

Decision to exclude companies with links to Israeli settlements in the West Bank

June 2021

1. Introduction

Effective from June 2021, KLP and KLP Funds (KLP) have decided to exclude 16 companies from their investment portfolios as part of a due diligence-based divestment. In KLP's assessment, there is an unacceptable risk that the excluded companies are contributing to the abuse of human rights in situations of war and conflict through their links with the Israeli settlements in the occupied West Bank. KLP has also previously excluded companies with links to the West Bank Barrier or the Israeli settlements.¹

KLP has had investments in the companies that have been excluded from June 2021.

2. Background

2.1 The situation in the West Bank

Since the Six Day War in 1967, Palestinians have lived under Israeli occupation in the West Bank, including East Jerusalem. The West Bank, often called Palestine, is the term given to the area of land east of the 1948 demarcation line and west of the River Jordan. In violation of international law, Israel has engaged in the construction of Israeli settlements in the West Bank since its occupation began 54 years ago. According to the UN, around 650,000 people currently reside in the illegal settlements in the West Bank.²

According to the UN, the settlements have a negative impact on Palestinians' living conditions, since they result in the loss of property and livelihoods, restricted access to services and threats to their physical safety. The Palestinians living in the occupied territory are also subject to a complex system of controls, comprising both physical (checkpoints, roadblocks) and bureaucratic (permits, the closure of certain areas) barriers that limit their freedom of movement.³

The situation in the West Bank worsened in the spring of 2021. Indiscriminate rocket attacks by Gaza's de facto authority Hamas claimed 10 lives in Israel and strikes inside the enclave by Israeli Security Forces left 242 dead.⁴

2.2 Legality of Israeli settlements in the West Bank

Israel has given notice of its intention to annex parts of the West Bank encompassing all the illegal settlements,⁵ in violation of the United Nations Charter's prohibition on the use of force

¹ <https://www.klp.no/en/english-pdf/Heidelberg%20og%20CEMEX%20beslutning%20om%20utelukkelse%20ENG.pdf>

² https://www.un.org/unispal/wp-content/uploads/2021/03/EUSETTLERPT_120321.pdf

³ <https://www.ochaopt.org/>

⁴ <https://news.un.org/en/story/2021/05/1092872>

⁵ <https://www.amnesty.org/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/>

to acquire territory. The Israeli settlements in the West Bank are characterised as a violation of international law, including Article 49 of the Fourth Geneva Convention, which constitutes a war crime.⁶

Article 49 of the Fourth Geneva Conventions states that: “[...] *The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*”⁷ The purpose of this provision is to prevent an occupying power from annexing occupied territories, and to protect the local population from any worsening of their economic situation. Such an act is deemed to be a war crime under the Rome Statute of the International Criminal Court.

After the Six-Day War, Israel disclaimed its legal obligation to abide by all the Convention’s provisions on the grounds that the West Bank was already occupied by Jordan before it was occupied by Israel. Although this reservation was rejected by other states and by the UN, it resulted, *inter alia*, in Israel permitting the construction of settlements in the occupied areas. In 2004, Israel’s Supreme Court found that the Fourth Geneva Convention applied in full to the occupied areas and that construction of settlements therein was illegal. However, it further specified that the ban applied only to the establishment of new settlements, not the expansion of existing settlements.

The International Court of Justice (ICJ) has recently established that it has the right to hear cases in areas that were occupied by Israel in 1967, and declared: “*The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.*”⁸

There is broad international consensus that the Israeli settlements in the West Bank violate international law. Norway is one of the countries which have always maintained that the occupation violates international law. Support for international law and the international rule of law is fundamental for Norway.⁹ The Norwegian Foreign Ministry has on a general level stated that it advises Norwegian businesses not to have dealings with the occupied territories, given the prevailing risk of international law violations there.

The Israeli view is that the settlements are not illegal and that claims to this effect are politically motivated. Israel refers, *inter alia*, to the fact that the relocation of Israelis to the settlements is voluntary and that the settlements do not displace other population groups in the area. Moreover, Israel points out that several of the settlements have been established in areas where Jewish communities were located in ancient times.¹⁰

2.3 UN report

On 12 February 2020, the United Nations High Commissioner for Human Rights published a list of companies with operations linked to the Israeli settlements in the occupied Palestinian territory.¹¹ This report, in the form of a database, has been drawn up at the request of the UN Human Rights Council on the basis of Resolution 31/36 of March 2016. This resolution is in

⁶ <https://news.un.org/en/story/2019/11/1051781>

⁷ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

⁸ <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

⁹ https://www.regjeringen.no/no/aktuelt/svar_annektering/id2701667/

¹⁰ <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>

¹¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542&LangID=E#main>

part based on the results of an International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory.¹² Work to complete the report has taken several years.

In an interim report presented to the Human Rights Council in March 2018, the UN High Commissioner for Human Rights noted that they had reviewed publicly available information on 307 companies. Upon further examination, the total number subject to review rose to 321. Of these, a total of 206 companies went forward for further assessment.

In the final report, 112 companies were identified as having operations linked to the Israeli settlements. On the basis of the information collected, the UN High Commissioner for Human Rights has reasonable grounds to conclude that these companies are involved in one or more of the specific activities which could contribute to human rights abuses – the infringement of civilian, political, economic, social and cultural rights. To arrive at this conclusion requires significant evidence.

The activities were predefined on the basis of the information that was collected in connection with the fact-finding mission. The information collected showed that businesses had directly or indirectly enabled, facilitated and profited from the construction and expansion of the settlements. In addition to addressing infringements of the Palestinians' labour rights, the fact-finding mission identified a number of activities that prompt particular concerns with respect to the abuse of human rights. To be included, three cumulative conditions had to be met:

- 1) "Business enterprise"
- 2) "Involved"
- 3) "In one or more listed activities"

The following ten key activities have been identified:

- a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures;
- b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;
- c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;
- d) The supply of security services, equipment and materials to enterprises operating in settlements;
- e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;
- f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;
- g) The use of natural resources, in particular water and land, for business purposes;
- h) Pollution, and the dumping of waste in or its transfer to Palestinian villages;

¹² https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

- i) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;
- j) Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.

KLP had investments in 26 of the companies listed in the UN report.

3. KLP's assessment

3.1 KLP's due diligence assessments

KLP's guidelines for responsible investment state that: "*KLP shall conduct due diligence in its investments and can decide due diligence-based divestments from companies if there is an unacceptable risk of companies being complicit in human rights abuses, based on a combination of country, sector or company risk.*"¹³.

KLP has considered whether the companies' links to and operations in the West Bank could constitute an unacceptable risk of violating KLP's guidelines, including contributing to human rights abuses and serious violations of the rights of the individual in situations of war and conflict.

Under the UN's Guiding Principles on Business and Human Rights, companies have a duty to respect and protect human rights in all the countries in which they operate, irrespective of whether the state itself upholds these rights. Conflict and political turmoil constitute a particularly high risk of human rights violations. Companies with operations in areas of conflict must therefore exercise a particularly high level of care to avoid becoming involved in human rights abuses.

The situation in the West Bank has worsened in recent months, and there is an ongoing danger to life and health, as well as human rights abuses. The Israeli settlements have a negative impact on the Palestinians' living conditions, since they result in the loss of property and livelihoods, restricted access to services and threats to their physical safety. Support for the maintenance of the settlements therefore constitutes an unacceptable and serious risk of continued infringement of the human rights of the Palestinians living in the territory and a weakening of their living conditions. Through the UN report, it is well documented that the companies are contributing to serious human rights abuses.

Furthermore, there must be a link between a company's business activities and the norm violations. Either the company must have actively contributed to the violations or known about them but failed to take the necessary steps to avoid contributing to them. An important aspect of the assessment is the future risk of the company continuing its present practices. The UN report indicates that this is indeed the case.

Israel has stepped up its construction work in the West Bank, and either approved or published plans for more than 12,000 homes in 2020.¹⁴ The risk that the same companies identified by the UN will be involved in future norm violations is thereby also heightened. In

¹³ <https://www.klp.no/om-klp/samfunnsansvar/hva-vi-ikke-investerer-i/Risikostyring%20og%20aktsomhet.pdf>

¹⁴ <https://news.un.org/en/story/2021/01/1082482>

2020, Israel was also the country that had the highest number of resolutions passed against them by the UN on the grounds of the occupation and its plans for annexation.¹⁵ One of KLP's most important tools for the exercise of influence is dialogue with companies. Only one of the companies has shown any willingness to engage in dialogue, and none have demonstrated that they have systems in place to reduce the risk of future norm violations. KLP therefore considers that the risk of future norm violations to be unacceptable.

3.2 Assessment of the companies' links to the Israeli settlements in the West Bank

Based on the UN report detailing companies that have a "clear and direct link to one or more of the listed activities" in the period 1 January 2018 to 1 August 2019, KLP has made a qualitative assessment of individual sectors and companies, based on the question:

"Can the settlements be maintained without the services/goods which the company supplies?"

If the answer to this question is no, the recommendation is that the company be excluded, since these companies supply necessary items of infrastructure to the settlements. When the activities are essential for the maintenance of the settlements, they constitute the strongest link between the company's activities and the human rights abuses being committed.

In KLP's assessment "necessary infrastructure" is not limited to the physical delivery of building supplies or infrastructure projects. There are several companies on the list whose deliveries make the settlements attractive places to relocate to and that enable the settlers to maintain a modern lifestyle. These services include the supply of electricity, digital services and security services. In addition, KLP considers the provision of building finance to be a precondition for the establishment of the settlements. In all, these assessments have resulted in the exclusion of 16 of the 26 companies on the UN list that KLP had investments in.

Certain sectors are considered essential for the maintenance and development of the settlements, and the companies are therefore excluded as a group. This applies particularly to banks and to companies' essential infrastructure.

Sectors with excluded companies

Banks are excluded because of their direct contribution to the development, expansion or maintenance of the settlements and their activities. This includes home loans and business development loans. In KLP's assessment, the banks' direct support for and facilitation of the construction of homes and infrastructure must be deemed essential for the continued existence of the settlements. No assessment has been made of other banking services, such as private consumer loans, in this analysis.

Building, Construction and Engineering services are excluded because of their provision of necessary materials and services for the construction of settlements and associated infrastructure. This includes the construction of railway lines, electrical power lines and the management of building land.

¹⁵ <https://www.un.org/press/en/2020/ga12292.doc.htm>
https://www.un.org/unispal/data-collection/general-assembly/?wpv_view_count=237041&wpv_paged=1

The Telecom sector is excluded because the provision of such services makes the settlements attractive residential areas. This category primarily includes communications-related services, including landline and mobile phone and internet services, which are essential prerequisites for the functioning of a modern society.

Apart from these categories, individual assessments have been made of four companies providing energy, communications and surveillance services. KLP has decided to exclude all four. These services include access to power and fuel, and surveillance of the settlements' external boundaries. KLP takes the view that these services play a vital role in the maintenance and continuation of the settlements, and consequent violation of international law. Nevertheless, KLP will continue to make individual assessments of companies in these sectors due to their lack of homogeneity and wider range of goods and services supplied.

The UN is expected to issue an annual, updated list, and KLP will therefore make subsequent decisions to exclude new companies on the list or to re-admit companies that are no longer involved.

Table 1: Complete list of excluded companies

Sector	Company	Link	UN activity
Construction & Engineering	ALSTOM SA	The company is involved in light rail infrastructure projects.	E, G
	ASHTROM GROUP LTD	Engages in building and property activities. Provides building products and owns and manages offices, commercial buildings, hotels and industrial facilities.	G
	ELECTRA LTD	Engages in the development of property and infrastructure.	E
Banks	BANK HAPOALIM BM	Israeli finance institution that offers banking and financial services to both the consumer and business markets.	E, F
	BANK LEUMI LE-ISRAEL	Israeli finance institution that offers banking and financial services to both the consumer and business markets.	E, F
	FIRST INTL BANK ISRAEL	Israeli finance institution that offers banking and financial services to both the consumer and business markets.	E, F
	ISRAEL DISCOUNT BANK-A	Israeli finance institution that offers banking and financial services to both the consumer and business markets.	E, F
	MIZRAHI TEFAHOT BANK LTD	Israeli finance institution that offers banking and financial services to both the consumer and business markets.	E, F
Telecoms	ALTICE EUROPE NV	Provides telecommunications	E

		services, including stationary and mobile broadband internet connections.	
	BEZEQ THE ISRAELI TELECOM CO	Telecommunications company that provides domestic and international landline and mobile phone services, multichannel satellite TV broadcasts and internet infrastructure.	E, G
	CELLCOM ISRAEL LTD	Provides landline and mobile phone services	E, G
	PARTNER COMMUNICATIONS CO	Telecommunications company that supplies a complete range of landline and mobile phone services.	E, G
Integrated Oil & Gas	DELEK GROUP LTD	Israeli investment company that controls a number of companies and investments in the field of energy, infrastructure, financial services and the automotive industry, among others.	E, G
Renewable Energy	ENERGIX-RENEWABLE ENERGIES	Israeli company that engages in the alternative energy sector and invests in wind power projects.	G
Oil & Gas Refining	PAZ OIL CO LTD	Israeli energy company that engages in refining, production, storage, importation and marketing of oil and refined products, as well as operating filling stations. Its customers include the Israeli Defence Force.	E, G
Tech Hardware	MOTOROLA SOLUTIONS INC	Provides communication services, command centre software, video security and analysis.	B

3.3 Information from the companies

KLP has contacted all companies concerned with a view to establishing a dialogue and has follow up due to a lack of response from the majority. The few companies that have replied to KLP's queries did so at an overarching level and have referred to general guidelines without discussing the specific query.

Only Alstom SA has been willing to meet with KLP. The company asserts that it does not contribute to the violation of international law through its activities in the occupied territory. Alstom refers to a judgment issued by a French court, which ruled that a suit filed against Alstom and another company in respect of their involvement in a project in the West Bank was inadmissible. The court rejected the case on the basis that it was outside of the court's jurisdiction.

Following the exclusions in June 2021, the energy company Energix Renewable Energies (Energix) made contact with KLP and informed us that the company had withdrawn from its operations in the West Bank.

At the same time, Energix also informed KLP in a telephone meeting that they are in a planning phase for a wind power project on the occupied Golan Heights. The UN considers the Israeli settlements in the Golan Heights a violation of international law in the same way as settlements on the West Bank. If the tender is approved, the company will complete the project. Based on KLP's due diligence criteria, the future risk of human rights violations is considered too high for KLP to consider re-including the company in its investments. KLP will thus maintain the exclusion from June 2021.

4. Conclusion

On the basis of the factors described above, 16 companies with links to Israeli settlements in the West Bank are excluded from investment by KLP and the KLP Funds effective from June 2021.