

Brief on OPT and the Israel-Gaza Conflict

December 2023

The comments and information contained is necessarily brief, and presents only a high level summary of the relevant items. Further detail is available in the various documents referred to.

Purpose: The purpose of this file note is to summarise our position on companies with activities in the Occupied Palestinian Territories (OPT) to support responses to external enquiries related to Israel and Palestine.

The context for this file note is the Israel-Gaza conflict that started in October 2023 with the Hamas terror attacks and Israeli military response. The New Zealand Government has responded to the attacks in a statement to the UN General Assembly in November 2023:

<https://www.mfat.govt.nz/en/media-and-resources/united-nations-general-assembly-informal-plenary-meeting-on-the-conflict-in-israel-and-the-occupied-palestinian-territories/>.

The UN General Assembly voted by large majority for immediate humanitarian ceasefire in Gaza, the immediate and unconditional release of all hostages and ensuring humanitarian access during an emergency session on 12 December 2023:

<https://news.un.org/en/story/2023/12/1144717>

New Zealand supported the resolution: <https://www.nzherald.co.nz/world/un-general-assembly-votes-overwhelmingly-for-ceasefire-in-gaza/OKOAF3H6ZBDXRRIQUFKYSJRYUA/>

We may draw on MFAT and other information and positions of the New Zealand government to guide our decisions as applicable under our Sustainable Investment Framework (SIF), but we cannot speak for or represent the New Zealand government. We may direct enquirers to go to the MFAT website for information on enquiries relating to New Zealand's foreign policy position.

The conflict may generate enquiries about the NZ Super Fund and its investment exposures. This brief can assist with responding to these enquiries. For many years we have had a position on investment in companies involved in the construction of settlements in the Occupied Palestinian Territories.

Key Messages

- UN context: The United Nations has consistently reaffirmed the illegality of settlements in the OPT. The settlement activity has been condemned as a barrier to the Israel-Palestine peace process. New Zealand has supported UN resolutions calling for cessation of settlement activity.
- OPT-related exclusions: The NZ Super Fund has excluded certain companies on the basis that in our view there was a serious risk, based on information available to us, that the companies were in severe breach of human rights standards due to their direct and material involvement in the development and construction of illegal settlements in the OPT. Our decisions about exclusions are based on a clear approach set out in our SIF.

- In line with our SIF, we draw a distinction between companies that have a direct and material involvement in the construction of the settlements versus companies that have a less material or indirect involvement such as a supplier of materials or other services.
- The UN HRC List: The UN Office of the High Commissioner for Human Rights has produced a list of companies for which it considers there are reasonable grounds to believe the companies are involved in a range of activities in the settlements. The UNHRC does not specify how the list should be used but the OHCHR reports in its June 2023 update that the list facilitates constructive engagement with the businesses and assists business to comply with obligations and responsibilities applicable under international law. However, the list does not make a determination on the legal status of any of the listed activities or companies. It does not provide guidance on how the list should be used or on the materiality of the different types of involvement.
- We do not automatically exclude any or all the companies on this list – and nor is there a specific call in the report for investors to do so. The list of companies and activities is broad and companies vary in the degree of their business involvement. Some of the companies excluded from the portfolio are on the list and some are not.
- This is due to our research and focus on business involvement in the development and construction of the settlements themselves – without which the settlements could not exist. This construction activity has received widespread criticism.

Companies involved in the construction of settlements in the Occupied Palestinian Territories (OPT)

The United Nations regards the activity of Israeli settlements within the OPT as illegal under international law. This position has been held for some time. New Zealand supports a lasting two-state settlement in accordance with the UN Security Council resolutions and with subsequent agreements between Israel and Palestine. New Zealand has supported General Assembly Resolutions, and UN Security Council Resolution 2334¹, that have called the settlements illegal and counter-productive to a two-state settlement. The UN Security Council Resolution is not specific regarding the legality of corporate activity. In broad terms, we consider that companies with sufficiently direct and material involvement in the development and construction of the settlements in the OPT can be in breach of corporate human rights standards – in particular of UN Global Compact Principles for companies - Principle 1. to support international human rights and Principle 2. to avoid complicity in breaches of human rights due to the human rights abuses caused by the construction of the settlements. In certain instances we have considered this breach is severe, long-term and ongoing. This has tended to be where the relevant company's activities are of an integral nature and scale such that the settlement construction could not otherwise occur at the relevant scale.

¹ In December 2016, New Zealand co-sponsored and the UN Security Council adopted a historic resolution (Resolution 2334) on Israeli settlements, which is considered binding on Israel.

We have excluded a number of companies that are significantly involved in settlement development and construction activities, consistent with our SIF process².

The reason for exclusion is the activity, and not the domicile of the companies. It is important that we are very clear in our communications that we do not exclude companies because they are Israel-domiciled as that is not a factor in our decision-making. We have held Israeli companies on the portfolio for many years – and holdings are primarily index-related passive holdings. To date, all the companies we have excluded have also been Israel domiciled – but that was not a factor in our decision and does not preclude non-Israeli companies being excluded if they undertook equivalent activities.

In excluding companies, we distinguished between direct and material involvement, such as construction and development companies, and less direct involvement such as suppliers of construction materials.

- The UN Human Rights Council resolution 31/36 sets out a requirement for a database of companies for which it considers there are reasonable grounds to believe the companies are involved in a list of specified activities in the settlements, to be reported to the council. The resolution does not provide instructions on the use of the list. We exclude some companies that are on the database and some companies that aren't. We do not automatically apply exclusions to all companies on the database given its broad scope. For example, we do not exclude a number of global companies on the portfolio involved in utilities, internet, booking agencies, retail and other services. We do exclude some companies not on the list that have been and in some cases continue to be directly involved in the development and construction of settlements. The report does not provide guidance on how the list should be used or on the materiality of the different types of involvement by category or by company.

In applying our exclusions policy across many different issues and regions, in addition to those related to the OPT, we need to exercise judgement in determining the scope of our engagement and exclusion activity. This includes considering resources, materiality and ensuring we are prudent in our investment approach, as required by our mandate.

The companies excluded from the NZ Super Fund because of credible evidence concerning their activities in the OPT are:

Africa-Israel Investments
Africa-Israel Properties
Elbit Systems Ltd
Shikun & Binui
Bank Hapoalim B.M.
Bank Leumi Le-Israel B.M.
First International bank of Israel
First International Bank of Israel Holdings

² <https://nzsuperfund.nz/assets/Uploads/Sustainable-Investment-Framework-June-2023.PDF>

Israel Discount Bank Ltd.
Mizrahi Tefahot Bank Ltd.

Sovereign Bonds

We exclude investment in the government bonds of any nation state 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. The New Zealand Government has not issued such sanctions on Israel. We do not exclude Israel government bonds.

Background

Our SI Framework

Our SIPSP and SIF provides guidance on our approach to monitoring, engagement and exclusion decisions.

Companies

We monitor the portfolio for breach of standards of responsible corporate behaviour by the companies we hold. We focus our attention on priority issues, in particular human rights, severe environmental damage, climate change and bribery and corruption.

When we identify a breach of standards by a company, we consider how material this is, including severity, how directly involved the company is, and if the activity is long-term and systemic in nature. We consider the degree to which we can engage with the company to encourage change and we may in some cases consider exclusion from the Fund's portfolios.

The focus on materiality is important. It helps to focus our resources on the most important ESG and reputational risks, and to manage the impact of exclusions on investment returns in a prudent manner whilst applying responsible investment principles.

Current exclusion list

We publish our exclusion list in June and December each year. New Zealand Super Fund full exclusion list can be found here: <https://nzsuperfund.nz/how-we-invest/sustainable-finance/exclusions/>