it is the management and board of those companies that are making the decision to pursue that activity.

We do not extend that to suppliers of materials, services or finance. If we did that for all our companies which are breaching international standards it would mean our engagement resources would be swamped and/or our exclusion lists would be too extensive.

There will be a refresh in June so some companies may change.

Katie spoke too soon!

AMO

Anne-Maree O'Connor
Head of Responsible Investment
DDI: [REDACTED]
Mobile: [REDACTED]
Email: [REDACTED]

s9(2)(a)

A Great Team Building the Best Portfolio

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



CAUTION - This message may contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient for this message, you are hereby notified that any user dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error, please notify New Zealand Superannuation Fund immediately. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of the Guardians of New Zealand Superannuation, and of the New Zealand Superannuation Fund.

From: Catherine Etheredge
Sent: Thursday, 31 May 2018 12:20 p.m.
To: Responsible Investment [REDACTED]
Cc: Isabelle Brunton [REDACTED]
Subject: FYI

s9(2)(a)

'Human rights watch targets Israeli banks invested in by NZ Super Fund'

[Home](#) > [National](#)

Contributor:



Fuseworks Media

Thursday, 31 May, 2018 - 10:25

The Palestine Solidarity Network has renewed calls for the NZ Super Fund to divest its shareholding in Israeli banks which invest in the illegal construction of Jewish only settlements in the Palestinian Occupied Territories.

Human Rights Watch has just listed a number of Israeli banks which fund construction of these settlements, which Human Rights Watch says is complicit in the occupation of Palestinian land and in breach of international law.

The New Zealand Super Fund invests in four of the banks identified by Human Rights Watch; Bank Hapoalim, Bank Leumi, Mizrahi Tefahot and the First International Bank of Israel.

Human Rights Watch says Bank Hapoalim funds construction at the settlements of Efrat and Beitar Illit. The Super Fund's investment in Bank Hapoalim is worth \$2.9 million.

Bank Leumi is banking construction at Alfei Menashi. The Fund investment in Bank Leumi is \$2.6 million.

The greatest extent of revealed bank loans for Israeli settlements is with Mizrahi Tefahot, with loans to multiple settlements in all of Ariel, Efrat, Elkana, Ma'aleh Adumin.

Mizrahi Tefahot also funds building work at Kiryat Arba. This settlement is one of the oldest and most notorious of Israeli settlements. One settler from Kiryat Arba was Baruch Goldstein who murdered 29 Palestinians in the Cave of the Patriarchs in 1994.

The Super Fund lists its most recent shareholding in Mizrahi Tefahot at \$934,111.

Spokesperson for the Palestine Solidarity Network in Auckland, Janfrie Wakim, says the Super Fund divested its stake in three Israeli companies on 2012 because they were building Israeli settlements.

"Then the Super Fund appears to have got cold feet and claimed that while building illegal Israeli settlements was wrong, paying for their construction was not objectionable."

Wakim says if the Super Fund doesn't act on the Human Rights Watch information, then the New Zealand government must instruct the Super Fund.

"The government has powers to give direction to the Super Fund through the Finance Minister. We've just had the massacre of more than 100 Palestinians by Israeli snipers in Gaza and the Israeli Defence Minister has announced a massive speed up of illegal settlements in the occupied West Bank."

"New Zealand needs send a clear message to Israel that even if the United States is encouraging Israel to act outside the law, then other countries are not prepared to accept it."

<https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

<https://www.nzsuperfund.co.nz/publications/annual-equity-listings>

Catherine Etheredge
Head of Communications

DDI:
Mobile:
Email:



s9(2)(a)

A Great Team Building the Best Portfolio

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



Released under the OIA

From: Catherine Etheredge
To: Anne-Maree O'Connor; [REDACTED] [DPMC]; Katie Beith
Cc: [REDACTED] [DPMC]
Subject: RE: Israeli investments - letter to PM
Date: Wednesday, 13 June 2018 3:43:53 PM
Attachments: image001.jpg
image002.jpg
image003.gif

s9(2)(a)

Hi [REDACTED]

Thanks for checking with us. Yes, the correct response is to refer the writer to the Guardians of NZ Superannuation (the Crown entity that manages the NZ Super Fund) – feel free to provide my contact details.

By way of background, the Guardians is a double-arms-length Crown entity with operational independence from the Government of the day regarding its investment decisions.

I can confirm that the Fund does hold the banks concerned. The Fund's investments in the Israeli banks are held passively in its global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost-effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily according to their market capitalisation rather than through active stock picking.

By way of background, in 2012 the Guardians excluded from the Fund a small number of Israeli companies because of their involvement in the construction of Israeli settlements or the Separation Barrier in the Occupied Palestinian Territories. This decision followed findings by the United Nations that that the West Bank Separation Barrier and settlement activities were illegal under international law. We also factored in votes by New Zealand for UN Security Council resolutions demanding the cessation and dismantling of the Separation Barrier, and the cessation of Israeli settlement activities in the Occupied Palestinian Territories.

In making any exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials or services in the normal course of business. On this basis the Israeli banks (and other companies about which we are occasionally targeted by activists) are not captured by our exclusion decision.

Feel free to call me to discuss.

Kind regards

Catherine

Catherine Etheredge

Head of Communications

DDI:

Mobile:

Email:

A Great Team Building the Best Portfolio

s9(2)(a)

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



From: Anne-Maree O'Connor

Sent: Wednesday, 13 June 2018 2:51 p.m.

To: [REDACTED] [DPMC]; Catherine Etheredge; Katie Beith

Cc: [REDACTED] [DPMC]

Subject: RE: Israeli investments - letter to PM

Hi [REDACTED]

Nice to hear from you. Catherine and Katie are covering this as we have been contacted recently on this.

Katie, Catherine, could you respond to [REDACTED] on this please?

Thanks Anne-Maree

Anne-Maree O'Connor

Head of Responsible Investment

DDI:

Mobile:

Email:

s9(2)(a)

A Great Team Building the Best Portfolio

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



CAUTION - This message may contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient for this message, you are hereby notified that any user dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error, please notify New Zealand Superannuation Fund immediately. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of the Guardians of New Zealand Superannuation, and of the New Zealand Superannuation Fund.

From: [Redacted]
Sent: Wednesday, 13 June 2018 2:31 p.m.
To: Anne-Maree O'Connor [Redacted] **s9(2)(a)**
Cc: [Redacted]
Subject: Israeli investments - letter to PM
Alert: External email.

[IN-CONFIDENCE]

Hi Anne-Maree, **s9(2)(a)**
[Redacted] DPMC, and
we've received the correspondence copied below.

We've drafted a standard reply explaining that NZSF is responsible for its investment policies and referring the requestor to the Fund for a response. Before we send it off, however, I thought I would check with you whether the facts are correct, and whether there's anything other information you think we could usefully include in the response.

Many thanks,

[Redacted signature]

s9(2)(a)

Department of the Prime Minister and Cabinet

[Redacted contact info]



.....
Please, don't send me a reply saying this matter has been referred to the Foreign Minister, Winston Peters. It's the responsibility of the Labour-led Govt. as a whole. And NO, it's NOT something you, unfortunately, can do nothing about --- those who manage this fund are answerable to us. Tacit support for Israel's ongoing illegal activity make decent Kiwis ashamed of New Zealand. Get some guts or get out.

Human Rights Watch targets Israeli banks... NZ Super fund – Palestine Solidarity Network

June 2, 2018

The Palestine Solidarity Network has renewed calls for the NZ Super Fund to divest its shareholding in Israeli banks which invest in the illegal construction of Jewish only settlements in the Palestinian Occupied Territories.

Human Rights Watch has just listed a number of Israeli banks which fund construction of these settlements, which Human Rights Watch says is complicit in the occupation of Palestinian land and in breach of international law.

The New Zealand Super Fund invests in four of the banks identified by Human Rights Watch; Bank Hapoalim, Bank Leumi, Mizrahi Tefahot and the First International Bank of Israel.

Human Rights Watch says Bank Hapoalim funds construction at the settlements of Efrat and Beitar Illit. The Super Fund's investment in Bank Hapoalim is worth \$2.9 million.

Bank Leumi is banking construction at Alfei Menashi. The Fund investment in Bank Leumi is \$2.6 million.

The greatest extent of revealed bank loans for Israeli settlements is with Mizrahi Tefahot, with loans to multiple settlements in all of Ariel, Efrat, Elkana, Ma'aleh Adumin.

Mizrahi Tefahot also funds building work at Kiryat Arba. This settlement is one of the oldest and most notorious of Israeli settlements. One settler from Kiryat Arba was Baruch Goldstein who murdered 29 Palestinians in the Cave of the Patriarchs in 1994.

The Super Fund lists its most recent shareholding in Mizrahi Tefahot at \$934,111.

Spokesperson for the Palestine Solidarity Network in Auckland, Janfrie Wakim, says the Super Fund divested its stake in three Israeli companies on 2012 because they were building Israeli settlements.

"Then the Super Fund appears to have got cold feet and claimed that while building illegal Israeli settlements was wrong, paying for their construction was not objectionable."

Wakim says if the Super Fund doesn't act on the Human Rights Watch information, then the New Zealand government must instruct the Super Fund.

"The government has powers to give direction to the Super Fund through the Finance Minister. We've just had the massacre of more than 100 Palestinians by Israeli snipers in Gaza and the Israeli Defence Minister has announced a massive speed up of illegal settlements in the occupied West Bank."

"New Zealand needs send a clear message to Israel that even if the United States is encouraging Israel to act outside the law, then other countries are not prepared to accept it."

The information contained in this email message is for the attention of the intended recipient only and is not necessarily the official view or communication of the Department of the Prime Minister and Cabinet. If you are not the intended recipient you must not disclose, copy or distribute this message or the information in it. If you have received this message in error, please destroy the email and notify the sender immediately.

Released under the OIA

From: Catherine Etheredge
To: [REDACTED]@parliament.govt.nz; [REDACTED]@treasury.govt.nz; [REDACTED] [TSY]
Cc: Isabelle Brunton
Subject: FW: Israeli investments - letter to PM **s9(2)(a)**
Date: Wednesday, 13 June 2018 4:45:42 PM
Attachments: image001.jpg
image002.jpg
image003.gif

FYI

From: Catherine Etheredge
Sent: Wednesday, 13 June 2018 3:45 p.m.
To: Anne-Maree O'Connor [REDACTED] [DPMC]
[REDACTED]@dpmc.govt.nz>; Katie Beith [REDACTED] **s9(2)(a)**
Cc: [REDACTED] [DPMC] [REDACTED]
Subject: RE: Israeli investments - letter to PM

Hi [REDACTED],

Thanks for checking with us. Yes, the correct response is to refer the writer to the Guardians of NZ Superannuation (the Crown entity that manages the NZ Super Fund) – feel free to provide my contact details.

By way of background, the Guardians is a double-arms-length Crown entity with operational independence from the Government of the day regarding its investment decisions.

I can confirm that the Fund does hold the banks concerned. The Fund's investments in the Israeli banks are held passively in its global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost-effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily according to their market capitalisation rather than through active stock picking.

By way of background, in 2012 the Guardians excluded from the Fund a small number of Israeli companies because of their involvement in the construction of Israeli settlements or the Separation Barrier in the Occupied Palestinian Territories. This decision followed findings by the United Nations that that the West Bank Separation Barrier and settlement activities were illegal under international law. We also factored in votes by New Zealand for UN Security Council resolutions demanding the cessation and dismantling of the Separation Barrier, and the cessation of Israeli settlement activities in the Occupied Palestinian Territories.

In making any exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials or services in the normal course of business. On this basis the Israeli banks (and other companies about which we are occasionally targeted by activists) are not captured by our exclusion decision.

Feel free to call me to discuss.

Kind regards

Catherine

Catherine Etheredge

Head of Communications

DDI:

Mobile:

Email: [REDACTED]

s9(2)(a)

A Great Team Building the Best Portfolio

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



From: Anne-Maree O'Connor

Sent: Wednesday, 13 June 2018 2:51 p.m.

To: [REDACTED] [DPMC] [REDACTED]; Catherine Etheredge

[REDACTED]; Katie Beith [REDACTED]

s9(2)(a)

Cc: [REDACTED] [DPMC] [REDACTED]

Subject: RE: Israeli investments - letter to PM

Hi [REDACTED]

Nice to hear from you. Catherine and Katie are covering this as we have been contacted recently on this.

Katie, Catherine, could you respond to [REDACTED] on this please?

s9(2)(a)

Thanks Anne-Maree

Anne-Maree O'Connor

Head of Responsible Investment

DDI: [REDACTED]

Mobile: [REDACTED]

Email: [REDACTED]

A Great Team Building the Best Portfolio

PO Box 106 607, Auckland 1143, New Zealand
Level 12, Zurich House, 21 Queen Street, Auckland 1010, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.co.nz



CAUTION - This message may contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient for this message, you are hereby notified that any user dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error, please notify New Zealand Superannuation Fund immediately. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of the Guardians of New Zealand Superannuation, and of the New Zealand Superannuation Fund.

From: [REDACTED] [DPMC] [REDACTED]@dpmc.govt.nz

s9(2)(a)

Sent: Wednesday, 13 June 2018 2:31 p.m.

To: Anne-Maree O'Connor [REDACTED]

Cc: [REDACTED] [DPMC] [REDACTED]

Subject: Israeli investments - letter to PM

Alert: External email.

[IN-CONFIDENCE]

s9(2)(a)

Hi Anne-Maree,

[REDACTED] at DPMC, and we've received the correspondence copied below.

We've drafted a standard reply explaining that NZSF is responsible for its investment policies and referring the requestor to the Fund for a response. Before we send it off, however, I thought I would check with you whether the facts are correct, and whether there's anything other information you think

we could usefully include in the response.

Many thanks,

[REDACTED]

s9(2)(a)

[REDACTED]



Department of the Prime Minister and Cabinet

M
P
E

[REDACTED]

.....

Please, don't send me a reply saying this matter has been referred to the Foreign Minister, Winston Peters. It's the responsibility of the Labour-led Govt. as a whole. And NO, it's NOT something you, unfortunately, can do nothing about ---- those who manage this fund are answerable to us. Tacit support for Israel's ongoing illegal activity make decent Kiwis ashamed of New Zealand. Get some guts or get out.

[REDACTED]

s9(2)(a)

Human Rights Watch targets Israeli banks... NZ Super fund – Palestine Solidarity Network

June 2, 2018

The Palestine Solidarity Network has renewed calls for the NZ Super Fund to divest its shareholding in Israeli banks which invest in the illegal construction of Jewish only settlements in the Palestinian Occupied Territories.

Human Rights Watch has just listed a number of Israeli banks which fund construction of these settlements, which Human Rights Watch says is complicit in the occupation of Palestinian land and in breach of international law.

The New Zealand Super Fund invests in four of the banks identified by Human Rights Watch; Bank Hapoalim, Bank Leumi, Mizrahi Tefahot and the First International Bank of Israel.

Human Rights Watch says Bank Hapoalim funds construction at the settlements of Efrat and Beitar Illit. The Super Fund's investment in Bank Hapoalim is worth \$2.9 million.

Bank Leumi is banking construction at Alfei Menashi. The Fund investment in Bank Leumi is \$2.6 million.

The greatest extent of revealed bank loans for Israeli settlements is with Mizrahi Tefahot, with loans to multiple settlements in all of Ariel, Efrat, Elkana, Ma'aleh Adumin.

Mizrahi Tefahot also funds building work at Kiryat Arba. This settlement is one of the oldest and most notorious of Israeli settlements. One settler from Kiryat Arba was Baruch Goldstein who murdered 29 Palestinians in the Cave of the Patriarchs in 1994.

The Super Fund lists its most recent shareholding in Mizrahi Tefahot at \$934,111.

Spokesperson for the Palestine Solidarity Network in Auckland, Janfrie Wakim, says the Super Fund divested its stake in three Israeli companies on 2012 because they were building Israeli settlements.

"Then the Super Fund appears to have got cold feet and claimed that while building illegal Israeli settlements was wrong, paying for their construction was not objectionable."

Wakim says if the Super Fund doesn't act on the Human Rights Watch information, then the New Zealand government must instruct the Super Fund.

"The government has powers to give direction to the Super Fund through the Finance Minister. We've just had the massacre of more than 100 Palestinians by Israeli snipers in Gaza and the Israeli Defence Minister has announced a massive speed up of illegal settlements in the occupied West Bank."

"New Zealand needs send a clear message to Israel that even if the United States is encouraging Israel to act outside the law, then other countries are not prepared to accept it."

The information contained in this email message is for the attention of the intended recipient only and is not necessarily the official view or communication of the Department of the Prime Minister and Cabinet. If you are not the intended recipient you must not disclose, copy or distribute this message or the information in it. If you have received this message in error, please destroy the email and notify the sender immediately.

Released under the OIA

From: [REDACTED]
To: [REDACTED]
Subject: Divestment of Israeli banks
Date: Monday, 18 June 2018 9:11:15 AM

s9(2)(a)

Alert: External email.

Palestine Solidarity Network
P.O box 56150
Mt Eden

15/06/2018

Matt Whineray

Acting CEO of NZ Super Fund

Level 12
21 Queen Street
Auckland 1010

Dear Mr Whineray,

I am a super annuitant and a member of the Palestine Solidarity Network, following our renewed calls for the New Zealand Superannuation fund to divest from Israeli banks investing in the illegal construction of Jewish only settlements in the Palestinian Occupied Territories, we would like to request a meeting with you to discuss divestment. The Boycott, Divest & Sanction (BDS) is the only peaceful means left the Palestinians to end the inhumane system of discrimination & slow genocide.

Human Rights Watch has just listed a number of banks which fund construction of these settlements, which Human Rights Watch says is complicit in the occupation of Palestinian land and & in breach of international law.

The New Zealand Super Fund invests in four of the banks identified by Human Rights Watch; Bank Hapoalim, Bank Leumi, Mizrahi Tefahot and the First International Bank of Israel.

Human Rights Watch says Bank Hapoalim funds construction at the settlements of Efrat and Beitar Illit. The Super Fund's investment in Bank Hapoalim is worth \$2.9 million. Bank Leumi is banking construction at Alfei Menashi. The Fund investment in Bank Leumi is \$2.6 million.

The greatest extent of revealed bank loans for Israeli settlements is with Mizrahi Tefahot, with loans to multiple settlements in all of Ariel, Efrat, Elkana, Ma'aleh Adumin. Mizrahi Tefahot also funds building work at Kiryat Arba. This settlement is one of the oldest and most notorious of Israeli settlements. One settler from Kiryat Arba was Baruch Goldstein who murdered 29 Palestinians in the Cave of the Patriarchs in 1994. The Super Fund lists its most recent shareholding in Mizrahi Tefahot at \$934,111.

In view of the move we urgently request that from both a humanitarian point of view & for the sake of New Zealand's international reputation The New Zealand Super Fund divests from the above banks & would be grateful for an opportunity to discuss this with you.

Yours faithfully

[REDACTED]

s9(2)(a)

Sent from [Outlook](#)

From: [Isabelle Brunton](#)
To: [Responsible Investment](#); [Mark Fennell](#); [Sarah Owen](#); [Adrien Hunter](#)
Cc: [Catherine Etheredge](#)
Subject: NZ Super Fund subject of petition to parliament on Israeli investments
Date: Wednesday, 20 June 2018 5:35:24 PM

Hi all

A heads up - a petition has been set up that calls on Parliament to request the Fund “divest from any investment in Occupied Palestine as soon as practicable”. The petition references the Fund’s investments in the Israeli banks Bank Hapoalim, Bank Leumi, Mizrahi Tefahot and the First International Bank of Israel, investments which have also been the subject of a recent OIA as well as several letters we have received via our enquiries inbox.

The petition was started by journalist Donna Miles, and is to be presented to Parliament by Labour MP Duncan Webb. It currently has 173 signatures.

More on the petition here: <https://thedailyblog.co.nz/2018/06/12/petition-urges-the-government-to-stop-super-fund-from-investing-in-illegal-settlements-on-occupied-palestinian-territory/> and on the NZ parliament website here:

https://www.parliament.nz/en/pb/petitions/document/PET_78417/petition-of-donna-miles-stop-super-fund-from-investing

The petition closes on the 31st July.

Regards,
Isabelle

Released under the OIA

28 June 2018

John Minto
Email: johnminto@orcon.net.nz

Dear John

Thank you for taking the time to write to us with your concerns in your letter dated 17 June 2018.

You are correct in that the Fund does have holdings in a number of Israeli banks. These investments are held passively in its global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock picking.

In 2012 the Guardians excluded from the Fund a small number of Israeli companies because of their involvement in the construction of Israeli settlements on the Separation Barrier in the Occupied Palestinian Territories. The decision followed findings by the United Nations that the West Bank Separation Barrier and settlement activities were illegal under international law. We also factored in votes by New Zealand for UN Security Council resolutions demanding the cessation and dismantling of the Separation Barrier, and the cessation of Israeli settlement activities in the Occupied Palestinian Territories.

In deciding whether a company is in breach of the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions, and our ability to engage with the company to change its business or practices. We draw a distinction between being directly and materially involved in an activity, versus being a supplier of materials or services in the normal course of business.

On this basis we remain comfortable that our decision making in relation to companies with interests in the Occupied Palestinian Territories is consistent and appropriate, and that the Israeli banks listed by you in your letter are not captured by our exclusion decision.

For further information about our approach to responsible investment please see <https://www.nzsuperfund.co.nz/how-we-invest/responsible-investment>.

We do note your views and thank you, again, for the information that you have provided. We will continue to monitor the situation in the Occupied Palestinian Territories to ensure that our activity meets our responsible investment standards and remains in line with the New Zealand Government's position.

Yours sincerely,

Matt Whineray
Chief Executive Officer

Released under the OIA

19 June 2018

[REDACTED]
Palestine Solidarity Network

Email: [REDACTED]

s9(2)(a)

Dear [REDACTED]

Thank you for taking the time to write to us with your concerns in your email dated 18 June 2018.

You are correct in that the NZ Super Fund does have holdings in a number of Israeli banks. These investments are held passively in the Fund's global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock picking.

In 2012 the Guardians of New Zealand Superannuation, the Crown entity that manages the Fund, excluded a small number of Israeli companies from the Fund because of their involvement in the construction of Israeli settlements on the Separation Barrier in the Occupied Palestinian Territories. The decision followed findings by the United Nations that the West Bank Separation Barrier and settlement activities were illegal under international law. The Guardians also factored in votes by New Zealand for UN Security Council resolutions demanding the cessation and dismantling of the Separation Barrier, and the cessation of Israeli settlement activities in the Occupied Palestinian Territories.

In deciding whether a company is in breach of the Fund's responsible investment standards and how material that breach is, the Guardians takes account of the proximity and importance of the company's actions, and our ability to engage with the company to change its business or practices. We draw a distinction between being directly and materially involved in an activity, versus being a supplier of materials or services, including banking services, in the normal course of business.

On this basis the Israeli banks listed by you in your letter are not captured by our exclusion decision. Given that the Guardians' position on the issue has not changed since we last met with you, we respectfully decline your request to meet again on the issue. We have noted your views and thank you, again, for the information that you have provided. We will continue to monitor the situation in the Occupied Palestinian Territories to ensure that our activity meets our responsible investment standards and remains in line with the New Zealand Government's position.

For further information about our approach to responsible investment please see <https://www.nzsuperfund.co.nz/how-we-invest/responsible-investment>.

Yours sincerely,

Matt Whineray
Chief Executive Officer

Released under the OIA

28 June 2018

[REDACTED]

s9(2)(a)

Email: [REDACTED]

Dear [REDACTED]

Thank you for taking the time to write to us with your concerns in your letter dated 21 June 2018.

You are correct in that the Fund does have holdings in a number of Israeli companies. These investments are held passively in its global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock picking.

In 2012 the Guardians excluded from the Fund a small number of Israeli companies because of their involvement in the construction of Israeli settlements on the Separation Barrier in the Occupied Palestinian Territories. The decision followed findings by the United Nations that the West Bank Separation Barrier and settlement activities were illegal under international law. We also factored in votes by New Zealand for UN Security Council resolutions demanding the cessation and dismantling of the Separation Barrier, and the cessation of Israeli settlement activities in the Occupied Palestinian Territories.

In deciding whether a company is in breach of the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions, and our ability to engage with the company to change its business or practices. We draw a distinction between being directly and materially involved in an activity, versus being a supplier of materials or services in the normal course of business.

On this basis we remain comfortable that our decision making in relation to companies with interests in the Occupied Palestinian Territories is consistent and appropriate, and that the Israeli companies referenced by you in your letter are not captured by our exclusion decision.

For further information about our approach to responsible investment please see <https://www.nzsuperfund.co.nz/how-we-invest/responsible-investment>.

We do note your views and thank you, again, for the information that you have provided. We will continue to monitor the situation in the Occupied Palestinian Territories to ensure that our activity meets our responsible investment standards and remains in line with the New Zealand Government's position.

Yours sincerely,

Matt Whineray
Chief Executive Officer

Released under the OIA

26 July 2018

██████████

s9(2)(a)

Email: ██████████

Dear ██████████

Thank you for taking the time to write to us with your concerns in your letter dated 18 June 2018.

You are correct in that the Fund does have holdings in a number of Israeli banks. These investments are held passively in the global equity portfolio, which is managed externally and includes shares in more than 6,500 companies around the world. Like many institutional investors, a sizeable proportion of the Fund tracks global equity indices in order to gain cost effective, diversified exposure to share markets around the world. Investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock picking.

In deciding whether a company is in breach of the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions. We draw a distinction between being materially involved in, and responsible for, the activity, versus being a supplier of materials or services in the normal course of business. We will also consider if engagement with the company would be able to influence an end to the activity before making an exclusion decision.

We have excluded development and construction companies directly involved in constructing settlements in the Occupied Palestinian Territories (OPT). These companies seek the permits, source the funding (primarily bank loans), manage the projects, and derive returns based on the sale of these newly constructed properties. Our exclusion decision followed findings by the United Nations that the West Bank Separation Barrier and settlement activities were illegal under international law. The decision also considered New Zealand's position, reflected in voting on UN Security Council resolutions that demand the cessation and dismantling of the Separation Barrier, the cessation of Israeli settlement activities in the OPT and support a lasting two-state solution. We are satisfied that our previous exclusion decisions should continue to apply to these companies.

Whilst financial accompaniment for any property development project is always necessary, our focus is on the company with primary responsibility for the activity. Extending the boundaries of our exclusion policy to companies whose involvement is less direct, including the provision of bank financing, given the range of activities to which our exclusions apply, would increase the number of companies captured to such an extent as to make our exclusion policy unworkable.

In your letter you request assurance that none of the Israeli banks the Fund is invested in are involved in pillage, or in any other contravention of international conventions or law. We do not provide legal assurances regarding the activity of companies. We do monitor legal suits and outcomes against companies on the issue of human rights, bribery and corruption, and severe

environmental damage through various research providers which helps us with our assessments.

For further information about our approach to responsible investment please see <https://www.nzsuperfund.co.nz/how-we-invest/responsible-investment>.

We do note your views and thank you, again, for the information that you have provided. We will continue to monitor the situation in the OPT and involvement of companies against our responsible investment standards.

Yours sincerely,

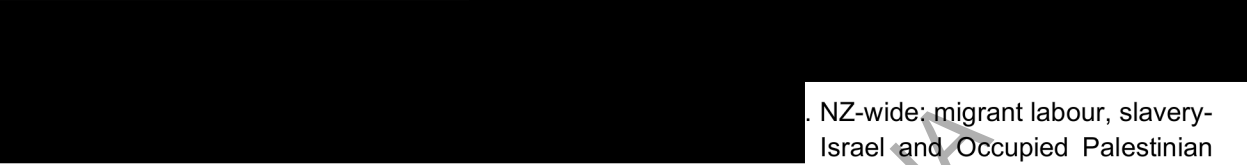
Matt Whineray
Chief Executive Officer

Released under the OIA

RI Digest –June-July 2018

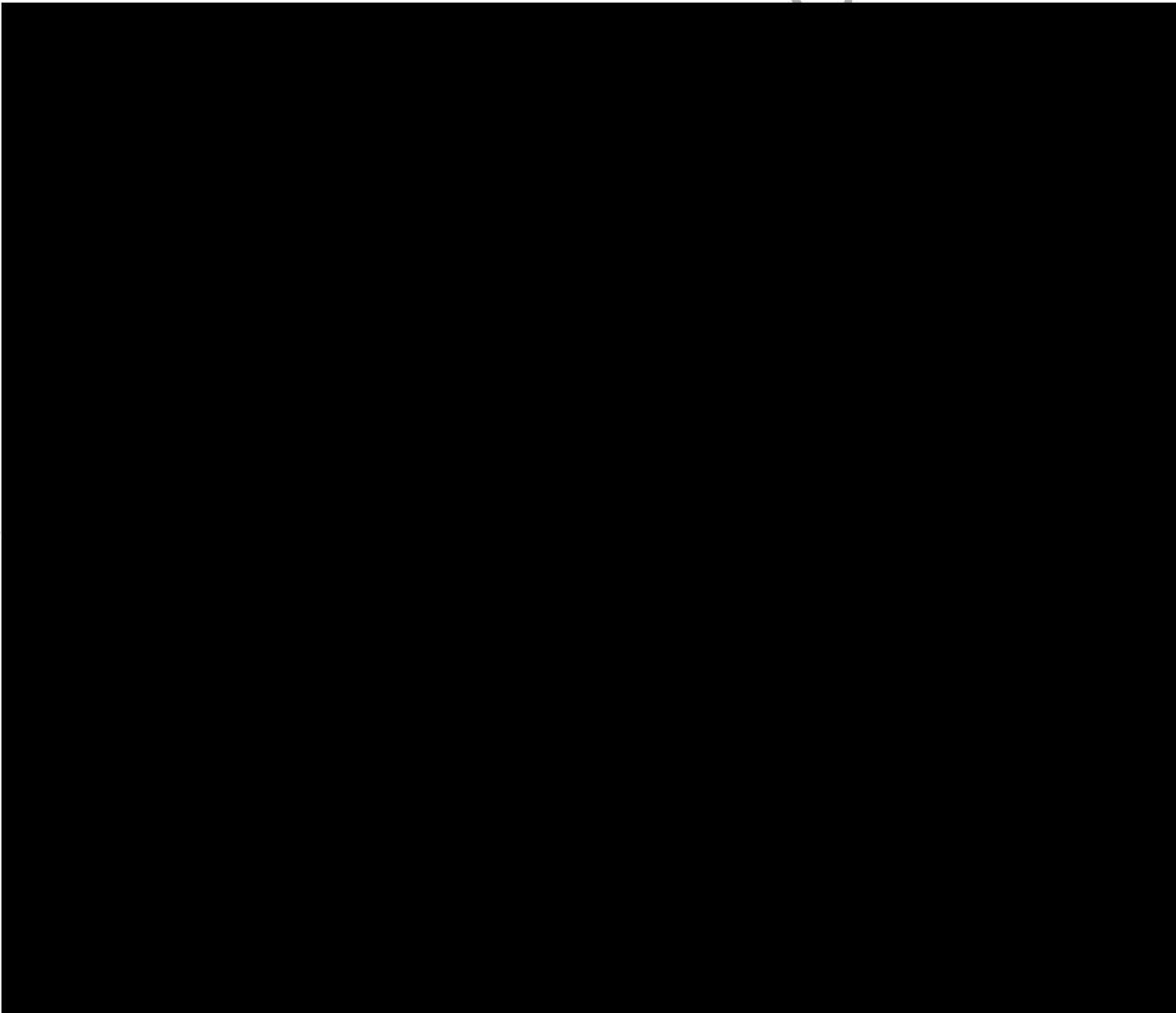


Stakeholders – Israel-Palestine NGOs;

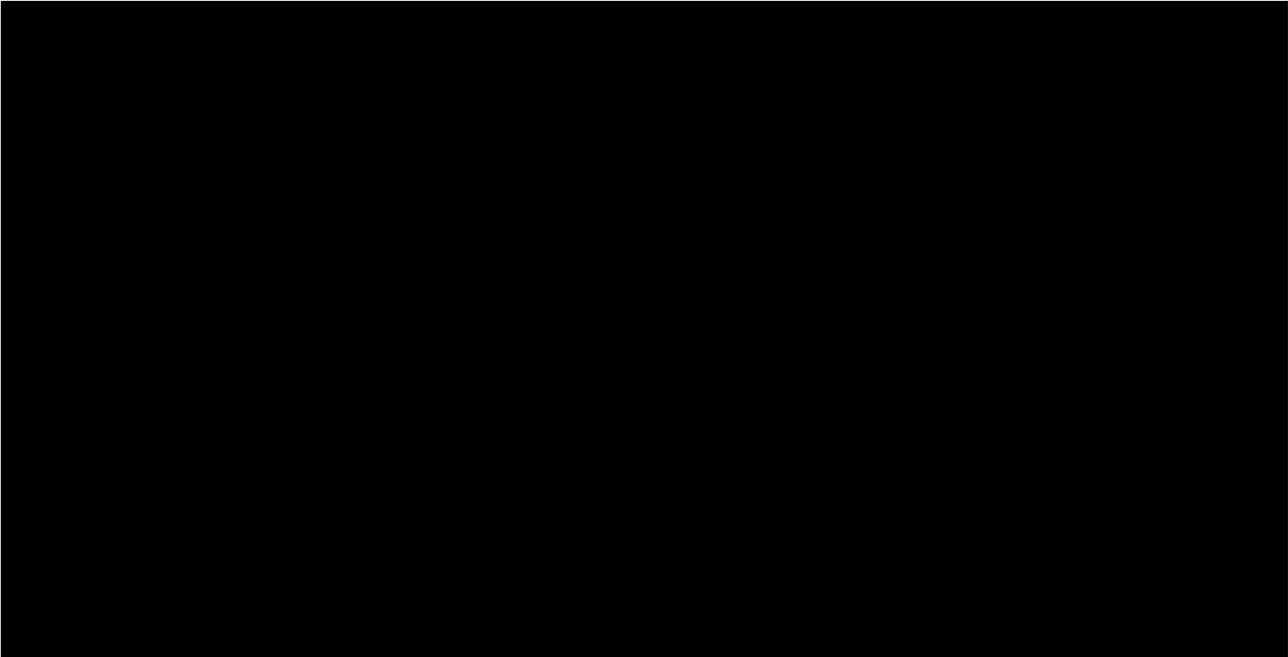


. NZ-wide: migrant labour, slavery-
Israel and Occupied Palestinian

Territories (OPT).

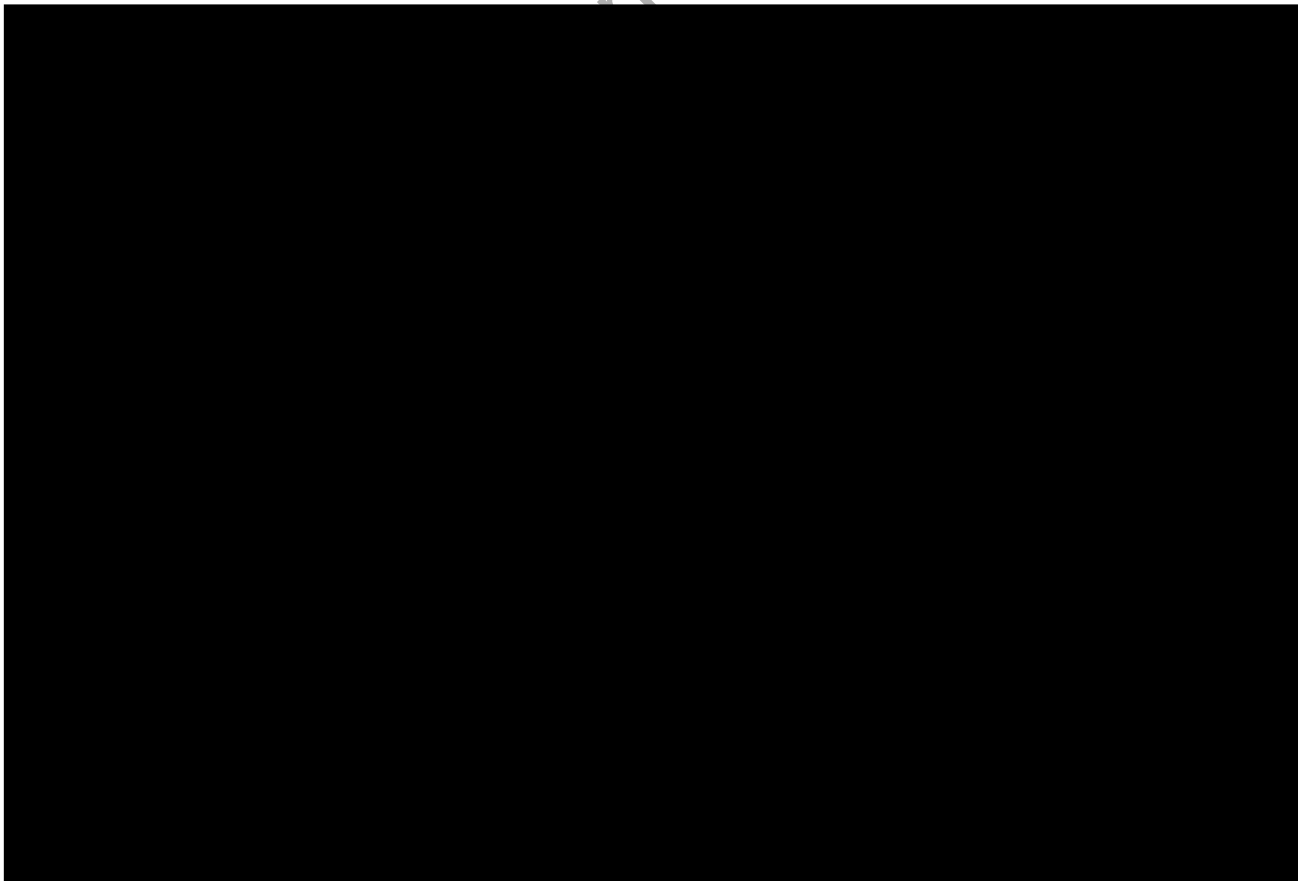


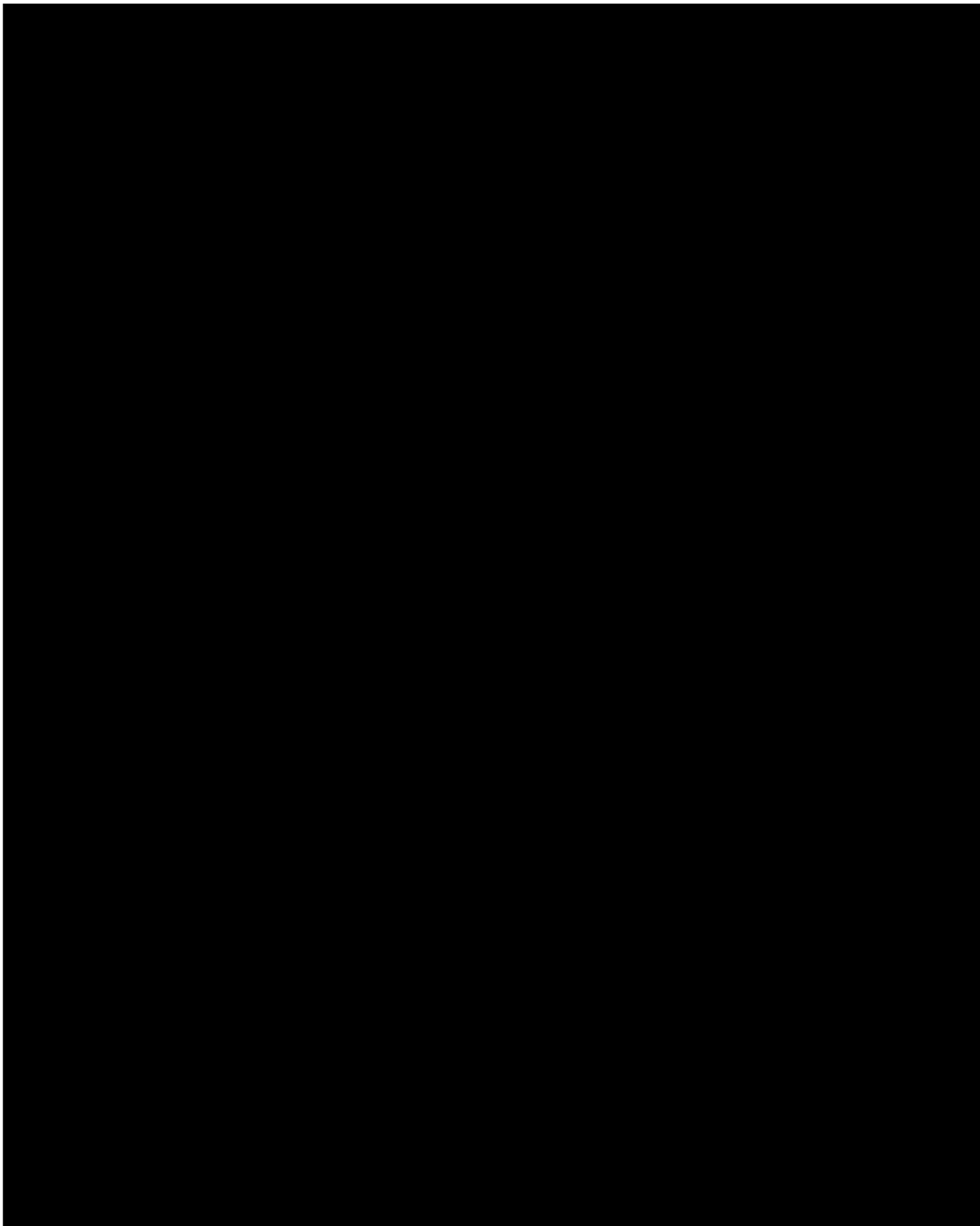
B

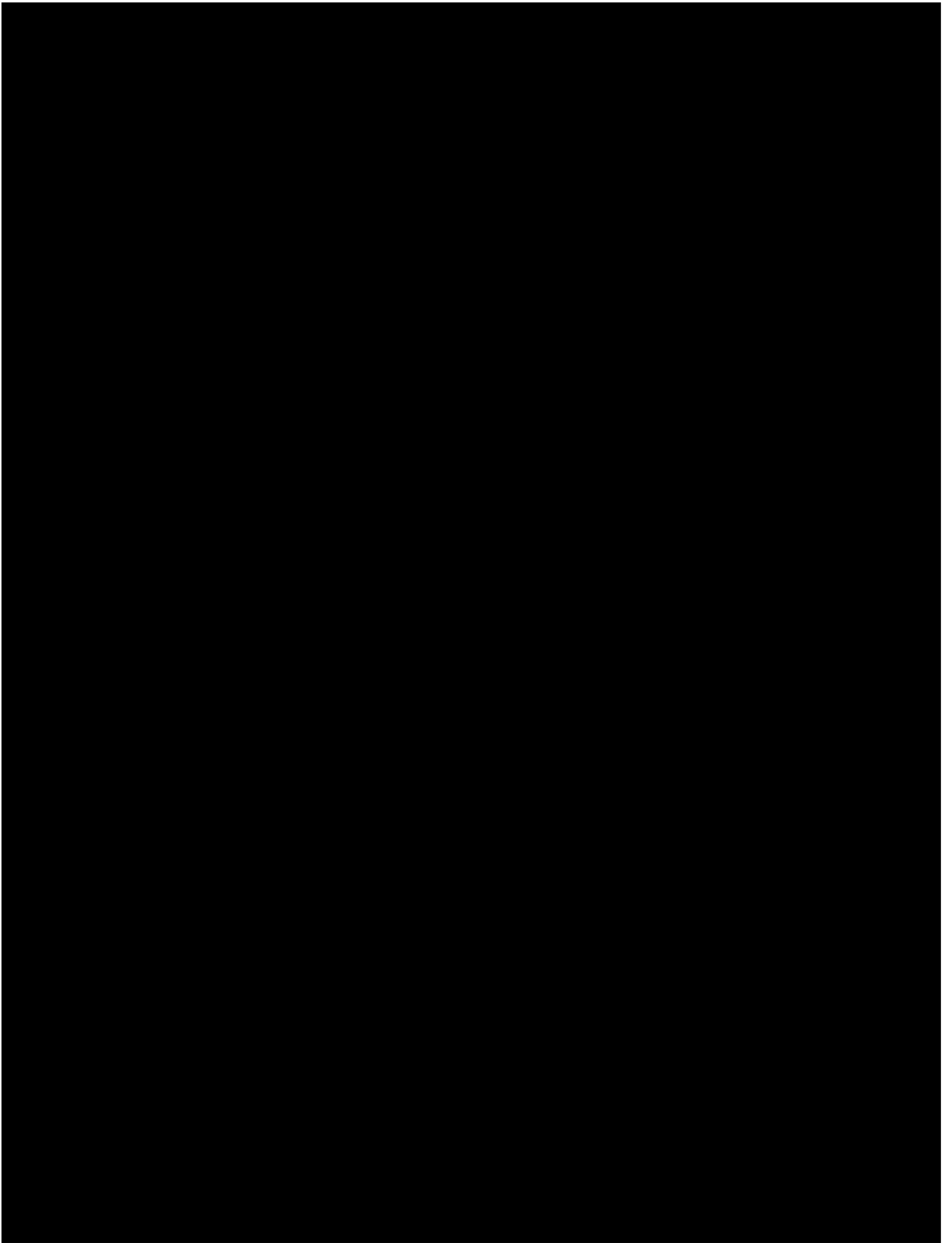


Issues: Israeli banks – a campaign against Israeli Banks involved in finance to developers of settlement villages. We exclude the developers not the banks. This is a common approach across our exclusions. Deteriorating relations in Israel and Palestine are leading to increased requests for information, letters to our Board and Ministers e.g. from John Minto.

Note: Whilst the banks come across our radar for their own poor practices e.g. around conflicts & incentives, they are facing increased stakeholder action for their loan portfolios e.g. coal, controversial projects. This could be an engagement topic to review with BMO and managers.







Released under the OIA

ITEM **DRAFT** **PORTFOLIO MONITORING:**
BANK LEUMI

Prepared by:



s9(2)(a)

Date:

July 2020

1 Purpose

- 1.1.1 The purpose of this note is to review and update the profiles of the Israeli bank holdings, in light of the political developments around the world relating to the proposed annexation of Israeli settlements in Occupied Palestinian Territory.
- 1.1.2 The note builds upon previous background work conducted in 2014, as well as various other notes referenced throughout.

2 Background

- 2.1.1 Bank Leumi le-Israel B.M., together with its subsidiaries, provides banking and financial services in Israel and internationally. It provides housing loans, collateral loans, and loans to purchasing groups, including mortgage planning, accompanying the customer through the mortgage process, and recycling existing loans; financial support to Israeli high-tech companies; credit cards; and digital banking services, as well as cash management services. In addition, it engages in the activities, such as advisory services, sale and management of loan portfolios, and development of financial products. The company provides banking services to private customers and small businesses, largest and multinational corporations, and middle-market companies, as well as financial services to institutional customers and foreign banks. It operates approximately 222 retail banking, 25 commercial banking, and 5 private banking branches. The company was founded in 1902 and is headquartered in Tel Aviv, Israel. Source: MSCI
- 2.1.2 A list of companies identified by the United Nations High Commissioner for Human Rights as being involved in 'activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', includes Bank Leumi. The list identifies a total of 112 companies.
- 2.1.3 We have not previously excluded banks operating in OPT as they have fallen outside our boundaries. Our boundary states that: *When making exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials in the normal course of business. In deciding whether a company is breaching the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions to an illegal or unethical activity.*

3 MSCI Reports

3.1.1 As at 10/07/2020, [REDACTED]

3.1.2 [REDACTED]

4 GNZS Holdings

4.1.1 Value: \$NZD 19,026,786

4.1.2 Managers: SSGA, BlackRock, Northern Trust

4.1.3 ISIN: [REDACTED]

5 The Issues

5.1.1 Since the last profile there has been significantly increased NGO and stakeholder interest in the matter. This section summarises the views from reports of Amnesty International, Who Profits, Human Rights Watch and the University of Essex Business and Human Rights Project which utilised the investor perspective of the Norwegian state-owned Pension fund – Norwegian Statens Pensjonsfund Utland (“SPU”).

5.1.2 The issues centre around the banks role in financing the construction of non-militarily necessary Jewish settlements in the Occupied Palestinian Territory, which Amnesty highlights is a breach of International Humanitarian Law¹.

5.1.3 “The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws” (Amnesty International).² Amnesty further alleges that Israel’s settlement policy is the driving force behind mass human rights violations.

5.1.4 A statement by PGGM in 2014 outlined their reasoning for excluding Bank Leumi:

“concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law. Moreover, international observers have indicated that the settlements constitute an important obstacle to a peaceful (two-state) solution of the Israeli- Palestinian conflict. In 2004 the International Court of Justice concluded in an Advisory Opinion that the settlements in the Palestinian territories are in breach of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Population in Time of War. This article prohibits an occupying power to transfer its own citizens to occupied territory. International bodies, including the UN General Assembly and the UN Human Rights Council have adopted various broadly

¹ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

² <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

supported resolutions, which state that the settlements are considered illegal. Israel disputes this interpretation of the applicability of international law.”

5.1.4.1 In 2014 ABP referenced that the three Israeli banks it had holdings in – Bank Hapoalim, Leumi and Mizrahi-Tefahot – “did not act in breach of international laws and regulations, adding that there were no existing judicial rulings that should result in their exclusion from its investment universe.”³

5.1.5 A report issued by the NGO, Who Profits alleges that:

“Bank Leumi, Bank Hapoalim, Israel Discount Bank, Mizrahi-Tefahot Bank, Bank Igud, FIBI and Bank of Jerusalem are all party to accompaniment agreements signed with Israeli construction companies operating in the Israeli settlements in the West Bank and East Jerusalem. All these banks provide loans or financial guarantees and extend credit to the companies, which in return provide the banks with all their contractual, actual and financial rights to the land and projects as collateral. Most companies also provide the bank with all of the funds they receive from buyers and renters in the project, as well as from different Israeli authorities, including the tax authorities.”⁴

“The banks are so heavily involved in accompanied construction projects that they inspect each and every stage of the project, including its profitability and the development of the construction. Usually, the bank is also involved in determining the price rate and sale schedule of the apartments.”⁵

5.1.6 The report by Who Profits provides specific case studies of construction projects and the respective banks involvement with the project. ⁶

5.1.7 A report issued by the Human Rights Watch in May 2018 found that:

“Israel’s largest banks are providing services that help support, maintain, and expand unlawful settlements by financing their construction in the occupied West Bank, including partnering with developers to build homes on land unlawfully seized from Palestinians. The banks’ involvement is direct and substantial: they acquire a property interest in the development projects and shepherd them through to completion. The transfer by the occupier of members of its civilian population into the occupied territory, and the deportation or transfer of members of the population of the territory, are war crimes. The activities of banks finance a critical step in this transfer.”⁷

“Most Israeli banks finance or “accompany” construction projects in the settlements by becoming partners in settlement expansion, supervising each

³ <https://www.ipe.com/main-navigation/israeli-banks-did-nothing-to-breach-international-law-abp-concludes/10000948.article>

⁴ <https://whoprofits.org/report/financing-land-grab-the-direct-involvement-of-israeli-banks-in-the-israeli-settlement-enterprise/>

⁵ Who Profits report SD#2999407

⁶ See page 51, 64, 66 of the Who Profits report footnoted above.

⁷ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

stage of construction, holding the buyers' money in escrow, and taking ownership of the project in case of default by the construction company.”⁸

5.1.8 A report titled ‘Investor Obligations in Occupied Territories’ authored by the Essex Business and Human Rights Project, focuses its analysis on the Norwegian Government state-owned Fund – Norwegian Statens Pensjonsfund Utland (“SPU”).

5.1.8.1 The report posits that: *“If SPU cannot use leverage to effect change in its investees’ human rights impacts, any continued investment has the potential to move from a situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.”⁹*

5.1.8.2 The report finds that: *“At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements contribute to the human rights impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as causing the violations because these businesses’ conduct is essential to the construction, and therefore essential to the resulting violations.”*

5.1.8.3 The report drew criticism from certain organisations such as pro-Israel NGO Monitor for using proposed inaccuracies in the report.¹⁰

5.1.9 Further, in 2015 the US state of Illinois’ House of Representatives and Senate voted unanimously to pass legislation requiring five state-funded pension schemes to divest their direct and indirect holdings from any company that is identified as boycotting Israeli companies.¹¹

6 The UN Human Rights Council database of business enterprises involved in OPT

6.1.1 The mandate of the report aims to produce a database that lists all business enterprises involved in any of the listed activities operating in OPT.

6.1.2 All listed activities and the complete database can be found [here](#).

6.1.3 Notably, Bank Leumi is listed as being involved in listed activities E and F.

6.1.4 E relates to: *the provision of services and utilities supporting the maintenance and existence of settlements, including transport;*

6.1.5 F relates to: *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*

⁸ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁹ <https://www.essex.ac.uk/-/media/documents/research/ebhr/investor-obligations-in-occupied-territories--report-on-the-norwegian-government-pension-fund--globa.pdf>

¹⁰ <https://www.ngo-monitor.org/reports/multiple-inaccuracies-in-the-essex-npa-bds-investor-obligations-report/>

¹¹ <https://www.ipe.com/pension-funds-ordered-to-divest-companies-that-support-boycott-of-israel/10008102.article>

C3 - Internal Use Only – Legally Privileged

- 6.1.6 OHCHR identified as “involved”, for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:
- 6.1.6.1 *A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;*
 - 6.1.6.2 *A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a minority share in a subsidiary that business enterprise is not considered to be “involved” for the purposes of this report;*
 - 6.1.6.3 *A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.*
- 6.1.7 The statement from the United Nations Human Rights office that accompanies the released database states:

*The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law**, this report does not provide a legal characterization of the activities in question, or of business enterprises’ involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council’s next session, beginning on 24 February.*

Note the 43rd session referred to above was delayed to the 22nd of June 2020. “The HRC expressed concern about reports by the independent international Col on the protests in the OPT , as well as fact-finding missions and boards of inquiry convened by the Secretary-General, regarding serious human rights violations and grave breaches of IHL, including possible war crimes and crimes against humanity. The HRC further expressed alarm that long-standing systemic impunity for violations of international law and stressed the need to ensure accountability for all violations IHL and IHRL in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace. The HRC requested the High Commissioner to report at the HRC’s 46th session on how all parties can implement the recommendations reviewed by the High Commissioner in 2017, including accountability and legal measures other states can take to ensure Israel and all other relevant parties respect their obligations under international law in the OPT, including East Jerusalem. The resolution was adopted by a vote of 22 in favour, 8 against and 17 abstentions.”¹² The session papers can be found [here](#) and [here](#).

*** Human Rights Council resolution 31/36 recalls reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of*

¹² <https://www.globalr2p.org/publications/hrc43-summary/>

several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.

7 Resolution 72/240 by the UN General Assembly on 20 December 2017

- 7.1.1 The internal note can be found [here](#).
- 7.1.2 On 20 December 2017, a resolution was adopted by the UN General Assembly that called for “Permanent sovereignty of the Palestinian people in the OPT, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources”.
- 7.1.3 The resolution builds on Resolution 2334 from Dec 2016 (see SD#2079722). New Zealand was one of four countries that put the 2016 resolution forward. At this time, New Zealand was a member of the UN Security Council. The resolution states that the “establishment by Israel of settlements in the Occupied Palestinian Territory, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace.”¹³
- 7.1.4 The International Court of Justice Middle East and North Africa Director, Bernabia, is quoted in a statement on the ICJ website that:
- 7.1.4.1 *“Israel’s settlements are illegal no matter how hard the Israeli and the US governments try to spin or whitewash them,”*¹⁴
- 7.1.4.2 *“Any sovereignty claims by Israel over East Jerusalem and the West Bank are null and void under international law and must be repudiated, not condoned or encouraged,”*¹⁵

8 Israel’s recent statement on annexation of the Jordan Valley and the occupied West Bank

- 8.1.1 A recent summary of organisational bodies views on the proposed annexation can be found [here](#).
- 8.1.2 The ICJ issued a statement on November 2019 that refers to the proposed annexation and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.”¹⁶

¹³ <https://www.mfat.govt.nz/en/media-and-resources/news/un-security-council-adopts-historic-resolution-on-israeli-settlements/>

¹⁴ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁵ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁶ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

8.1.3 Some further development see the Dutch Parliament passing a resolution on the 1st of July which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.¹⁷ Belgium's Chamber of Representatives voted for a similar resolution, should Israel proceed with annexation plans.

9 NZ Government statement on Israel's annexation plans

9.1.1 "New Zealand is a long-standing supporter of Israel's right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process,"

9.1.2 "The New Zealand Government's view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans."¹⁸

10 Appendix 1: Peer fund divestments

10.1.1 In January 2014 PGGM, the second largest Dutch pension fund manager announced it will divest from five Israeli banks over their dealings with businesses operating in Jewish settlements within occupied Palestinian territory.¹⁹ Bank Leumi is one of the five banks excluded.

10.1.2 Storebrand (2015), United Methodist Church (2016) and Samepensjon (2017) have all excluded Bank Leumi as at July 2020.

10.1.3 In early 2019 the main client of PGGM, PFZW has removed the five Israeli banks from its exclusion list. As reported by The Rights Forum, the reason for removing the banks from the list is that PFZW is reassessing its entire investment portfolio this year.²⁰ The article suggests that Borgdorff – the CEO of PFZW – is intending on placing the banks back on the list at the end of the year. A search through the PFZW invested shares list as at 31-12-2019 finds the firm to have €7.4 million currently invested in Bank Leumi²¹.

10.1.4 On June 20, 2020 ABP – the largest Dutch pension fund – announced it was divesting from two Israeli banks: Bank Leumi and Hapoalim, for their failure to comply with

¹⁷ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

¹⁸ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long,live%20in%20peace%20and%20security.&text=%E2%80%9CThe%20New%20Zealand%20Government's%20view,significant%20risks%20to%20regional%20security.>

¹⁹ <https://www.reuters.com/article/netherlands-israel-divestment/major-dutch-pension-firm-divests-from-israeli-banks-over-settlements-idUSL6N0KI1N220140108>

²⁰ <https://rightsforum.org/nieuws/pensioenfondsen-pfzw-haalt-vijf-israelische-banken-van-uitsluitingslijst/>

²¹ <https://www.pfzw.nl/over-ons/zo-beleggen-we/waar-in-we-beleggen/overzicht-aandelen.html>

C3 - Internal Use Only – Legally Privileged

ABP's expectation for a detailed and comprehensive human rights policy²². The two banks do not appear on ABP's 1 Jun 2020 exclusion list however.²³

10.1.5 A manual search for the bank's Human Rights policy found no specific piece. Their most recent CSR report had no mention of a Human Rights²⁴ policy in place for operating in OPT.

OPT-related enterprises peer-fund exclusions				
	PGGM	ABP	NBIM	Future Fund
Bank Leumi	\	x	-	-
Bank Hapoalim	\	x	-	-
Mizrahi Tefahot Bank	\	-	-	-
FIBI	\	-	-	-
Israel Discount Bank	\	-	-	-

Legend	
x	Excluded
-	Never excluded
\	Previously excluded but no longer

Timeline of Exclusions

September 2009	NBIM excludes Elbit Systems
February 2010	ABP excludes Elbit Systems
August 2010	NBIM excludes Africa-Israel and subsidiary Danya Cebus.
June 2012	PGGM excludes Elbit Systems
June 2012	NBIM excludes Shikun & Binui
August 2013	NBIM revokes exclusion of Africa-Israel
January 2014	NBIM excludes Africa-Israel and subsidiary Danya Cebus. ²⁵

²² <https://rightsforum.org/nieuws/abp-dumpt-israelische-banken/>

²³ <https://www.abp.nl/images/companies-excluded.pdf>

²⁴ https://english.leumi.co.il/static-files/10/LeumiEnglish/Misc.%20PDFs/Leumi_SocialReport2018_ENGLISH8.pdf

²⁵ Not included in March 2020 exclusion list

January 2014	PGGM excludes all five Israeli banks (Leumi, Hapoalim, Mizrahi-Tefahot, Discount Bank and FIBI).
January 2019	PGGM (PFZW) removes all five Israeli banks from exclusions list in 're-assessment of all investments.'
June 2020	ABP divests from Bank Leumi and Hapoalim

11 Appendix 2: Bank Leumi statements on investments / loans in OPT

11.1.1 The author was unable to find any reference to particular investments/loans, or a statement on, the banks involvement within OPT.

12 Appendix 3: Past work on exclusions of OPT-related businesses

12.1.1 See: [SD#2385043](#)

Released under the OIA

ITEM **DRAFT** **PORTFOLIO MONITORING:**
BANK MIZRAHI-TEFAHOT

Prepared by:



s9(2)(a)

Date:

July 2020

1 Purpose

- 1.1.1 The purpose of this note is to review and update the profiles of the Israeli bank holdings, in light of the political developments around the world relating to the proposed annexation of Israeli settlements in Occupied Palestinian Territory.
- 1.1.2 The note builds upon previous background work conducted in 2014, as well as various other notes referenced throughout.

2 Background

- 2.1.1 Mizrahi Tefahot Bank Ltd., together with its subsidiaries, provides a range of international, commercial, domestic, and personal banking services to individuals and businesses in Israel, Switzerland, and internationally. It offers checking, savings, and deposits accounts; and provides loans, such as instant, home renovation, car, all-purpose, student, and business, as well as mortgages, credit cards, and guarantees. In addition, it offers capital market services, including consultancy for capital market activities, distribution of mutual funds, management of securities portfolios for clients, pension advisory service, trust services, provision of registration services; and operates provident funds and insurance incidental to mortgages, as well as engages in credit operations and participates in syndication deals. As of December 31, 2019, Mizrahi Tefahot Bank Ltd. operated through a network of 198 branches and business centers in Israel; and 3 bank affiliates and representative offices. The company was formerly known as United Mizrahi Bank Limited and changed its name to Mizrahi Tefahot Bank Ltd. in November 2005. Mizrahi Tefahot Bank Ltd. was founded in 1923 and is headquartered in Ramat Gan, Israel. Source: MSCI
- 2.1.2 A list of companies identified by the United Nations High Commissioner for Human Rights as being involved in 'activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', includes Mizrahi Tefahot. The list identifies a total of 112 companies.
- 2.1.3 We have not previously excluded banks operating in OPT as they have fallen outside our boundaries. Our boundary states that: *When making exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials in the normal course of business. In deciding whether a company is breaching the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions to an illegal or unethical activity.*

3 MSCI Reports

3.1.1 As at 10/07/2020, [REDACTED]

3.1.2 [REDACTED]

4 GNZS Holdings

4.1.1 Value: \$NZD 509,455

4.1.2 Managers: SSGA, BlackRock, Northern Trust

4.1.3 ISIN: [REDACTED]

5 The Issues

5.1.1 Since the last profile there has been significantly increased NGO and stakeholder interest in the matter. This section summarises the views from reports of Amnesty International, Who Profits, Human Rights Watch and the University of Essex Business and Human Rights Project which utilised the investor perspective of the Norwegian state-owned Pension fund – Norwegian Statens Pensjonsfond Utland (“SPU”).

5.1.2 The issues centre around the banks role in financing the construction of non-militarily necessary Jewish settlements in the Occupied Palestinian Territory, which Amnesty highlights is a breach of International Humanitarian Law¹.

5.1.3 “The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws” (Amnesty International).² Amnesty further alleges that Israel’s settlement policy is the driving force behind mass human rights violations.

5.1.4 A statement by PGGM in 2014 outlined their reasoning for excluding Mizrahi Tefahot Bank:

“concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law. Moreover, international observers have indicated that the settlements constitute an important obstacle to a peaceful (two-state) solution of the Israeli- Palestinian conflict. In 2004 the International Court of Justice concluded in an Advisory Opinion that the settlements in the Palestinian territories are in breach of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Population in

¹ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

² <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

Time of War. This article prohibits an occupying power to transfer its own citizens to occupied territory. International bodies, including the UN General Assembly and the UN Human Rights Council have adopted various broadly supported resolutions, which state that the settlements are considered illegal. Israel disputes this interpretation of the applicability of international law.”

5.1.4.1 In 2014 ABP referenced that the three Israeli banks it had holdings in – Bank Hapoalim, Leumi and Mizrahi-Tefahot – “did not act in breach of international laws and regulations, adding that there were no existing judicial rulings that should result in their exclusion from its investment universe.”³

5.1.5 A report issued by the NGO, Who Profits alleges that:

“Bank Leumi, Bank Hapoalim, Israel Discount Bank, Mizrahi-Tefahot Bank, Bank Igud, FIBI and Bank of Jerusalem are all party to accompaniment agreements signed with Israeli construction companies operating in the Israeli settlements in the West Bank and East Jerusalem. All these banks provide loans or financial guarantees and extend credit to the companies, which in return provide the banks with all their contractual, actual and financial rights to the land and projects as collateral. Most companies also provide the bank with all of the funds they receive from buyers and renters in the project, as well as from different Israeli authorities, including the tax authorities.”⁴

“The banks are so heavily involved in accompanied construction projects that they inspect each and every stage of the project, including its profitability and the development of the construction. Usually, the bank is also involved in determining the price rate and sale schedule of the apartments.”⁵

5.1.6 The report by Who Profits provides specific case studies of construction projects and the respective banks involvement with the project.

5.1.7 A report issued by the Human Rights Watch in May 2018 found that:

“Israel’s largest banks are providing services that help support, maintain, and expand unlawful settlements by financing their construction in the occupied West Bank, including partnering with developers to build homes on land unlawfully seized from Palestinians. The banks’ involvement is direct and substantial: they acquire a property interest in the development projects and shepherd them through to completion. The transfer by the occupier of members of its civilian population into the occupied territory, and the deportation or transfer of members of the population of the territory, are war crimes. The activities of banks finance a critical step in this transfer.”⁶

“Most Israeli banks finance or “accompany” construction projects in the settlements by becoming partners in settlement expansion, supervising each

³ <https://www.ipe.com/main-navigation/israeli-banks-did-nothing-to-breach-international-law-abp-concludes/10000948.article>

⁴ https://www.banktrack.org/download/who_profits_financing_land_grab/who_profits_financing_land_grab.pdf

⁵ Who Profits report SD#2999407

⁶ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

stage of construction, holding the buyers' money in escrow, and taking ownership of the project in case of default by the construction company."⁷

- 5.1.8 A report titled 'Investor Obligations in Occupied Territories' authored by the Essex Business and Human Rights Project, focuses its analysis on the Norwegian Government state-owned Fund – Norwegian Statens Pensjonsfund Utland ("SPU"). The report posits that: "*If SPU cannot use leverage to effect change in its investees' human rights impacts, any continued investment has the potential to move from a situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.*"⁸
- 5.1.8.1 The report finds that: "*At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements contribute to the human rights impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as causing the violations because these businesses' conduct is essential to the construction, and therefore essential to the resulting violations.*"
- 5.1.8.2 The report drew criticism from certain organisations such as pro-Israel NGO Monitor for using proposed inaccuracies in the report.⁹
- 5.1.9 Further, in 2015 the US state of Illinois' House of Representatives and Senate voted unanimously to pass legislation requiring five state-funded pension schemes to divest their direct and indirect holdings from any company that is identified as boycotting Israeli companies.¹⁰

6 The UN Human Rights Council database of business enterprises involved in OPT

- 6.1.1 The mandate of the report aims to produce a database that lists all business enterprises involved in any of the listed activities operating in OPT.
- 6.1.2 All listed activities and the complete database can be found [here](#).
- 6.1.3 Notably, Mizrahi Tefahot Bank is listed as being involved in listed activities E and F.
- 6.1.4 E relates to: *the provision of services and utilities supporting the maintenance and existence of settlements, including transport;*
- 6.1.5 F relates to: *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*

⁷ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁸ <https://www.essex.ac.uk/-/media/documents/research/ebhr/investor-obligations-in-occupied-territories--report-on-the-norwegian-government-pension-fund--globa.pdf>

⁹ <https://www.ngo-monitor.org/reports/multiple-inaccuracies-in-the-essex-npa-bds-investor-obligations-report/>

¹⁰ <https://www.ipe.com/pension-funds-ordered-to-divest-companies-that-support-boycott-of-israel/10008102.article>

C3 - Internal Use Only – Legally Privileged

- 6.1.6 OHCHR identified as “involved”, for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:
- 6.1.6.1 *A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;*
 - 6.1.6.2 *A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a minority share in a subsidiary that business enterprise is not considered to be “involved” for the purposes of this report;*
 - 6.1.6.3 *A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.*
- 6.1.7 The statement from the United Nations Human Rights office that accompanies the released database states:

*The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law**, this report does not provide a legal characterization of the activities in question, or of business enterprises’ involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council’s next session, beginning on 24 February.*

Note the 43rd session referred to above was delayed to the 22nd of June 2020. “The HRC expressed concern about reports by the independent international Col on the protests in the OPT , as well as fact-finding missions and boards of inquiry convened by the Secretary-General, regarding serious human rights violations and grave breaches of IHL, including possible war crimes and crimes against humanity. The HRC further expressed alarm that long-standing systemic impunity for violations of international law and stressed the need to ensure accountability for all violations IHL and IHRL in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace. The HRC requested the High Commissioner to report at the HRC’s 46th session on how all parties can implement the recommendations reviewed by the High Commissioner in 2017, including accountability and legal measures other states can take to ensure Israel and all other relevant parties respect their obligations under international law in the OPT, including East Jerusalem. The resolution was adopted by a vote of 22 in favour, 8 against and 17 abstentions.”¹¹ The session papers can be found [here](#) and [here](#).

*** Human Rights Council resolution 31/36 recalls reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of*

¹¹ <https://www.globalr2p.org/publications/hrc43-summary/>

several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.

7 Resolution 72/240 by the UN General Assembly on 20 December 2017

- 7.1.1 The internal note can be found [here](#).
- 7.1.2 On 20 December 2017, a resolution was adopted by the UN General Assembly that called for “Permanent sovereignty of the Palestinian people in the OPT, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources”.
- 7.1.3 The resolution builds on Resolution 2334 from Dec 2016 (see SD#2079722). New Zealand was one of four countries that put the 2016 resolution forward. At this time, New Zealand was a member of the UN Security Council. This resolution was really aimed at preventing terrorism in the region.
- 7.1.4 The International Court of Justice Middle East and North Africa Director, Bernabia, is quoted in a statement on the ICJ website that:
- 7.1.4.1 *“Israel’s settlements are illegal no matter how hard the Israeli and the US governments try to spin or whitewash them,”*¹²
- 7.1.4.2 *“Any sovereignty claims by Israel over East Jerusalem and the West Bank are null and void under international law and must be repudiated, not condoned or encouraged,”*¹³

8 Israel’s recent statement on annexation of the Jordan Valley and the occupied West Bank

- 8.1.1 A recent summary of organisational bodies views on the proposed annexation can be found [here](#).
- 8.1.2 The ICJ issued a statement on November 2019 that refers to the proposed annexation and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.”¹⁴
- 8.1.3 Some further development see the Dutch Parliament passing a resolution on the 1st of July which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.¹⁵ Belgium’s Chamber of

¹² <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹³ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁴ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁵ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

Representatives voted for a similar resolution, should Israel proceed with annexation plans.

9 NZ Government statement on Israel's annexation plans

- 9.1.1 “New Zealand is a long-standing supporter of Israel's right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process,”
- 9.1.2 “The New Zealand Government's view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans.”¹⁶

10 Appendix 1: Peer fund divestments

- 10.1.1 In January 2014 PGGM, the second largest Dutch pension fund manager announced it will divest from five Israeli banks over their dealings with businesses operating in Jewish settlements within occupied Palestinian territory.¹⁷ Mizrahi Tefahot is one of the five banks excluded.
- 10.1.2 Storebrand (2015), United Methodist Church (2016) have all excluded Mizrahi Tefahot bank as at July 2020.
- 10.1.3 In early 2019 the main client of PGGM, PFZW has removed the five Israeli banks from its exclusion list. As reported by The Rights Forum, the reason for removing the banks from the list is that PFZW is reassessing its entire investment portfolio this year.¹⁸ The article suggests that Borgdorff – the CEO of PFZW – is intending on placing the banks bank on the list at the end of the year. A search through the PFZW invested shares list as at 31-12-2019 finds the firm to have €1.5 million currently invested in Mizrahi Tefahot Bank¹⁹.
- 10.1.4 On June 20, 2020 ABP – the largest Dutch pension fund – announced it was divesting from two Israeli banks: Bank Leumi and Hapoalim, for their failure to comply with ABP's expectation for a detailed and comprehensive human rights policy²⁰. This does not include Mizrahi Tefahot Bank.

¹⁶ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long,live%20in%20peace%20and%20security.&ext=%E2%80%9CThe%20New%20Zealand%20Government's%20view,significant%20risks%20to%20regional%20security.>

¹⁷ <https://www.reuters.com/article/netherlands-israel-divestment/major-dutch-pension-firm-divests-from-israeli-banks-over-settlements-idUSL6N0KI1N220140108>

¹⁸ <https://rightsforum.org/nieuws/pensioenfondsen-pfzw-haalt-vijf-israelische-banken-van-uitsluitingslijst/>

¹⁹ <https://www.pfzw.nl/over-ons/zo-beleggen-we/waar-in-we-beleggen/overzicht-aandelen.html>

²⁰ <https://rightsforum.org/nieuws/abp-dumpt-israelische-banken/>

C3 - Internal Use Only – Legally Privileged

10.1.5 A manual search for the bank's Human Rights policy found no specific piece. Their most recent CSR report had no mention of a Human Rights²¹ policy in place for operating in OPT.

OPT-related enterprises peer-fund exclusions				
	PGGM	ABP	NBIM	Future Fund
Bank Leumi	\	x	-	-
Bank Hapoalim	\	x	-	-
Mizrahi Tefahot Bank	\	-	-	-
FIBI	\	-	-	-
Israel Discount Bank	\	-	-	-

Legend	
x	Excluded
-	Never excluded
\	Previously excluded but no longer

Timeline of Exclusions

September 2009	NBIM excludes Elbit Systems
February 2010	ABP excludes Elbit Systems
August 2010	NBIM excludes Africa-Israel and subsidiary Danya Cebus.
June 2012	PGGM excludes Elbit Systems
June 2012	NBIM excludes Shikun & Binui
August 2013	NBIM revokes exclusion of Africa-Israel
January 2014	NBIM excludes Africa-Israel and subsidiary Danya Cebus. ²²
January 2014	PGGM excludes all five Israeli banks (Leumi, Hapoalim, Mizrahi-Tefahot, Discount Bank and FIBI).
January 2019	PGGM (PFZW) removes all five Israeli banks from exclusions list in 're-assessment of all investments.'

²¹ https://www.mizrahi-tefahot.co.il/mizmedia/4860/policy_on_implementation_of_corporate_social_responsibility_2019_en_acc.pdf

²² Not included in March 2020 exclusion list

June 2020	ABP divests from Bank Leumi and Hapoalim
-----------	--

11 Appendix 2: Mizrahi Tefahot recent statements on issue

11.1.1 From 2019 Annual Report:²³

11.1.1.1 *Bank Mizrahi Tefahot, as most banks in Israel, was included in the Black List issued by the UN Human Rights Council on February 12, 2020, listing companies that operate in territories beyond the Green Line.*

11.1.1.2 *This publication may impact discussion in the media and activities of various organizations, including analysts and shareholders overseas, which would impact all of the business sector, including the banking system.*

11.1.1.3 *The Bank is acting on this matter in co-operation with the Banking Association and with the Bank of Israel; at this stage, the Bank is unable to assess the impact on Bank operations.*

12 Appendix 3: Past work on exclusions of OPT-related businesses

12.1.1 See: SD#2385043

²³ <https://www.mizrahi-tefahot.co.il/mizmedia/5934/20001194e.pdf>

ITEM **DRAFT** PORTFOLIO MONITORING:
BANK HAPOALIM

s9(2)(a)

Prepared by:



Date:

July 2020

1 Purpose

- 1.1.1 The purpose of this note is to review and update the profiles of the Israeli bank holdings, in light of the political developments around the world relating to the proposed annexation of Israeli settlements in Occupied Palestinian Territory.
- 1.1.2 This note adds Bank Hapoalim to the collection of Israeli Bank profiles and builds various other pieces of work referenced throughout.

2 Background

- 2.1.1 Bank Hapoalim B.M., together with its subsidiaries, provides various banking and financial products and services in Israel and internationally. Source: MSCI
- 2.1.2 A list of companies identified by the United Nations High Commissioner for Human Rights as being involved in 'activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', includes Bank Hapoalim. The list identifies a total of 112 companies.
- 2.1.3 We have not previously excluded banks operating in OPT as they have fallen outside our boundaries. Our boundary states that: *When making exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials in the normal course of business. In deciding whether a company is breaching the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions to an illegal or unethical activity.*

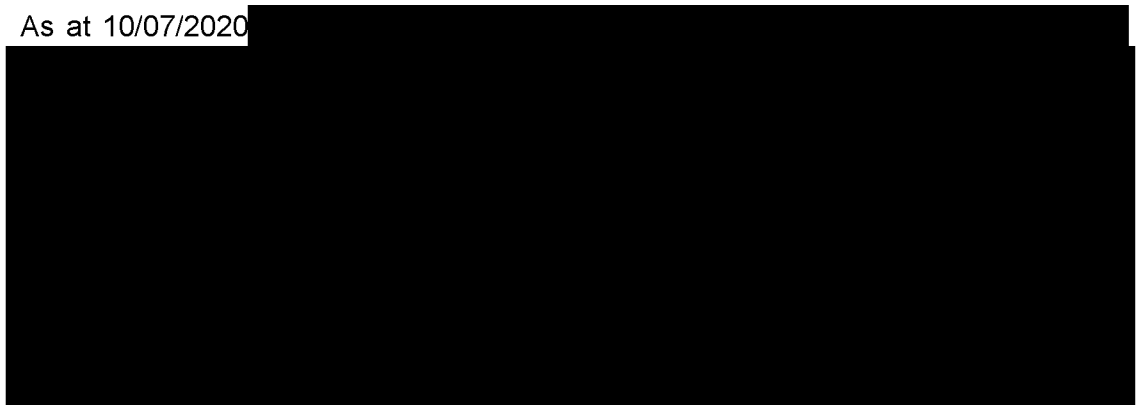
3 MSCI Reports

3.1.1 As at 10/07/2020

3.1.2

3.1.3

3.1.3.1



3.1.3.2

3.1.3.3

3.1.4

3.1.4.1

3.1.4.2

3.1.4.3

3.1.4.4

3.1.5

3.1.5.1

3.1.5.2

4 GNZS Holdings

- 4.1.1 Value: \$NZD 1,513,667
- 4.1.2 Managers: SSGA, BlackRock, Northern Trust
- 4.1.3 ISIN: [REDACTED]

5 The Issues

- 5.1.1 Since the last profile there has been significantly increased NGO and stakeholder interest in the matter. This section summarises the views from reports of Amnesty International, Who Profits, Human Rights Watch and the University of Essex Business and Human Rights Project which utilised the investor perspective of the Norwegian state-owned Pension fund – Norwegian Statens Pensjonsfund Utland (“SPU”).
- 5.1.2 The issues centre around the banks role in financing the construction of non-militarily necessary Jewish settlements in the Occupied Palestinian Territory, which Amnesty highlights is a breach of International Humanitarian Law¹.
- 5.1.3 “The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws” (Amnesty International).² Amnesty further alleges that Israel’s settlement policy is the driving force behind mass human rights violations.
- 5.1.4 A statement by PGGM in 2014 outlined their reasoning for excluding Bank Hapoalim:
“concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law. Moreover, international observers have indicated that the settlements constitute an important obstacle to a peaceful (two-state) solution of the Israeli- Palestinian conflict. In 2004 the International Court of Justice concluded in an Advisory Opinion that the settlements in the Palestinian territories are in breach of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Population in Time of War. This article prohibits an occupying power to transfer its own citizens to occupied territory. International bodies, including the UN General Assembly and the UN Human Rights Council have adopted various broadly supported resolutions, which state that the settlements are considered illegal. Israel disputes this interpretation of the applicability of international law.”
- 5.1.4.1 In 2014 ABP referenced that the three Israeli banks it had holdings in – Bank Hapoalim, Leumi and Mizrahi-Tefahot – “did not act in breach of international laws and regulations, adding that there were no existing judicial rulings that should result in their exclusion from its investment universe.”³

¹ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

² <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

³ <https://www.ipe.com/main-navigation/israeli-banks-did-nothing-to-breach-international-law-abp-concludes/10000948.article>

5.1.5 A report issued by the NGO, Who Profits alleges that:

“Bank Leumi, Bank Hapoalim, Israel Discount Bank, Mizrahi-Tefahot Bank, Bank Igud, FIBI and Bank of Jerusalem are all party to accompaniment agreements signed with Israeli construction companies operating in the Israeli settlements in the West Bank and East Jerusalem. All these banks provide loans or financial guarantees and extend credit to the companies, which in return provide the banks with all their contractual, actual and financial rights to the land and projects as collateral. Most companies also provide the bank with all of the funds they receive from buyers and renters in the project, as well as from different Israeli authorities, including the tax authorities.”⁴

“The banks are so heavily involved in accompanied construction projects that they inspect each and every stage of the project, including its profitability and the development of the construction. Usually, the bank is also involved in determining the price rate and sale schedule of the apartments.”⁵

5.1.6 The report by Who Profits provides specific case studies of construction projects and the respective banks involvement with the project.

5.1.7 A report issued by the Human Rights Watch in May 2018 found that:

“Israel’s largest banks are providing services that help support, maintain, and expand unlawful settlements by financing their construction in the occupied West Bank, including partnering with developers to build homes on land unlawfully seized from Palestinians. The banks’ involvement is direct and substantial: they acquire a property interest in the development projects and shepherd them through to completion. The transfer by the occupier of members of its civilian population into the occupied territory, and the deportation or transfer of members of the population of the territory, are war crimes. The activities of banks finance a critical step in this transfer.”⁶

“Most Israeli banks finance or “accompany” construction projects in the settlements by becoming partners in settlement expansion, supervising each stage of construction, holding the buyers’ money in escrow, and taking ownership of the project in case of default by the construction company.”⁷

5.1.8 A report titled ‘Investor Obligations in Occupied Territories’ authored by the Essex Business and Human Rights Project, focuses its analysis on the Norwegian Government state-owned Fund – Norwegian Statens Pensjonsfund Utland (“SPU”).

5.1.8.1 The report posits that: *“If SPU cannot use leverage to effect change in its investees’ human rights impacts, any continued investment has the potential to move from a*

⁴ https://www.banktrack.org/download/who_profits_financing_land_grab/who_profits_financing_land_grab.pdf

⁵ Who Profits report SD#2999407

⁶ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁷ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.”⁸

- 5.1.8.2 The report finds that: *“At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements contribute to the human rights impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as causing the violations because these businesses’ conduct is essential to the construction, and therefore essential to the resulting violations.”*
- 5.1.8.3 The report drew criticism from certain organisations such as pro-Israel NGO Monitor for using proposed inaccuracies in the report.⁹
- 5.1.9 Further, in 2015 the US state of Illinois’ House of Representatives and Senate voted unanimously to pass legislation requiring five state-funded pension schemes to divest their direct and indirect holdings from any company that is identified as boycotting Israeli companies.¹⁰

6 The UN Human Rights Council database of business enterprises involved in OPT

- 6.1.1 The mandate of the report aims to produce a database that lists all business enterprises involved in any of the listed activities operating in OPT.
- 6.1.2 All listed activities and the complete database can be found [here](#).
- 6.1.3 Notably, Bank Hapoalim is listed as being involved in listed activities E and F.
- 6.1.4 E relates to: *the provision of services and utilities supporting the maintenance and existence of settlements, including transport;*
- 6.1.5 F relates to: *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*
- 6.1.6 OHCHR identified as “involved”, for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:
- 6.1.6.1 *A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;*
- 6.1.6.2 *A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a minority share in a subsidiary that business enterprise is not considered to be “involved” for the purposes of this report;*

⁸ <https://www.essex.ac.uk/-/media/documents/research/ebhr/investor-obligations-in-occupied-territories--report-on-the-norwegian-government-pension-fund--globa.pdf>

⁹ <https://www.ngo-monitor.org/reports/multiple-inaccuracies-in-the-essex-npa-bds-investor-obligations-report/>

¹⁰ <https://www.ipe.com/pension-funds-ordered-to-divest-companies-that-support-boycott-of-israel/10008102.article>

- 6.1.6.3 *A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.*
- 6.1.7 The statement from the United Nations Human Rights office that accompanies the released database states:

*The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law**, this report does not provide a legal characterization of the activities in question, or of business enterprises' involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council's next session, beginning on 24 February.*

Note the 43rd session referred to above was delayed to the 22nd of June 2020. "The HRC expressed concern about reports by the independent international Col on the protests in the OPT , as well as fact-finding missions and boards of inquiry convened by the Secretary-General, regarding serious human rights violations and grave breaches of IHL, including possible war crimes and crimes against humanity. The HRC further expressed alarm that long-standing systemic impunity for violations of international law and stressed the need to ensure accountability for all violations IHL and IHRL in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace. The HRC requested the High Commissioner to report at the HRC's 46th session on how all parties can implement the recommendations reviewed by the High Commissioner in 2017, including accountability and legal measures other states can take to ensure Israel and all other relevant parties respect their obligations under international law in the OPT, including East Jerusalem. The resolution was adopted by a vote of 22 in favour, 8 against and 17 abstentions."¹¹ The session papers can be found [here](#) and [here](#).

*** Human Rights Council resolution 31/36 recalls reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.*

7 Resolution 72/240 by the UN General Assembly on 20 December 2017

- 7.1.1 The internal note can be found [here](#).
- 7.1.2 On 20 December 2017, a resolution was adopted by the UN General Assembly that called for "Permanent sovereignty of the Palestinian people in the OPT, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources".

¹¹ <https://www.globalr2p.org/publications/hrc43-summary/>

7.1.3 The resolution builds on Resolution 2334 from Dec 2016 (see [SD#2079722](#)). New Zealand was one of four countries that put the 2016 resolution forward. At this time, New Zealand was a member of the UN Security Council. This resolution was really aimed at preventing terrorism in the region.

7.1.4 The International Court of Justice Middle East and North Africa Director, Bernabia, is quoted in a statement on the ICJ website that:

7.1.4.1 *“Israel’s settlements are illegal no matter how hard the Israeli and the US governments try to spin or whitewash them,”*¹²

7.1.4.2 *“Any sovereignty claims by Israel over East Jerusalem and the West Bank are null and void under international law and must be repudiated, not condoned or encouraged,”*¹³

8 Israel’s recent statement on annexation of the Jordan Valley and the occupied West Bank

8.1.1 A recent summary of organisational bodies views on the proposed annexation can be found [here](#).

8.1.2 The ICJ issued a statement on November 2019 that refers to the proposed annexation and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.”¹⁴

8.1.3 Some further development see the Dutch Parliament passing a resolution on the 1st of July which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.¹⁵ Belgium’s Chamber of Representatives voted for a similar resolution, should Israel proceed with annexation plans.

9 NZ Government statement on Israel’s annexation plans

9.1.1 “New Zealand is a long-standing supporter of Israel’s right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process,”

¹² <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹³ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁴ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁵ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

- 9.1.2 “The New Zealand Government’s view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans.”¹⁶

10 Appendix 1: Peer fund divestments

- 10.1.1 In January 2014 PGGM, the second largest Dutch pension fund manager announced it will divest from five Israeli banks over their dealings with businesses operating in Jewish settlements within occupied Palestinian territory.¹⁷ Bank Hapoalim is one of the five banks excluded.
- 10.1.2 Around a similar time (Feb 2014), Danske Bank also chose to exclude Bank Hapoalim citing that the bank was acting against the rules of international humanitarian law.¹⁸ However, in early 2016 Danske Bank’s Head of Responsible Investments Thomas H. Kjærgaard issued a statement saying: “It is our understanding that the bank handles the dilemmas associated with running a bank in Israel in a good and responsible manner and therefore we see no reason to continue to exclude them from our investment universe”.¹⁹
- 10.1.3 Storebrand (2015), United Methodist Church (2016) have all excluded Bank Hapoalim as at July 2020.
- 10.1.4 In early 2019 the main client of PGGM, PFZW has removed the five Israeli banks from its exclusion list. As reported by The Rights Forum, the reason for removing the banks from the list is that PFZW is reassessing its entire investment portfolio this year.²⁰ The article suggests that Borgdorff – the CEO of PFZW – is intending on placing the banks bank on the list at the end of the year. A search through the PFZW invested shares list as at 31-12-2019 finds the firm to have €3.0 million currently invested in Bank Hapoalim²¹.
- 10.1.5 On June 20, 2020 ABP – the largest Dutch pension fund – announced it was divesting from two Israeli banks: Bank Leumi and Hapoalim, for their failure to comply with ABP’s expectation for a detailed and comprehensive human rights policy²². The two banks do not appear on ABP’s 1 Jun 2020 exclusion list however.²³

¹⁶ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long.live%20in%20peace%20and%20security.&text=%E2%80%9CThe%20New%20Zealand%20Government's%20view.significant%20risks%20to%20regional%20security.>

¹⁷ <https://www.reuters.com/article/netherlands-israel-divestment/major-dutch-pension-firm-divests-from-israeli-banks-over-settlements-idUSL6N0KI1N220140108>

¹⁸ <https://www.haaretz.com/danish-bank-blacklists-hapoalim-1.5317808>

¹⁹ <https://old.danwatch.dk/en/nyhed/danske-bank-dropper-eksklusion-af-bank-hapoalim/>

²⁰ <https://rightsforum.org/nieuws/pensioenfonds-pfzw-haalt-vijf-israelische-banken-van-uitsluitingslijst/>

²¹ <https://www.pfzw.nl/over-ons/zo-beleggen-we/waar-in-we-beleggen/overzicht-aandelen.html>

²² <https://rightsforum.org/nieuws/abp-dumpt-israelische-banken/>

²³ <https://www.abp.nl/images/companies-excluded.pdf>

C3 - Internal Use Only – Legally Privileged

10.1.6 A manual search for the bank's Human Rights policy found no specific piece. Their most recent CSR report²⁴ had no mention of a Human Rights policy in place for operating in OPT.

OPT-related enterprises peer-fund exclusions				
	PGGM	ABP	NBIM	Future Fund
Bank Leumi	\	x	-	-
Bank Hapoalim	\	x	-	-
Mizrahi Tefahot Bank	\	-	-	-
FIBI	\	-	-	-
Israel Discount Bank	\	-	-	-

Legend	
x	Excluded
-	Never excluded
\	Previously excluded but no longer

Timeline of Exclusions

September 2009	NBIM excludes Elbit Systems
February 2010	ABP excludes Elbit Systems
August 2010	NBIM excludes Africa-Israel and subsidiary Danya Cebus.
June 2012	PGGM excludes Elbit Systems
June 2012	NBIM excludes Shikun & Binui
August 2013	NBIM revokes exclusion of Africa-Israel
January 2014	NBIM excludes Africa-Israel and subsidiary Danya Cebus. ²⁵

²⁴

[https://www.bankhapoalim.com/wps/wcm/connect/17d3ab0041ff1ecfb2f3b23541ca90ac/FullReport.pdf?MOD=AJPERES&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac](https://www.bankhapoalim.com/wps/wcm/connect/17d3ab0041ff1ecfb2f3b23541ca90ac/FullReport.pdf?MOD=AJPERES&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac&lmod=-2047156547&CACHEID=17d3ab0041ff1ecfb2f3b23541ca90ac)

²⁵ Not included in March 2020 exclusion list

January 2014	PGGM excludes all five Israeli banks (Leumi, Hapoalim, Mizrahi-Tefahot, Discount Bank and FIBI).
January 2019	PGGM (PFZW) removes all five Israeli banks from exclusions list in 're-assessment of all investments.'
June 2020	ABP divests from Bank Leumi and Hapoalim

11 Appendix 2: Statements by Bank Hapoalim on the issue

11.1.1 From their most recent (2018) 'Social, Environmental, and Economic Responsibility Report':

"The bank also adheres to universal norms and principles of the protection of human rights in employment, as described in the United Nations Global Compact (UNGC); the UN International Bill of Rights; the UN International Covenant on Economic Social, and Cultural Rights; the UN Guiding Principles on Business and Human Rights; and the Conventions of the International Labor Organization (ILO)."

11.1.2 No other statements were found by the Author.

12 Appendix 3: Past work on exclusions of OPT-related businesses

12.1.1 See: SD#[2385043](#)

Released Under the FOIA

ITEM **DRAFT** **PORTFOLIO MONITORING:**
FIRST INTERNATIONAL BANK OF ISRAEL (FIBI)

Prepared by:



s9(2)(a)

Date:

July 2020

1 Purpose

- 1.1.1 The purpose of this note is to review and update the profiles of the Israeli bank holdings, in light of the political developments around the world relating to the proposed annexation of Israeli settlements in Occupied Palestinian Territory.
- 1.1.2 The note builds upon previous background work conducted in 2014, as well as various other notes referenced throughout.

2 Background

- 2.1.1 First International Bank of Israel Ltd. provides various financial and banking services to individuals, households, and businesses in Israel and Western Europe. It offers deposits and savings products, and structured deposits; mortgage services; credit cards; and private banking, mobile and online banking, investment advisory, securities trading, and foreign exchange services. The company also provides solutions for importers, exporters, and international transactions; financing of capital market operations; foreign currency investment management services; services in the areas of current account management, credit, investment advice, savings, pension advice, mortgages, and others; and financial derivatives, trading rooms, and various investment products. It operates approximately 160 branches. The company was founded in 1972 and is headquartered in Tel Aviv, Israel. Source: MSCI
- 2.1.2 A list of companies identified by the United Nations High Commissioner for Human Rights as being involved in 'activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', includes FIBI . The list identifies a total of 112 companies.
- 2.1.3 We have not previously excluded banks operating in OPT as they have fallen outside our boundaries. Our boundary states that: *When making exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials in the normal course of business. In deciding whether a company is breaching the Fund's responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions to an illegal or unethical activity.*

3 MSCI Reports

- 3.1.1 As at 10/07/2020,



4 GNZS Holdings

- 4.1.1 Value: \$NZD 40,885
- 4.1.2 Managers: SSGA
- 4.1.3 ISIN: [REDACTED]

5 The Issues

- 5.1.1 Since the last profile there has been significantly increased NGO and stakeholder interest in the matter. This section summarises the views from reports of Amnesty International, Who Profits, Human Rights Watch and the University of Essex Business and Human Rights Project which utilised the investor perspective of the Norwegian state-owned Pension fund – Norwegian Statens Pensjonsfund Utland (“SPU”).
- 5.1.2 The issues centre around the banks role in financing the construction of non-militarily necessary Jewish settlements in the Occupied Palestinian Territory, which Amnesty highlights is a breach of International Humanitarian Law¹.
- 5.1.3 “The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws” (Amnesty International).² Amnesty further alleges that Israel’s settlement policy is the driving force behind mass human rights violations.
- 5.1.4 A statement by PGGM in 2014 outlined their reasoning for excluding First International Bank of Israel:

“concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law. Moreover, international observers have indicated that the settlements constitute an important obstacle to a peaceful (two-state) solution of the Israeli- Palestinian conflict. In 2004 the International Court of Justice concluded in an Advisory Opinion that the settlements in the Palestinian territories are in breach of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Population in Time of War. This article prohibits an occupying power to transfer its own citizens to occupied territory. International bodies, including the UN General Assembly and the UN Human Rights Council have adopted various broadly supported resolutions, which state that the settlements are considered illegal. Israel disputes this interpretation of the applicability of international law.”
- 5.1.4.1 In 2014 ABP referenced that the three Israeli banks it had holdings in – Bank Hapoalim, Leumi and Mizrahi-Tefahot – “did not act in breach of international laws

¹ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

² <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

and regulations, adding that there were no existing judicial rulings that should result in their exclusion from its investment universe.”³

5.1.5 A report issued by the NGO, Who Profits alleges that:

“Bank Leumi, Bank Hapoalim, Israel Discount Bank, Mizrahi-Tefahot Bank, Bank Igud, FIBI and Bank of Jerusalem are all party to accompaniment agreements signed with Israeli construction companies operating in the Israeli settlements in the West Bank and East Jerusalem. All these banks provide loans or financial guarantees and extend credit to the companies, which in return provide the banks with all their contractual, actual and financial rights to the land and projects as collateral. Most companies also provide the bank with all of the funds they receive from buyers and renters in the project, as well as from different Israeli authorities, including the tax authorities.”⁴

“The banks are so heavily involved in accompanied construction projects that they inspect each and every stage of the project, including its profitability and the development of the construction. Usually, the bank is also involved in determining the price rate and sale schedule of the apartments.”⁵

5.1.6 The report by Who Profits provides specific case studies of construction projects and the respective banks involvement with the project.

5.1.7 A report issued by the Human Rights Watch in May 2018 found that:

“Israel’s largest banks are providing services that help support, maintain, and expand unlawful settlements by financing their construction in the occupied West Bank, including partnering with developers to build homes on land unlawfully seized from Palestinians. The banks’ involvement is direct and substantial: they acquire a property interest in the development projects and shepherd them through to completion. The transfer by the occupier of members of its civilian population into the occupied territory, and the deportation or transfer of members of the population of the territory, are war crimes. The activities of banks finance a critical step in this transfer.”⁶

“Most Israeli banks finance or “accompany” construction projects in the settlements by becoming partners in settlement expansion, supervising each stage of construction, holding the buyers’ money in escrow, and taking ownership of the project in case of default by the construction company.”⁷

5.1.8 A report titled ‘Investor Obligations in Occupied Territories’ authored by the Essex Business and Human Rights Project, focuses its analysis on the Norwegian Government state-owned Fund – Norwegian Statens Pensjonsfund Utland (“SPU”).

³ <https://www.ipe.com/main-navigation/israeli-banks-did-nothing-to-breach-international-law-abp-concludes/10000948.article>

⁴ https://www.banktrack.org/download/who_profits_financing_land_grab/who_profits_financing_land_grab.pdf

⁵ Who Profits report SD#2999407

⁶ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁷ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

- 5.1.8.1 The report posits that: *“If SPU cannot use leverage to effect change in its investees’ human rights impacts, any continued investment has the potential to move from a situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.”*⁸
- 5.1.8.2 The report finds that: *“At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements contribute to the human rights impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as causing the violations because these businesses’ conduct is essential to the construction, and therefore essential to the resulting violations.”*
- 5.1.8.3 The report drew criticism from certain organisations such as pro-Israel NGO Monitor for using proposed inaccuracies in the report.⁹
- 5.1.9 Further, in 2015 the US state of Illinois’ House of Representatives and Senate voted unanimously to pass legislation requiring five state-funded pension schemes to divest their direct and indirect holdings from any company that is identified as boycotting Israeli companies.¹⁰

6 The UN Human Rights Council database of business enterprises involved in OPT

- 6.1.1 The mandate of the report aims to produce a database that lists all business enterprises involved in any of the listed activities operating in OPT.
- 6.1.2 All listed activities and the complete database can be found [here](#).
- 6.1.3 Notably, FIBI is listed as being involved in listed activities E and F.
- 6.1.4 E relates to: *the provision of services and utilities supporting the maintenance and existence of settlements, including transport;*
- 6.1.5 F relates to: *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*
- 6.1.6 OHCHR identified as “involved”, for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:
- 6.1.6.1 *A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;*
- 6.1.6.2 *A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a*

⁸ <https://www.essex.ac.uk/-/media/documents/research/ebhr/investor-obligations-in-occupied-territories--report-on-the-norwegian-government-pension-fund--globa.pdf>

⁹ <https://www.ngo-monitor.org/reports/multiple-inaccuracies-in-the-essex-npa-bds-investor-obligations-report/>

¹⁰ <https://www.ipe.com/pension-funds-ordered-to-divest-companies-that-support-boycott-of-israel/10008102.article>

minority share in a subsidiary that business enterprise is not considered to be “involved” for the purposes of this report;

6.1.6.3 *A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.*

6.1.7 The statement from the United Nations Human Rights office that accompanies the released database states:

*The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law**, this report does not provide a legal characterization of the activities in question, or of business enterprises’ involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council’s next session, beginning on 24 February.*

Note the 43rd session referred to above was delayed to the 22nd of June 2020. “The HRC expressed concern about reports by the independent international Col on the protests in the OPT , as well as fact-finding missions and boards of inquiry convened by the Secretary-General, regarding serious human rights violations and grave breaches of IHL, including possible war crimes and crimes against humanity. The HRC further expressed alarm that long-standing systemic impunity for violations of international law and stressed the need to ensure accountability for all violations IHL and IHRL in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace. The HRC requested the High Commissioner to report at the HRC’s 46th session on how all parties can implement the recommendations reviewed by the High Commissioner in 2017, including accountability and legal measures other states can take to ensure Israel and all other relevant parties respect their obligations under international law in the OPT, including East Jerusalem. The resolution was adopted by a vote of 22 in favour, 8 against and 17 abstentions.”¹¹ The session papers can be found [here](#) and [here](#).

*** Human Rights Council resolution 31/36 recalls reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.*

7 Resolution 72/240 by the UN General Assembly on 20 December 2017

7.1.1 The internal note can be found [here](#).

7.1.2 On 20 December 2017, a resolution was adopted by the UN General Assembly that called for “Permanent sovereignty of the Palestinian people in the OPT, including

¹¹ <https://www.globalr2p.org/publications/hrc43-summary/>

East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources”.

7.1.3 The resolution builds on Resolution 2334 from Dec 2016 (see SD#2079722). New Zealand was one of four countries that put the 2016 resolution forward. At this time, New Zealand was a member of the UN Security Council. This resolution was really aimed at preventing terrorism in the region.

7.1.4 The International Court of Justice Middle East and North Africa Director, Bernabia, is quoted in a statement on the ICJ website that:

7.1.4.1 *“Israel’s settlements are illegal no matter how hard the Israeli and the US governments try to spin or whitewash them,”*¹²

7.1.4.2 *“Any sovereignty claims by Israel over East Jerusalem and the West Bank are null and void under international law and must be repudiated, not condoned or encouraged,”*¹³

8 Israel’s recent statement on annexation of the Jordan Valley and the occupied West Bank

8.1.1 A recent summary of organisational bodies views on the proposed annexation can be found [here](#).

8.1.2 The ICJ issued a statement on November 2019 that refers to the proposed annexation and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.”¹⁴

8.1.3 Some further development see the Dutch Parliament passing a resolution on the 1st of July which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.¹⁵ Belgium’s Chamber of Representatives voted for a similar resolution, should Israel proceed with annexation plans.

9 NZ Government statement on Israel’s annexation plans

9.1.1 “New Zealand is a long-standing supporter of Israel’s right to live in peace and security. However, successive New Zealand governments have also been clear that

¹² <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹³ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁴ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁵ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

Israeli settlements are in violation of international law and have negative implications for the peace process,”

- 9.1.2 “The New Zealand Government’s view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans.”¹⁶

10 Appendix 1: Peer fund divestments

- 10.1.1 In January 2014 PGGM, the second largest Dutch pension fund manager announced it will divest from five Israeli banks over their dealings with businesses operating in Jewish settlements within occupied Palestinian territory.¹⁷ FIBI is one of the five banks excluded.
- 10.1.2 United Methodist Church (2016) has also excluded FIBI as at July 2020.
- 10.1.3 In early 2019 the main client of PGGM, PFZW has removed the five Israeli banks from its exclusion list. As reported by The Rights Forum, the reason for removing the banks from the list is that PFZW is reassessing its entire investment portfolio this year.¹⁸ The article suggests that Borgdorff – the CEO of PFZW – is intending on placing the banks bank on the list at the end of the year. A search through the PFZW invested shares list as at 31-12-2019 finds the firm to have €0.7 million currently invested in FIBI¹⁹.
- 10.1.4 On June 20, 2020 ABP – the largest Dutch pension fund – announced it was divesting from two Israeli banks: Bank Leumi and Hapoalim, for their failure to comply with ABP’s expectation for a detailed and comprehensive human rights policy²⁰.
- 10.1.5 A manual search for the bank’s Human Rights policy found no specific piece. Their most recent CSR report²¹ had no mention of a Human Rights policy in place for operating in OPT.

OPT-related enterprises peer-fund exclusions				
	PGGM	ABP	NBIM	Future Fund
Bank Leumi	\	x	-	-
Bank Hapoalim	\	x	-	-
Mizrahi Tefahot Bank	\	-	-	-

¹⁶ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long,live%20in%20peace%20and%20security.&ext=%E2%80%9CThe%20New%20Zealand%20Government's%20view,significant%20risks%20to%20regional%20security.>

¹⁷ <https://www.reuters.com/article/netherlands-israel-divestment/major-dutch-pension-firm-divests-from-israeli-banks-over-settlements-idUSL6N0KI1N220140108>

¹⁸ <https://rightsforum.org/nieuws/pensioenfonds-pfzw-haalt-vijf-israelische-banken-van-uitsluitingslijst/>

¹⁹ <https://www.pfzw.nl/over-ons/zo-beleggen-we/waar-in-we-beleggen/overzicht-aandelen.html>

²⁰ <https://rightsforum.org/nieuws/abp-dumpt-israelische-banken/>

²¹ https://online.fibi.co.il/wps/wcm/connect/online.fibi.co.il/9960/2517d8ce-0e73-442c-960d-1a0b1f7f4cc4/CSR+2018.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_5G3DTJOFITL70AN3NN69D0003-2517d8ce-0e73-442c-960d-1a0b1f7f4cc4-ncallE-

C3 - Internal Use Only – Legally Privileged

FIBI	\	-	-	-
Israel Discount Bank	\	-	-	-

Legend	
x	Excluded
-	Never excluded
\	Previously excluded but no longer

Timeline of Exclusions

September 2009	NBIM excludes Elbit Systems
February 2010	ABP excludes Elbit Systems
August 2010	NBIM excludes Africa-Israel and subsidiary Danya Cebus.
June 2012	PGGM excludes Elbit Systems
June 2012	NBIM excludes Shikun & Binui
August 2013	NBIM revokes exclusion of Africa-Israel
January 2014	NBIM excludes Africa-Israel and subsidiary Danya Cebus. ²²
January 2014	PGGM excludes all five Israeli banks (Leumi, Hapoalim, Mizrahi-Tefahot, Discount Bank and FIBI).
January 2019	PGGM (PFZW) removes all five Israeli banks from exclusions list in 're-assessment of all investments.'
June 2020	ABP divests from Bank Leumi and Hapoalim

11 Appendix 2: FIBI statements on investments / loans in OPT

11.1.1 The Author was unable to find any statements on investments / loans in OPT, or in relation to the recent UN list.

12 Appendix 3: Past work on exclusions of OPT-related businesses

²² Not included in March 2020 exclusion list
Document Number: 2988246

12.1.1 See: SD#2385043

Released under the OIA

ITEM **DRAFT** **PORTFOLIO MONITORING:
ISRAEL DISCOUNT BANK**

Prepared by:



s9(2)(a)

Date:

July 2020

1 Purpose

- 1.1.1 The purpose of this note is to review and update the profiles of the Israeli bank holdings, in light of the political developments around the world relating to the proposed annexation of Israeli settlements in Occupied Palestinian Territory.
- 1.1.2 The note builds upon previous background work conducted in 2014, as well as various other notes referenced throughout.


2 Background

- 2.1.1 Israel Discount Bank Limited, together with its subsidiaries, provides various banking and financial services in Israel, Europe, and North America. Source: MSCI
- 2.1.2 A list of companies identified by the United Nations High Commissioner for Human Rights as being involved in ‘activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem’, includes Israel Discount Bank. The list identifies a total of 112 companies.
- 2.1.3 We have not previously excluded banks operating in OPT as they have fallen outside our boundaries. Our boundary states that: *When making exclusion decisions, we draw a distinction between a company being directly and materially involved in an activity, versus being a supplier of materials in the normal course of business. In deciding whether a company is breaching the Fund’s responsible investment standards and how material that breach is, we take account of the proximity and importance of the company’s actions to an illegal or unethical activity.*

3 MSCI Reports

- 3.1.1 As at 10/07/2020, 
- 3.1.2 

4 GNZS Holdings

- 4.1.1 Value: \$NZD 874,586
- 4.1.2 Managers: SSGA, BlackRock, Northern Trust
- 4.1.3 ISIN: 

5 The Issues

- 5.1.1 Since the last profile there has been significantly increased NGO and stakeholder interest in the matter. This section summarises the views from reports of Amnesty International, Who Profits, Human Rights Watch and the University of Essex Business and Human Rights Project which utilised the investor perspective of the Norwegian state-owned Pension fund – Norwegian Statens Pensjonsfond Utland (“SPU”).
- 5.1.2 The issues centre around the banks role in financing the construction of non-militarily necessary Jewish settlements in the Occupied Palestinian Territory, which Amnesty highlights is a breach of International Humanitarian Law¹.
- 5.1.3 “The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws” (Amnesty International).² Amnesty further alleges that Israel’s settlement policy is the driving force behind mass human rights violations.
- 5.1.4 A statement by PGGM in 2014 outlined their reasoning for excluding Israel Discount Bank:

“concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law. Moreover, international observers have indicated that the settlements constitute an important obstacle to a peaceful (two-state) solution of the Israeli- Palestinian conflict. In 2004 the International Court of Justice concluded in an Advisory Opinion that the settlements in the Palestinian territories are in breach of Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Population in Time of War. This article prohibits an occupying power to transfer its own citizens to occupied territory. International bodies, including the UN General Assembly and the UN Human Rights Council have adopted various broadly supported resolutions, which state that the settlements are considered illegal. Israel disputes this interpretation of the applicability of international law.”

- 5.1.4.1 In 2014 ABP referenced that the three Israeli banks it had holdings in – Bank Hapoalim, Leumi and Mizrahi-Tefahot – “did not act in breach of international laws and regulations, adding that there were no existing judicial rulings that should result in their exclusion from its investment universe.”³
- 5.1.5 A report issued by the NGO, Who Profits alleges that:

“Bank Leumi, Bank Hapoalim, Israel Discount Bank, Mizrahi-Tefahot Bank, Bank Igud, FIBI and Bank of Jerusalem are all party to accompaniment agreements signed with Israeli construction companies operating in the Israeli settlements in the West Bank and East Jerusalem. All these banks provide loans or financial guarantees and extend credit to the companies, which in

¹ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

² <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

³ <https://www.ipe.com/main-navigation/israeli-banks-did-nothing-to-breach-international-law-abp-concludes/10000948.article>

return provide the banks with all their contractual, actual and financial rights to the land and projects as collateral. Most companies also provide the bank with all of the funds they receive from buyers and renters in the project, as well as from different Israeli authorities, including the tax authorities.”⁴

“The banks are so heavily involved in accompanied construction projects that they inspect each and every stage of the project, including its profitability and the development of the construction. Usually, the bank is also involved in determining the price rate and sale schedule of the apartments.”⁵

5.1.6 The report by Who Profits provides specific case studies of construction projects and the respective banks involvement with the project.⁶

5.1.7 A report issued by the Human Rights Watch in May 2018 found that:

“Israel’s largest banks are providing services that help support, maintain, and expand unlawful settlements by financing their construction in the occupied West Bank, including partnering with developers to build homes on land unlawfully seized from Palestinians. The banks’ involvement is direct and substantial: they acquire a property interest in the development projects and shepherd them through to completion. The transfer by the occupier of members of its civilian population into the occupied territory, and the deportation or transfer of members of the population of the territory, are war crimes. The activities of banks finance a critical step in this transfer.”⁷

“Most Israeli banks finance or “accompany” construction projects in the settlements by becoming partners in settlement expansion, supervising each stage of construction, holding the buyers’ money in escrow, and taking ownership of the project in case of default by the construction company.”⁸

5.1.8 A report titled ‘Investor Obligations in Occupied Territories’ authored by the Essex Business and Human Rights Project, focuses its analysis on the Norwegian Government state-owned Fund – Norwegian Statens Pensjonsfund Utland (“SPU”).

5.1.8.1 The report posits that: *“If SPU cannot use leverage to effect change in its investees’ human rights impacts, any continued investment has the potential to move from a situation in which SPU is directly linked to violations to one in which SPU is contributing to those violations.”⁹*

5.1.8.2 The report finds that: *“At a minimum, businesses that knowingly fund the construction of settlements, construct the settlements themselves, or provide equipment for the construction of the settlements contribute to the human rights*

⁴ https://www.banktrack.org/download/who_profits_financing_land_grab/who_profits_financing_land_grab.pdf

⁵ Who Profits report SD#2999407

⁶ See page 58 of the Who Profits report

⁷ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁸ <https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>

⁹ <https://www.essex.ac.uk/-/media/documents/research/ebhr/investor-obligations-in-occupied-territories--report-on-the-norwegian-government-pension-fund--global.pdf>

impacts caused by that construction. In certain circumstances, the financing or direct construction of the settlements can be understood as causing the violations because these businesses' conduct is essential to the construction, and therefore essential to the resulting violations."

5.1.8.3 The report drew criticism from certain organisations such as pro-Israel NGO Monitor for using proposed inaccuracies in the report.¹⁰

5.1.9 Further, in 2015 the US state of Illinois' House of Representatives and Senate voted unanimously to pass legislation requiring five state-funded pension schemes to divest their direct and indirect holdings from any company that is identified as boycotting Israeli companies.¹¹

6 The UN Human Rights Council database of business enterprises involved in OPT

6.1.1 The mandate of the report aims to produce a database that lists all business enterprises involved in any of the listed activities operating in OPT.

6.1.2 All listed activities and the complete database can be found [here](#).

6.1.3 Notably, Israel Discount Bank is listed as being involved in listed activities E and F.

6.1.4 E relates to: *the provision of services and utilities supporting the maintenance and existence of settlements, including transport;*

6.1.5 F relates to: *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*

6.1.6 OHCHR identified as "involved", for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:

6.1.6.1 *A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;*

6.1.6.2 *A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a minority share in a subsidiary that business enterprise is not considered to be "involved" for the purposes of this report;*

6.1.6.3 *A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.*

6.1.7 The statement from the United Nations Human Rights office that accompanies the released database states:

*The report makes clear that the reference to these business entities is not, and does not purport to be, a judicial or quasi-judicial process. While the settlements as such are regarded as illegal under international law**, this report does not provide a legal characterization of the activities in question, or*

¹⁰ <https://www.ngo-monitor.org/reports/multiple-inaccuracies-in-the-essex-npa-bds-investor-obligations-report/>

¹¹ <https://www.ipe.com/pension-funds-ordered-to-divest-companies-that-support-boycott-of-israel/10008102.article>

of business enterprises' involvement in them. Any further steps with respect to the continuation of this mandate will be a matter for the Member States of the Human Rights Council, which will consider the report during the Council's next session, beginning on 24 February.

Note the 43rd session referred to above was delayed to the 22nd of June 2020. "The HRC expressed concern about reports by the independent international Col on the protests in the OPT , as well as fact-finding missions and boards of inquiry convened by the Secretary-General, regarding serious human rights violations and grave breaches of IHL, including possible war crimes and crimes against humanity. The HRC further expressed alarm that long-standing systemic impunity for violations of international law and stressed the need to ensure accountability for all violations IHL and IHRL in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace. The HRC requested the High Commissioner to report at the HRC's 46th session on how all parties can implement the recommendations reviewed by the High Commissioner in 2017, including accountability and legal measures other states can take to ensure Israel and all other relevant parties respect their obligations under international law in the OPT, including East Jerusalem. The resolution was adopted by a vote of 22 in favour, 8 against and 17 abstentions."¹² The session papers can be found [here](#) and [here](#).

*** Human Rights Council resolution 31/36 recalls reports of the UN Secretary-General, resolutions of the UN General Assembly and Security Council, an advisory opinion of the International Court of Justice and the opinions of several human rights bodies reaffirming the illegality of the Israeli settlements in the Occupied Palestinian Territory, including in East Jerusalem.*

7 Resolution 72/240 by the UN General Assembly on 20 December 2017

- 7.1.1 The internal note can be found [here](#).
- 7.1.2 On 20 December 2017, a resolution was adopted by the UN General Assembly that called for "Permanent sovereignty of the Palestinian people in the OPT, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources".
- 7.1.3 The resolution builds on Resolution 2334 from Dec 2016 (see SD#[2079722](#)). New Zealand was one of four countries that put the 2016 resolution forward. At this time, New Zealand was a member of the UN Security Council. The resolution states that the "establishment by Israel of settlements in the occupied Palestinian territory, has no legal validity and constitutes a flagrant violation under international law

¹² <https://www.globalr2p.org/publications/hrc43-summary/>

and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace.”¹³

7.1.4 The International Court of Justice Middle East and North Africa Director, Bernabia, is quoted in a statement on the ICJ website that:

7.1.4.1 *“Israel’s settlements are illegal no matter how hard the Israeli and the US governments try to spin or whitewash them,”*¹⁴

7.1.4.2 *“Any sovereignty claims by Israel over East Jerusalem and the West Bank are null and void under international law and must be repudiated, not condoned or encouraged,”*¹⁵

8 Israel’s recent statement on annexation of the Jordan Valley and the occupied West Bank

8.1.1 A recent summary of organisational bodies views on the proposed annexation can be found [here](#).

8.1.2 The ICJ issued a statement on November 2019 that refers to the proposed annexation and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.”¹⁶

8.1.3 Some further development see the Dutch Parliament passing a resolution on the 1st of July which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.¹⁷ Belgium’s Chamber of Representatives voted for a similar resolution, should Israel proceed with annexation plans.

9 NZ Government statement on Israel’s annexation plans

9.1.1 “New Zealand is a long-standing supporter of Israel’s right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process,”

¹³ <https://www.mfat.govt.nz/en/media-and-resources/news/un-security-council-adopts-historic-resolution-on-israeli-settlements/>

¹⁴ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁵ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁶ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

¹⁷ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

9.1.2 “The New Zealand Government’s view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans.”¹⁸

10 Appendix 1: Peer fund divestments

10.1.1 In January 2014 PGGM, the second largest Dutch pension fund manager announced it will divest from five Israeli banks over their dealings with businesses operating in Jewish settlements within occupied Palestinian territory.¹⁹ Israel Discount Bank is one of the five banks excluded.

10.1.2 United Methodist Church (2016) has excluded Israel Discount Bank as at July 2020.

10.1.3 In early 2019 the main client of PGGM, PFZW has removed the five Israeli banks from its exclusion list. As reported by The Rights Forum, the reason for removing the banks from the list is that PFZW is reassessing its entire investment portfolio this year.²⁰ The article suggests that Borgdorff – the CEO of PFZW – is intending on placing the banks bank on the list at the end of the year. A search through the PFZW invested shares list as at 31-12-2019 finds the firm to have €4.3 million currently invested in Israel Discount Bank²¹.

10.1.4 A manual search for the bank’s Human Rights policy found that their CSR site was currently offline.

OPT-related enterprises peer-fund exclusions				
	PGGM	ABP	NBIM	Future Fund
Bank Leumi	\	x	-	-
Bank Hapoalim	\	x	-	-
Mizrahi Tefahot Bank	\	-	-	-
FIBI	\	-	-	-
Israel Discount Bank	\	-	-	-

Legend	
x	Excluded
-	Never excluded
\	Previously excluded but no longer

¹⁸ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long,live%20in%20peace%20and%20security.&ext=%E2%80%9CThe%20New%20Zealand%20Government's%20view,significant%20risks%20to%20regional%20security.>

¹⁹ <https://www.reuters.com/article/netherlands-israel-divestment/major-dutch-pension-firm-divests-from-israeli-banks-over-settlements-idUSL6N0KI1N220140108>

²⁰ <https://rightsforum.org/nieuws/pensioenfonds-pfzw-haalt-vijf-israelische-banken-van-uitsluitingslijst/>

²¹ <https://www.pfzw.nl/over-ons/zo-beleggen-we/waar-in-we-beleggen/overzicht-aandelen.html>

Timeline of Exclusions

September 2009	NBIM excludes Elbit Systems
February 2010	ABP excludes Elbit Systems
August 2010	NBIM excludes Africa-Israel and subsidiary Danya Cebus.
June 2012	PGGM excludes Elbit Systems
June 2012	NBIM excludes Shikun & Binui
August 2013	NBIM revokes exclusion of Africa-Israel
January 2014	NBIM excludes Africa-Israel and subsidiary Danya Cebus. ²²
January 2014	PGGM excludes all five Israeli banks (Leumi, Hapoalim, Mizrahi-Tefahot, Discount Bank and FIBI).
January 2019	PGGM (PFZW) removes all five Israeli banks from exclusions list in 're-assessment of all investments.'
June 2020	ABP divests from Bank Leumi and Hapoalim

11 Appendix 2: Israel Discount Bank statements on investments / loans in OPT

11.1.1 The Author was unable to find any statement related to investments / loans in OPT, or in relation to the recent UN list.

12 Appendix 3: Past work on exclusions of OPT-related businesses

12.1.1 See: [SD#2385043](#)

²² Not included in March 2020 exclusion list
Document Number: 2988247

C2 - Internal Use Only

Investment in Israeli banks – reactive response - October 2020

Reactive media/external response:

We take our obligations as a responsible investor very seriously. These obligations are integrated into Guardians' activities through several policies including our Responsible Investment Framework.

In all investment matters we appropriately apply our Framework to meet legislative requirements to manage the Fund in a manner consistent with, among other things, avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

The Framework is closely aligned to the United Nations' backed Principles for Responsible Investment (PRI), which graded the Guardians' activities A+ in its annual assessment of governance and strategy, and listed equity, and A for active ownership.

Further, the Guardians is subject to 5-year independent performance reviews, which consider whether its investment policies, standards, and procedures are appropriate to the Fund, and have been complied with in all material respects.

A particular focus of the most recent review conducted by Willis Towers Watson looked at whether the Guardians' Responsible Investment Framework was consistent with "avoiding prejudice to New Zealand's reputation as a responsible member of the world community" in the context of international best practice.

It concluded that the Guardians is meeting its obligations and that its current approach to environmental, social and governance (ESG) integration and stewardship is impressive and, in its view, aligns with best practice. Overall the Guardians received an AA excellent rating, reflecting previous independent reports and assessments of its RI framework.

We constantly reassess the portfolio to ensure it reflects the requirements set out in our legislation and against our responsible investment framework, at the same time as maximising returns to the taxpayer without taking on undue risk.

Q&A

Why are you invested in Israeli banks?

The \$46 billion NZ Super Fund holds shares in approximately 6,500 listed companies globally, with two-thirds of the Fund invested in a passive market-tracking portfolio. These companies form part of our passive index portfolio, which simply replicates the mix of listed equities on stock markets around the world.

Why do you continue to invest in them when the UN Security Council has called the settlements financed by these banks illegal and deemed their continuing construction a "flagrant violation" of international law?

Decisions to exclude certain companies are made in accordance with clear process and principles that are set out in our Responsible Investment Framework which covers international conventions, New Zealand law, Crown actions and company activities.

C2 - Internal Use Only

When deciding whether a company is breaching the Guardians' responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions, and our ability to engage with the company to change its business or practices.

We draw a distinction between being directly and materially involved in an activity versus being a supplier of materials or services in the normal course of business, as appears to be the case with the Israeli financial institutions in question. In doing so, we consider whether the product or service is integral to the activity and tailor-made, as opposed to being an off-the-shelf substitute or readily replaceable alternative.

How can you be meeting your legislative requirement to avoid prejudicing New Zealand's international reputation, when the NZ government has called the settlements these banks are financing a 'violation of international law' that have 'negative implications for the peace process'?

We monitor UN Security Council resolutions relating to the Occupied Palestinian Territory (OPT) and the New Zealand Government's voting position in order to ensure that our position is aligned with that of the New Zealand Government. In January 2017 we reviewed UN Security Council resolution 2334 (refer doc #2079722) in order to assess if the boundaries on which we had based our exclusion decisions relating to companies operating in the OPT should be reconsidered.

We concluded that the resolution did not draw any additional distinctions around particular business activities that would lead us to look further into potential exclusions based on a business activity. The resolution reaffirmed New Zealand's long-standing position on the issue, fully recognising the illegality of Israeli settlements in the OPT. We reached the same conclusion after our review of UN Security Council resolution 72/240, adopted the following year (refer doc #2531350).

We also regularly review our research on the companies that we have excluded from the Fund due to poor Environmental Governance and Social (ESG) practices, including the companies that have been excluded due to their operations in the OPT, to ensure that our exclusions are based on current information and are as accurate as possible. The most recent review was undertaken in February 2018, and no changes were made to our exclusion list, in respect of the Israeli companies, as a result.

We remain comfortable with where we have drawn the line on issues of materiality and proximity, and believe we have acted consistently on this issue.

Do you agree with XYZ that the government should give a direction to the Fund regarding these investments?

We agree with the Minister of Finance who says it is not the role of ministers to assess individual investments, and that the Guardians board is responsible for establishing investment policies and ensuring management is acting consistently with them. It was pleasing to note the Minister recognises our responsible investment practices represent global best practice standards.



NZSUPERFUND

*Te Kaitiaki Tahua Penihana
Kaumātua o Aotearoa*

TITLE:

RI Education: RI Exclusions Policy

Legally Privileged

AUTHOR:

Anne-Maree O'Connor

Head of Responsible Investment

EVENT | PRESENTATION:

Education SD:3092317

Released under the OIA

RI Policy and Framework: Exclusions

- The Board developed the RI Statement of Investment Policies, Standards & Procedures (RI Policy) with particular regard for “avoiding prejudice to New Zealand’s reputation as a responsible member of the world community” and consistent with other legs of the Guardians’ mandate.
- The Board retains the power to determine whether any categories of investments should be excluded under the RI Policy. The Board has delegated responsibility to management to determine and update lists of securities excluded under each product-based category. Beyond this, Board has delegated authority to management to exclude companies for poor ESG practices. This requires IC recommendation to the CIO.
- Our categories of exclusions are: Product based: e.g. Cluster Munitions & Landmines; **Company-based: exclude specific companies for poor ESG practices**; Sovereign-bond based: exclusions may apply to sovereign bonds of countries subject to UN Security Council sanctions.
- Exclusions apply to securities issued by companies or countries, and to single company name derivatives. Exclusions apply to the segregated portfolio, and, where commercially feasible, to pooled funds including private markets and to index derivatives

Company exclusion guidelines

- ❑ The Board may apply exclusions where there is a strong belief the company is *materially* breaching *our* RI standards, based on evidence from *reputable sources*, and where engagement is *unlikely* to materially change behaviour.
- ❑ Our exclusions may occur where companies are involved in certain activities (e.g. products) or breaches of standards (in particular, UN Global Compact). In implementing these guidelines we consider the following factors:
 - Requirements of our mandate
 - International conventions to which New Zealand is a signatory
 - New Zealand or national law
 - Significant policy positions of the New Zealand Government
 - Severity of breach of our RI standards
 - Actions of our peers
 - Likelihood of success of alternative course of action (engagement)
 - Impact of exclusion on expected returns
- ❑ In 2012, the Board approved a recommendation that exclusion may be used where engagement was not effective, or not an efficient use of resources. The Board delegated decisions on company exclusions under this category to the Investment Committee (recommendation) and CIO (decision).

Case Study: Israeli Settlements in the OPT

Previous exclusions based on material involvement.

- In 2012, the Guardians excluded three property and construction companies from the portfolio due to material involvement in the construction of Israeli settlements in the Occupied Palestinian Territories.
- We have currently considering the involvement of a five Israeli Banks in the development and construction of Israeli settlements.
- The following slides will provide an overview of how the companies ESG practices are considered under the RI Framework.
- The Investment Committee makes recommendations on RI exclusions based on ESG practices to the CIO who has the final decision.

International Law and International censure

- UN Security Council resolution 465 adopted unanimously on March 1 1980 established that Israel's policy and practices of building settlements on occupied territory, including East Jerusalem, have no legal validity and constitute a flagrant violations of the IV Geneva Convention provisions to protect civilians during war and occupation.
- 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.**” A ICJ advisory opinion in 2004 also concluded that the Israeli settlement in the OPT breached international law.
- In December 2016, the UN Security Council adopted a historic resolution (UNSC Res. 2334) on Israeli settlements. “The United Nations Security Council has reaffirmed that the establishment by Israel of settlements in the occupied Palestinian territory, has no legal validity and constitutes a flagrant violation under international law and **a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace**”.
- The ICJ issued a statement on November 2019 that refers to **Israel's current annexation proposals** and states “such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force.” <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

New Zealand Law and Policy Position

- New Zealand is a signatory to the Geneva Convention and to the Universal Declaration of Human Rights.
- New Zealand worked throughout its two-year term on the Security Council to advance the Middle East peace process.
- The December 2016 UN Security Council Resolution 2334 was put forward by New Zealand and three other elected members and was the first action taken by the Security Council on the Middle East Peace Process in almost eight years.
- In June 2020, the New Zealand government released the following press statement: “New Zealand is a long-standing supporter of Israel’s right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process.”

RI Standards for Companies

- The RI Framework includes the UN Global Compact Principles as a standard for responsible corporate behaviour. The standards companies are at risk of breaching due to involvement in the settlements are UN Global Compact
 - *Principle 1: companies should support international human rights; and*
 - *Principle 2. companies should avoid complicity in breaches of human rights.*

- We consider the severity of the breach of standards in our decisions to:
 - Add a company to our focus list for engagement, or
 - Consider the company for exclusion in certain circumstances where:
 - engagement is not likely to be effective
 - we have engaged but it has not been effective
 - Engagement is not a prudent use of our resources.

Materiality of the breach of standards

- We analyse the materiality of the breach of these standards by companies by assessing if it is:
 - a significant environment, social or governance risk,
 - Has a long term or short term impact
 - is an isolated incident or a structural problem.
- We take account of the *proximity and importance* of the company's actions to an illegal or unethical activity.
- For example, we draw a distinction between being directly and materially involved in an activity versus being indirectly involved as supplier of materials or services.

Banks and the settlements in the OPT

- The banks role is a step removed from the construction companies in the building of the settlements. However, Accompaniment Agreements (in line with Israeli Sale Law) mean there is a close partnership with the developers.
 - These agreements involve: collateral; escrow; inspections to stage payments (assess risk); are closely involved in determining price and sale schedules; and in taking ownership in case of default or bankruptcy.
 - There do not appear to be non-Israeli Banks funding the settlements, so Israeli Banks are a key source of finance.
- The banks involvement presents:
 - Significant social risk to the company
 - Has a long-term negative social impact; and
 - is a structural issue for the banks given their long-term and ongoing involvement.
- The ongoing unwillingness of a company to address breaches of standards in the face of UN condemnation and international censure is a relatively rare situation. The Banks view their involvement as legal under Israeli Law.
- For these reasons engagement is unlikely to be effective.

Other considerations

- **Peer Funds:** exclusion of companies for involvement in the settlements is **rare**. The Norwegian Government Pension Fund excluded a number of construction companies but not the Banks. PGGM (in 2014) and ABP (in 2020) are the only peer funds to have excluded the banks for involvement. (Some other non-peer funds have done so). ABP excluded after engagement had failed.
- **Impact of exclusions on returns:** The Fund's investment in the banks involved is not material – circa NZD\$22m.

Released under the OIA

Summary

- The RI Framework provides a structured way to work through the best course of action for the Guardians to take in the case of companies involved in activities that breach international standards expected of companies in relation to environmental, social and governance practice.
- Addressing the issue of materiality is important in order to set reasonable boundaries around the use of our resources and our decisions to monitor, engage and exclude.
- The RI Framework assist the Guardians in meeting the requirements of our mandate.

Released under the OIA

Full Image Slide



Communications Plan – exclusion of Israeli Banks

Finalised 19/2/21

Background

Further to IC paper #3087711 the Guardians has decided to exclude the following securities from the NZ Super Fund:

- First International Bank of Israel;
- Israel Discount Bank;
- Bank Hapoalim;
- Bank Leumi;
- Bank Mizrahi-Tefahot.

The exclusion is being made based on our RI Policy, Standards and Procedures on the basis of credible evidence that these banks provide finance for the construction of Israeli settlements in the Occupied Palestinian Territories and that this an integral aspect of settlement construction. For further information refer to the IC Paper.

The decision is likely to be contentious and to attract stakeholder and media interest.

Relevant Audiences

- NZSF External Investment Managers
- Staff (investment and non-investment)
- Minister of Finance's office
- Treasury – relationship team and legal team
- Ministry of Foreign Affairs and Trade – legal team
- ACC and GSF, Kiwisaver funds and other industry participants following NZSF's exclusion list
- Repeat correspondents with the Guardians on this issue – John Minto, [REDACTED] s9(2)(a)
- Media
- Excluded companies
- Israeli lobby

Key Principles

- Proactive disclosure of IC paper (redacted as appropriate)
- Media release and Q&A to be prepared for reactive use

Approach

Communications materials will be factual, short and simple.

In line with our usual precautionary approach to managing communications regarding publicly listed companies, there will be no external communications on the matter until the securities have physically sold.

C3 - Restricted Confidential

We will prepare the following communications material:

- Key messages/talking points for staff
- Media statement (reactive use)
- Q&A (reactive use)
- Version of IC paper for proactive disclosure
- Updated exclusion list for website
- No surprises comms for Minister of Finance and Treasury
- Emails advising of our decision for regular correspondents on this issue
- Letter to excluded companies.

Once confirmation has been received that all the managers have sold all the holdings, we will:

- Confirm to Guardians' Board that holdings sold (MW).
- Brief the Minister's office and Treasury including Treasury legal team under no surprises (CE/CR) and provide advice on a response for the Minister to use: "The decision to divest was the Guardians' alone and the Government had no involvement in the decision." MOF office and Treasury to be provided with copies of the IC paper, media statement and Q&A and indication of timing.
- Arrange for the Minister and Ministry of Foreign Affairs to be briefed (arrangements to be discussed with Minister of Finance's office – likely approach to Ben King, Deputy Chief Executive - CE/CR; GMCS to brief MFAT legal team – [REDACTED] SO to brief [REDACTED]). Briefing to: **s9(2)(a)**
 - acknowledge improvement in Israel's relations in the middle East while noting increase in settlements and growing concern over this;
 - express our appreciation that there may be a reaction but express that we are convinced that without the banks the settlements could not be built;
 - note that when PGGM excluded the Israeli banks, Israel summoned the Dutch Ambassador to discuss it: (see <https://www.ipe.com/main-navigation/israel-decrie-s-pggm-decision-to-divest-from-banks-involved-in-settlements/10000770.article>.) At a later point PGGM reversed all exclusions as part of a review of its exclusion list approach – currently ongoing.
- Provide advice to the Guardians' receptionist on how to manage any calls on the issue (refer callers to CE/CR).

Once we are satisfied our Board, Ministers and officials are adequately briefed we will:

- Write to the five excluded companies.
- Commence NT monitoring and send remaining manager letters (managers that don't hold the stocks).
- Advise CFIs (KB) noting confidentiality.

Once those letters/communications have been sent and received we will:

- Provide internal communications to staff noting possibility of controversy and providing key messages.

- Upload the updated exclusion list to our website.
- Upload the redacted IC paper to our website.
- Write to the three repeat correspondents advising them of the decision.
- Utilise media statement and Q&A as required. Maintain a watching brief in respect of media coverage/enquiries and stakeholder interest.

If a media spokesperson is required (e.g. for interviews) this will be the Head of Responsible Investment.

Media Statement – reactive use

Guardians excludes five Israeli banks on responsible investment grounds

The Guardians of New Zealand Superannuation, the manager of the NZ\$50 billion NZ Super Fund, has excluded five Israeli banks on responsible investment grounds.¹

Company	NZ\$ value of divested holdings
First International Bank of Israel	\$856,971.65
Israel Discount Bank	\$1,049,063.83
Bank Hapoalim	\$2,100,072.45
Bank Leumi	\$2,407,309.85
Bank Mizrahi-Tefahot	\$927,205.18
Total	\$6,528,441.54

There is credible evidence that the excluded companies provide project finance for the construction of Israeli settlements in the Occupied Palestinian Territories, which is an integral aspect of settlement construction. We believe that without the banks' involvement the settlement activity would not be proceeding at the scale seen in recent times.

In June 2020 the New Zealand Government released the following press statement: "New Zealand is a long-standing supporter of Israel's right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process."²

In 2016 New Zealand co-sponsored a UN Security Council resolution demanding the cessation of Israeli settlement activities in the Occupied Palestinian Territories and in December 2020 the United Nations called for an immediate cessation of settlement activity.

In our view, based on the information available to us, the companies' activities are inconsistent with the UN Global Compact, the key benchmark against which the Guardians

¹ Pursuant to the Guardians' Statement of Investment Policies, Standards and Procedures; and its Responsible Investment Framework.

² <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans>

measures corporate behaviour, and engagement with the companies is unlikely to be successful.

Given the small size of the holdings in the excluded companies the decision will not have a material financial impact on NZ Super Fund performance.

Further information is available [here](#) (link to IC paper).

ENDS

The Guardians has a long-standing commitment to responsible investment. In 2019 our responsible investing practice was independently assessed by Willis Towers Watson in the course of their independent review of the Guardians and Fund. Willis Towers Watson rated the Guardians' responsible investment approach as excellent, and noted our approach to exclusions as aligning with best practice standards. The Guardians' approach to responsible investment has been recognised internationally, including being named by the UNPRI in 2019 as one of 47 asset owners on the UNPRI Leaders' Group as demonstrating "a breadth of responsible investment excellence".

Q&A – reactive use as required.

What has changed to make you exclude the Israeli banks now when you decided not to exclude them in 2012?

We have been monitoring developments in respect of the illegal settlements. Recent information has indicated that settlement activity has intensified and we consider that settlement construction of the scale contemplated would not be possible without finance from the Israeli banks - no international banks appear to be providing such finance. We have therefore come to the view that the finance provided by these banks and the nature of that finance is integral to the construction of the illegal settlements.

See 3.4 and 3.5 of the IC paper for a fuller explanation.

Why not exclude other companies active in the OPT / other companies mentioned in the UNHRC list of companies involved in activities related to the Israeli settlements?

We have excluded other companies in relation to this issue – refer to our exclusion list.

The nature and degree of a company's involvement is important in determining if we conduct further research, engage, hold or exclude companies with some link to an issue flagged as a concern.

A key factor is the proximity and importance of the company's actions to that illegal or unethical activity. We draw a distinction between a company being directly and materially involved in an activity versus being a supplier of materials or services in the normal course of business. In doing so, we consider whether the product or service is integral to the activity; specifically designed for the activity (as opposed to a product/service for more

general application which happens to be used for the relevant activity); and whether there are alternatives or off-the-shelf substitutes to the use of this product or service.

The UNHRC list provides a database of companies believed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to be involved in certain specified activities but does not provide detail on the different types of involvement or express a view as to the legality or otherwise of the activities of the companies on the list. We have long utilised other sources of information on this issue which provide more detail.

Why exclude these banks and not ones funding other human rights abuses around the world, and/or fossil fuel extraction? Is this a double standard?

Our long-standing preference is to engage with companies to encourage them to improve their policies and practices. Exclusion is a last resort that we may choose to undertake if we believe engagement will be ineffective. We are an active shareholder on responsible investment issues, and human rights and climate change are priority engagement themes for us. We engage with companies on these both directly and through our engagement provider BMO – refer to our Annual Reports for details. Also, exclusion decisions can only be made on the basis of the information that we have to hand and robust analysis of the relevant issues.

The specific context in terms of the Israeli Bank activity is also relevant here – where involvement has continued despite the settlements being considered illegal under international law - for more information refer to the IC Paper.

Did you engage with the banks prior to excluding and divesting from them?

No – we did not believe engagement would be effective. The Israeli banks have continued their involvement in the face of international criticism over a long period and have reported that they believe their activity is legal. However, we did advise them of our decision before making it public.

Would you reconsider your decision in the future based on new information?

Yes.

Do ethical exclusions impact negatively on Fund performance?

These investments are of small size and immaterial to Fund performance. The funds from sale of these shares have been reinvested in global equity indices. Previous research on the performance impact of our ethical exclusions on the Fund has not found them to have a material effect.

Can you comment on the political / Israeli reaction to your decision?

The decision was solely our own. An independent body, the Guardians, was specifically established to manage the Fund to ensure that investment decisions were not subject to

political interference. Our focus is on corporate practices and how companies conduct business responsibly in the countries in which they operate.

How do you prioritise your focus areas? Is the renewed attention you have paid to this issue the result of lobbying/activism?

The issue of human rights has been a long-term focus of our RI programme. The activities of the banks and construction companies was prioritised for review last year after new information (including from UN sources) came to our attention about the escalation of the settlement activity together with increase international concern over annexation, and the integral role of the Israeli banks in the construction of new settlements. The long history and number of UN resolutions on this matter is relevant. It fits within one of our priority responsible investment themes - human rights abuses. Reports from international bodies and NGOs are among a number of information sources used when we apply our RI framework.

Have any other investors also moved to exclude these banks? If so, who?

Yes – a number have. Investors that have excluded some or all of these banks include ABP, Storebrand, United Methodist Church, Samepensjon, FDC, the Finnish Danske Bank and the German Deutsche Bank Ethical Fund. However, we note that the exclusion of companies on poor ESG practices is a relatively rare practice for institutional investors internationally.

Do you expect other investors in New Zealand to follow your lead?

Many would not be invested in these companies in the first instance, because of the nature of their portfolios. Our decisions are appropriate to our particular investment mandate and responsible investment, including ethical investment, policies.

Is this because there is a new US administration?

No.

Do you exclude corporate bond holdings as well as equities?

Yes.

Aren't you forming a view on international matters that are outside your remit?

No, we are taking a view on corporate behaviour in companies in which we are a shareholder. This is normal practice for an institutional investor. [The illegality of the settlements is well established in international law and New Zealand has a clear position on it.]

Why haven't you excluded Israeli bonds from the portfolio? Isn't it the Israeli government that is funding the activities and is really at fault here?

We follow the New Zealand Government's approach on sanctions to determine this. These sanctions reflect the UN Security Council sanctions list.

Under our Responsible Investment Framework we exclude government bonds where there is widespread condemnation or sanctions by the international community and New Zealand has imposed meaningful diplomatic, economic or military sanctions aimed at that government. Israel is not subject to such sanctions (see <https://www.mfat.govt.nz/en/peace-rights-and-security/sanctions/>) and therefore Israeli bonds remain in our portfolio. As at 31 Jan 2021 the NZSF held (all via Blackrock Beta Fixed Income) 1.3 million Israeli State Bonds valued at NZ\$2.3m.

Where a sanction is in place, we exclude any securities issued by the Governments, or Government agencies of countries, or non-index derivatives by government issuers referencing countries.

Would the Guardians exclude Air NZ on responsible investment grounds given its involvement with the Saudi Arabian military?

Given Air NZ has ceased this involvement and acknowledged it did not meet expectations, the question is hypothetical and we have not given it consideration.

Internal Communications Messages for Staff

- If you are contacted by a member of the public or media, please refer them to Catherine or Conor.
- New information about the increasing scale of the illegal settlements, further analysis and information on the important role of the Israeli banks to the settlement activities and other relevant developments such as Israel's statements concerning annexation prompted us to change our position on the issue
- This decision is likely to be controversial
- If you are asked about it by friends or business acquaintances explain that the Guardians has a robust process for excluding companies and note that NZ has taken a strong position at the UN on the issue of the illegal settlements
- You could also note that the Guardians' RI Processes are well regarded internationally
- Direct people to the exclusions section of our website for more information
- If you would like to know more please refer to the IC paper available on our website at x .

Catherine Etheredge

From: Catherine Etheredge
Sent: Monday, 22 February 2021 11:36 AM s9(2)(a)
To: Paul Young [REDACTED]
Cc: Michael Eyre [TSY]; Conor Roberts [REDACTED]
Subject: In confidence - no surprises briefing on exclusion of Israeli banks
Attachments: R - GNZS IC Paper - Exclusion of Israeli Banks January 2021.pdf; 3145484-1-Media Statement and Q&A – Israeli Banks 2021- reactive use.DOCX

Categories: In eDOCS Sent for filing, In eDOCS, #3145561

Hi Paul, Michael,

Thanks for your time on Zoom this morning.

To recap –

- At this stage the stocks have been sold but the companies have not yet been advised.
- Please find the IC paper, media statement and Q&A attached.
- Once we have confirmation from yourself that the Minister has been briefed, and we are comfortable that MFAT and the Minister of Foreign Affairs have also been adequately briefed, we will advise the companies concerned; and post the updated exclusion list on our website. Concurrent with updating the exclusion list, we will proactively disclose the IC paper on our website. We will then advise some regular correspondents on this issue of our decision.
- No proactive media announcement is planned. The media statement and Q&A are drafts for reactive use as needed.
- We will give the other CFIs a heads up.
- Conor will keep you apprised per no surprises of any media interest/enquiries. We have drafted the following comment for the Minister's consideration: "The decision to divest was the Guardians' alone and the Government had no involvement in the decision."

Kind regards
Catherine Etheredge

Catherine Etheredge
Head of Communications

DDI: [REDACTED]
Mobile: [REDACTED]
Email: [REDACTED]

s9(2)(a)

PO Box 106 607, Auckland 1143, New Zealand
Level 12, 21 Queen Street, Auckland, New Zealand
Office: +64 9 300 6980 | Fax: +64 9 300 6981 | Web: www.nzsuperfund.nz



[Subscribe](#) to NZ Super Fund news.

Please consider the environment before printing this e-mail.

Media Statement – reactive use

Guardians excludes five Israeli banks on responsible investment grounds

The Guardians of New Zealand Superannuation, the manager of the NZ\$50 billion NZ Super Fund, has excluded five Israeli banks on responsible investment grounds.¹

Company	NZ\$ value of divested holdings
First International Bank of Israel	\$856,971.65
Israel Discount Bank	\$1,049,063.83
Bank Hapoalim	\$2,100,072.45
Bank Leumi	\$2,407,309.85
Bank Mizrahi-Tefahot	\$927,205.18
Total	\$6,528,441.54

There is credible evidence that the excluded companies provide project finance for the construction of Israeli settlements in the Occupied Palestinian Territories, which is an integral aspect of settlement construction. We believe that without the banks' involvement the settlement activity would not be proceeding at the scale seen in recent times.

In 2016 New Zealand co-sponsored a UN Security Council resolution demanding the cessation of Israeli settlement activities in the Occupied Palestinian Territories and in December 2020 the United Nations called for an immediate cessation of settlement activity.

In June 2020 the New Zealand Government released the following press statement: "New Zealand is a long-standing supporter of Israel's right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process."²

In our view, based on the information available to us, the companies' activities are inconsistent with the UN Global Compact, the key benchmark against which the Guardians measures corporate behaviour, and engagement with the companies is unlikely to be successful.

Given the small size of the holdings in the excluded companies the decision will not have a material financial impact on NZ Super Fund performance.

Further information is available [here](#) (link to IC paper).

ENDS

¹ Pursuant to the Guardians' Statement of Investment Policies, Standards and Procedures; and its Responsible Investment Framework.

² <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans>

The Guardians has a long-standing commitment to responsible investment. In 2019 our responsible investing practice was independently assessed by Willis Towers Watson in the course of their independent review of the Guardians and Fund. Willis Towers Watson rated the Guardians' responsible investment approach as excellent, and noted our approach to exclusions as aligning with best practice standards. The Guardians' approach to responsible investment has been recognised internationally, including being named by the UNPRI in 2019 as one of 47 asset owners on the UNPRI Leaders' Group as demonstrating "a breadth of responsible investment excellence".

Q&A – reactive use as required.

What has changed to make you exclude the Israeli banks now when you decided not to exclude them in 2012?

We have been monitoring developments in respect of the illegal settlements. Recent information has indicated that settlement activity has intensified and we consider that settlement construction of the scale contemplated would not be possible without finance from the Israeli banks - no international banks appear to be providing such finance. We have therefore come to the view that the finance provided by these banks and the nature of that finance is integral to the construction of the illegal settlements.

See 3.4 and 3.5 of the IC paper for a fuller explanation.

Why not exclude other companies active in the OPT / other companies mentioned in the UNHRC list of companies involved in activities related to the Israeli settlements?

We have excluded other companies in relation to this issue – refer to our exclusion list.

The nature and degree of a company's involvement is important in determining if we conduct further research, engage, hold or exclude companies with some link to an issue flagged as a concern.

A key factor is the proximity and importance of the company's actions to that illegal or unethical activity. We draw a distinction between a company being directly and materially involved in an activity versus being a supplier of materials or services in the normal course of business. In doing so, we consider whether the product or service is integral to the activity; specifically designed for the activity (as opposed to a product/service for more general application which happens to be used for the relevant activity); and whether there are alternatives or off-the-shelf substitutes to the use of this product or service.

The UNHRC list provides a database of companies believed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to be involved in certain specified activities but does not provide detail on the different types of involvement or express a view as to the legality or otherwise of the activities of the companies on the list. We have long utilised other sources of information on this issue which provide more detail.

Why exclude these banks and not ones funding other human rights abuses around the world, and/or fossil fuel extraction? Is this a double standard?

Our long-standing preference is to engage with companies to encourage them to improve their policies and practices. Exclusion is a last resort that we may choose to undertake if we believe engagement will be ineffective. We are an active shareholder on responsible investment issues, and human rights and climate change are priority engagement themes for us. We engage with companies on these both directly and through our engagement provider BMO – refer to our Annual Reports for details. Also, exclusion decisions can only be made on the basis of the information that we have to hand and robust analysis of the relevant issues.

The specific context in terms of the Israeli Bank activity is also relevant here – where involvement has continued despite the settlements being considered illegal under international law - for more information refer to the IC Paper.

Did you engage with the banks prior to excluding and divesting from them?

No – we did not believe engagement would be effective. The Israeli banks have continued their involvement in the face of international criticism over a long period and have reported that they believe their activity is legal. However, we did advise them of our decision before making it public.

Would you reconsider your decision in the future based on new information?

Yes.

Do ethical exclusions impact negatively on Fund performance?

These investments are of small size and immaterial to Fund performance. The funds from sale of these shares have been reinvested in global equity indices. Previous research on the performance impact of our ethical exclusions on the Fund has not found them to have a material effect.

Can you comment on the political / Israeli reaction to your decision?

The decision was solely our own. An independent body, the Guardians, was specifically established to manage the Fund to ensure that investment decisions were not subject to political interference. Our focus is on corporate practices and how companies conduct business responsibly in the countries in which they operate.

How do you prioritise your focus areas? Is the renewed attention you have paid to this issue the result of lobbying/activism?

The issue of human rights has been a long-term focus of our RI programme. The activities of the banks and construction companies was prioritised for review last year after new information (including from UN sources) came to our attention about the escalation of the settlement activity together with increase international concern over annexation, and the integral role of the Israeli banks in the construction of new settlements. The long history and number of UN resolutions on this matter is relevant. It fits within one of our priority responsible investment themes - human rights abuses. Reports from international bodies

and NGOs, are among a number of information sources used when we apply our RI framework.

Have any other investors also moved to exclude these banks? If so, who?

Yes – a number have. Investors that have excluded some or all of these banks include ABP, Storebrand, United Methodist Church, Samepensjon, FDC, the Finnish Danske Bank and the German Deutsche Bank Ethical Fund. However, we note that the exclusion of companies on poor ESG practices is a relatively rare practice for institutional investors internationally.

Do you expect other investors in New Zealand to follow your lead?

Many would not be invested in these companies in the first instance, because of the nature of their portfolios. Our decisions are appropriate to our particular investment mandate and responsible investment, including ethical investment, policies.

Is this because there is a new US administration?

No.

Do you exclude corporate bond holdings as well as equities?

Yes.

Aren't you forming a view on international matters that are outside your remit?

No, we are taking a view on corporate behaviour in companies in which we are a shareholder. This is normal practice for an institutional investor. [The illegality of the settlements is well established in international law and New Zealand has a clear position on it.]

Why haven't you excluded Israeli bonds from the portfolio? Isn't it the Israeli government that is funding the activities and is really at fault here?

We follow the New Zealand Government's approach on sanctions to determine this. These sanctions reflect the UN Security Council sanctions list.

Under our Responsible Investment Framework we exclude government bonds where there is widespread condemnation or sanctions by the international community and New Zealand has imposed meaningful diplomatic, economic or military sanctions aimed at that government. Israel is not subject to such sanctions (see <https://www.mfat.govt.nz/en/peace-rights-and-security/sanctions/>) and therefore Israeli bonds remain in our portfolio. As at 31 Jan 2021 the NZSF held (all via Blackrock Beta Fixed Income) 1.3 million Israeli State Bonds valued at NZ\$2.3m.

Where a sanction is in place, we exclude any securities issued by the Governments, or Government agencies of countries, or non-index derivatives by government issuers referencing countries.

C3 - Restricted Confidential

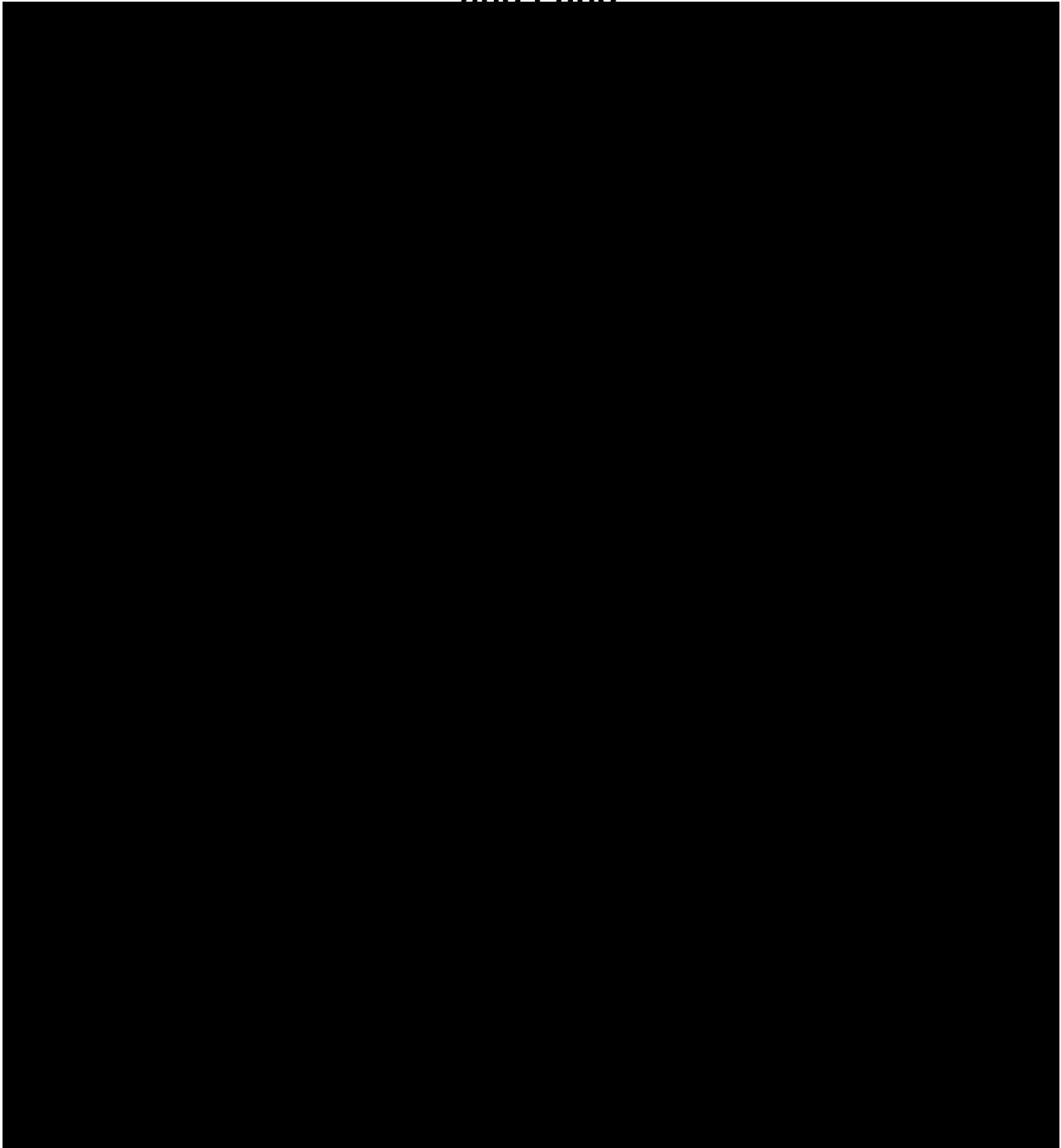
Would the Guardians exclude Air NZ on responsible investment grounds given its involvement with the Saudi Arabian military?

Given Air NZ has ceased this involvement and acknowledged it did not meet expectations, the question is hypothetical and we have not given it consideration.

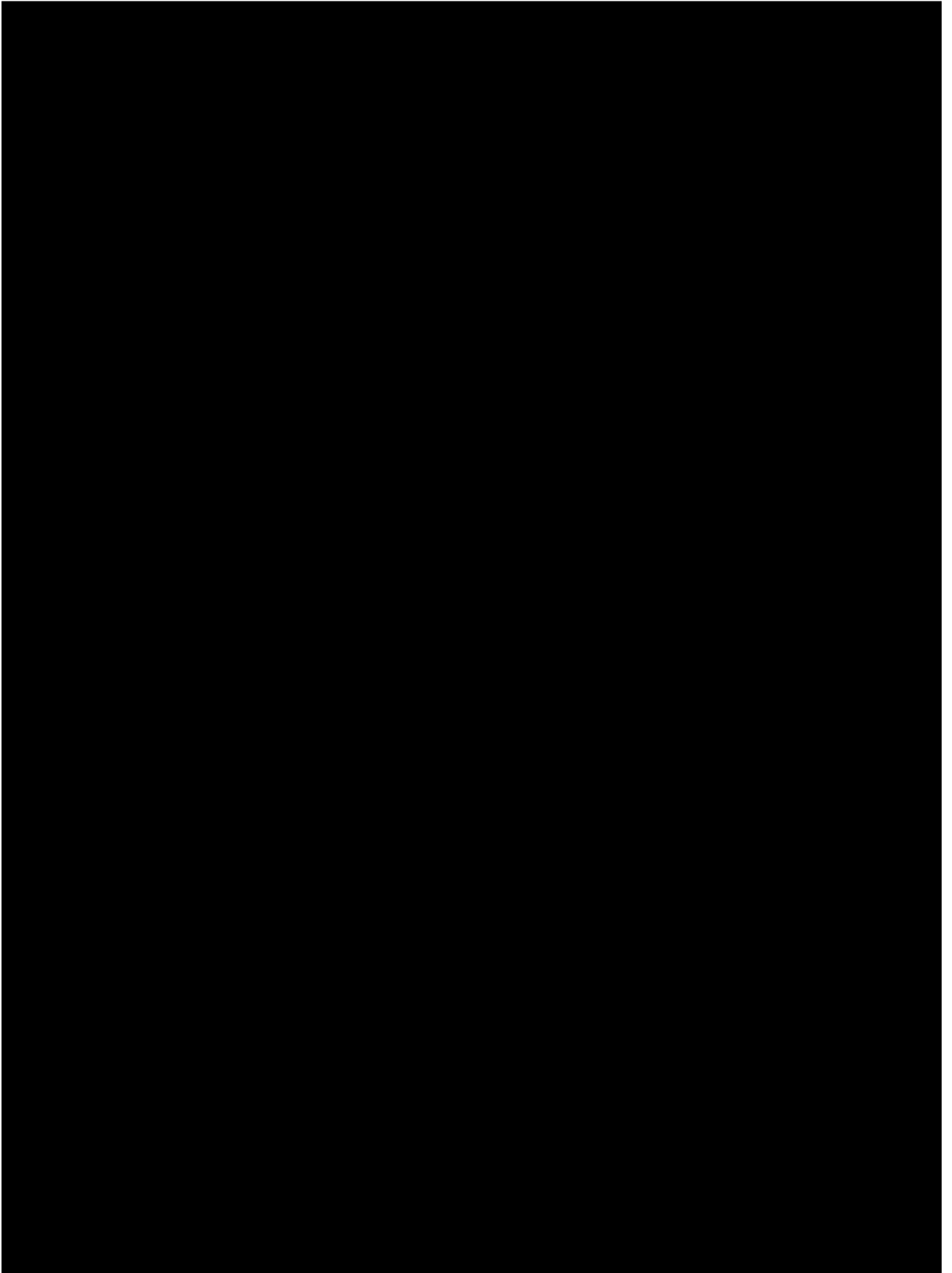
Released under the OIA

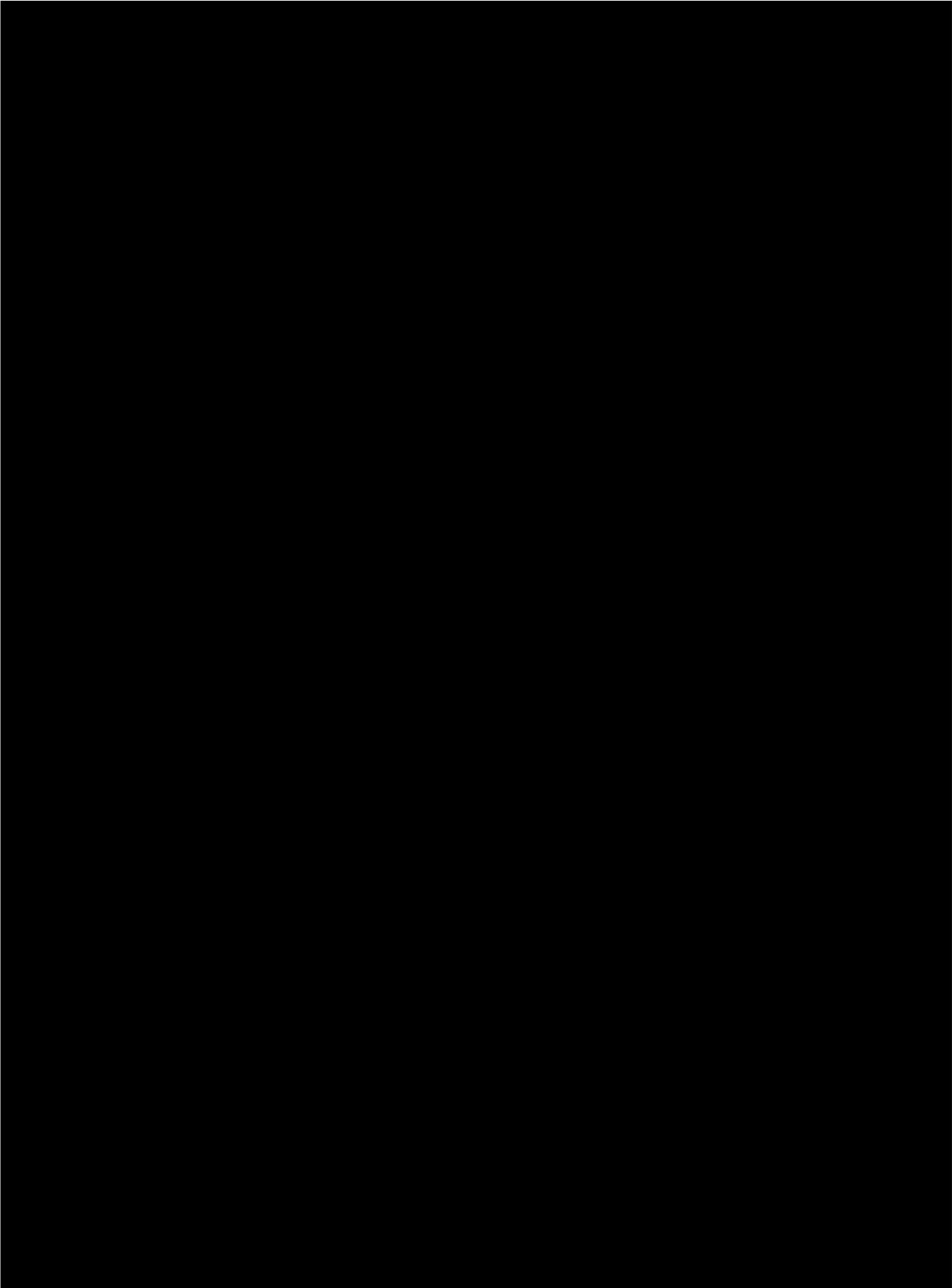
Key messages and Q&A on possible issues of Parliamentary/media/stakeholder interest

2019/20 Finance and Expenditure Select Committee Hearing 3 March 2021 - Financial Review of the Guardians and Fund



Key messages and supporting facts for various possible question lines are set out below.







Israeli Banks

- In our view, based on the information available to us, the companies' activities are inconsistent with the UN Global Compact, the key benchmark against which the Guardians measures corporate behaviour, and engagement with the companies is unlikely to be successful.
- Successive NZ government's position on these settlements has been clear: In June 2020 the New Zealand Government stated: "New Zealand is a long-standing supporter of Israel's right to live in peace and security. However, successive New Zealand governments have also been clear that Israeli settlements are in violation of international law and have negative implications for the peace process."
- In 2016 New Zealand co-sponsored a UN Security Council resolution demanding the cessation of Israeli settlement activities in the Occupied Palestinian Territories and in December 2020 the United Nations called for an immediate cessation of settlement activity.

C3 - Restricted Confidential

- Given the small size of the holdings in the excluded companies the decision will not have a material financial impact on Fund performance.
- In making this decision we have been transparent about our rationale – more information, including the relevant Investment Committee paper, is available on our website.
- We monitor the activities of the companies we are invested in and review our decisions as more information comes to light.



Released under