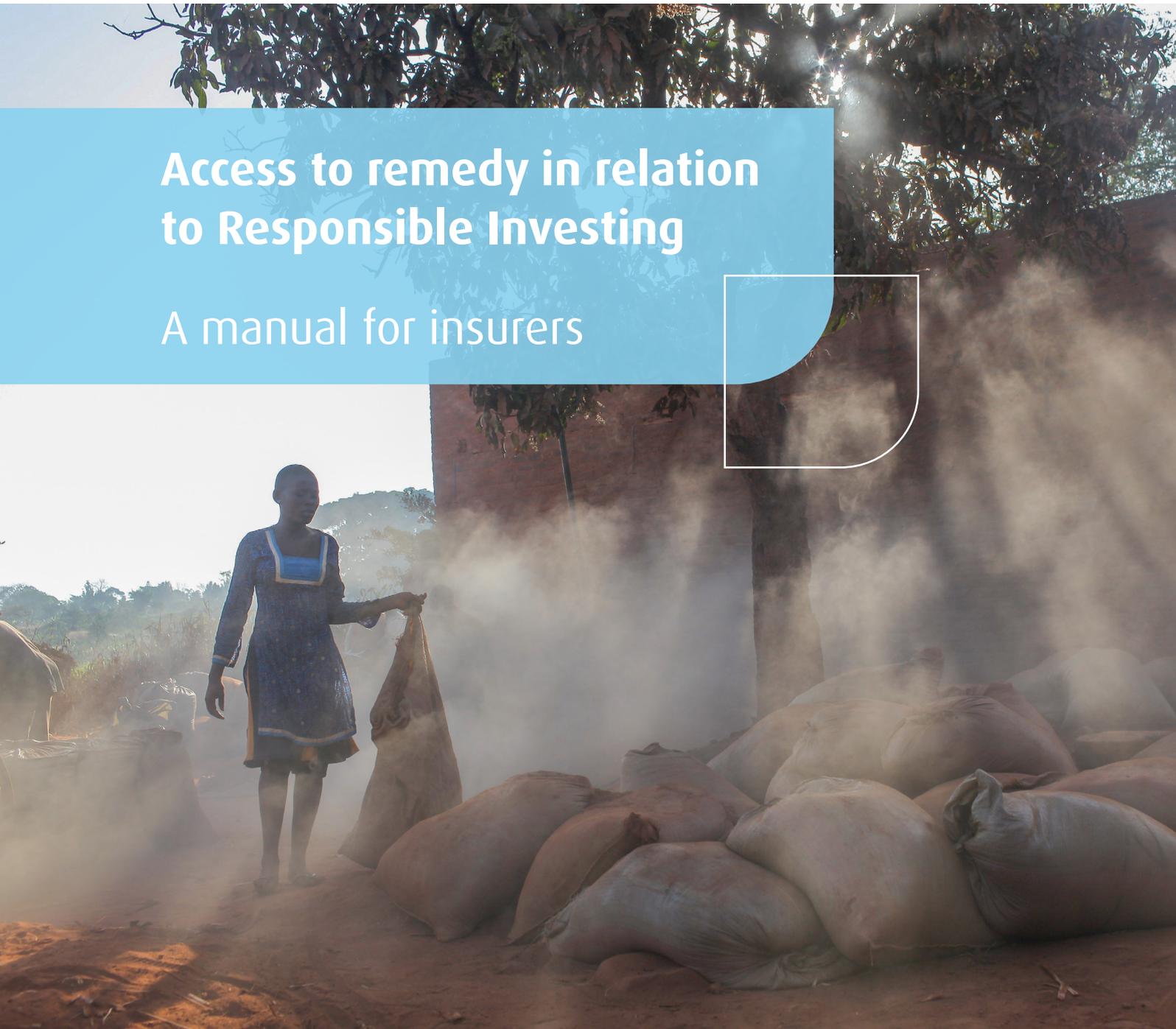


# Access to remedy in relation to Responsible Investing

A manual for insurers





Ministerie van Buitenlandse Zaken



Ministerie van Financiën

Contents

Introduction..... 4

Responsibilities of insurers in the category ‘Directly linked’ ..... 5

What is access to remedy?..... 5

What is a grievance mechanism? ..... 5

Distinction according to form of asset management..... 6

Set-up of the manual..... 6

Step 1: Policy ..... 6

Step 2: Identification of risks..... 7

Step 3: Prevent and limit..... 8

Step 4: Monitoring the approach..... 14

Step 5: Reporting..... 14

Step 6: Access to remedy ..... 16

Fictitious case: Insurer A, investor in Company X ..... 17

Fictitious case: Insurers B & C, via asset managers, investors in Company X..... 19

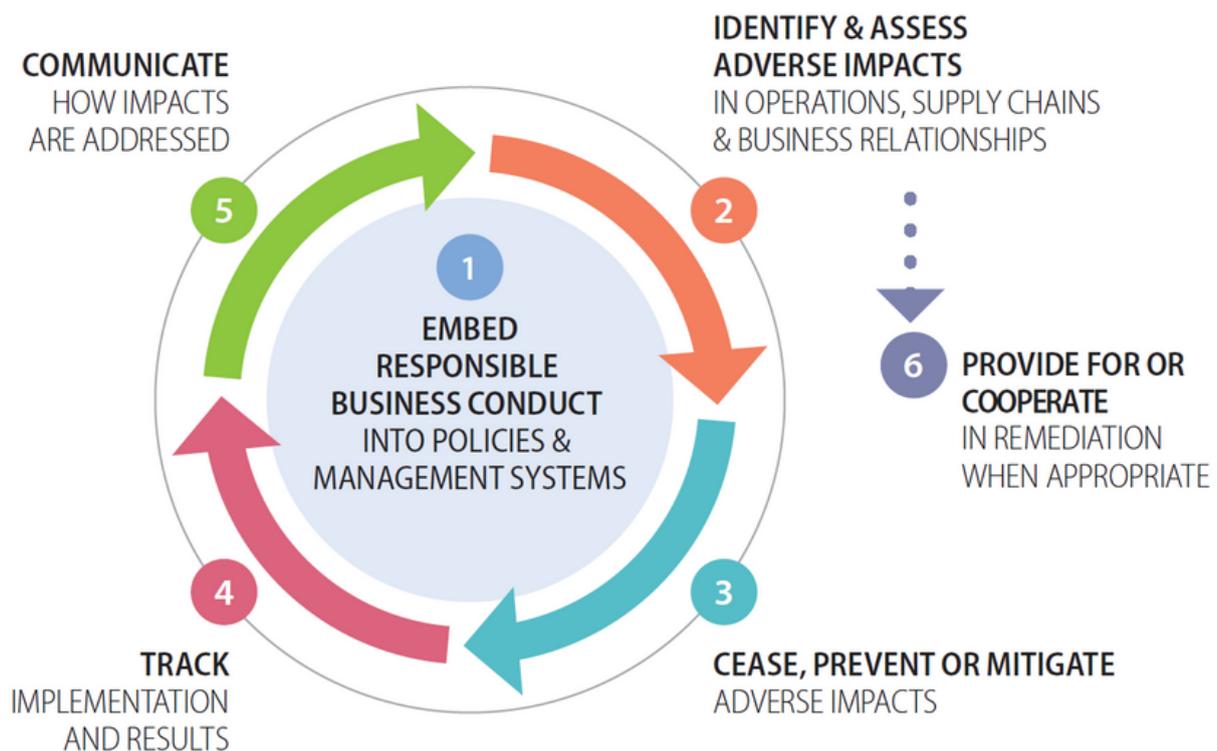
## Background of this document

Paragraph 6 of the Agreement for International Responsible Investment in the Insurance Sector sets out that insurers, in accordance with their responsibility as set out in the OECD Guidelines for Multinational Enterprises ("OECD Guidelines") and the UN Guiding Principles on Business and Human Rights ("UNGPs"), must endeavour to promote access to remedy when adverse impacts occur. The Joint Priorities Work Group under the Agreement has drawn up this manual to help insurers in implementing this Agreement commitment.

For more information on practical lessons learned in relation to access to remedy, see page 11 et seq. of [this document](#) that the Agreement published previously. You can also find more information on access to remedy on [this page of the IRBC agreements](#).

## Introduction

The polluting of water sources by a construction company, local communities that have been driven off their land to make way for a coal mine, child labour on a cocoa plantation, a dam that breaks and destroys a village, employees in a factory who were exposed to toxic substances: companies can become involved in all kinds of adverse impacts on human rights and the environment. In those cases a company must see to or cooperate with effective access to remedy measures. This is step 6 of the due diligence process<sup>1</sup>:



This manual goes into what insurers can do to promote access to remedy for the affected stakeholders, when investee companies have caused an adverse impact or have contributed to such adverse impact.

<sup>1</sup> <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> page 21

## What is access to remedy?

Access to remedy comes in a variety of shapes: apologies, restitution, rehabilitation, financial or non-financial compensation, sanctions. It also comes in the form of measures which ensure that such adverse impacts can be prevented from happening again. The remediation measures that affect a company in a given situation depend on the nature of the adverse impact and the victim's wishes. What is in any case essential is that the victims are the focal point in determining effective access to remedy. They must receive remediation. It is therefore in any event important that the measures are taken adequately and in time, and that they are fully accessible to the victims. They must also be inclusive. For more information on what constitutes effective access to remedy, see this [report](#) of the OHCHR.

## What is a grievance mechanism?

Victims of adverse impacts arising from business activities can try to gain access to remedy by means of various grievance mechanisms. The term "grievance mechanism" refers to the options available to stakeholders to deal with concerns or wrongdoings, so that these can be handled and resolved. This can include such things as legal grievance mechanisms, such as judicial proceedings, and non-legal grievance mechanisms, like NCPs, national human rights institutions and ombudsmen. In addition, companies can have their own grievance mechanisms, also referred to as "operational grievance mechanisms".

The OECD Guidelines and UNGPs prescribe that companies must have a grievance mechanism for the event that they cause or contribute to adverse impacts. In addition to the function of offering access to remedy, this is an important tool for receiving feedback relating to the due diligence steps that the company carries out. Grievance mechanisms enable companies to determine what the actual impact of their activities is and to what extent preventive measures taken in relation to identified risks have proven effective. Companies can also be held responsible for their approach.

A grievance mechanism is therefore a tool to ensure victims have access to remedy. There will only truly be effective remediation and reparation if victims are actually offered access to remedy.

## Responsibilities of insurers in the 'Directly linked' category

The OECD Guidelines and the UN Guiding Principles identify three ways in which an investor can be involved in an adverse impact: the investor may itself have *caused* the adverse impact; the investor may have *contributed* to the adverse impact; or the investor may be *directly linked* to the adverse impact. In most cases, investors will only be directly linked to adverse impacts through their investments, whether or not via an asset manager, in

investee companies that caused or contributed to the adverse impact. In direct linked cases, an investor need not offer access to remedy itself, but it is the investor's responsibility to use its influence (*exercise its leverage*) on the investee company to ensure that the investee company take remediation measures. This manual focuses on the elaboration of this category of involvement and related responsibility: how can an insurer that is directly linked to an adverse impact via its investment portfolio, exercise its leverage to ensure that victims have access to effective remedy?

## Distinction according to form of asset management

Depending on the way they have invested their assets, insurers can realise their responsibility to exercise their leverage in different ways. Large insurers who manage their own assets and are directly engaged, will be able to directly carry out the steps below itself. For medium-sized and small insurers that have outsourced (a part of) their assets to an asset manager, and/or their engagement to that manager or to an external service provider, there will be a step in between, i.e. they must ensure that the manager or service provider applies the following steps. Where relevant, the document will indicate how insurers who have outsourced their assets and/or engagement can implement the steps.

## Set-up of the manual

The need to promote access to remedy is reflected in all steps in the ESG due diligence process: access to remedy needs to have its own place in management policy (step 1); it needs to be included when identifying and prioritising risks (step 2); action is to be taken to prevent or remedy adverse impacts (step 3); these actions are to be monitored (step 4) and reported on (step 5). This manual sets out per due diligence step how an insurer can promote access to remedy for victims of adverse impacts to which the insurer is directly linked.

## Step 1: Policy

**Tip:** Indicate in your ESG policy how you give remediation a place in your investment policy. As has been explained, there are three ways in which an investor may be involved in adverse impacts. This manual deals with the practical expression of your responsibility when you are directly linked, because this will be the case in most cases. When establishing policy, you should set out how you will use your leverage on investee companies, or how your asset manager does so on your behalf. It is nevertheless recommended that you thoroughly review whether there are situations where your responsibility goes even further and where you should lay down in your policy what your responsibilities are at the time that you, as investor, have contributed to adverse impacts (*contributing*). In those cases you have a greater responsibility and you, possibly in your capacity of investor, must yourself enable remediation (and state in your policy how you will do so).

## Example:

“If companies in which *[name of insurer]* invests have caused an adverse impact or have contributed to such, *[name of insurer]* expects the company to provide or contribute to access to remedy for people affected by the adverse impact it. If companies in which *[name of insurer]* invests are directly linked to the adverse impact, *[name of insurer]* expects them to use their leverage to provide access to remedy for people affected by the adverse impact. *[name of insurer]* realises this in practice as follows:

- *[name of insurer]* selects asset managers who pay great attention and care to the elaboration of the engagement policy. This means that if a company is suitable for investment but has nevertheless caused adverse impacts, this company will be guided toward providing access to remedy by means of engagement and voting.
- *[name of insurer]* periodically reviews whether this is appropriately realised. If improvement is possible, this will be discussed with the asset manager. If such discussion does not yield satisfactory results, this could lead to replacement of the asset manager.
- In addition, specific collective engagement activities are supported through the fiduciary asset manager of *[name of insurer]* in order to remedy wider civil society challenges.”<sup>1</sup>

## Step 2: Identification of risks

In step 2 of the due diligence process you identify potential and actual adverse impacts within your investments. When it comes to remediation, it is important to look at the risk that a company has insufficient policy/processes to provide access to remedy in the event of an adverse impact. There are various indicators of this risk, including:

- Companies and sectors that are active in specific risk areas where the chance of human rights violations is significant and where the legal system is weak, indicate a heightened risk. An example of this is in the mining sector in countries with limited protection for employees and the environment or the textile and agricultural sector in countries where frequent use is made of migrant workers who have little to no protection. The [Rule of Law Index](#) can be used to establish an indication of the reliability of national systems of law. It is important to view information provided by NGOs when identifying risks and the need to take remediation measures.
- Remediation policies and measures that investee companies have established themselves also play a role. An important question in this respect is whether investee companies have an effective grievance mechanism (see text box Step 3). This enables local stakeholders to report their concerns about possible adverse impacts to the investee company at an early stage. This helps to prevent adverse impacts from occurring in the first place and remediation becoming an issue. The degree in which an investee company engages in open and transparent reporting on the use of this grievance mechanism and the concomitant measures then become relevant. If investee companies do not have an (effective)

---

<sup>1</sup> ZLM Verzekeringen, ESG investment policy 2021. [Link](#)

grievance mechanism, this indicates an increased risk of adverse impacts and lack of access to remedy in connection with those adverse impacts.

Using the above indicators, identify the risk sectors and companies you invest in. Then establish your priorities: carry out an in-depth investigation and see where the (potential) adverse impacts are most serious and where no effective access to remedy is offered. This is where you start. Insurers who have outsourced their assets can ask their asset manager to include the above indicators in their risk identification process.

It is important that a company carry out its own research in addition to the information provided by data providers. Information of data providers does not always [as of 2022] provide a complete picture of the risks in your investment portfolio. There are a number of reasons for this:

- The information provided by data providers can be based on the material risks to the company and fail to take account of victims;
- The information can lack depth in relation to specific parts of the case, such as ongoing legal proceedings;
- If a company does not report about the case or does not report adequately, it can be difficult to gather sufficient information;
- Not all countries have sufficient public information available about the cases. This may be due to such things as lack of a robust legal system or a lack of democracy.

**Tip:** Exchange information with other investors and, in high risk sectors, look at such things as NGO reports and what these say about the position of victims. This provides additional information about the seriousness of (risks of) wrongdoings and the need for remediation measures for victims.

### Step 3: Prevent and mitigate

The next step is the tackling of the identified (risks of) adverse impacts. Insurers, or the asset managers engaged by them, do this in their engagements with investee companies. Where access to remedy is concerned it is important to ask the investee company how it guarantees this. See also step 2 above. It is important to make a distinction between the *risk* that an adverse impact will occur and the *actual* adverse impact that has occurred. Engagements with investee companies about risks relating to adverse impacts concern prevention: how does the investee company prevent adverse impacts from occurring and how does it guarantee that, if an adverse impact nevertheless does occur, victims have access to remedy? If the risk has manifested itself and adverse impact has occurred, it is of vital importance that engagement occur that focuses on the investee company taking or contributing to remediation measures as soon as possible, so that victims receive reparation. In addition, the investee company must tackle the adverse impact to limit and prevent further damage as much as possible.

**Tip:** ask the following questions in an engagement. Have you outsourced your engagement? Ask your service providers to make the following questions a standard part of the engagement process.

- I. Has the investee company committed in its policy to provide access to remedy to victims in conformity with the OECD Guidelines and UNGPs?
  - a. If so, ask the investee company how it applies its remediation policy in practice (see Questions II and III below);
  - b. If not, insist that the investee company incorporate access to remedy in its policy as soon as possible and anchor it in its systems.
  
- II. Does the investee company have a grievance mechanism in accordance with UNGP 31?
  - a. If so, ask the investee company:
    - o How the grievance mechanism works and how the requirements of UNGP 31 are satisfied (see also the table below);
    - o How stakeholders, including externals/non-employees, can report any concerns and grievances they may have;
    - o How many reports are made annually on average;<sup>2</sup>
    - o How reports are followed up;
    - o What role the management board plays in monitoring the grievances and follow-up actions. This says something about what importance the investee company attaches to this and whether access to remedy has been effectively integrated in the investee company's governance;
    - o How the investee company publicly reports on grievances that have been received and how these were dealt with and resolved.

**Note:** there is a difference between having a grievance mechanism and making access to remedy a reality in practice. Having an effective grievance mechanism in accordance with UNGP 31 therefore need not mean that the investee company has indeed provided effective access to remedy for adverse impacts.

\*See also the two blue tables below with questions that you can ask as an insurer regarding the set-up and working of the grievance mechanism.

- b. If not, insist that the investee company incorporate this in policy as soon as possible and anchor it in its systems, or that it joins a legitimate grievance mechanism.

---

<sup>2</sup> Even if no reports are received, this does not mean there are no adverse impacts. It is generally assumed that a company with a properly functioning grievance mechanism will receive a number of reports per year. The greater the number of reports, the more effective the grievance mechanism.

The table below sets out the criteria of an effective grievance mechanism as laid down in UNGP 31:

<p><b>A Legitimacy:</b> enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;</p> <p><b>B Accessibility:</b> being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;</p> <p><b>C Predictability:</b> providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;</p> <p><b>D Equitability:</b> seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;</p>	<p><b>E Transparency:</b> keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;</p> <p><b>F Rights-compatibility:</b> ensuring that outcomes and remedies accord with internationally-recognized human rights;</p> <p><b>G Dialogue and engagement:</b> consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances;</p> <p><b>H Continuous learning:</b> drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.</p>
---	--

3

---

<sup>3</sup> Rees, Caroline. Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned. CSR Initiative, Harvard Kennedy School, Cambridge, 2011. p. 29 [Link](#)

Questions that an insurer can ask in relation to the assessing of the effectiveness of the set-up of a grievance mechanism:

Question	Comments/Evidence
Did the perspectives of affected stakeholders inform the design of the grievance mechanism?	Evidence of any consultation processes or other venue where stakeholders could provide input
Are user representatives involved in the oversight of the grievance mechanism?	e.g. as part of a second order mechanism involving community reps or as an oversight committee or worker/management committee
Are there clear and predictable processes for how grievances or complaints get addressed?	Evidence of a grievance procedure
Are contractors contractually required to follow the company grievance procedure	Evidence of the standard contracting clause re: grievance management
Has the company a mechanism to deal with the concern of retaliation?	Evidence that anonymous grievances are lodged as well as have been managed effectively The procedure discusses how the company will deal with the risk of retaliation
Are complainants able to be accompanied in the grievance process by a worker representative, an advocate, or other forms of support?	Evidence of communication materials where this is explicitly mentioned
Does the grievance mechanism have an credible and impartial appeal mechanism	Evidence that (some) grievance investigation outcomes change after being appealed
Has the General Manager signed off on the grievance mechanism?	Evidence of the signatory page of the procedure
Do all complaints receive a response from management, either indicating what action was or will be taken or the reasons no further action was taken?	Evidence of examples of signed close out forms
Is there management accountability for the grievance mechanism?	Evidence that senior manager been designated as responsible for responding to complaints Evidence that effectiveness of a GM is linked to a bonus system
Does the company publicly report how it has adapted its approach as a result of grievances	Evidence of communication to this effect

4

---

<sup>4</sup> Discussion paper: Working Group Enabling Remediation. Dutch Banking Agreement 2019 [link](#)

Questions that an insurer can ask in relation to the assessing of the effectiveness of the working of a grievance mechanism:

Question	Comments/Evidence
% cases (not) acknowledged within agreed timeframe	The grievance register Monthly report
Trends in percentage true/false claims	You would want to see a downward trend
# of complaints that remain unresolved for more than 3 months after they were logged	The grievance register. Grievances staying open for > 3months need to have a justification
How does the company know if affected stakeholders (i.e., users and intended users) are satisfied with the process and/or the outcomes?	% of cases close out 'negatively' for outcome but 'positively' for process
How does the company know if the grievance mechanism is working in practice?	Evidence of perception survey's Evidence that the same users are using the grievance mechanism again

5

- III. If adverse impacts have occurred, has the investee company taken remediation measures?
  - a. If so, ask the investee company how the process of providing access to remedy occurred:
    - o In what way was the adverse impact investigated and determined?
    - o How were the victims found and determined and what was the contact with the victims like?
    - o How did the investee company determine whether the victims received adequate remediation?

The above questions concern the *process* of achieving remediation. It is important in this respect to always bear in mind that remediation itself (the *outcome*) can take a multitude of forms in an infinite number of possible contexts; see also the introduction to this paper. In addition to the essential determination that victims must be the focal point in any remediation process, it is very difficult to establish general basic points that remediation must satisfy. The assessment of the *process* to achieve remediation is therefore all the more important for the investor.

- b. If not, insist that the investee company take action as soon as possible to (1) determine the adverse impact and who the victims are and (2) to take remediation measures. This insistence can take place in engagement talks, but also by means of submitting or supporting resolutions during shareholders' meetings (which may be via your external service provider). A detailed escalation schedule can be found under 'Step 4: Monitoring the approach'.

**Example of resolutions submitted in relation to remediation:** *during shareholders' meetings of the Swedish oil company Lundin (involved in serious human rights violations during the civil war in Sudan), resolutions were submitted at different times which called for remediation for the victims and for a completely open and honest cooperation with the investigation and litigation. Contact PAX for more information regarding Lundin, the resolutions and the lawsuit<sup>6</sup>.*

<sup>5</sup> Discussion paper: Working Group Enabling Remediation. Dutch Banking Agreement 2019 [link](#)

<sup>6</sup> The resolutions are available on this site: [Company Statements - Lundin: Sudan Legal Case \(lundinsudanlegalcase.com\)](#)

## Legal procedures

It often turns out in practice that investee companies do not wish to have discussions with insurers regarding wrongdoing if a legal procedure is ongoing between the investee company and the victims. This makes engagement difficult. For example, the investee company will say it does not wish to make any statements regarding the case, as this could influence the legal proceedings. Waiting for the outcome of such proceedings can nevertheless take a long time and the wrongdoing will be left unresolved in the interim and the stakeholders will not receive justice.

Although a lawsuit may at first instance appear to be a step on the road to justice, this is far from always the case. A legal procedure often arises when companies deny that they are responsible. Victims encounter financial and evidentiary obstacles and risk harassment when pointing out wrongdoing.

In addition, adverse consequences of business activities occur more often in countries where legal systems are prone to corruption, lack of independence or other factors that undermine due process. Even in countries where there is a trustworthy legal system, litigation can take dozens of years, as we have seen in the lawsuits against Shell in the Netherlands and Lundin in Sweden. All that time there was no remediation and the wrongdoing was never resolved.

A lawsuit between investee companies and victims regarding wrongdoing does not detract from insurers' responsibility to exercise their leverage in engagements. Insurers can encourage investee companies to reach an out-of-court settlement, possibly by making use of mediation. This allows a solution to be found more quickly than would be the case in a lawsuit. An impartial expert could be engaged to study the impacts and make a binding advisory opinion. Should engagement not lead to a result, an insurer will have to look at possibilities for increasing and, if necessary, escalating its leverage. A detailed escalation schedule can be found under 'Step 4: Monitoring the approach'.

## Step 4: Monitoring the approach

In case of de facto adverse impacts, an insistence on providing access to remedy is essential for ensuring that victims receive reparation. Should no remediation measures be taken despite this insistence, as an insurer you must see what you can do to increase your leverage on the investee company to ensure that the investee company does indeed provide remediation. If this does not work, you will have to consider other escalation possibilities. As long as the investee company fails to take responsibility, the wrongdoing will not be remedied and victims will be left empty-handed.

**Tip:** when monitoring the approach to de facto adverse impacts, follow the schedule set out below:

- I. Has the investee company taken remediation measures?
  - a. If so:
    - o Ask how the investee company determined that victims felt they had received reparation. See also Step 3 under III.a.
    - o Check whether this resolved the wrongdoing for the victims (see Step 3 under III.a.). If not, see b. for the unresolved part of the wrongdoing.
  - b. If not, insist that the investee company proceed to provide access to remedy as soon as possible. If there is no follow-up, apply the escalation schedule set out below:
    - i. A letter, ideally in cooperation with other investors, to the investee company's management board. This can be either confidentially to the investee company, or publicly to increase pressure;
    - ii. Ask questions at the shareholders' meeting;
    - iii. Submit a shareholders' resolution;
    - iv. Include the concerns in voting policy, for example when (re)appointing directors. Check whether there is sufficient expertise relating to this topic and human rights in general on the management board and whether the current board members have adequately addressed the issue of human rights, including access to remedy.

## Step 5: Reporting

Transparency about your due diligence process, including the element of access to remedy, is important. This allows you to show the outside world *that* you engage in due diligence and precisely *what* you do. It is a way to show accountability for signalled wrongdoing and how the wrongdoing is being dealt with. As insurer you can make it clear, in policy (Step 1) and in external reporting on identified risks (Step 2) and how you tackle and monitor these identified risks (Steps 3 and 4), how access to remedy is a part of the due diligence process.

**Tip:** Use the questions set out below when reporting on the various steps and the way in which access to remedy has been dealt with in those steps:

- What wrongdoing have you identified / what wrongdoing has been reported and how? What actions have you taken as a consequence? What engagements have been conducted in which remediation was the topic of discussion? With which investee companies?

- Per investee company / engagement procedure: what were the considerations for making use of the engagement process, what were the pre-formulated goals and the timeline and what approach was chosen (was the engagement process outsourced or did the investee company take care of the engagement process itself)? How many and what kinds of contact moments have there been?
- Per investee company / engagement process: How was leverage exercised – voting behaviour, supporting shareholders’ resolutions, presenting your own resolutions, and at what point in the process?
- Per investee company / engagement process: what (local) stakeholders have the investee company and the insurer been in contact with regarding the wrongdoing?
- What is the current status of the processes and what are the results? How do you monitor this? It is recommended to highlight a particular case and clearly communicate about the nature and background of the wrongdoing(s), the action that the insurer has taken, the investee company’s response and any consequences the insurer attached to this in terms of its investments in the investee company.
  - In case of a successful engagement: what steps has the investee company taken to offer effective access to remedy? It must be specified to what degree this has been verified by an independent party. See also Step 3 under III.a.
- Has there been exclusion in relation to an (unsuccessful) engagement process? Why/why not? In the event exclusion was utilised, the recommendation is to publish the list of excluded companies, including the reasons for exclusion per company.

It is important that information is properly accessible for all intended target groups, but at the same time it is important to guard against publication of information jeopardising an ongoing engagement process.

If you have outsourced (a part of) your assets to an external asset manager, it is important to include the above questions in talks with that manager. This helps you ensure that you receive all necessary information relating to remediation. It is also a good idea to include agreements on transparency on the above points in the contract with the external asset manager. It is worth recommending to agree with the service provider what information can be publicly reported and what information is confidential, because disclosure could have an adverse effect on the progress of the engagement.

Concretely, this due diligence step means that the insurer or, in case of outsourcing, the service provider, draws up two reports: a confidential, internal report which includes sensitive information on the progress of the engagement talks and a report that is suitable for external publication.

See also the guidelines on transparency published within the Agreement framework written in Dutch:

- [Setting priorities in ESG due diligence](#)
- [Transparency of actions taken after reports of serious wrongdoings](#)
- [Transparency regarding engagement](#)

## Step 6: Access to remedy

In short, for insurers this means that they are generally directly linked to (risks of) adverse impacts. This means that insurers should exercise their leverage to ensure that the company (the *investee*) that is causing or contributing to the wrongdoing, take remediation measures. In special cases, for example in case of a majority stake or fully-owned subsidiary, the insurers contribute to adverse impacts. In that case the insurers themselves have a responsibility to take remediation measures.

Insisting on providing access to remedy recurs in all preceding steps of the due diligence process. This manual only looks at the cases where you, as insurer, are directly linked to adverse impacts. In those cases, you must implement step 6 of the due diligence process by:

- including access to remedy in company policy (Step 1);
- taking account of access to remedy when identifying risks (Step 2);
- making access to remedy part of engagements and insisting on remediation measures (Step 3);
- monitoring remediation measures (Step 4);
- including access to remedy in reporting on identification, approach and monitoring (Step 5).

## Fictitious case: Insurer A, investor in Company X

Below is an example of a fictitious case to illustrate what an insurer who is linked via an investee company to adverse impacts could do to promote remediation.

### Case

Company X is an international mining company that operates large goldmines in a Central African country. When excavating new open-pit mines, various groundwater sources were recently polluted. In the farming villages around the mine, people have fallen seriously ill and a large part of the farmland has fallen into disuse.

Insurer A has shares in Company X.

### Engagement

When screening its portfolio, Insurer A concluded that there had been an adverse impact in which Company X was involved. As part of the due diligence process, Insurer A wants to determine whether effective access to remedy has been provided to the victims. Insurer A draws up a letter for the management of Company X. In this letter Insurer A asks whether Company X can provide insight into the way in which the company deals with its responsibility to provide access to remedy to victims of adverse impacts.

In a response to the letter Company X, only states that it has a grievance mechanism, and that grievances are addressed by means of this mechanism. Insurer A asks more questions: is Company X's policy actually being effectively implemented in conformity with international guidelines? How has Company X worked toward establishing good relationships between the company and the local communities? How does the management board supervise proper consultation between the company and community representatives, in what manner does it do so? How does the company guarantee the inclusivity of those consultations? Can Company X provide insight into what was done with the input of the persons that it consulted? How has Company X made the existence and working of the grievance mechanism known to the local communities in its vicinity? What happens with grievances that are submitted? Can the company demonstrate this?

In addition, Insurer A gathers other information to gain a more complete picture of the situation. NGOs have recently published research reports which show that problems have been occurring for some time relating to Company X's mines. Local communities say that they have complained to employees of Company X about pollution on various occasions, but that they never received any response or were simply turned away at the gate.

On the basis of this information, Insurer A continues to insist that Company X provide effective access to remedy to the affected communities.

### Lawsuit

In the country where Company X's head office is based, a lawsuit has now been brought against the company. The preliminary investigation has started, but is not progressing because Company X refuses to provide transparency regarding the mining excavations and the way in which previous complaints were dealt with. In the meantime, Insurer A continues talks with the management of Company X. The victims have stated they wish to engage in dialogue with Company X regarding what happened and on how the company can contribute to remediation for the victims and the communities whose

farmland has fallen into disuse due to the pollution. Insurer A asks Company X whether this dialogue has taken place and, when it turns out that it has not, insists on the company urgently complying with this request.

### Escalation

As the dialogue has still not taken place, the victims have still not been given access to remedy and the engagement talks do not appear to be producing any concrete results, Insurer A seeks contact with other investors. They decide to submit a joint resolution during Company X's shareholders' meeting. In the resolution, the investors assert that the remediation process is inadequate and request an independent investigation with public recommendations regarding the improvements which the company must carry out in this case and other cases. During the ongoing preliminary investigation, another shareholder addresses the shareholders' meeting and a public statement is read out, which calls upon the management board to actively and openly cooperate with the investigation. Knowing the truth is an important part of remediation for victims. At the same time, transparency and openness will benefit the company's reputation.

A new board member will be (re)appointed during one of the shareholders' meeting. Insurer A, together with other shareholders, steers toward the appointment of a board member with expertise in human rights and remediation.

### Monitoring

Insurer A continues to follow the situation as part of its monitoring. After asking around, it turns out that a dialogue process has finally been started between Company X and the victims and that the company has agreed to contribute to remediation. In a discussion with Company X, Insurer A asked how the process is going: have the communities been consulted as to the form of the remediation and if so, how? How did the company verify whether the remediation was sufficient for the victims?

Insurer A also verifies whether Company X's grievance mechanism has improved in the meantime, and whether the company has established access to remedy in its policy in cases when it causes or contributes to adverse impacts. Insurer A also verifies whether the company is transparent about grievances that are received and in the way in which those grievances are dealt with.

## Fictitious case: Insurers B & C, via asset managers, investors in Company X

### Case

Company X is an international mining company that operates large goldmines in a Central African country. When excavating new open-pit mines, various groundwater sources were recently polluted. In the farming villages around the mine, people have fallen seriously ill and a large part of the farmland has fallen into disuse.

Insurer B and Insurer C are investors in Company X. The investments of both insurers are managed by an asset manager. Insurer B has a discretionary mandate. Insurer C invested in Company X via an investment fund.

### Selection process

In the selection process, Insurers B and C noted that the asset managers had incorporated access to remedy in their policy. They reviewed the following questions. Does the asset manager's policy include that the asset manager will exercise its leverage to steer toward remediation when a company in which investments have been made has caused or contributed to adverse impacts? Does the asset manager include the risk indicators mentioned in 'Step 2: Identification of risks' in its screening, in order to turn up risks in the area of access to remedy? The insurers also informed the asset manager that they want the asset manager to include the questions mentioned in 'Step 3: Prevent and limit' in engagements.

### Engagement with asset manager

Both insurers regularly check whether asset managers are ensuring proper realisation and implementation of the policy. They periodically check what adverse impacts have been noted and how the managers can follow up. Insurer B does this in individual talks with its asset manager and Insurer C does this by means of proposing agenda items in participants' meetings, whereby it seeks cooperation with other fund participants to increase its leverage.

An NGO has informed Insurers B and C of the adverse impacts involving Company X. Both insurers would like to assess how the asset managers deal with this wrongdoing in their portfolio and request more information. Once again, Insurer B does this in individual talks with its asset manager and Insurer C during the fund's participants' meeting. They both ask as to the progress of the engagement process. For example, they indicate that engagement must be based on a clear plan of action, whereby agreements, with deadlines, are made with Company X. They also ask the asset manager to include the questions described under 'Step 3: Prevent and limit' in his talks with Company X.

At a certain point in time, both insurers are contacted by Insurer A, which is itself conducting engagement with Company X regarding the wrongdoing. Insurer B contacts its asset manager to urge that he support the resolution that Insurer A proposes submitting. Insurer C does the same with its asset manager, together with other fund participants.

### Monitoring

As part of its monitoring and in the framework of transparency, Insurer B indicates that it would like to receive regular reports from the asset manager regarding the progress of engagement processes with companies whereby adverse impacts have been noted on the basis of the questions described in 'Step 4: Monitoring the approach'.

### Escalation

When the insurers determine that their asset managers are not engaging in adequate follow-up of the wrongdoing, they urge that they must do so in conformity with the policy and/or in conformity with the agreements that have been made. When it turns out that the asset manager does not satisfy the standards set by the insurers, they consider selecting a new asset manager or consider withdrawing from the fund in question.

Insurance Sector  International  
**RBC** | **SER**

SOCIAL AND ECONOMIC COUNCIL  
(SOCIAAL-ECONOMISCHE RAAD)  
Bezuidenhoutseweg 60  
P.O. Box 90405  
2509 LK The Hague  
The Netherlands

T +31 (0)70 3499 525  
E [communicatie@ser.nl](mailto:communicatie@ser.nl)

<https://www.imvoconvenanten.nl/en/insurance>

© 2022, Sociaal-Economische raad