

ITEM IC ISRAELI BANKS AND CONSTRUCTION OF SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORIES

Presented by: [REDACTED]

Section 9(2)(a)

Date: 14 January 2021

1 Purpose

1.1 To **approve** following recommendation:

1.2 *“Exclude securities issued by First International Bank of Israel; Israel Discount Bank; Bank Hapoalim; Bank Leumi; Bank Mizrahi-Tefahot from the portfolio based on the Guardians’ RI Policy, Standards and Procedures.”*

1.3 The reasons for this recommendation are set out in the accompanying template. In brief, the primary considerations under our Statement of Investment Policies Standards and Procedures (**SIPSP**) and Responsible Investment Framework (**RIF**) leading to this recommendation are as follows:

- The United Nations General Assembly has consistently reaffirmed the illegality of Israeli settlements in the Occupied Palestinian Territories (**OPT**) and called for an immediate halt to all settlement activities (most recently in December 2020). In resolution 2334 (co-sponsored by New Zealand), the UN Security Council reaffirmed that the establishment by Israel of settlements in the OPT had no legal validity and constituted a flagrant violation under international law.
- International concern about settlement activity in the OPT has been heightened following the announcement in September 2019 by the Israeli Prime Minister that if his government were re-elected it would annex parts of the OPT¹ and by the escalation since in approvals of construction plans for housing units in the OPT².
- A number of reports by the UN Human Rights Council have concluded that the construction of Israeli settlements in the OPT cause or contribute to breaches of Palestinian human rights including the right to self-determination, non-discrimination, freedom of movement, and rights to education, water, housing, and an adequate standard of living³. Palestinian people are not permitted to purchase settlement housing and are generally barred from entering the settlements. The planned intensification of settlement activity will exacerbate the infringement of these human rights.

¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, “Situation of human rights in the Palestinian territories occupied since 1967” 21 October 2019, para 63 (Report of the Special Rapporteur 2019). <https://undocs.org/A/74/507>.

² Highlighted in the June and December 2020 reports from the UN Secretary General on the implementation of Security Council resolution 2334, <https://www.un.org/unispal/wp-content/uploads/2020/06/S.2020.555.pdf>, https://www.un.org/unispal/wp-content/uploads/2020/12/S20201234_161220.pdf

³ See the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, UN Doc A/HRC/22/63,

C3 - Restricted Confidential & Legally privileged

- Under our RI Framework we use the UN Global Compact principles as a benchmark for expected standards of corporate behaviour. Principle 1 asks that companies support international human rights and Principle 2 provides that businesses should avoid being complicit in human rights abuses. There is credible evidence that the relevant companies, (*First International Bank of Israel; Israel Discount Bank; Bank Hapoalim; Bank Leumi; Bank Mizrahi-Tefahot, hereafter called “the Israeli Banks”*), provide finance for the construction of Israeli settlements in the OPT. We have accordingly considered if, due to the nature of that finance, the Israeli Banks are breaching these standards due to the human rights abuses caused by the construction of those settlements.
 - It is reasonable to assume both that the provision of bank funding is critical to enabling the construction of settlements in the OPT to proceed on the scale contemplated by recent construction plan approvals and that funding from international banks is not readily available, given their notable absence⁴, making the Israeli banks essential to the construction process.
 - Various reports have describe the nature of these banks involvement, not as passive lenders, but as active and direct partners in the development projects. A key reason given is that Israeli law limits the ability of developers to collect advance payments from buyers unless those developers obtain financial guarantees, in a framework known as “accompanying agreements”. It is through these agreements that the banks are reported to become involved in every stage of the project, including involvement in determining the price rate and sale schedule of the apartments⁵.
 - Given these matters, we have concluded the Israeli Banks are materially contributing (and are highly likely to continue to contribute) to the construction of settlement in the OPT, and due to the human rights impacts associated with construction of the settlements are materially in breach of Principle 1 and Principle 2 of the UN Global Compact.
- 1.4 Engagement would be resource intensive and is unlikely to be effective given the Israeli Banks have continued their involvement in the face of international criticism over a long period and have reported that they believe their activity is legal.
- 1.5 Exclusion would be financially immaterial for the Fund.

2 SIPSP and IC delegations

- 2.1 Under the Guardians’ delegation framework, the CIO can authorise the Fund to exclude/divest individual issuers on the recommendation of the Investment Committee.
- 2.2 We use a template to assist the IC in making its recommendations and this follows below. This template guides the IC through the considerations in the SIPSP and RIF and provides additional background to understand the basis for determining where there may be a breach of relevant standards and the materiality of the issue.
- 2.3 Our governing legislation says that we must invest the Fund on a prudent, commercial basis and in doing so, must manage and administer the Fund in a manner consistent with best-practice portfolio management, maximising return without undue risk to the Fund as

⁴ To be clear, if non-Israeli banks were similarly involved, we would apply the RIF to them in the same way we are to the Israeli banks covered in this paper.

⁵ Financing the Land Grab – the direct involvement of Israeli Banks in the Settlement Enterprise” – report by Who Profits research centre (NGO) Feb 2017

C3 - Restricted Confidential & Legally privileged

a whole, and avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

- 2.4 Our RIF provides further details on how we will give effect to responsible investment (which as stated in the RIF encompasses ethical investment).
- 2.5 We utilise a range of activities and procedures as we consider appropriate. This includes monitoring the portfolio to identify companies that may breach the standards of good corporate practice contained in our SIPSP (i.e. our RI Standards). These standards include the UN Global Compact Principles.
- 2.6 Following this analysis we may undertake a range of steps as further outlined in the RIF, which may include monitoring, engaging with the issuer in various ways such as through correspondence, meetings or voting. In certain circumstances we may also exclude issuers.
- 2.7 The SIPSP and RIF provides guidance as to the way in which we approach exclusion decisions.⁶
- 2.8 The RIF states that in some limited cases we will exclude securities issued by companies from the portfolio. This may occur where companies are involved in certain activities or breaches of standards.
- 2.9 We exercise judgement in making these decisions and, as relevant, take account of:
 - New Zealand or other national law,
 - International law, including conventions to which New Zealand is a signatory,
 - Requirements of our mandate,
 - Significant policy positions of the New Zealand Government,
 - Impact of exclusion on expected Fund returns,
 - Actions of our peers,
 - Severity of breach/action,
 - Likelihood of success of alternative course of action (engagement),
 - Expert or other advice where relevant,
 - Other relevant factors on a case-by-case basis.
- 2.10 The relevance of these factors in a given case, and the weight to be given to them, will vary depending on the context in which the issue has arisen. Ultimately these are matters for the Guardians to determine based on its understanding of the position, and its consideration of its mandate.
- 2.11 A key factor in assessing whether a company may be breaching our RI standards and the severity of the breach, is the proximity and importance of the company's actions to that 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; specifically designed for the activity (as opposed to a product/service for more general application which happens to be used for the relevant activity); and whether there are alternatives or off-the-shelf substitutes to the use of this product or service.
- 2.12 The focus on materiality is important. It focuses attention on where there may be greater reputational risk, and helps to manage the Fund prudently with regards to impact on investment returns and consistent with best practice and with our mandate.
- 2.13 Given the nature and complexity of certain issues, it is not always possible for us to establish definitively whether a company has breached any particular RI standard. For example, this may ultimately depend on information that is not available to us. Where

⁶ See Page 17 of the RI Framework
Document Number: 3087711

C3 - Restricted Confidential & Legally privileged

that is the case, we assess whether there is an unacceptable risk of such breach occurring based on credible information available to us at the relevant time.

3 The issue of companies and settlements in the OPT

- 3.1 As outlined in the template, the United Nations regards the wider activity of Israeli settlements within the OPT as illegal under international law. This position has been held for some time.
- 3.2 However, it is important to note that the United Nations' position relates to the broader activity. It does not specifically determine the legal status of activities by particular companies which provide services/activities that contribute in some manner to the settlement activities within OPT.
- 3.3 In such cases, as noted in section 2, we assess the proximity and importance of the companies' actions to the broader activity that is considered illegal.
- 3.4 In December, 2012 the Investment Committee recommended the exclusion of certain construction companies where there was credible evidence as to material involvement in the development and construction of the settlements in the OPT.⁷ Without this activity the settlements would not exist. In excluding these companies, we distinguished between direct involvement as lead developers or lead contractors and indirect involvement by suppliers of materials and other subsidiary services. At the time, we did not exclude the banks/financiers of the construction activities as their involvement was considered to be a service and less direct than the construction firms themselves.
- 3.5 Since implementing the exclusions, we have continued to monitor relevant developments in the region, including:
 - More recently, there have been increased reports on the nature and importance of the role certain banks play in the settlements.
 - A significant increase in the construction of settlements and the number of approvals of plans for settlements to be developed.
 - The significant concern around Israel's annexation plans as summarised further in the template.
 - The Office of the United Nations High Commissioner for Human Rights (**OHCHR**) has, pursuant to Human Rights Council resolution 31/36⁸, published a database of 112 companies for which it considers there are reasonable grounds to believe the companies are involved in certain specified activities related to the Israeli settlements in the OPT (including supply of equipment, materials, utilities, and other services during and after construction). This list includes a number of Israeli Banks but has not identified any non-Israeli banks as being involved.
 - More detailed coverage of companies and the nature of their involvement in the settlements is provided by the Who Profits non-governmental organisation. Its report on the extent and nature of the Israeli Banks involvement⁹ is well researched and draws on credible annotated evidence, including the companies own disclosures and council records.
- 3.6 From our research, we have identified the Israeli Banks as raising concerns from a RI perspective.

⁷ In 2012 the IC excluded Africa Israel and its subsidiary Danya Cebus, and Shikun & Binui for property development and construction of settlements Superdoc: 812553.

⁸ The Office of the United Nations High Commissioner for Human Rights (OHCHR) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542>

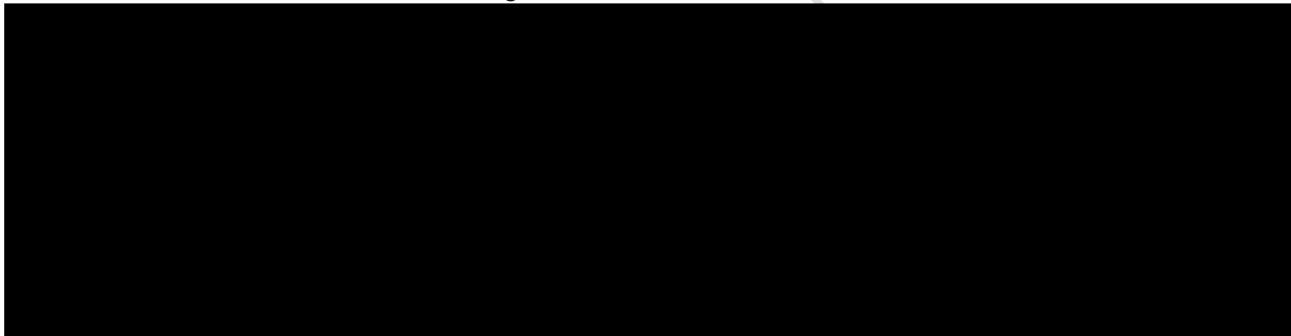
⁹ Financing the Land Grab – the direct involvement of Israeli Banks in the Settlement Enterprise” – report by Who Profits research centre (NGO) Feb 2017 and Bankrolling Abuse – Israeli Banks in West Bank Settlements – Human Rights Watch 2018 (NGO report)

C3 - Restricted Confidential & Legally privileged

- 3.7 As set out in the template, there is credible evidence that the banks provide project finance in respect of the construction of Israeli settlements in the OPT and that this is an integral aspect of settlement construction. These companies are the focus of this paper and our recommendations.
- 3.8 More generally, the OHCHR database lists a range of other companies. We note that the database 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 would therefore need to do further analysis to determine if these other companies should be added to our focus list for engagement or exclusion based on the guidance in our RIF. Subject to further information and analysis being undertaken, the extent of their involvement may be very different from that of the banks which form the subject of this paper. The OHCHR list will be published annually.

4 Communication of decision

- 4.1 We will write to the five companies informing them of our decision prior to including them on the public exclusion list.
- 4.2 This will give the companies an opportunity to respond, including on whether they have made recent decisions to withdraw from financing the development and construction of settlements. If the latter arises, which we believe unlikely, we will revert to the Investment Committee to discuss rescinding the exclusion decision.



Section 9(2)(g)(i)

Section 9(2)(i)

RI Guidance for Exclusion Decisions

Companies	First International Bank of Israel; Israel Discount Bank; Bank Hapoalim; Bank Leumi; Bank Mizrahi-Tefahot (“Israeli Banks”)
Date	14th January 2020
Domicile/Sector	Israel/Banking
Description of issue	
<p>Context: Occupied Palestinian Territories (OPT) and Israeli settlements</p> <p>There is credible evidence that the Israeli Banks identified are providing project finance which enables the development and construction of Israeli settlements in the OPT at the scale contemplated by recent construction plan approvals. The background to OPT and the Israeli settlements is well-known, and the Israeli-controlled settlements in the OPT are regularly condemned by the UN. These matters, and key sources of supporting information, are summarised further below:</p> <p>History of the Settlements</p> <p>Following the ending of an Israeli imposed moratorium on settlement expansion in late 2009-2010, construction revived during 2011 and as continued over the decade.¹⁰</p> <p>By 2017, an industry article quoted in the Who Profits report stated that about 55% of the land marketed by the Israel Land Authority for development was over the Green Line.¹¹</p> <p>In 1983, there were 99,000 Israeli settlers in the West Bank and East Jerusalem, whereas by 2019 there were 650,000 settlers, an increase of more than 550 per cent.¹² Furthermore, the planned construction of settlements has escalated recently. In October 2020 the Israeli government announced that it had approved the construction of nearly 5,000 more settlement homes in the OPT, which brought the number of settlement home approvals for 2020 to more than 12,150¹³.</p>	

¹⁰ 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

¹¹ “Financing the Land Grab – the direct involvement of Israeli Banks in the Settlement Enterprise” – report by Who Profits research center (NGO) February 2017

¹² Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, “Situation of human rights in the Palestinian territories occupied since 1967” 21 October 2019, para 62 (Report of the Special Rapporteur 2019). <https://undocs.org/A/74/507>.

¹³ See reference 2

Israel and annexation

In September 2019 Prime Minister Netanyahu announced that if his government were re-elected it would annex parts of the OPT.¹⁴ In June 2020 an agreement between the coalition partners of the Israeli Government to annex significant parts of the Occupied Palestinian West Bank after 1 July 2020, was condemned by a group of 47 independent experts appointed by the UN Human Rights Council.¹⁵ The Israeli Government put its annexation plans on hold in August 2020 as part of an agreement to establish full diplomatic relations with the United Arab Emirates. Israel's coalition government broke apart in late December 2020 and new elections are expected in March 2021. It is not clear what impact the Israeli elections will have on any annexation plans, nor the impact of the new US administration on Israel and its settlement activity.

If Israel does not go ahead with its *de jure* annexation plans, the settlements in the OPT are, in any case, considered by most international authorities, including the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, an independent expert appointed by the UN Human Rights Council, to be *de facto* annexation, and contrary to international law.¹⁶

Regulatory Environment – Legal status of settlements and their construction

International Law

The position at international law has been well articulated by the United Nations Security Council¹⁷ and in subsequent and numerous UN Resolutions on the subject.

Multiple UN Security Council Resolutions dating back decades have stated 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 violation 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." An advisory opinion by the International Court of Justice (ICJ) in 2004¹⁸ 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.

¹⁴ Report of the Special Rapporteur 2019, para 63. See also <https://undocs.org/A/HRC/40/73>

¹⁵ "Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability", June 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E>

¹⁶ Report of the Special Rapporteur 2019, para 62-63.

¹⁷ UN Security Council resolution 465 (1980) <http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

¹⁸ ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4th 2004 (also consider the legality of the settlements).

In December 2016, the UN Security Council adopted a historic resolution (Resolution 2334)¹⁹ on Israeli settlements, which is considered binding on Israel. "The United Nations Security Council has reaffirmed that the establishment by Israel of settlements in the occupied Palestinian territory, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace".

The resolution was put forward by New Zealand and three other elected members – Malaysia, Senegal and Venezuela, - and was the first action taken by the Security Council on the Middle East Peace Process in almost eight years.

On 20 December 2017, a resolution building on UN Security Council Resolution, was adopted by the UN General Assembly that called for "Permanent sovereignty of the Palestinian people in the OPT, including East Jerusalem, and of the Arab population in the Occupied Syrian Golan over their natural resources".

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. The State of Palestine states the settlements are an illegal annexation.

The International commission of Jurists issued a statement on November 2019 that refers to Israel's current annexation proposals and states "such annexation is prohibited by international law, including Article 2(4) of the UN Charter, which forbids the use of force against the territorial integrity of a State and, consequently, the transmission of sovereign title over territories resulting from such use of force."²⁰

New Zealand's Position²¹

New Zealand is a signatory to the Geneva Convention and to the Universal Declaration of Human Rights which the ICJ considers to be international laws which are being breached by the development and construction of the settlements in the OPT.

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 that have called the settlements illegal and counter-productive to a two-state settlement.²²

New Zealand worked throughout its two-year term on the Security Council to advance a resolution on the Middle East Peace Process, one of the most long-standing and unresolved issues on the Council's agenda.

¹⁹ https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_21_december_2020_2334.pdf

²⁰ <https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/>

²¹ <https://www.mfat.govt.nz/en/media-and-resources/ministry-statements-and-speeches/un-security-council-the-situation-in-the-middle-east-including-the-palestinian-question/>

²² <http://www.mfat.govt.nz/Foreign-Relations/Middle-East/New-Zealand-Voting.php>

In December 2016, New Zealand co-sponsored and supported UN Security Council Resolution 2334. Foreign Minister Murray McCully welcomed the adoption of Resolution 2334, saying “New Zealand voted for and co-sponsored the resolution because it was consistent with long-held New Zealand policy positions on the Palestinian question”.

Speaking after the vote, New Zealand’s Permanent Representative Gerard van Bohemen told the Security Council “every settlement creates false hope for the settlers that the land will one day be part of a greater Israel. Every settlement takes land away from Palestinians needing homes or farmland or roads. Today’s resolution provides important signals to the parties and to the international community about the way forward.”

NZ Government statement on Israel’s current annexation plans

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

“The New Zealand Government’s view is that annexation would gravely undermine the two-state solution, breach international law, and pose significant risks to regional security. We call on Israel to reconsider these plans.”²³

Peer fund actions

We regard wide-spread exclusion of companies by peer funds (that have exclusion policies) as a signal that those holdings are a concern amongst our global investor community.

Exclusion of companies due to their involvement in the construction of Israeli settlements in the OPT is still *rare* amongst large institutional investment funds. Notable exclusions have been made by NGPF, PGGM and ABP on the issue, and by a small handful of other pension funds or fund managers.

The Norwegian Council of Ethics (Council) Report (2009) on business involvement in the construction of settlements in the OPT focused on those development and construction firms who were directly involved. The Council’s analysis concluded that the companies were contributing to the construction of the settlements 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. The Council of Ethics has issued no further company exclusions related to this issue.

In 2014, the Dutch Pension Fund PGGM excluded Israeli Banks involved in the settlements whilst the other Dutch Fund ABP determined that it was not appropriate to exclude the banks. [REDACTED]

Section 9(2)(b)(ii)

Section 9(2)(i)

Section 9(2)(g)(i)

²³ <https://www.beehive.govt.nz/release/new-zealand-expresses-concerns-over-proposed-israeli-annexation-plans#:~:text=%E2%80%9CNew%20Zealand%20is%20a%20long,live%20in%20peace%20and%20security.&text=%E2%80%9CThe%20New%20Zealand%20Government's%20view,significant%20risks%20to%20regional%20security.>

Following the Israeli annexation announcements, in June 2020 ABP excluded 2 Israeli banks, Bank Leumi and Bank Hapoalim for failure to produce a detailed and comprehensive human rights policy. More action by peer funds may follow.

NZ Super Fund considerations

Institutional investors may face reputational risks from both holding, or from excluding, companies involved in some way on the politically divisive issue of Israel and Palestine. Response to our own decision to exclude in the past has been mixed.

[Redacted]

Section 9(2)(g)(i)

The overall issues are complex and involve matters of judgment. However, we have a robust decision-making process for exclusion decisions, and ensure that position is clearly communicated.

Relevant RI standards (under the RIF)

UN Global Compact Principle 1: support international human rights

UN Global Compact Principle 2: avoid complicity in human rights abuses

Materiality of involvement

Context under international law and the actions of States

International sanctions or International Law.

National Law

International censure

The United Nations regards the broader issue of Israel establishing settlements in the OPT as breaching international law (including the IV Geneva Convention) by moving its own civilian population into occupied territory. The ICJ has indicated that it is inconsistent with The Universal Declaration of Human Rights and UN Resolutions.

A Report to the UN Human Rights Council in 2013 by an independent international fact-finding mission established to investigate the implications of the Israeli settlements on the human rights of the Palestinian people considered the human rights implications of the settlements in the OPT and highlighted infringement of the right to self-determination, non-

	<p>discrimination, freedom of movement, the rights to education, water, housing and an adequate standard of living.</p> <p>Whilst Israel disputes the illegality of the activity, the UN, State of Palestine, and NZ view the settlement activity as a significant breach of international law.</p> <p>The recent deterioration in the peace process due to Israeli annexation intent has significantly increased international censure and heightens the human rights and reputational risks surrounding corporate involvement in the settlements.</p> <p>Some further developments saw the Dutch Parliament passing a resolution on the 1st of July 2020 which calls for the government to consider sanctions against Israel if it goes ahead with the annexation plan for settlements in OPT.²⁴ Belgium’s Chamber of Representatives voted for a similar resolution, should Israel proceed with annexation plans.</p> <p>Companies are not responsible for the actions of States. However, these actions can be important to the context within which they operate and seek to apply their own corporate standards.</p>
--	--

UN Global Compact	Evidence and Severity of breach of RI standards by company
Breach of RI standards (severity)	
	<p>The United Nations and ICJ’s positions focus on the broader issue of settlements, and do not establish whether the Israel Banks’ activities contravene international law.</p> <p>MSCI has raised a lower level controversy flag (yellow) noting concerns over the Israeli Banks involvement in the construction of settlements in the OPT. MSCI reports the companies’ have responded by stating that they</p>

²⁴ <https://www.middleeastmonitor.com/20200701-dutch-parliament-votes-to-impose-sanctions-on-israel-if-it-annexes-west-bank/>

have legal rights conferred by the Israeli State. MSCI does not conduct further in-depth analysis on the issue of the settlements.

Following our own research, drawing on UN and other credible reports, we consider the materiality (proximity and importance) between the Israeli Banks' activities and settlement construction below, whether this leads to a breach of our RI standards and if so the severity of this breach.

UN Global Compact Principle 1
UN Global Compact Principle 2

Breaches of standards by banks in the construction of settlements in the OPT

Summary: *Given the special circumstances pertaining to the OPT, the clear positions by the United Nations and New Zealand Government on the unlawful nature of the settlements, and the nature of their involvement in the settlements, there is an unacceptable risk in our view, based on the information available to us, that the banks are in breach of the UN Global Compact Principle 1. to support international human rights and Principle 2. to avoid complicity in breaches of human rights, and that this breach is severe, long-term and ongoing.*

A number of reports have concluded that the construction of Israeli settlements in the OPT cause or contribute to breaches of Palestinian human rights including the right to self-determination, non-discrimination, freedom of movement, and rights to education, water, housing, and an adequate standard of living. The planned intensification of settlement activity will exacerbate the infringement of these human rights.

Under our RI Framework we use the UN Global Compact principles as a benchmark for expected standards of corporate behaviour (our RI standards for companies). Principle 1 asks companies to support international human rights and Principle 2 provides that businesses should avoid being complicit in human rights abuses. There is credible evidence that the Israeli Banks provide finance for the construction of Israeli settlements in the OPT. We have accordingly considered whether, by providing that finance, the Israeli Banks have materially breached these UN Global Compact Principles.

Guardians has previously excluded property development and construction firms Africa-Israel Investment, Danya Cebus, and Shikun & Binui. There was credible evidence that these companies have an integral role in settlement planning, development and construction.

In our original research into the issues of the OPT settlements, we considered the banks to be service providers to the developers and less materially involved on the basis that they were one step removed from the construction process.

We have continued to monitor developments since that time, and now understand their role to be materially more integral to the settlement activities based on more recent reports.

In particular, we understand the banks to be providing project finance to the developers (i.e. funding directly linked to the particular development projects) and actively partnering with the development and construction firms.

The Israeli Banks' activities appear to be of a material scale and important to the settlement activities for the following reasons:

- It is likely to be difficult for settlement construction to take place on the scale contemplated by recent construction approvals without significant bank finance.
- There do not appear to be any non-Israeli bank companies funding the settlements, therefore Israeli Banks (including the listed banks we covering in this paper) are the key source of ongoing finance for the settlements.
- According to reports we have seen, the Israeli Banks sign Accompaniment Agreements (regulated by Israeli Sale Law) which involves the bank across key stages of the construction and sale process. The Israeli Banks provide finance for the development and construction company to purchase the land and build the project and financial guarantees on housing projects for buyers. They hold the property as collateral until the units are sold. The banks will inspect each stage of the project including profitability

	<p>and are usually involved in determining the price rate and sale schedule of apartments.</p> <p>It is not necessarily atypical of banks to be closely involved with developers they are financing. Generally we would engage with a bank to improve integration of ESG risks in their lending processes when faced with such activity by customers.</p> <ul style="list-style-type: none"> • However, the ongoing absence of any significant action by the Israeli Banks to address the issues in the face of UN condemnation, including UN Security Council Resolutions, is a rare situation. The Israeli Banks' involvement has continued in full knowledge of UN censure regarding the settlements over a long period of time. • The Israeli Bank's breach of UN Global Compact standards is, in our view, severe, long-term and ongoing due to the integral nature of involvement and the significant impact on human rights from the settlements. 		
	<p>Specific details of the Israeli Banks' involvement</p> <p>The primary source of information on the banking sector and involvement in the OPT is the NGO "Who Profits" reports.²⁵ The researchers have identified the banks involvement by settlement and project. The sources of information are well referenced and we consider them to be reliable. The UN OHCHR has identified that it considers there are reasonable grounds to believe, based on a reliable body of information consistent with other material, these banks as involved in financing the settlements in the database prepared pursuant to Human Rights Council resolution 31/36.</p> <p>The following table lists each bank and the main settlements where they are each financing projects, (primarily housing developments):</p> <table border="1" data-bbox="1144 1238 2092 1294"> <tr> <td data-bbox="1144 1238 1626 1294">First International Bank of Israel:</td> <td data-bbox="1626 1238 2092 1294">Beitar Illit; Gilo (East Jerusalem)</td> </tr> </table>	First International Bank of Israel:	Beitar Illit; Gilo (East Jerusalem)
First International Bank of Israel:	Beitar Illit; Gilo (East Jerusalem)		

²⁵ <http://www.globes.co.il/serveen/globes/docview.asp?did=1000596221&fid=1124>

	Israel Discount Bank:	Gilo (East Jerusalem); Neve Ya'akov
	Bank Hapoalim	Beitar Illit; Efrat; Ma'ale Adumim; Har Homa; Pisgat Ze'ev
	Bank Leumi	Alfei Menashe; Givat Ze'ev; Ma'ale Adumim; Har Homa; Neve Ya'akov; Pisgat Ze'ev
	Bank Mizrahi-Tefahot	Southeast Ariel; Beitar Illit; Ma'ale Adumim; Har Homa; Neve Ya'akov; Pisgat Ze'ev; Ramat Shlomo
Severity of the breach of standards	Severe, long term, ongoing	
Key sources		
<p>Council on Ethics (Norway) Recommendations to the Ministry of Finance November 16th 2009 (Africa Israel Investments Ltd, & subsid. Danya Cebus)</p> <p>Council on Ethics (Norway) Recommendations to the Ministry of Finance 21 December 2011 (Shikun & Binui Ltd.)</p> <p>UN Security Council resolution 465 (1980) http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5</p> <p>ICJ Legal Consequences of the Construction of a Wall in the OPT, July 4th 2004 (also consider the legality of the settlements).</p> <p>UN General Assembly GA/11191 66th GA Plenary 81st Meeting Annex IV, VI and VII</p> <p>NZ MFAT - http://www.mfat.govt.nz/Foreign-Relations/Middle-East/New-Zealand-Voting.php</p> <p>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</p> <p>https://www.icj.org/israel-palestine-measures-toward-annexation-of-the-occupied-palestinian-territory-must-be-reversed-icj-analysis/</p> <p>"Financing the Land Grab – the direct involvement of Israeli Banks in the Settlement Enterprise" – report by Who Profits research centre (NGO) Feb 2017</p> <p>"Bankrolling Abuse – Israeli Banks in West Bank Settlements" – Human Rights Watch 2018 (NGO report)</p> <p>Database of business enterprises involved in certain specified activities related to the Israeli settlements pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. – Report compiled by OHCHR – to be updated annually (12 February 2020). https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25542</p> <p>Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, "Situation of human rights in the Palestinian territories occupied since 1967" 21 October 2019, para 63 (Report of the Special Rapporteur 2019). https://undocs.org/A/74/507.</p> <p>Highlighted in the June and December 2020 reports from the UN Secretary General on the implementation of Security Council resolution 2334, https://www.un.org/unispal/wp-content/uploads/2020/06/S.2020.555.pdf, https://www.un.org/unispal/wp-content/uploads/2020/12/S20201234_161220.pdf</p>		

Assessment of sources of evidence	Reputable evidence based on reliable sources
--	---

Likely effectiveness of engagement and use of resources	
Context	<p>The Israeli Banks have business revenue coming from a wide range of business lines, primarily in Israel (not the OPT). The Israeli State disputes that the projects are illegal. However, reliance by the companies on local Israeli law is not sufficient in this case to avoid a breach of RI standards.</p> <p>The Israeli Banks are not responsive to the concerns of the international community regarding the impact of the construction of settlements , including on the peace process.</p> <p>Two banks have recently been excluded by ABP for not responding sufficiently on human rights policy and practice. The ability to collaborate is limited as four of the five banks are small-cap which reduces the likelihood peers would hold the companies and/or prioritise them for engagement.</p> <p>We expect if the companies take a view that their activities are legal (and this is a view reflected by the Israeli State) any engagement efforts we undertake will not be successful, which is consistent with the absence of material substantive action from the Israeli Banks to date.</p>
Issue conflicts with viability of company?	
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?	
Can work with other investors	
Engagement is an efficient use of resources?	<p>so engagement collaboration would need to be led by us. As a small minority shareholder and with limited likelihood of success, we do not believe engagement on this issue with these investee companies is a good use of our resources.</p>
Assessment	Engagement unlikely to be effective or an efficient use of resource

Section 9(2)(i) Section 9(2)(b)(ii)

Section 9(2)(g)(i) Section 9(2)(ba)(i)

Impact on Fund Performance	
Is this a NZ or Australian company? Does the Fund have large holdings in the company/ies? Will exclusion harm Fund performance?	The companies are not part of the New Zealand or Australian universe for our local portfolios. The companies are not important to the portfolio in terms of total exposure, AUM or size of holdings. Exclusion of the Israeli Banks will not harm Fund performance.
Assessment	Engagement is resource intensive and unlikely to be effective; Exclusion does not have a significant impact.

Concluding comments	
<p>Summary of key considerations supporting exclusion recommendation.</p> <p>The materiality of the issue for the Israeli Banks centers on the illegal status of the settlements, and credible evidence that the Israeli Banks play a material and critical role in enabling such settlement activities. We can expect growing censure of business involvement in the settlements due to the escalating numbers of approvals and tensions from annexation plans announced by the Israeli Government. Whilst these formal annexation plans are now on hold, these moves have escalated international censure of the settlement activity. The key elements are:</p> <ol style="list-style-type: none"> 1. UN and International censure, NZ position 2. Recent escalation of tensions increasing reputational risks 3. Central and direct involvement of the banks 4. Lack of responsiveness to engagement by peers 5. Other priorities on which to expend engagement resources 6. Limited investment impact from exclusion <p>Conclusion: <i>We consider that there is an unacceptable risk that the banks are materially contributing to a breach of human rights standards and that engagement is unlikely to be effective, is resource intensive given the size of holding and exclusion would be financially immaterial for the Fund.</i></p>	

Recommendation	Exclude
----------------	---------