Institute for
Human Rights and Business

Investing the Rights Way: an Engagement Tool

Introduction

Investing the Rights Way: A Guide for Investors on Business and Human Rights[1] supports investors in making human rights an integral part of their environmental, social and governance (ESG) considerations in investment decisions and corporate engagement. The Guide explains how investors can use the widely endorsed *UN Protect, Respect and Remedy Framework* and its implementing principles, the *UN Guiding Principles on Business and Human Rights,* to improve their due diligence and risk assessment of human rights-related risks across their portfolios and as a tool to hold companies more accountable for their social performance.

Human rights risks are not new to investors or companies. The evidence of impacts on people and communities as well as on corporate financial performance are evident in news stories addressing poor working conditions in supply chains, forced evictions from land, child labour in factories, and widespread restrictions on freedom of speech among other abuses. The UN Guiding Principles provide a roadmap for companies on how to "know and show" that they are respecting human rights. Many of the due diligence steps in the UN Guiding Principles will be familiar to both investors and companies. What is new is the emphasis on the formal and systematic integration of human rights considerations into company risk management. However, there is a caveat: as with environmental impact assessments, the UN Guiding Principles require companies to assess the impacts they have on others (in this case on people and their human rights) compared to traditional risk management or due diligence processes which focus primarily, if not exclusively, on risks to the company.

Investors also have a responsibility to respect human rights and should also formally and systematically integrate human rights into their own due diligence processes. This includes mainstream investors as well as responsible investors, as minority and majority shareholders and across all asset classes. The Guide explains how investors can use the UN Guiding Principles as a tool to engage companies about whether they have put the suggested systems in place to identify and respond to the human rights risks they may be creating through their own operations or with their business partners. Companies that implement the UN Guiding Principles on an on-going basis will be better prepared to identify human rights risks in advance and to address them in a systematic and considered way, before they escalate into more serious impacts on people, communities, the company and its investors.

1 The full Guide can be downloaded from: http://www.ihrb.org/pdf/Investing-the-Rights-Way/Investing-the-Rights-Way.pdf

Suggestions on Using the Guide

Investors, managers and service providers can use the Guide in a number of ways:

1. As a basis to engage with companies on human rights, bilaterally or jointly with other investors.

2. To benchmark or rank companies on their human rights performance against their peers.

3. To screen companies in or out of a fund.

4. To explore what lies behind a company's public reporting statements. The Guide's questions should reveal whether a company has the policies and management system(s) to systematically address human rights.

5. To establish whether a fund, investor or company should invest in a particular region, country or sector. The Guide's questions may be used to probe whether companies have carried out appropriate due diligence, and understand the implications of their choices.

6. To engage with Environmental, Social and Governance (ESG) initiatives about human rights issues in an informed manner.

7. As an aid to research. The Guide will help investors and analysts identify new trends and developments on relevant human rights issues.

8. As an aid to advocacy. Investors can draw on the Guide when they evaluate legislation, policies or new international standards.

Questions for Engagement

The questions below have been extracted from each section of the Guide for ease of use and are based on the UN Guiding Principles on Business and Human Rights. They are prefaced with brief supporting explanations of why each step of the corporate responsibility to respect human rights is important to investors.

I. Making a Statement: A Company's Policy Commitment to Human Rights

Why a policy commitment is important to investors:

· The presence of a human rights policy commitment helps investors differentiate between companies that publicly acknowledge their human rights responsibilities and those that do not. It underpins a company's efforts to meet its responsibility to respect rights. It defines the company's ambition, and guides and frames processes that implement the commitment.

· The adoption of a human rights policy commitment indicates that a company has considered the potentially negative impacts of its activity and its business relationships, and ideally discussed these with key stakeholder groups inside and outside the company.

· High-level oversight signals that a company attaches importance to human rights, recognises their significance in terms of governance and accountability, and understands the financial consequences of human rights risks.

· Embedding management of human rights into company processes regularises the handling of human rights issues and makes it more likely that they will be dealt with swiftly and efficiently before potentially escalating into more grievous situations.

Questions to ask or determine:

· *Has the company publicly affirmed that it will address human rights in a policy commitment that is based on an assessment of its potential impacts and is endorsed at the most senior level?*

· *Who has oversight of the policy commitment and due diligence process?*

· *Is the commitment integrated in the overall risk management system of the company and supported by internal policies, procedures, budgets and assigned across relevant functions of the company?*

II. From Commitment to Action: Human Rights Due Diligence

a. Human Rights Due Diligence Overview

Why human rights due diligence processes are important to investors:

· Human rights due diligence processes can and should be incorporated into a company's overall risk-management system. They show that companies are actively taking steps to determine and address human rights risks to people and their related reputational, financial, and operational risks to the company.

· They help companies to comply with international and domestic law. Companies often grow by operational expansion or acquisitions in other legal jurisdictions. Companies that fail to conduct human rights due diligence may not identify and manage their exposure to new human rights risks, especially in jurisdictions where the legal system or enforcement is weak.

· They can help companies to: build relationships with stakeholders and engage positively with local communities; establish a "social license" to operate; strengthen relations with employees, consumers and partners; and demonstrate leadership in the area of risk management.

· They can enable a company to access new markets that it might otherwise avoid on grounds of risk by providing a process for appropriately managing operations in higher risk zones, thereby giving them a competitive advantage.

Questions to ask or determine:

· *Has the company developed a human rights due diligence process to implement its policy commitment and assess its impacts? Is the process initiated early so that results can be incorporated into decision-making? Does it assess the company's potential impact on people? If an urgent human rights problem arises, do the company's procedures prevent its involvement or enable it to address human rights abuses immediately?*

· *Does the due diligence process enable the company to manage the complexity of its business environment, including its business relationships (e.g. conflict zones, countries with poor human rights records, emerging markets, etc.)?*

· *Does the company have a process for carrying out periodic assessments? Does it re-assess when it makes significant new transactions, when it creates important new relationships, or when its operating environment changes in important ways?*

- *Does the process examine potential negative impacts that are directly linked to it by the company's business relationships, such as in its supply chain, mergers and acquisitions, joint ventures, franchising, or licensing? What steps does the company take to encourage or require its business partners to conduct their own human rights due diligence?*

b. Involving Stakeholders and Experts in Human Rights Due Diligence

Why consultation is important to investors:

· A company that draws on human rights expertise shows that it takes human rights risks seriously; and its due diligence processes are more likely to be effective.

· External consultation reassures investors that a company bases its human rights policies on a diversity of perspectives, including the views of people who may be affected by its activities and relationships. It is evidence that a company understands its stakeholders, including those it affects.

· Consultation with potentially affected parties early on enables a company to address their concerns before negative impacts or complaints become serious or irreparable. Many problems can be resolved if addressed promptly, for example by amending a project's design. Such actions can also reduce the risk of local or international protest, which can disrupt company operations.

Questions to ask or determine:

- *Does the company possess the human rights expertise and capacity it needs to carry out human rights due diligence? Is it making appropriate use of external expertise?*
- *Does the company identify on an ongoing basis potentially affected stakeholders and involve them in its human rights due diligence in a meaningful way?*
- *How does the company ensure that its consultation efforts include all relevant parties and that its processes are inclusive and accessible to relevant groups, including those who may be particularly vulnerable or at risk?*
- *Does the company participate in multi-stakeholder initiatives or other sector initiatives that address human rights issues?*

c. Integrating Human Rights Due Diligence into Company Processes

Why integration into company management systems is important to investors:

· Sound human rights due diligence will result in operational changes that will minimise future business risks and impacts to stakeholders, therefore making the company a more attractive investment.

· Given that a company will often be exposed to risks through its business relationships, systematically addressing these issues early on with business partners can help reduce risk to people and the company. This approach multiplies the uptake of the responsibility to respect throughout value chains, contributing to a more level playing field.

Questions to ask or determine:

- *Does the company integrate the results of its human rights due diligence into its business decisions and operations, and does it take action at an early stage?*
- *Does the company integrate due diligence findings to influence the conduct of its business partners?*
- *When the company's due diligence reveals that negative human rights impacts are likely, are significant findings reported to senior management and the Board? If so, what operational and policy decisions do senior managers and the Board take in response?*

d. Tracking Human Rights Performance

Why tracking performance is important to investors:

· Tracking effectiveness demonstrates to investors and other stakeholders that a company has developed and implements appropriate systems and procedures to minimise human rights impacts.

· Tracking helps to identify patterns of impacts where remedial action is needed, and assists managers to establish goals and targets for reducing negative impacts in the future and to assess trends over time.

· Tracking, and the communication of performance to affected stakeholders, builds accountability at the operational level, close to affected stakeholders.

· Tracking, and eventual disclosure, are an important tool for benchmarking companies against peers.

Questions to ask or determine:

- *Does the company apply qualitative and quantitative indicators to evaluate its human rights performance? Have these been developed with the participation of affected stakeholders?*
- *Does the company employ a sound monitoring system to track how it handles human rights impacts across its operations?*

e. Communicating about Human Rights Impacts and Responses

Why communication is important to investors:

- A company that reports on its human rights impacts demonstrates that it takes responsibility for these impacts and is accountable to investors and other stakeholders.
- Investors largely rely on corporate reports to assess a company's performance on human rights.

Questions to ask or determine:

- *Does the company communicate its results locally to stakeholders?*
- *Does the company report formally on its human rights impacts and responses? If it does, is the company's report informed by relevant reporting standards and specific human rights performance indicators?*

III. Righting the Wrong: Remedies and Operational Level Grievance Mechanisms

Why grievance mechanisms at operational level are important to investors:

- They show that a company's systems enable it to identify but also track and address allegations of human rights abuse. They provide companies and investors with an early warning system for monitoring human rights performance.
- They enable a company to tackle problems before they generate legal penalties, blockades, protests, or other reputational, financial or operational costs.
- They give investors access to third party, objective information that indicates whether businesses are properly managing their risks and have learned from past problems.
- They can promote transparency and disclosure (although it may not always be appropriate to disclose information about grievance resolution).

Questions to ask or determine:

- *Has the company developed accessible and effective grievance mechanisms at operational level to address human rights issues raised by workers or affected stakeholders?*
- *Does the company's grievance mechanism satisfy the UN Guiding Principles' effectiveness criteria?*
- *What is the company doing with the information and lessons it obtains from its grievance mechanisms? Does it track information over time to identify trends, improve its procedures, or report to stakeholders and investors?*

In collaboration with:

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