

WELLINGTON PALESTINE GROUP
PO BOX 642, WELLINGTON
WELLINGTONPALESTINE@GMAIL.COM



28 August 2016

Matt Whineray
New Zealand Superannuation Fund
enquiries@nzsuperfund.co.nz

Dear Mr Whineray,

We write to again draw your attention to the activities of Israeli banks in maintaining the Israeli occupation of the West Bank and East Jerusalem by financing illegal settlements in these areas. Organisations active in opposing the Israeli occupation have seen the role of the Israeli banks to have been a crucial one in facilitating the occupationⁱ.

We have previously written to you about your failure to achieve a consistency with your 2012 exclusion of some Israeli companies active in settlements in the Occupied Palestinian Territories (OPT) by failing to exclude your full range of Israeli companies which are complicit in the occupation or for that matter companies which produce weaponry which is used against the population of Gaza.

We note that your exclusions in 2012 were based on factors such as an acceptance that the settlements are illegal and New Zealand's voting in the United Nations reflected this acceptance. We will not therefore need to revisit these matters.

We wish instead to draw your attention to the Israeli banks which are active in the OPT but in which you have since 2012 chosen to increase your investments.

We do so in the context of major divestments from Israeli banks in Europe in particularⁱⁱ, but also in the United Statesⁱⁱⁱ.

We firstly ask you to consider a Human Rights Watch (HRW) Report (the Report) of 19 January 2016, 'Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights'.^{iv} This report has a focus on the role of Israeli banks in illegal settlement activities.

Allow me to quote various pertinent sections of the Report;

جمعية أصدقاء فلسطين في ولنتون
ص.ب ٦٤٢ ولنتون نوريلندة

Based on the findings of this report, it is Human Rights Watch's view that any adequate due diligence would show that business activities taking place in or in contract with Israeli settlements or settlement businesses contribute to rights abuses, and that businesses cannot mitigate or avoid contributing to these abuses so long as they engage in such activities. In Human Rights Watch's view, the context of human rights abuse to which settlement business activity contributes is so pervasive and severe that businesses should cease carrying out activities inside or for the benefit of settlements, building housing units or infrastructure, or providing waste removal and landfill services. They should also stop financing, administering, trading with or otherwise supporting settlements or settlement-related activities and infrastructure (p. 2).

By virtue of facilitating the settlement regime, settlement businesses, in Human Rights Watch's view, contribute to the discriminatory system that Israel operates for the benefit of settlements. These businesses also directly benefit from these policies in myriad ways. The report describes two such ways. One is the financial and regulatory incentives that the Israeli government provides to settlement businesses, but not to local Palestinian businesses, in order to encourage the economic development of settlements (p. 4).

By contributing to and benefitting from Israel's unlawful confiscation of land, the financing, construction, leasing, lending, selling and renting operations of businesses like banks and real estate agencies help the illegal settlements in the West Bank to function as viable housing markets, enabling the government to transfer settlers there (p. 6).

..... settlement business includes companies that manage the practical demands of constructing and maintaining settlements. Three of the report's case studies fall into this type: a bank that finances and provides mortgages for settlement homes, a real estate franchise that sells them, and a waste management company that processes settlement trash. The direct contribution these companies make to Israel's unlawful settlement regime is self-evident (p. 18)

Settlement businesses profiting from land and resources that Israel unlawfully appropriated from Palestinians may violate an international law prohibition—which also exists in many domestic legal systems—against an individual or company knowingly benefitting from the fruits of illegal activity. This principle is enshrined in Article 6 of the United Nations Convention Against Transnational Organized Crime, which prohibits “the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime (p. 27).

Could we now consider the Israeli banks which NZSF continues to invest in.

Bank Hapoalim BM

This is a major Israeli bank. NZSF has recently markedly increased its investment in this bank to where its investment stands at \$1,499,358 as of June 2015 (compared with an investment of \$915,806 in 2012, which was the year of your exclusion of other Israeli companies). In early 2014 there were European institutional disinvestments from Bank Hapoalim, including Germany's largest bank^v and Denmark's largest bank^{vi}.

Bank Hapoalim finances construction in Israel settlements in the OPT, and the Occupied Golan, acting as a guarantor and loan maker to contractors and construction companies, as detailed by the monitoring group Who Profits^{vii}.

The Bank provides financing for the construction of housing projects in Israeli settlements in occupied territory. Hapoalim Bank acted as a guarantor and loan maker to major contractors and construction companies who build in the Occupied Territories (e.g. Heftzibah). The bank also acted as a financial underwriter for Heftziba via IBI. In addition, Hapoalim Bank is a major creditor for **Shikun & Binui – Housing and Construction**.

Hapoalim Bank finances the Jerusalem light rail project: The bank is a guarantor of the state loans to the companies that built the Light Rail in Jerusalem, which is designed to connect the settlement neighborhoods around Jerusalem with the city center.

The project is run by an ad-hoc conglomerate of companies called Citypass, comprising of: **Ashtrom** (47.5%), Harel (20%), Israel Infrastructure Fund (27.5%) and **Veolia** (5%). According to an **article (link is external)** published in June 2009, "The funding agreement of the project with Bank Hapoalim and Bank Leumi included raising 280 million Euros in short-term loans and 100 million US dollars in long-term loans. [...] In light of the delays, Citypass asked the banks to increase the line of credit".

The bank provides mortgages for homebuyers in settlements. For example, the bank supplied mortgage for a house in **Alfei Menashe** in 2010.

Hapoalim bank provides loans and financial services to local authorities of settlements: The bank operates the account of the settlement regional council of **Har Adar**, which opened another account for the rehabilitation, maintenance and development of water and sewage systems; the bank operates the account of **Katzerin** settlement in the Golan Heights.

Hapoalim Bank manages the finances of Clal finance and Jerusalem equity portfolio, companies owned by the settlement of **Efrat**, along with **Leumi Bank**.

The Bank operates branches in the following settlements: **Ariel**, **Beitar Illit**, **Modi'in Illit**, **Ma'ale Adumim**, **Pisgat Ze'ev** and two branches in East Jerusalem (in **Gilo** and in **Ramot**). In addition, the bank operates a branch in **Bnei Yehuda** in the Golan Heights.

The bank benefits from access to the Palestinian monetary market as a captive market.

Hapoalim bank discriminates Palestinian citizens of Israel. On 5 June 2013, the Israeli news channel 10 published an **investigative report (link is external)** regarding discrimination of Palestinian costumers with an Israeli ID by Hapoalim Bank. According to the article, several Hapoalim branches refused to transfer accounts of Palestinian citizens to branches located in Jewish populated areas.

Hapoalim bank finances the military city project for the Israeli army in the Negev.

Hapoalim Bank has been found guilty of money laundering in the past^{viii}.

Bank Leumi Le-Israel BM

NZSF has hugely increased its investment in this bank to \$1,493,942 in June 2015 (compared with only \$77,476 in 2012). Bank Leumi Le-Israel BM provides extensive banking services in the Occupied West Bank, according to Who Profits^{ix}.

Leumi bank provides financing for the construction of housing projects in Israeli settlements in occupied territory. The bank provided financial support for 78 housing units in 6 buildings in **Har Homa**, constructed by Heftziba.

The bank provides loans and financial services to local authorities of settlements: The bank manages the funds of Clal finance and Jerusalem equity portfolio, owned by the settlement of **Efrat**, along with **Hapoalim bank**; **Alfei Manashe** settlement opened accounts for education funds and for development funds in Leumi Bank; **Ma'ale Adumim** settlement has signed an investment consultant agreement with Leumi Bank; **Kiryat Arba** settlement's property tax are saved in Leumi Bank.

The bank finances the Jerusalem light rail project, which was designed to connect the settlement neighborhoods around Jerusalem with the city center.

Through its subsidiary Leumi Mortgage Bank (100%), which specializes in providing mortgages, the bank also provides mortgages for homebuyers in settlements. For instance, a sign in the settlement of **Tzofim** says that special offers for mortgages by Leumi Mortgage Bank are given for private construction in the Tzofim View (Nofei Zufim) Project.

The bank supplies mortgages for homebuyers in the settlements of **Ariel**, **Beitar Illit** and **Katzrin** in the Golan Heights.

The bank benefits from access to the Palestinian monetary market as a captive market.

The bank has branches in the following settlements in the West Bank: Ma'ale Adumim, **Oranit**, **Pisgat Ze'ev** and **Kiryat Arba**, in the settlement neighborhoods of **Ramot** and **Gilo** in East Jerusalem and in **Katzrin** in the Golan Heights.

Leumi Mortgage Bank, has a branch in **Ramat Eshkol** settlement neighborhood in East Jerusalem.

The conduct of Bank Leumi in international tax evasion is another reason why New Zealand's Superannuation Fund should be removing investment in the bank rather than increasing it^x.

Mizrahi Tefahot Bank Ltd

NZSF has also massively increased its investment in Mizrahi Teahot to \$656,939 in June 2015 (only \$61,090 in 2012).

Who Profits has detailed Mizrahi Tefahot activities in West Bank settlements^{xi}.

The bank provides financing for constructing housing projects in the settlements of **Ariel**, **Har Homa**, **Ramat Rachel**, **Ma'ale Adumim** and **Pisgat Ze'ev** in the occupied West Bank and East Jerusalem. These projects include at least seven complexes of 377 housing units in Har Homa in the occupied East Jerusalem, carried out by **Heftziba**, **Dona**, **Kotler Adika** and **Sasi** construction companies. In Ma'ale Adumim settlement, the bank financed at least 10 construction projects, which include about 369 housing units, a commercial center and the Adumim park, carried out by **Dona**, **Kotler-Adika** and **Sasi**. The bank also financed a construction project by **Kotler-Adika** in **Pisgat Ze'ev** settlement, which includes 49 housing units. In addition, the bank financed a 128 housing units' project in **Ramat Rachel** in East Jerusalem by **R. Ela** construction company. **Mizrahi Bank** also provides financial safeguarding for a **Hanan mor** construction project in **Ariel**.

The bank advertises in its website construction projects in the settlements of **Modi'in Ilit**, **Har Homa** and **Pisgar Ze'ev**.

Mizrahi-Tefahot provides loans and financial services to local authorities of settlements and Israeli businesses operating in the occupied territories: The **Kdumim** settlement opened a current loan account in **Mizrahi Bank**, in **Otsar Hahayal** bank and in **Igud Bank**; The settlement of **Karnei Shomron** opened a current loan account in **Mizrahi Bank** in 2010, in addition to attachment of collateral of the settlement's incomes and property tax in **Mizrahi Bank**; The **Gush Etzion** settlements' regional council's operates an account in **Mizrahi Bank**, which is also used for development and education expenses; **Efrat** settlement operates two accounts in **Mizrahi Bank** branch in **Alon Shvut**: welfare fund and unordinary budget fund.

In addition, the bank provides mortgages for homebuyers in settlements. For example in **Ariel** (from 2000, 2005 and 2009), **Beit Arye (Ofarim)** from 2009, 2 houses and land in **Beitar Illit** from 2010 and a house in **Beitar ilit** from 2009. In addition, the bank provided mortgage for homebuyer in **Immanuel** from 2002 and four homebuyers in **Modi'in Ilit** from 2003, 2005, 2008 and 2012.

Bank Adanim, a fully owned subsidiary of **Mizrahi**, provides mortgages for houses in settlements, for example, a mortgage for a house in **Beitar Illit** from 2008.

The bank cooperated with **Y.H. Dimri**, an Israeli construction company for marketing housing exclusively for Israeli security officers.

The bank operates 3 branches in the illegal settlements of **Alon Shvut** and **Karnei Shomron** in the occupied West Bank and a branch in **Ramat Eshkol** settlement neighborhood in the occupied East Jerusalem.

A subsidiary of the bank (50%), **Yahav Bank for Government Employees**, has a branch in occupied East Jerusalem, a branch in the settlement of **Ma'ale adumim** and a branch in **Pisgat Ze'ev**.

In 29 July 2013, **Ha'aretz** newspaper reveled a recorded conversation with one of **Mizrahi's** representatives, who stated that the bank's policy is not to provide credit to Palestinian citizens of Israel in order to discourage them from opening an account in the bank. This is a violation of the Israeli law, which forbids banks from refusing costumers' requests to open accounts.

A news story^{xii} at the time on the Report gave more detail of the activities of the Mezrahi Tefahot Bank, though the bank is not identified by name in the Report;

According to an online brochure, an Israeli bank is financing Green Ariel through an “accompaniment agreement” with an Israeli developer. Such agreements, which govern most construction projects in Israel, provide the loan for the construction and protect buyers during the construction phase. The accompanying bank gives homebuyers a guarantee and deposits their payments in a dedicated bank account, while it monitors the financial status and development of the project. In some cases, the accompanying bank also holds the real estate property as collateral until the developer sells all the housing units in the project. Neither the bank nor the developer responded to separate letters from Human Rights Watch sharing our preliminary findings and requesting further information (p. 62).

NZSF Policy

You wrote to us on 27 May 2014, to state the New Zealand Superannuation Fund’s criteria for excluding companies.

“... 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 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. 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.”

You have also made a similar, though not identical, statement in a press release;

Our exclusion decisions are guided primarily by United Nations and New Zealand Government legislation and policy positions. For example, in 2012, the Fund excluded Israeli companies Africa Israel Investments and subsidiary Danya Cebus; Elbit Systems Limited; and Shikun & Binui from the Fund. 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^{xiii}.

As indicated above from the Report, at page 27, there is some potential legal liability, deriving in domestic legislation from such treaties as UNCATOC, should companies profit from illegal activities in a different jurisdiction.

This letter sets these obligation aside for the moment. We will address merely the NZSF criteria for exclusion as a policy position adopted by NZSF, whether based on international codes of practice or otherwise. We identify your Environmental, social and governance policy (ESG) to be the central such policy.

First we note that the HRW criteria of culpability of proximity to illegal settlements follows a different distinction to yours.

HRW considers there are two types of settlement businesses;

The first type of settlement business includes companies that manage the practical demands of constructing and maintaining settlements. Three of the report's case studies fall into this type: a bank that finances and provides mortgages for settlement homes, a real estate franchise that sells them, and a waste management company that processes settlement trash. The direct contribution these companies make to Israel's unlawful settlement regime is self-evident (p. 18)

The Report then compares this first category with the second;

The second type of settlement business (which) includes companies that engage in activities that do not directly provide services to residential settlements, yet nonetheless are based in settlements or settlement industrial zones (p. 19).

As we pointed out to you on 29 April 2014, we cannot see the difference in culpability between those companies which build the settlements and those which finance them. Human Rights Watch cannot see the difference either.

We have difficulty in interpreting your first paragraph above. Proximity is certainly a legal yardstick, employed in tort law, meaning, we suggest, in this policy instance here, a close relationship between the actions of a company NZSF has invested in, and the consequences of those actions to damage in some way the wellbeing of the Palestinian population of the OPT. Remoteness is essentially the same test expressed in contrary terms.

We suggest the Report has ample evidence of the almost inevitably negative results for Palestinians' wellbeing and rights from any Israeli economic activity in the OPT.

Consequently, the related and conceptually alternative test to proximity, that of foreseeability, becomes applicable. In tort law generally the tests are used concurrently where the greater the foreseeability the closer the proximity.

There may however be a high degree of foreseeability of a consequence of an action though the chain of proximity is not short. Conversely, there may be a low foreseeability even if the causal proximity is immediate. The case law on the two principles lies in favour of foreseeability^{xiv}

This is relevant in that the foreseeability of the result of the banks' activities in this instance is quite clear. We are not referring to a set of circumstances in a tort action where the defendant should have foreseen a single or cumulative action by them which then caused a damaging outcome.

This is a situation of a continuing ex post facto awareness by the banks of the worsening consequences for the Palestinians of the OPT arising from the continued construction of illegal Israeli settlements on their land. The evidence provided by HRW and Who Profits alone is ample. Much of the evidence, such as the location of bank agencies within the settlements, is incontrovertible.

We suggest that the outcome of this is that the threshold of satisfying the proximity test must have been achieved. The banks know the harm they are causing through financing the settlements - yet they persist in doing it.

In the next aspect of the NZSF policy, confusion derives from which end 'importance' is perceived. We presume that the importance is in the impact of the people who are affected: that is the Palestinian population. Were the importance to derive from the significance to the company of its OPT activities, then the NZSF policy would simply insulate from divestment the large companies which have a lot of activities outside the OPT and so proportionally the OPT would be less important to them. Conversely, small companies, with a conceivably less extreme activity, would be divested from by the NZSF simply because the OPT was proportionally more important to these companies. Through such a distinction the NZSF would be excluding small 'bad' companies but keeping its investments in large 'worse' companies. The outcome of this approach would be of little value to the very people it was designed to help.

A positive response from an Israeli company to a request from the NZSF, in order to stay listed as an investment, appears to be a sensible requirement. Though again, companies, operating in such a charged political environment as the OPT, are unlikely to respond to an approach from NZSF with any enthusiasm, and they have already demonstrated to the international community they are not interested in conforming to international law.

We can certainly understand the distinction you are drawing in the next criteria in your policy. A line can be drawn between a supplier of materials to an unknown customer and a company which is 'directly and materially involved' in the activities of another to which it is selling materials. But again it is the details in this situation which cause confusion. In this instance the

supplier of finance is well aware of who the settlement customer is and their location and purpose.

Moreover, in the supply of services in just about any situation it is difficult to imagine where the customer is not well known to the seller, compared with what could be a more anonymous transaction in the sale of physical materials. Either, we suggest, are 'in the normal course of business'.

A banking service in this instance is most clearly made available by Israeli banks well aware of who they are supplying that service to and what that service is being used for. It is inconceivable the banks' officials are unaware of the illegal nature of the settlements and their consequences on the Palestinian population. They would need at the very least to conduct due diligence on the financial and other security of the settlements they are lending to.

Presumably borrowing is integral to building settlements. If the builders did not need to borrow, then borrowing would not be integral, but it would also be unnecessary. The policy reasoning thus appears to be tautological.

Such banking services are surely tailor-made in the sense of NZSF policy, for reasons of scale alone, to extend beyond standard form 'off the shelf' contacts into specific and dedicated provisions of a financing contract in each case.

As such, the three banks are no less complicit in illegal construction activities in the OPT than were Africa Israel Investments and Shikun & Binui which you have excluded. The exemption which you appear to offer to the banks, that their resources in the settlements are 'readily replaceable', applied equally to the two construction companies.

In summary then, NZSF criteria for exclusion, even allowing for the ambiguities and contradictions within that policy, are not being followed by NZSF in regards the three Israeli banks NZSF is increasingly heavily investing in.

These banks have a questionable professional reputation. They are a direct, material and vital component of the construction of illegal Israeli settlements in the OPT. Without those services the settlements would be unlikely to be built as no alternatives to borrowing or underwriting conceivably exist. The three banks have been shown to be immune to international investor concerns. Their lending is on a scale and of a type which has to be tailor-made for the requirements of the settler constructors.

Finally, we presume you are aware of the adverse investment climate in Israel, where direct foreign investment figures have been severely impacted by the actions of the Israeli government.^{xv}

Yours faithfully,

Serena Moran
Wellington Palestine Group

ⁱ Funding the Israeli Occupation – The Direct Involvement of Israeli Banks in Illegal Israeli Settlement Activity and Control over the Palestinian Banking Market, Coalition of Women for Peace, October 2010, available at; <http://www.whoprofits.org/company/mizrahi-tefahot-bank>

ⁱⁱ Major Dutch pension firm divests from Israeli banks over settlements, Reuters, 8 Jan 2014, available at <http://www.reuters.com/article/2014/01/08/netherlands-israel-divestment-idUSL6N0K11N220140108>

ⁱⁱⁱ 'A BDS victory – US churches pension board blacklists Israeli banks', Jerusalem Post, 13 January 2016, available at; <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/A-BDS-victory-US-church-pension-board-blacklists-Israeli-banks-441348>

^{iv} 'Occupation, Inc. How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights', Human Rights Watch, 19 January 2016, available at; <https://www.hrw.org/node/285045/>

^v 'Germany's largest bank flags Israel's Hapoalim as morally questionable investment', Haaretz, 17 Feb 2014, available at <http://www.haaretz.com/news/diplomacy-defense/1.574743>

^{vi} Denmark's largest bank blacklists Israel's Hapoalim over settlement construction, Haaretz, 1 Feb 2014, available at <http://www.haaretz.com/news/diplomacy-defense/1.571849>

^{vii} Who Profits – The Israeli Occupation Industry, available at; <http://www.whoprofits.org/company/hapoalim-bank>

^{viii} 'Gaydanah suspected in bank scandal', Jerusalem Post, 28 November 2005, available at; <http://www.jpost.com/Israel/Gaydamak-suspected-in-bank-scandal>

^{ix} Who Profits – The Israeli Occupation Industry, available at; <http://www.whoprofits.org/company/leumi-bank>

^x 'Israel's Bank Leumi under investigation after \$400 million settlement with USA, Jewish Political News & Updates, 14 January 2015; available at; <http://jpupdates.com/2015/01/14/israels-bank-leumi-investigation-400-million-settlement-usa/>

^{xi} Who Profits – The Israeli Occupation Industry, available at; <http://www.whoprofits.org/company/mizrahi-tefahot-bank>

^{xii} 'End all business in Israeli settlements, says Human Rights Watch' Electronic Intifada, 19 January 2016, available at; <https://electronicintifada.net/blogs/ali-abunimah/end-all-business-israeli-settlements-says-human-rights-watch> (NB [this story has further links from](#) ')

^{xiii} New Zealand Superannuation Fund Statement on Israel/Palestine, NZSF media statement, 4 August 2014, available at; <https://www.nzsuperfund.co.nz/news-media/nz-super-fund-statement-israelpalestine>

^{xiv} *Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty Ltd* [1967] 1 AC 617 (PC) [*The Wagon Mound (No 2)*]; *RWM Dias* (1967) 25 CLJ 62.

جمعية أصدقاء فلسطين في ولنتون
م. ب. ٦٤٢ ولنتون نوريلندة

^{xv} Foreign direct investment in Israel dropped by 50% in 2014 and expert says it's due to the Gaza war and BDS (Updated), 25 June 2016; available at; <http://mondoweiss.net/2015/06/foreign-investment-dropped/>