

6 June 2013

By email: [REDACTED]

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated **28 May 2013** made pursuant to the Official Information Act 1982 ("OIA") and acknowledged by us on **29 May 2013**.

Your Request

You have requested copies of documents and information relating to the NZ Superannuation Fund's decision to exclude Africa Israel Investments and subsidiary Danya Cebus; Elbit Systems Limited; and Shikun & Binui from the Fund in December 2012, with a focus on understanding:

- the nature of the exclusion process used by the NZSF;
- which bodies influenced the NZSF's decision and how;
- how long these companies had been in the NZSF's portfolio; and
- what triggered the research into the three Israeli companies and when.

Our Response

The nature of the exclusion process used by the NZSF

By way of background, in September 2012 the Guardians introduced an updated responsible investment engagement process to guide how we respond to potential or actual breaches of the Fund's environmental, social and governance standards by companies.

While our preference is to engage with companies and to use our influence as a shareholder to encourage them to improve their policies and practices, this new process takes account of the context in which the company is operating, and their responsiveness, in order to make a decision about whether it is worth to engage with them. The Fund is a relatively small investor in global terms and we want to focus our limited resource on companies where we can make a difference.

Since this change, we have decided against engaging with a small number of companies, and have instead excluded them from the Fund for breaches of standards. The exclusions of Africa Israel Investments and subsidiary Danya Cebus; Elbit Systems Limited; and Shikun & Binui are examples of this type of exclusion. Prior to then, exclusions from the Fund had all been on a category or product basis (e.g. involvement in the manufacturing of cluster munitions, tobacco).

It is this process change which is the main factor behind the timing of the Fund's exclusion of these companies.

For further details of our exclusion process, please refer to our Responsible Investment Framework and the Exclusions decision

	page on www.nzsuperfund.co.nz .
Which bodies influenced the NZSF's decision and how	<p>In terms of which bodies were influential over our decision, as noted in my earlier email to you, we base our engagement and exclusion decisions on quality, verifiable information; and on the guiding principles set out in our Responsible Investment Framework.</p> <p>We invest across a wide range of companies (some 6,500) globally. As set out in the Framework, in making an exclusion decision, we focus on:</p> <ul style="list-style-type: none"> • New Zealand or national law; • International conventions to which New Zealand is a signatory; • Significant policy positions of the New Zealand Government; • Impact of exclusion on expected Fund returns; • Actions of our peers; • Severity of breach/action; and • Likelihood of success of alternative course of action (engagement). <p>While our Responsible Investment Framework provides the basis for our decision-making, as part of our research into companies we do take account of information provided by research providers, regulators and NGOs close to the issue. In this case we relied on key documents from the UN, including UN Resolutions & related public MFAT reports on New Zealand's position on Israel-Palestine issues; and Norwegian Council of Ethics Reports on these companies. Specific sources are referenced in the profile documents released as part of this response. In addition to those sources, we also referred to other sources which are referenced in the Investment Committee Paper attached.</p> <p>Over the years we have received information and questions on this issue from a number of NGOs and individuals. Most recently the Green Party asked the following Parliamentary Question about Shikun & Binui (at the time it was asked we were already considering the issue): http://www.parliament.nz/en-NZ/PB/Business/QWA/7/9/8/QWA_07248_2012-7248-2012-Dr-Russel-Norman-to-the-Minister-of-Finance.htm</p>
How long these companies had been in the NZSF's portfolio	<ul style="list-style-type: none"> • Elbit had been in the portfolio since May 2009. • Shikun & Binui – May 2010. • Africa Israel - September 2010. <p>Note: all the companies were held in our passive global portfolio i.e. the Fund's investment was proportionate to company's market weighting rather than an active stock-picking decision. As the companies list on local stock markets they are picked up by market indices if they meet the index criteria. The companies enter or exit our portfolio as they enter or drop off the relevant market index (e.g. MSCI Small Cap).</p>
What triggered the research into the three Israeli companies and when	In the first instance, our research was triggered by the Norwegian Council of Ethics Reports. For further details refer to the information provided above about the change to our engage/exclude process, and the attached documents.

Information supplied under the OIA

Based on our telephone conversation of 30 May 2013, details of the information we have pertaining to your request, and our response in respect of that request, are set out below.

You have confirmed that you are only interested in the key documents relating to the above questions. You do not require duplicates of documents or email correspondence.

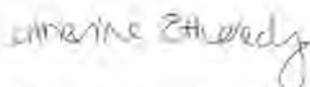
Doc Ref	Document	Sections Relevant to Request	Released	Reason for withholding
1 - 814159	Investment Committee Cover Note: RI Engage-Exclude Decisions, 29 November 2012 and attachments: <ul style="list-style-type: none">• Elbit Systems Profile and Recommendation Paper• Africa Israel Investments (& subsidiary Danya Cebus) & Shikun & Binui Profile and Recommendation Paper	All	Released in full	N/A
2	Minutes of 4 December 2013 Investment Committee meeting. Note: the minutes include reference to an action item about further clarifying if Israeli law on the company construction activities in the Occupied Territories. Following a discussion with the Chair of the Investment Committee this action item was removed since it would not change the outcome and would have required legal resource to determine. The original paper was accepted as providing sufficient assessment of the issue and the action item was formally removed.	2C	Relevant portions released in full	N/A

██████████ if you are not satisfied that we have adequately responded to your request, or if you have further questions, please contact me to clarify your requirements.

General

You have the right to seek a review by the Ombudsmen's Office of our response. Contact details for the Ombudsmen's Office can be found at: <http://www.ombudsmen.parliament.nz/>.

Yours sincerely



Catherine Etheredge
Head of Communications

Released under the OIA, as requested by [REDACTED]; directly relevant portions of NZSF 2012.12.04 Investment Committee Meeting Minutes.

Item 2C: Exclude Decisions

The paper is taken as read. It is noted that the exclusions are referencing UN resolutions.

Not relevant material deleted

Discussion if there are any other companies that are related to the Barrier that should also be excluded from our portfolio. There are no others that we hold that that are involved according to our delineation – that is, their activities or products are integral to the construction, tailor-made and not easily substituted and their involvement is direct. The RI team has gone through about 300 companies to establish those that we hold that are directly involved in this way. Two other companies were similar to Elbit but are not on our portfolio. Many were Israeli construction companies.

The question is raised – how do we make a distinction between these companies and a company like Motorola that is also involved in Israeli? The distinction is drawn as Elbit is a company whose product was specifically developed (with two years of testing) to be an integral security system in the Barrier and was included as part of the construction efforts. Motorola products are used in the operation of the barrier but are “off the shelf”, generic and easily replaced by a number of other companies. It is also noted that if these companies or activities were a very small part of a large company’s operations we may still exclude them.

Not relevant material deleted

RI team to clarify a paragraph on page two relating to the legality of Israeli settlements.

Decisions:

- The Investment Committee ACCPETED the recommendation to exclude Elbit systems, Africa Israel Investments (& subsidiary Danya Cebus) and Shikun & Binui.

ITEM 2.C

RI ENGAGE – EXCLUDE DECISIONS

Prepared by:

Anne-Maree O'Connor

Date:

29 November 2012

1 Purpose

1.1 To provide *for decision* recommendations to the Investment Committee on engagement and exclusions of companies under our RI framework.

2 Background

2.1 In July 2012, the Investment Committee approved a new framework to guide decision making on engagement and exclusion of companies in the Fund's portfolio in order to better focus resources used for engagement and to provide for a formal exit to active engagements with companies.

2.2 Three companies (plus one subsidiary) are presented in a template setting out the relevant information under the framework with recommendations to assist the Investment Committee in its decision making.

3 Recommendations

3.1 The company profiles are attached and summarised as:

- Elbit systems - Exclude
- Africa Israel Investments (& subsidiary Danya Cebus) & Shikun & Binui - Exclude

For Approval

Attachments: Company Profiles and Recommendations

RI Engagement Decision

Company	Africa Israel Investments (& subsid. Danya Cebus); Shikun & Binui Ltd
Domicile/ Sector	Israel/Construction
MSCI Rating	n/a

Description of issue

Our RI Framework includes monitoring the portfolio to identify companies that breach our RI Standards. Our main focus when such breaches are identified as significant is to engage with the company to correct the situation. In some cases we may decide that engagement is not the best course of action and the company may remain on the portfolio or be excluded.

Two Israeli domiciled construction firms, Africa Israel (& its subsidiary Danya Cebus) and Shikun & Binui have been identified over concerns relating to the construction of Israeli settlements in the Occupied Palestinian Territories (OPT) cited as illegal under international law.

Legal status of settlements and their construction

International Law

Multiple UN Security Council Resolutions dating back decades have established that the construction of Israeli Settlements in the OPT are illegal. 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 2004¹ also concluded that the Israeli settlement in the OPT breached international law.

Repeated Security Council and UN General Assembly Resolutions have further criticized the settlement activity as a serious obstacle to the peace process.

Israeli Law

Israel contests the settlements are illegal under the Geneva conventions and maintains that it has valid rights to the territory until negotiations over the final agreement are reached.

New Zealand Position (<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/2-Arab-Israeli-conflict.php>)

New Zealand states its position clearly on the MFAT website. This supports a lasting two-state settlement in accordance with UN Security Council resolutions and with subsequent agreements between Israel and Palestine. New Zealand has supported General Assembly Resolutions that have called the settlements illegal and counter-productive to a two-state settlement.² In December 2011, New Zealand voted for Res/66/78: Israeli settlements in the OPT including East Jerusalem and the occupied Syrian Golan, which reiterates the demand for the immediate and complete cessation of all Israeli settlement activities in all of the OPT.

Recent Settlement Activity³

There are over 200 Israeli settlements and settlement outposts in the West Bank and East Jerusalem with a population making up around half a million. The total area controlled by settlements is substantial with around 43% of the West Bank off-limits to Palestinians due to allocation to the settlements' local and regional councils. Settlement expansion has led to demolition of Palestinian homes and forced displacement. Following the ending of an Israeli imposed moratorium on settlement expansion in late 2009-2010, construction revived a rapid rate during 2011, due to the highest number of development plans in a decade with 3690 housing units approved and plans for 2660 more deposited in East Jerusalem alone without counting approvals in the rest of the West Bank.

Company's policies and practices

Africa Israel and Shikun Binui are involved in the construction of Israeli settlements in the Occupied Territories. According to the Norwegian Council of Ethics (Council) Report, based on information it had obtained from councils, court documents or company websites, Danya Cebus was involved in West Bank settlements in Modi'in Elit constructing 3000 housing units and another project in Ma'aleh Ha'adumim. The NGO "Who Profits" reports

¹ ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4th 2004 (also consider the legality of the settlements).

² <http://www.mfat.govt.nz/Foreign-Relations/Middle-East/New-Zealand-Voting.php>

³ EU Trade with Israeli Settlements Briefing Paper Aug 2012 and Peace Now report "Torpedoing the Two State Solution: Summary of 2011 in the Settlements". Jan 2012

that Danya Cebus company has built many settlements including the Green Park project in Matityahu East in the West Bank settlement of Modi'in Illit and a housing project for Ya'asour in the West Bank settlement of Ma'ale Edomim. In 2010 Africa Israel stated that it was no longer planning to build in the West Bank. However, it soon after received a contract to construct the C-Jerusalem project in the settlement neighbourhood of Gilo in East Jerusalem which is still under-going construction and is due for completion in 2014.⁴ The Norwegian report identified Shikun & Binui as being involved in East Jerusalem and West Bank Israeli construction projects including a residential project in East Talpiyyot (East Jerusalem). The Council's analysis concluded that the companies were contributing to the settlements construction in a material and direct manner and were very likely to continue to be involved in such activities into the future. It determined that this constituted a direct contribution to projects that breached humanitarian law and the Norwegian Government Pension Fund subsequently excluded the companies from the portfolio on the council's recommendation. Shikun & Binui markets one project identified in the Norwegian report that is not due to be completed until 2013. This indicates that involvement will be ongoing.

Following the Norwegian exclusion, Blachar Doron, Chief Financial Officer of Shikun & Binui, told Responsible Investor news that the firm is an Israeli public company that operates according to all applicable laws. The company does not view these projects as illegal settlements but as nationally permitted and legal construction projects.

Relevant RI standards	Compliance Status
International Law	Breaches IV Geneva Convention & UN Resolutions
Universal Declaration of Human Rights	Inconsistent with Human Rights Norms
National Law	Unclear in Israel, no NZ sanctions or restrictions breached
UN Global Compact Principles 1	Inconsistent with principle to support international human rights
UN Global Compact Principles 2	Inconsistent with principle to avoid complicity in human rights abuses
Assessment	Reputable evidence of breach

⁴ <http://www.globes.co.il/serveen/globes/docview.asp?did=1000596221&fid=1124>
 Document 812553 v 1

Materiality of issue	
Contravention of international sanctions or International Law.	✓
Significant regulatory non-compliance?	✓
Severe long-term impact	✓
Severe but short-term impact	✓
Structural problem (history of problems)?	✓
Direct involvement?	✓
	<p>The construction activity breaches International Law and UN Resolutions voted for by NZ. Whilst Israel disputes the illegality of the activity, and so presumably do the companies, the UN and NZ view the settlement activity, as a significant breach of law, as having a significant long-term impact on the peace process and on the rights of Palestinians. Settlement activities have a long history of controversy.</p> <p>In deciding whether a company is breaching our RI 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. 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. In doing so, we consider whether the product or service is: integral to the activity; tailor-made (as opposed to general use); and whether there are alternatives or off-the-shelf substitutes to the use of this product or service.</p> <p>Shikun & Binui has been involved in settlement construction since 1994 and Africa Israel (& subsidiary Danya Cebus) at least since 2004. As the primary developers and construction companies for their settlement projects their involvement is direct and integral. Each settlement project will require its own detailed planning and construction management. The physical construction of houses is a significant contributor to the expansion of the settlements which in turn is a barrier to the peace process. We make a distinction between direct involvement as lead developers or lead contractors and indirect involvement by suppliers of materials and other subsidiary services.</p> <p>The Israeli organisation Peace Now tracks the number of permits and construction of illegal settlements. It reports there has been a significant rise in permits in 2011. Given this and new applications in the pipeline, the companies' involvement is likely to continue into the future.</p>
MSCI	n/a
Assessment	Severe long term ongoing impact
Key sources	
Council on Ethics (Norway) Recommendations to the Ministry of Finance November 16 th 2009 (Africa Israel Investments Ltd, & subsid. Danya Cebus)	
Council on Ethics (Norway) Recommendations to the Ministry of Finance 21 December 2011 (Shikun & Binui Ltd.)	
UN Security Council resolution 465 (1980) http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5	
ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4 th 2004 (also consider the legality of the settlements).	
UN General Assembly GA/11191 66 th GA Plenary 81 st Meeting Annex IV, VI and VII	
NZ MFAT - http://www.mfat.govt.nz/Foreign-Relations/Middle-East/New-Zealand-Voting.php	
EU Trade with Israeli Settlements Briefing Paper Aug 2012 and Peace Now report "Torpedoing the Two State Solution: Summary of 2011 in the Settlements". Jan 2012	
Assessment	Reputable evidence based on reliable sources

Likely effectiveness of engagement			
Context			
Issue conflicts with viability of company?	x	Both companies are large construction firms (by Israeli standards) involved in multiple countries and types of infrastructure and construction business. These companies can survive without these projects. The companies can control whether they bid for the construction projects (although commercially they may see this as foregoing profit opportunities). The Israeli State disputes that the projects are not legal. In this case, given New Zealand's position and support for UN resolutions passed by a strong majority, local law is not sufficient to avoid a breach of RI standards. The companies have not been willing to engage on the subject with the Norwegian Council of Ethics leading up to, and in the time since, being excluded. Shikun & Binui state the settlement projects are legal. We could collaborate with peers, although the companies are small-cap which reduces the likelihood of cross-holdings or of priority being given to these companies by peers. The barrier to engagement is likely to be large. We assume the companies take a similar view that their activities are legal. This presents a significant barrier to engagement as we have experienced in our engagement with Elbit.	
Lack of ability to control situation?	x		
Legal compliance is not sufficient?	✓		
Responsiveness			
Structural issue (history of problems)?	✓		
History or culture of non-engagement (e.g. only responds to extreme actions)?	✓		
Limited ability to collaborate with peers?	?		
Has reached limits of what company can do?	x		
Language or cultural barriers?	✓		
Assessment			
		Engagement unlikely to be effective	
Resource Focus			
One of our focus issues?	✓	Human rights and conflict is a key focus issue. The company is not important to the portfolio in terms of holdings and it is not a New Zealand or Australian company that could be held on our local portfolios. This is not currently a UNPRI clearinghouse engagement so collaboration would need to be led by us. Exclusions will not harm fund performance as we currently hold NZ\$9,200 in Africa Israel Investment Ltd and NZ\$19,800 in Shikun & Binui in our SSgA Equity Small Cap portfolio.	
NZ or Australian company?	x		
We have a large holding in the company?	x		
Can work with other investors?	?		
Exclusion will harm fund performance?	x		
Assessment			
		Resource intensive given size of holding	
Other issues / comments			
Recommendation			
		Exclude	

RI Engagement Decision

Company	Elbit Systems
Domicile/Sector	Israel/Aerospace & Defense
MSCI Rating	n/a

Description of issue

Our RI Framework includes monitoring the portfolio to identify companies that breach our RI Standards. Our main focus when such breaches are identified as significant is to engage with the company to correct the situation. In some cases we may decide that engagement is not the best course of action and the company may remain on the portfolio or be excluded.

Elbit Systems has been identified over concerns relating to the construction of the Separation Barrier in the Occupied Palestinian Territories (OPT), cited as illegal under international law. Israel maintains that the Barrier is necessary for its self-protection.

Legal status of settlements and their construction

International Law

At the request of the UN General Assembly, the International Court of Justice (ICJ) in the Hague issued an advisory opinion in 2004 regarding the legitimacy of the construction of the separation barrier in occupied territory. The ICJ advisory opinion in 2004¹ concluded that the parts of the separation barrier that was in the OPT breached international law. "... *the wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.*"

The ICJ concluded that Israel is obligated to cease construction of the Wall inside the Occupied Palestinian Territory, to dismantle the existing portions inside the Occupied Palestinian Territory and to make reparations for damages caused by the construction of the Wall. Israel has yet to comply with the advisory opinion.

In January 2006 the UN's Special Rapporteur presented a report on the human rights situation in the OPT which points out that the barrier route had also been chosen with a clear objective is to protect illegal settlements and allow the expansion of these: "*The wall near Bil'in has clearly been constructed to allow for the expansion of the Modi'in settlement. The construction of the settlement of Matityahu East in the Modi'in bloc is there for all to see and provides the obvious explanation for the wall.*"

The Norwegian Council on Ethics made the point in its report on Elbit Systems that many issues of international law were raised by the Separation Barrier which were outside the focus of its assessment. In this context the Council stated it would focus on the advisory opinion from the ICJ and the report from the UN Special Rapporteur, which both accept that the construction of the separation barrier along the chosen route is illegal.

In January 2012, the UN General Assembly Resolution 66/79 (supported by NZ) included the following: The General Assembly:

... "**Demands** that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has gravely impacted the human rights and the socio-economic living conditions of the Palestinian people"

On 14 September 2012, a report submitted by the Secretary General "pursuant to General Assembly resolution 66/79, concerning Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem." stated that The Wall, in conjunction with its gate and permit regime, continues to be the single largest obstacle to Palestinian movement within the West Bank.

Israeli Law

Israel contests the ICJ judgment as it believed such judgment to be outside the ICJ jurisdiction. However Israel's

¹ ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4th 2004 (also consider the legality of the settlements).
Document 812346 v 1

Supreme Court also established that, to the extent its purpose is to annex occupied territory, the separation barrier is not legal.

New Zealand Position (<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/2-Arab-Israeli-conflict.php>)

New Zealand states its position clearly on the MFAT website. This supports a lasting two-state settlement in accordance with UN Security Council resolutions and with subsequent agreements between Israel and Palestine. In January 2012, New Zealand voted for Res/66/79 demanding the cessation of the construction of the Separation Barrier and its dismantling in the OPT.

Recent Separation Barrier construction

The Barrier, in conjunction with its gate and permit regime, continues to be the single largest obstacle to Palestinian movement within the West Bank. Approximately 62 per cent of the 708-kilometre-long Wall is complete, more than twice the length of the 320-kilometre-long 1949 Armistice Line (Green Line) between the West Bank, not including East Jerusalem, and Israel. A further 8 per cent is under construction, and 30 per cent is planned but not yet constructed. When completed, the majority of the route, approximately 85 per cent, will run inside the West Bank, including East Jerusalem, rather than along the Green Line. Some 100,000 Palestinians who live in enclaves and surrounding areas are completely surrounded by the barrier and only have access to the West Bank through regulated gates.

Company's policies and practices

Elbit Systems designs, manufactures and services defense and security systems. It has subsidiaries all throughout Europe, US and Asia. The Israeli government and defense force is a major customer. In addition to security systems the company is involved in the production of weapons for the Israeli forces.

The company's breach of our RI standards is due to its involvement in the Separation Barrier and came to our attention through the Norwegian Council of Ethics (Council) report on the company and its subsequent exclusion from the NGPF. The council, having established that the construction of the Separation Barrier breached international law, looked at the materiality of involvement of companies in the project. Companies that were integral to the Barrier's construction and operation they considered could be complicit in the Israeli State's breach of international law. The Council made a distinction between this material contribution to the Barrier and the many companies that provided materials or other off-the-shelf products and services to the project. In particular they found that Elbit was the lead developer, supplier and operator of the *Torch* surveillance system, the main component of the surveillance and control regime, especially designed for the separation barrier. They reported that *Torch* does not have an alternative area of application and is functionally integral to the Barrier.

The Israeli Ministry of Defence website reported that the detection fence system had required an extensive two year technical test site experiment, before being approved. Elbit System's *Torch* system was put into operation after two years of development and testing.² It is therefore an integral, specifically developed part of the Barrier and could not be called "off-the-shelf" nor be easily replaceable. The Council concluded that Elbit is an important contributor to the Barrier.

In 2010, following the Council's report, we included the company in our CFI engagement programme. The company issued a no comment in response to our letter enquiring about its activities. We then sent a copy of the UN Conflict Zones and Human Rights guidance and requested Elbit adopt these guidelines. The company responded by stating that it would become a signatory to the UN Global Compact. However, again it rejected any acknowledgment of unethical activity. Instead it stated its activities were ethical since one of its main mission's as a company was the protection of the State of Israel. Whilst Elbit has some good Corporate Responsibility Policies e.g. employment & safety, it does not accept any accusations of unethical practices.

² The US company Detektion worked for Elbit on this contract. One other company was awarded a similar contract – Magal Security Systems, an Israeli firm.
Document 812346 v 1

Relevant RI standards		Status
International Law		ICJ judgment and UN Resolutions including A/Res/66/79
Universal Declaration of Human Rights		Inconsistent with Human Rights Norms
National Law		Unclear in Israel, no NZ sanctions applicable
UN Global Compact Principles 1		Inconsistent with support for international human rights
UN Global Compact Principles 2		Inconsistent with commitment to avoid complicity in human rights abuses
Assessment		Reputable evidence of breach
Materiality of issue		
Contravention of international sanctions or International Law.?	✓	<p>The construction activity breaches International Law and UN Resolutions voted for by NZ. Whilst Israel disputes the illegality of the activity, and so does Elbit, the UN and NZ view the Separation Barrier in OPT as illegal and UN Resolutions have demanded its removal. The construction and operation of the Barrier is a significant breach of international law, is having a significant long-term impact on the peace process and on the rights of Palestinians. The Israeli Supreme court also judged the Barrier illegal where it is in the OPT if the purpose is to annex land. The Barrier has a long history of controversy and Elbit's involvement continues to be direct and integral to the construction and operation of the Barrier project.</p> <p>In deciding whether a company is breaching our RI 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. We draw a distinction between being <i>directly</i> and <i>materially</i> 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: <i>integral</i> to the activity; <i>tailor-made</i> (as opposed to general use); and whether there are <i>alternatives or off-the-shelf substitutes</i> to the use of this product or service.</p> <p>The Elbit system is integral to, and tailor-made for, the Barrier and it is difficult to replace with another company or system. Other surveillance products such as cameras, scanners, ID cards, biometric systems used in the operation of the Barrier, although sophisticated, can be supplied "off-the-shelf" and serviced by a multiple number of replaceable providers. Similarly, providers of cement and construction material or equipment do not control their customers use of their product and are readily replaceable. There are potentially a number of companies on the portfolio involved in providing these latter products and services. We do not consider them to be as materially or integrally involved in the Barrier construction as Elbit.</p>
Significant regulatory non-compliance?	✓	
Severe long-term impact	✓	
Severe but short-term impact	✓	
Structural problem (history of problems)?	✓	
Direct involvement?	✓	
MSCI recently downgraded	n/a	Not covered by MSCI monitoring
Assessment		Severe long term ongoing impact
Key sources		
Council on Ethics (Norway) Recommendations to the Ministry of Finance May 15 th 2009.		
UN General Assembly resolution 66/79		
ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4 th 2004 (also consider the legality of the settlements).		
NZ MFAT - http://www.mfat.govt.nz/Foreign-Relations/Middle-East/New-Zealand-Voting.php		
Secretary General's Report GA 66 th Session Item 53 14 Sep 2012		

Assessment		Reputable evidence based on reliable sources	
Likely effectiveness of engagement			
Context			
Issue conflicts with viability of company?	?	<p>Elbit is involved in a number of countries especially Europe and US including government defense force contracts. However services to Israel security forces is central to the company's mission and business and it committed considerable resource to developing its Barrier surveillance system. It has a range of other sophisticated defense services. Elbit is highly unlikely to cease its activities –and difficult for the Israeli state to replace. The company sees its activities as ethical and legal and is committed to services that act to defend Israel. It is unlikely to refuse contracts with one of its main clients, the Israeli government and its defense force.</p> <p>We have engaged with the company and during this time we have come to understand the company's firm position on the issue . Although the company has taken steps to adopt the UN Global Compact we believe this is as far as our engagement can go – and do not believe its joining the initiative will go far enough to address the breach of standards. In this case, given New Zealand's position and support for UN resolutions passed by a strong majority, local law is also not sufficient to avoid a breach of RI standards. We could collaborate with peers, although the company is small-cap which reduces the likelihood of cross-holdings or of priority being given to it by peers. We do not believe collaboration in this case will achieve greater results than our direct engagement has to date.</p>	
Lack of ability to control situation?	✗		
Legal compliance is not sufficient?	✓		
Responsiveness			
Structural issue (history of problems)?	✓		
History or culture of non-engagement (e.g. only responds to extreme actions)?	✓		
Limited ability to collaborate with peers?	✗		
Has reached limits of what company can do?	✗		
Language or cultural barriers?	✓		
Assessment		Fundamental barriers due to differences in legal views means engagement is unlikely to be effective even in a collaborative context.	
Resource Focus			
One of our focus issues?	✓	<p>Human rights and conflict is a key focus issue for our engagement programme. The company has not been important to the portfolio in terms of size of holding and it is not a New Zealand or Australian company that could be held on our local portfolios. This company is not currently a UNPRI clearinghouse engagement initiative but we could potentially find other investors to work with. Exclusion will not harm fund performance as we currently do not hold the company. Whilst we do not normally review companies we do not hold, we have had a long period of engagement with Elbit Systems, it was until recently held on the portfolio and it could be bought again in the future. We therefore believe it is appropriate to consider if Elbit should be excluded.</p>	
NZ or Australian company?	✗		
We have a large holding in the company?	✗		
Can work with other investors?	✓		
Exclusion will harm fund performance?	✗		
Assessment			Resource intensive given (potential) size of future holding and additional communications resource required.
Other issues / comments			
Recommendation	Exclude		