

# Case study: Extractives and human rights

A case study for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide



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# Case study: Extractives and human rights

**A case study for the Dutch Fair Bank Guide  
and the Dutch Fair Insurance Guide**

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## Summary

In the case studies executed for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, Profundo analyses a number of times per year how the selected banks and/or insurers let sustainability standards play a role in their decision making process on investments and financial services. This case study on “Extractive companies and human rights” is the first case study that was contracted jointly by the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide.

## Background

Since the global scope and influence of companies have increased strongly over the last decades, their responsibilities for the protection of human rights have also increased considerably. Company activities may have both a positive and negative impact on human rights. The ways in which a company treats its employees, how it structures and governs production processes, which commodities and services it is buying, how it is operating in the local community, how it deals with indigenous people, which use is made of security companies and the kind of essential public services they offer, can all have both positive and negative impacts on human rights. Also, how companies cooperate with governments and controlling authorities may have both positive and negative impacts on the compliance with human rights in the region they operate in.

Financial institutions, as participants in society, have the responsibility to respect human rights in all their activities. This responsibility encompasses their own activities as well as the activities of companies they invest in. By lending funds to companies, by underwriting share and bond issuances, and by buying shares and bonds, banks and insurers facilitate the activities of companies in different ways. By doing so, they can enhance the financial position of companies that respect human rights properly or they can support companies that are involved in violating human rights.

The responsibility of financial institutions is, however, not limited to the selection of companies they decide to invest in or provide financial services to. As shareholders and creditors, financial institutions can also exert influence on the companies they have already invested in. As such, they are in the position to bring human rights to the attention of companies and stimulate them to improve their behaviour with regard to human rights. In this way financial institutions can contribute to preventing and ending human rights violations.

To describe more clearly what is expected from companies in the field of human rights, professor John Ruggie was appointed as the “Special Representative of the Secretary-General of the United Nations on the issue of Human Rights and Transnational Corporations” in July 2005. Ruggie’s final report was published in March 2011. It contains the *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*.

Although these *Guiding Principles on Business and Human Rights* do not specifically describe the role of financial institutions, they do indicate that “all business enterprises have the same responsibility to respect human rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.” As financial institutions are business enterprises, the *Guiding Principles* apply to financial institutions as well. However, what exactly the *Guiding Principles* do expect from a financial institution depends on both the seriousness of the violation of human rights and on the way in which the financial institution is involved in this violation.

## Research framework

The research objective of this case study is to assess to what extent 16 financial institutions, selected for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, comply to the “responsibility to respect human rights”, which is laid down in the *Guiding Principles*, with regard to their investments.

To this end we assessed, using publicly available sources, whether these 16 financial institutions maintain financial relations with ten selected extractive companies. These ten companies have been selected since there are either indications of their involvement or their association with severe violations of human rights over the last four years (1 July 2009 – 1 July 2013), or of a duty to restore the damages due to prior violations of human rights in that same period. The following ten companies were selected:

1. Barrick Gold	Canada
2. Freeport-McMoran Copper & Gold	United States of America
3. Glencore Xstrata	Switzerland
4. Goldcorp	Canada
5. Oil and Natural Gas Corporation (ONGC)	India
6. PetroChina / CNPC	China
7. Posco	South-Korea
8. Royal Dutch Shell	The Netherlands
9. Trafigura	The Netherlands
10. Vedanta Resources	United Kingdom

One way in which financial institutions may use their influence on the behaviour of companies with regard to human rights, is by *not* investing in companies structurally violating human rights. We have checked whether financial institutions that did not have financial relations with the selected extractive companies, had decided to not get involved deliberately, as a result of their sustainable investment policies.

Regarding the financial institutions who did have financial relations with the ten extractive companies, we have researched whether, and if so, how, they have made use of their influence on the companies’ behaviour with regard to human rights. Specifically, we analysed to what extent they made use of the following instruments: screening, voting, engagement and exclusion. These instruments are defined as followed:

- Screening is analysing in what way (potential) investments may have negative effects on human rights. Based on this analysis a decision can be taken whether or not to invest and - when a decision is taken to invest - if additional measures are necessary to try to tackle or prevent negative effects on human rights.
- Engagement is a critical dialogue between a company’s management and board of directors on one side and investors in the company on the other. By actively engaging in a discussion with the company, financial institutions may obtain information and exert influence on the company’s behaviour.
- Voting is giving one’s vote to each of the issues which are discussed at the Annual Shareholders’ Meeting of a company.
- Exclusion means restricting or completely excluding investments in a certain company, after it has become clear that this particular company, or some of its activities, do not comply to the financial institution’s human rights policy.

To evaluate these policies, we have done interviews with financial institutions that maintain financial relations with the selected companies. In these interviews the instruments financial institutions use to guarantee that human rights are respected by extractive companies were discussed. As a principle, financial institutions were asked to support their answers with screening reports, accounts of discussions, progress reports and/or other specific documents of the company.

We assessed the financial institutions' activities by comparing the research results with a framework of 22 predetermined elements. Every single financial institution got one, two or three scores, depending on the kind of financial relations found between the financial institution and the companies: the first is a score on bank investments and services, the second one concerns insurance investments and the third focusses on asset management activities.

### Research group

The 16 financial institutions that were researched in this case study were selected for the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide. The following 10 banking groups, including the brand names under which they operate in the Netherlands, have been selected for the Fair Bank Guide:

#### Banking groups selected for the Fair Bank Guide

Banking group	Brand names
ABN Amro	ABN Amro Bank, MoneYou
Aegon	Aegon Bank, Knab
ASN Bank	ASN Bank
Delta Lloyd	Delta Lloyd Bank
ING	ING Bank, Nationale-Nederlanden Bank, WestlandUtrecht Bank
NIBC	NIBC Bank
Rabobank	Rabobank, Friesland Bank
SNS Reaal	SNS Bank, RegioBank
Triodos	Triodos Bank
Van Lanschot	Van Lanschot

For the Dutch Fair Insurance Guide the following 10 insurance groups, including the brand names under which they operate in the Netherlands, were selected:

#### Insurance groups selected for the Dutch Fair Insurance Guide

Insurance group	Brand names
Achmea	Achmea, Agis, Avéro, Centraal Beheer, FBTO, Inshared, Interpolis, OZF, Prolife, Syntrus, Woonfonds, Zilveren Kruis
Aegon	Aegon, Kroodle, Optas
Allianz	Allianz, Allsecur, London Verzekeringen, Royal Nederland, Zwolsche Algemeene
APG	Loyalis
ASR Nederland	Ardanta, a.s.r., Budgio, Crisper, De Amersfoortse, Ditzo, Europeesche Verzekeringen

Insurance group	Brand names
Delta Lloyd	ABN Amro Verzekeringen, Be Frank, Delta Lloyd, Erasmus Leven, Nationaal Spaarfonds, Ohra
Generali	Generali
ING	AZL, ING, Movir, Nationale-Nederlanden
Legal & General	Legal & General
SNS Reaal	Proteq, Reaal, Zelf, Zwitserleven

Four of the selected banking and insurance groups are assessed by both the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide. These banking and insurance groups are Aegon, Delta Lloyd, ING and SNS Reaal. Thus, in total 16 financial institutions were researched in this study.

### Research results

The 16 financial institutions researched, together have invested billions of euros in the ten selected extractive companies. Within this group of 16 financial institutions the biggest investments were made by the following banking and insurance groups:

- ING Bank and Rabobank were the biggest providers of loans to the selected extractive companies over the last four years. They invested respectively € 2.8 billion and € 1.4 billion in the ten companies.
- Legal & General is the biggest shareholder, owning shares with a total value of € 5.8 billion in the ten companies combined. It is followed by Allianz with shareholdings with a total value of € 1.4 billion.
- The most important holders of bonds issued by the ten companies are Allianz (€ 717 million) and ING Group (€ 444 million).

Among the 16 financial institutions, only ASN Bank, NIBC and Triodos do not maintain any financial relation with the ten selected companies. NIBC is not active in the extractive sector for strategic reasons. Therefore, it has not been included in this case study. The asset managers of ASN and Triodos have pointed out that the fact that they do not invest in the ten selected companies is a direct consequence of their sustainable investment policy. This has been researched in this case study, by testing the asset management activities of the two banks with regard to some of the assessment elements.

Four out of the 16 financial institutions did not cooperate with this case study. These are: Allianz, Delta Lloyd, Generali and Legal & General.

As NIBC was not included in the case study and 4 financial institutions did not cooperate, we have done interviews with 11 financial institutions. We have asked them how they exert influence in order to make a positive contribution to the behaviour of companies with regard to human rights. We have also asked whether they make use of the following instruments: screening, voting, engagement and exclusion.

We discussed asset management activities with 9 of the financial institutions, bank services and investments with 3 financial institutions and insurance investments with 6 financial institutions.

From these interviews we can conclude that all of the 11 financial institutions that were researched, except for the asset management division of ABN Amro, have been able to show that they structurally screen their (potential) investments, based on human rights criteria. They usually do this using company analyses which they buy from external research providers.



However, a negative conclusion with regard to a company's behaviour concerning human rights does not always lead to a negative investment decision. Less than 50% of the banks, insurers and asset managers exclude companies as a result of negative outcome of the screening process.

A negative outcome of the screening process does, however, does stimulate most of the financial institutions that we have researched to use their influence on the companies they invest in by entering into engagement. A large majority of the researched financial institutions, about 90%, have shown that they enter into discussions with some of the companies. These discussions deal with the way these companies take responsibility with regard to respecting human rights.

The financial institutions which own shares of the selected companies, actively make use of the right to vote on shareholder resolutions. More than 50% of the financial institutions lay down specific measures for the way they take responsibility regarding human rights.

However, this case study also shows that the engagement processes are often rather free of obligations. Less than 25% of the financial institutions end the financial relation within a reasonable term when it turns out to be impossible to come to agreements with the extractive company or when the company does not comply with the agreements made.

73% of the researched banks, insurers and asset managers focus, when they use the instruments of screening or engagement, mainly on stimulating extractive companies to implement policies and take procedural measures. The agreements they make usually concern the framing of human rights policies or procedural measures. Only one third of the financial institutions discuss with the companies restoring damages and compensation for victims when human rights violations have taken place. And only 10% of the financial institutions actually come to specific agreements on these topics.

We get a similar picture with regard to how seriously financial institutions look at the results of the policies which companies have implemented, or measures that have been taken in order to respect human rights. One third of the researched financial institutions discusses the desired effect of policy and procedural measures in the engagement process. SNS Reaal is the only financial institution that has been able to show that they set clear goals with regard to the desired impact that companies' activities have on human rights.

### **Bank investments**

Many banking groups are not able, or do not want to, show certain documents on companies due to the client confidentiality which needs to be respected between them and the companies they invest in. For this reason, banks were allowed to show de-identified documents. Banks have been granted scores for specific elements if they were able to show at least two de-identified documents which indicated that the bank meets the required element. As this methodology differs from the methodology used for assessing asset management and insurance investments, the scores for bank investments cannot be properly compared with those for asset management and insurance investments.

On the basis of the documentation provided it was not possible to determine whether ABN Amro Bank, ING Bank and Rabobank applied screening and engagement to the ten selected companies. Nevertheless each of these three banks have made clear that they pay attention to the impact of their clients' activities on human rights in their screening and engagement processes. Furthermore, ABN Amro Bank and ING Bank both provided insight into the kind of the engagement trajectories they set up with their business clients active in the extractive industries. Moreover, ING Bank has also shown that agreements on human rights have sometimes been included in credit agreements. As a result ABN Amro Bank scores 6 points and ING Bank scores 7 points regarding their bank investments.

Rabobank did not provide de-identified reports. Consequently it was impossible to assess most elements. As a result, Rabobank scores 3 points, which is well below average.

### Asset management

The nine asset managers we have interviewed take a leading position in this research, by actively taking responsibility for human rights. They score 6.6 on average.

Yet there are great differences amongst the various asset managers. While the asset managers of ABN Amro and ING score very low, 1 point and 3 points respectively, the other asset managers manage to gain sufficient or even outstanding scores. The asset managers of APG and Aegon both score 6, Achmea asset management scores 7 points, the asset manager of Van Lanschot scores 8 and the asset managers of ASN, SNS Reaal and Triodos manage to score 10 points.

By engaging with nearly all of the selected companies they invest in, Aegon, Achmea and APG show that they take their responsibility with regard to human rights seriously. The asset manager at Van Lanschot invests in only one of the selected companies. In this particular case, Van Lanschot engages with the company and tries to come to clear agreements with regard to human rights. Van Lanschot also engages with the companies in which they invest through externally managed funds. The asset manager of SNS Reaal sets clear goals prior to the engagement process, and tries to reach the defined goals by means of clear agreements with companies. To this end, SNS Asset Management screens (potential) investments thoroughly by means of a comprehensive policy document focused on the mining, oil and gas sector.

The asset managers of ASN and Triodos apply a methodology based on inclusion of suitable investments. This means that only companies that live up to their criteria for sustainable investments are included in their investment universe. The list of these companies is open to the public. ASN and Triodos only invest in companies that are included in this universe. None of the ten selected companies complies with the ASN and Triodos sustainability and human rights criteria. Therefore none of the ten selected companies was included in the ASN and Triodos investment universes.

### Insurance investments

The six insurance companies that we interviewed only just score sufficiently. They scored 5.7 points on average. However, as with asset management, there are great differences amongst the insurance companies.

SNS Reaal received the highest score due to its consistent use of screening, engagement and exclusion at a high level. The insurance company of SNS Reaal scores 10 points. The insurance companies of ING and APG lag far behind. Both insurance groups score no more than 3 points for their insurance investments. At Loyalis, the insurance company of APG, this is due to the fact that no engagement is applied for its externally managed stocks. ING Insurance Management only enters into engagement discussions with a minority of the

companies with whom it maintains business relations.

The insurance companies of Achmea (7), ASR (7) and Aegon (7) take their responsibilities concerning human rights seriously, as is indicated by their scores. Regarding its internally managed funds, ASR does not invest in the selected companies at all, as these companies do not meet the requirements of the ASR sustainability and human rights policy. Nevertheless, ASR fails to score maximum points due to investments in the selected companies by an externally managed ASR fund that is not offered actively to clients anymore.

### No cooperation with the case study

Four financial institutions have not cooperated with this case study. These are Allianz, Delta Lloyd, Generali and Legal & General. Delta Lloyd stated that it did not want to cooperate. Legal & General Nederland pointed out that it was not able to cooperate. The general information it has provided was insufficient to make a proper assessment. Allianz and Generali have not responded at all to repeated requests for cooperation.

For this reason these four insurance companies score 1 point in the categories where investments were found, i.e. asset management and insurance investments. This is in accordance with the previously agreed assessment methodology.

For these insurance companies we have identified investments in the selected extractive companies. Allianz and Legal & General even turned out to be the largest shareholders in the ten selected companies among the studied financial institutions.

### Overview of scores

The following table provides an overview of the scores of the 10 banking groups.

#### Overview of scores per banking group

Banking group	Bank investments	Asset management
ABN Amro	6	1
Aegon		6
ASN		10
Delta Lloyd		1
ING	7	3
NIBC		
Rabobank	3	
SNS Reaal		10
Triodos		10
Van Lanschot		8

The following table provides an overview of the scores of the 10 insurance groups.

### Overview scores per insurance group

Insurance group	Insurance group	Asset management
Achmea	7	7
Aegon	7	6
Allianz	1	1
APG (Loyalis)	3	6
ASR	7	
Delta Lloyd	1	1
Generali	1	1
ING	3	3
Legal & General	1	1
SNS Reaal	10	10

### Commitments

A number of financial institutions have made commitments to improve the implementation of their human rights policies. ABN Amro (bank investments and asset management), ASR, ING Bank (bank investments), Achmea (insurance investments and asset management) and SNS Reaal (insurance investments and asset management) have promised in writing that as of next year, they will make use of more instruments to avoid investing in extractive companies that do not take sufficient responsibility for respecting human rights.

### Recommendations

Based on the results of the 'Extractive Companies and Human Rights' case study, the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide make the following recommendations to the banking and insurance groups that were examined in this research project:

1. Too often, the human rights policies of financial institutions do not apply to all the institution's subsidiaries. Neither do these policies apply to all types of financing. Human rights policies are only convincing when they are applied to all bank services, insurance investments and all sorts of asset management provided by the financial institution.
2. When screening companies, banks, insurance companies and asset managers should pay more attention to the impact of a company's activities on the human rights of affected communities. They should especially focus on the right to information, the right to an adequate standard of living, the right to health and the right to water. Improvements could be made by paying more attention to grievance mechanisms, rehabilitation and compensation.
3. Financial institutions select companies to engage with on the basis of several elements. These elements are: risks, reputation, substance, regional or thematic focus, and amount of assets. This is the accepted practice. However, according to the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, in some situations the impact of the company's activities on human rights is so big that this should get priority while selecting candidates to engage with.

4. Banks, insurance companies and asset managers often only proceed to engage with companies after they have noticed an infringement of their human rights policy or when incidents have taken place. Financial institutions could enhance their influence by engaging with companies when they do not (yet) violate human rights. Such a proactive approach could lead to prevention of violations of human rights.
5. In their engagements with companies banks, insurance companies and asset managers mainly focus on encouraging mining, oil and gas companies and other extractive companies to implement policies and procedural measures to address human rights issues. However, this approach neglects the fact that the result is more important than the process, i.e. companies should have a more positive impact on human rights. This is an important principle that should take a central role in the discussions that financial institutions have with these companies.
6. Banks and insurance companies, and to a lesser extent also asset managers, should set clearer goals as well as create interim goals when engaging with companies. In order to be able to monitor the results, they should use, as often as possible, Key Performance Indicators (KPI). While discussing with companies they should try to come to specific agreements, which focus on actually reaching these goals, with the companies. Using the first results and the fact whether the set goals have been reached (or not), they can evaluate and decide whether they either should end the engagement process or that they could adjust their strategies through means of, for example, cooperation with other financial institutions or entering the discussion at another level.
7. Insurance companies and asset managers do not often apply screening, engagement and exclusion procedures to passive or externally managed funds. The responsibility of a financial institution, however, also applies to these kinds of funds. Although the possibilities for applying screening, engagement and exclusion procedures are different from the possibilities that exist in active or internally managed funds, possibilities do exist. The Dutch Fair Bank Guide and the Dutch Fair Insurance Guide expect that insurance companies and asset managers that choose to invest in passive or externally managed funds should actively make use of these instruments if they wish to continue investing in these kind of funds.
8. Most of the financial institutions choose engagement as their main instrument to exert influence on companies. Engagement certainly can be a strong instrument, but there are situations in which it is not effective or does not make sense. For example when a company is involved in certain activities that will undoubtedly lead to severe violations, or if a company is active in an area that is so vulnerable that it would be unrealistic to believe that violations would not occur. Consequently, in case that an initial screening already points out that the violations of human rights committed by a company are severe and structural, and when it is highly unlikely that corrective measures would be effective, this should be a reason for a financial institution not to invest in, or disinvest from, this particular company. Many financial institutions presently do not use the instrument of exclusion on any meaningful scale.
9. Also when an engagement process has ended without achieving the predetermined goals of engagement, exclusion is hardly ever applied. There are only a few financial institutions that take decisive action to the result of an engagement process. However, without a clear link to (future) investment decisions, an engagement process fails to create needed pressure and can most of the times be regarded as ineffective.
10. Financial institutions should share information. Although the human rights policies of many financial institutions are quite similar, there are quite a few differences with regard to the specific companies whom they have engaged with, and with regard to the ones which they have excluded. If financial institutions would properly coordinate and combine their research and engagement activities, they would not only make better use of their limited capacities, but they would also be able to set up more fruitful engagement processes.

11. Dutch banking groups could and should be a lot more transparent with regard to their investments, engagement processes and exclusions. Without disrespecting the duty of care they have towards clients, they could and should be more transparent in the information they provide to society. More transparency and accountability are required, both regarding their bank services and their asset management activities. They could take the following steps in this regard:
- Publish an annual overview of the number of companies with whom the bank, insurance company or asset manager has exchanged information regarding social and environmental issues (GRI indicator FS10).
  - Publish records of the engagement processes with individual companies or publish a detailed, and externally monitored overview of the goals and success rates of the engagement processes.
  - Publish an overview of the voting behaviour on shareholder resolutions for the shares that the bank or asset manager invests in.
  - Ensure that the annual sustainability report is audited by an independent auditor. This auditor should check whether GRI standards are taken into account and whether there is information in the report regarding each of the GRI criteria. These audits should be more than just a conclusion that there is no reason to believe that the given information would be contrary to the GRI standards. They should also assess whether sufficient information has been provided with regard to decisive criteria (like FS6 and FS10)
12. The Dutch Fair Insurance Guide calls on the four insurance groups who did not wish to cooperate with this research project - Allianz, Delta Lloyd, Generali and Legal & General - to take their clients and other stakeholders, such as many Dutch civilians, seriously. Clients and other stakeholders deserve to know what their money is used for and whether Allianz, Delta Lloyd, Generali and Legal & General pay sufficient attention to human rights with regard to their investments.

## Introduction

In September 2013 the *Fair Insurance Guide* (Eerlijke Verzekeringswijzer) was launched. The Dutch *Fair Insurance Guide* informs consumers about the financing and investment policies and practices of Dutch insurance companies. The *Fair Insurance Guide* continues to build on the methodology of the *Fair Bank Guide* (*Eerlijke Bankwijzer*). This project started in 2009. The foundation was a joint initiative of Amnesty International, FNV (Dutch Trade Union), *Milieudefensie* (Friends of the Earth Netherlands) and Oxfam Novib. The *Dierenbescherming* (Dutch Society for the Protection of Animals) and PAX joined later. The *Fair Bank Guide* informs consumers about the financing and investment policies and practices of Dutch banking groups.

In case studies for the *Fair Bank Guide* and the *Fair Insurance Guide* Profundo analyses the investments and financial services of the selected banks and insurance companies based on practice examples. The case study 'Extractives and Human Rights' is the first to be conducted and jointly commissioned by the *Fair Bank Guide* and the *Fair Insurance Guide*.

Since the global scope and influence of companies have increased strongly over the last decades, their responsibilities for the protection of human rights have also increased considerably. Company activities may have both a positive and negative impact on human rights. The ways in which a company treats its employees, how it structures and governs production processes, which commodities and services it is buying, how it is operating in the local community, how it deals with indigenous people, which use is made of security companies and the kind of essential public services they offer, can all have both positive and negative impacts on human rights. Also, how companies cooperate with governments and controlling authorities may have both positive and negative impacts on the compliance with human rights in the region they operate in.<sup>1</sup>

Financial institutions, as participants in society, have the responsibility to respect human rights in all their activities. This responsibility encompasses their own activities as well as the activities of companies they invest in. By lending funds to companies, by underwriting share and bond issuances, and by buying shares and bonds, banks and insurers facilitate the activities of companies in different ways. By doing so, they can enhance the financial position of companies that respect human rights properly or they can support companies that are involved in violating human rights.

The responsibility of financial institutions is, however, not limited to the selection of companies they decide to invest in or provide financial services to. As shareholders and creditors, financial institutions can also exert influence on the companies they have already invested in. As such, they are in the position to bring human rights to the attention of companies and stimulate them to improve their behaviour with regard to human rights. In this way financial institutions can contribute to preventing and ending human rights violations.<sup>2</sup>

The objective of this case study is to assess whether 16 financial institutions, namely the banking groups and insurance groups that have been selected within the framework of the *Fair Bank Guide* and the *Fair Insurance Guide*, adhere to international standards in the field of human rights with regard to their investment practices, such as those defined in the United Nations Guiding Principles (Guiding Principles). To this effect, this case study has researched to what extent the selected banks and insurance companies, in the business relationships that they maintain with extractive companies, deploy the use of screening, engagement and exclusion to help prevent and solve human rights violations.

This case study concentrates on respecting human rights as described in Chapter 2. The field of Employment rights - including topics such as child labour and forced labour, offering a healthy and safe working environment and dealing with accidents at work (sometimes fatal) - falls outside the scope of this case study.

Within the Project Group for the *Fair Bank Guide* and the *Fair Insurance Guide*, Amnesty International was the first responsible for this case study.

### Contents of this report

- The report starts with three chapters that depict the context of the case study. Chapter 1 elaborates the opportunities and challenges for extractive companies with regard to human rights. Chapter 2 gives a description of the framework of international human rights relevant for this case study. It also describes which relevant guidelines extractive companies can follow to prevent involvement in human rights violations. Chapter 3 discusses the responsibilities and potential impact of financial institutions with regard to human rights.
- Chapter 4 describes the methodology used to arrive at a score for each financial institution.
- Chapter 5 provides a brief profile of the ten selected extractive companies.
- Chapter 6 provides the detailed case study results for the 16 financial institutions researched, with separate paragraphs for each organisation.
- In Chapter 7 the case study results are summarised and conclusions are drawn.
- In Chapter 8 recommendations are made by the *Fair Bank Guide* and the *Fair Insurance Guide* for the 16 financial institutions as well as for other involved parties regarding the way they can use their leverage to provide a positive contribution to the conduct and the impact of companies with respect to human rights.

The chapters 1-7 were written by Profundo, commissioned by the *Fair Bank Guide* and the *Fair Insurance Guide*. The responsibility for chapter 8 does however fully fall to the *Fair Bank Guide* and the *Fair Insurance Guide*.

You can find a summary of the results of this case study on the first pages of this report.

### Limitations of this case study

In this case study Profundo had to deal with the following limitations, which had an impact on the scores assigned:

- Incomplete overview of insurance investments:
  - Public sources were used for analysing the business relationships of the financial institutions with the selected extractive companies. Insurance investments are mostly not made public. Exceptions to this are insurance investments of US subsidiaries of insurance companies. These can be viewed by the public;
  - Found investments that were labelled asset management investments, often appeared to be a combination of insurance investments and asset management investments;
  - As far as Profundo can estimate, the insurance companies and asset management companies that granted their cooperation to this case study were transparent and helpful in supplementing and/or categorising missing data. However, Profundo cannot fully guarantee the correctness and completeness of the financial data provided by the financial institutions.
- Limited evidence for financial institutions:



- Because the assessment of financial institutions takes place based on evidence in the form of documentation provided by the financial institution, the extent to which this evidence was made available is of major influence on the final score. When evidence was missing, it was impossible to make a complete assessment.
- In cases where the financial institution was not prepared to substantiate answers with relevant evidence, the respective answers were not included in their score. This may have had a negative impact on the assessment. It can however not be said with certainty that financial institutions would have achieved a higher score if they made this evidence available.
- Because a lot of banks, given the relationship of trust with their clients in the case of banking services, cannot or don't want to show company specific documents, it was decided in the case of banking services not to stick to the requirement of company specific evidence. When a bank could demonstrate, based on at least two anonymous documents, that they complied with an element, that element was awarded. The scores given within the framework of banking services are therefore not comparable to those for asset management and insurance investments.

## Chapter 1      Impact of extractive companies on human rights

### 1.1      Introduction

Extractive companies have a significant impact on the areas in which they operate. This largely relates to the nature of the company activities, but surely also has to be seen within the political, economic, social and/or technical context in which the company activities take place.

In resource dependent countries, extractive companies can create an economic boost and serve the interest of society. With their activities they create job opportunities and in this way can help to reduce poverty. Also, by leading by example and engaging in dialogue with governments and other companies in the region, extractive companies can encourage adherence to international standards and initiatives in the field of human rights. In addition, extractive companies can grant deprived groups access to society and encourage positive relationships between different social groups.<sup>3</sup> In conflict areas extractive companies can contribute to a more peaceful future, local economic development and better opportunities for the local community.

However, if the yields of the mineral extracting activities insufficiently benefit the host country and the local community, activities of extractive companies will have a negative impact on the macro-economic development of these countries and lead to further disruption of the political, economic and social system. Mining and oil and gas companies are regularly involved in, or even responsible for, severe environmental pollution and severe violations of human rights in the areas surrounding the oil or mineral extracting activities.<sup>4</sup>

This often involves disrespecting human rights of the local community and polluting or deteriorating the environment. This is surely the case if extractive companies operate in 'high risk areas' where human rights are not, or insufficiently, guaranteed by the government of the respective country and where the enforcement of these rights is flawed.

### 1.2      Dealing with the local community

To build a mine or when mining for oil or gas, extractive companies need to have access to the land where these minerals are located. For that reason they need a mining concession from the local or national government for the respective area. Local communities depend on these areas for their food and livelihoods and often these areas have major social, religious or cultural value to them. When this is the case a conflict of interest arises between the local community and the extractive company.

Many of the human rights violations by extractive companies result from dealing inadequately or disrespectfully with local communities. The extent of the problem depends of the extent to which extractive companies provide timely information, consult with, or take into account the interests of local communities, the extent to which they respect their property, livelihoods and resources as well as the extent to which they deal with possible complaints or protests. Severe human rights violations occur when extractive companies start using the territory a local community economically depends on without sufficient compensation, without *Free, Prior and Informed Consent (FPIC)* and/or by using force and violence, tenure or buying up land. Violations can also occur when places or areas with large social, religious or cultural value are being used or damaged.<sup>5</sup>

### 1.3 Deteriorating the environment

Human rights violations and environmental pollution often go hand in hand, particularly when violations of socio-economic rights are concerned (see paragraph 2.1.2). The activities of extractive companies often pollute and harm the soil and water quality. A lot of mining industry activities cover large areas, resulting in large scale destructing of the natural living environment of plants and animals. This is especially the case when mining activities take place in open pits. In addition, mining companies use vast amounts of water to separate the minerals from the mud that is dug-up alongside it. Drilling rigs, oil and gas production facilities, flaring systems and refineries all pollute the soil, the air and the ground and surface water. The activities of extractive companies have an impact long after mining activities have finished. Often, insufficient recovery work is conducted to restore the natural environment. Long term problems - such as the leakage of acid from the mines - can continue polluting the environment for decades or even centuries.<sup>6</sup>

In addition to this 'standard' environmental pollution, accidents also regularly occur; leading to severe environmental damage. As a result of cheap or unsuitable techniques, toxic substances end up in the soil and in waterways due to accidents that occur when storing toxic mining waste and transporting oil through pipe lines. Moreover, production needs lead companies to ecologically vulnerable regions, such as the Amazon or the Polar Regions. In these areas the chance of accidents from heavy rainfall, earthquakes or landslides is far greater and the consequences of a disaster are far harder to combat, making the damage irreversible.<sup>7</sup>

While the adverse effects of environmental damage are case specific, extractive activities always involve problems to surrounding communities. This is because the drinking water, fishing water, water used for sanitation and irrigation and the air and the soil communities depend on becomes polluted. This is why the activities of extractive companies can have a negative impact on the food security and the health of local people, as well as on their sources of income. Consequently, when environmental damage does lead to severe violations of human rights, this mostly concerns the fundamental right to water, the right to food, the right to health or the right to an adequate standard of living.<sup>8</sup>

### 1.4 Operating in 'high risk areas'

Characteristic of countries classified as 'high risk areas' is that human rights are not, or insufficiently, guaranteed by the government of the respective country and that enforcement of these rights is flawed.

There is always a business relationship between an extractive company and a government because essential issues (such as a mining concessions and environmental permits) are obtained from the government. Companies also partially depend on the government when it comes to jurisdictional, health and safety issues. Due to this dependency, the chances of becoming involved as a company, intentionally or unintentionally, in human rights violations in these types of countries is larger than in countries with a stable political or legal system. Consequently, it regularly occurs that companies, in their relationship with public security personnel, cannot guarantee the safety and the fundamental freedoms of their employees as well as the local community. Violence against women also occurs more frequently in high risk areas.

A conflict area is an extreme form of a high risk area as the most severe human rights violations, such as crimes against humanity (genocide, torture and war crimes), occur in these areas. In these countries or areas the government often plays an important role regarding human rights and might even be responsible for human rights violations. Through the business relationship that exists between companies and the government, extractive companies that are active in conflict areas always provide some sort of financial support to the respective government of that conflict area, which in some cases is a totalitarian or corrupt regime. Corporate Social Responsibility and investing in conflict countries are therefore often at odds.

## Chapter 2 Human rights and extractives: guidelines and relevant initiatives

Given the high impact activities of the mineral extracting industry and the complex dynamics of the human rights, governance and environmental context in which extractive companies operate, there is a broad framework of relevant treaties. The focus of this case study is on human rights that are directly influenced by the activities of extractive companies, as described in Chapter 1. To this effect, paragraph 2.1 gives a definition of human rights and elaborates on the international treaties with respect to human rights. Next, paragraph 2.2 briefly elaborates on international law with respect to the rights of vulnerable groups. Paragraph 2.3 discusses guidelines and industry initiatives that extractive companies can implement to guarantee respect for human rights.

### 2.1 Definition of human rights

Human rights are “rights and freedoms inherent to all human beings.”<sup>9</sup> The Universal Declaration of Human Rights (UDHR), which was adopted in 1948 by the United Nations describes human rights as the rights and freedoms of every human being “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”<sup>10</sup>

In total there are approximately one hundred different, generally accepted human rights, which can be described in nine relevant human rights treaties. The International Bill of Rights is considered as the principal international standard of human rights.<sup>11</sup> In the Universal Declaration of Human Rights (UDHR), civil rights, political rights and economic, social and cultural rights (ESC-rights) are distinguished. These rights are further elaborated in the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were both adopted in 1966 and ratified by 150 states. The first article of both UN treaties includes the right to self-determination of all people, as well as the management of resources and the obligations of the state. The individual right to self-determination can be considered as an element of personal freedom and thus as a foundation of human rights. Together the UDHR, ICCPR and the ICESCR form the International Bill of Rights.<sup>12</sup>

#### 2.1.1 Civil rights and political rights

The UN Convention on Civil rights and Political Rights (ICCPR) comprises 55 articles on civil rights and political rights.<sup>13</sup>

Civil rights include the freedom of religion and expression, freedom from torture, freedom from interference with privacy, the right to a fair trial and the protection of minorities. The right to privacy, rights regarding arrest and detention, the right to freedom of the press and the protection against hate speech and discrimination also fall under the civil rights.<sup>14</sup>

The political rights include e.g. the right to vote, the right to participate in governance and the right to form political parties. The ICCPR mentions as a civil right e.g. the free participation to social affairs, to elections and to public services. An important political right concerns the freedom of the press. Combined, the rights from the ICCPR form the ‘classical’ human rights, sometimes also equated to fundamental rights.<sup>15</sup> Many of these human rights are binding.<sup>16</sup>

## 2.1.2 Socio-economic rights

The UN-treaty regarding International Economic, Social and Cultural Rights or ICESCR comprises 31 articles on socio-economic rights, also called basic social rights. ESC rights have to ensure the minimum conditions for a dignified existence, such as the right to work, the right to health and the right to education. The right to work means that people have access to work without discrimination against a reasonable payment, within a safe working environment and with the reasonable limitation of working hours. In addition, everyone has the right to organise into an union and to strike. Everyone has the right to social security.<sup>17</sup>

The ICESCR also mentions the right to (the continuous improvement of) an adequate standard of living as well as to provisions for support in case of an insufficient standard of living. There are currently no generally accepted criteria to determine an adequate standard of living exists and no lower limit is indicated. The right to an adequate standard of living also includes, among other things, the right to water, food, clothes and housing. Water and food have to be available, accessible and have to be of good quality. The right to water is also considered as a self-contained fundamental human right. The right to health refers to the right to a healthy living environment as well as the right to physical and mental health. This includes both the right of autonomy over your own body and health as well as the right to adequate healthcare.<sup>18</sup>

Most of these rights are less binding than those of the ICCPR. A popular vision of socio-economic rights is that they can be considered as fundamental human rights to the extent that they deal with obtaining access and fair chances.<sup>19</sup> In international law, the implementation of socio-economic rights is usually not compulsory. However, a modest shift can be identified, illustrated by enforcing access to cheap medicines against HIV/AIDS (South Africa) and the right to self-determination of street children (Guatemala).<sup>20</sup> Also, the ruling of the Supreme Court in India with regard to Vedanta Resources, where the Court ruled that those most affected by a proposed mine had to have a vote, is an important step in this respect.<sup>21</sup>

## 2.2 Rights of vulnerable groups

Within the broader field of human rights the rights of vulnerable groups, such as women, children, people with disabilities, migrants, indigenous people and people that are discriminated based on ethnicity, caste or race, take a specific position. Vulnerable groups are people who are deprived of rights due to discrimination or misconceptions with respect to skills and capabilities or because they have a dependent status. Companies, when operating with vulnerable groups, should be alert towards discrimination and take specific needs of minorities into account.<sup>22</sup>

### 2.2.1 Rights of women

Women are often vulnerable to human rights violations. This is because in many cases they have no property rights, no land rights and no employment contract, due to which they rarely enjoy protection against the violation of their rights.<sup>23</sup> In 1979 the United Nations established the Convention to Eliminate All Forms of Discrimination Against Women. This convention obliges member states to ban all forms of discrimination against women and goes even further: in all areas, particularly the political, social, economic and cultural fields, policy and legislation has to be established to ensure the full involvement and development of women, so that their human rights and fundamental freedoms are ensured. Article 15, paragraph 2 states that women “(shall have) equal rights to conclude contracts and to administer property. This principle is reaffirmed in Article 16, paragraph 1h.<sup>24</sup>

In the end of 1993, the UN General Assembly adopted a Declaration on the Elimination of All Forms of Violence Against Women.<sup>25</sup> According to the definition of the Declaration, violence against women means “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” These forms of violence are a violation of human rights if the government fails to prevent the violations and fails to prosecute the perpetrators.<sup>26</sup>

## 2.2.2 Rights of indigenous people

For a long time indigenous people in many places of the world have been made submissive and silenced. Even today, they are disproportionately exposed to violations of their civil and political, economic, social and cultural rights, e.g. due to loss of land ownership and deprivation of access to particular areas, loss of culture and the threat to their livelihoods.<sup>27</sup> Indigenous people belong to the most vulnerable groups and are often disproportionately affected by the exploitation of natural resources.

In July 2013, James Anaya, the UN special rapporteur on the rights of indigenous people, stated that the most often applied business model in the extractive industries fails to respect the rights of indigenous communities as the business model is set up in such a way that the involved indigenous communities can only benefit to a limited extent.<sup>28</sup>

Anaya suggests an alternative business model that respects the rights of indigenous people. In the proposed model, indigenous people have to take the initiative to extract raw materials in their area. In addition, they would maintain control over extraction, so the economic activities are in line with the development priorities of the indigenous people. In North America there are already situations where indigenous people have set up their own raw materials company. Some of these companies work together with non-indigenous companies, by setting up joint-ventures as well as other opportunities. These forms of cooperation can offer benefits to both the indigenous communities as well as the non-indigenous company.<sup>29</sup>

At the same time, Anaya insists that indigenous people at all times have the right to refuse the exploitation of natural resources in their territory. Governments and companies have to refrain from putting indigenous people under pressure.<sup>30</sup>

The rights of indigenous people have only been acknowledged since the late eighties. The Convention on Indigenous and Tribal People from 1989, also known as ILO Convention 169, is a convention of the International Labour Organisation (ILO) on indigenous and tribal people in independent countries. This is the principal binding convention with respect to indigenous people, and a forerunner of the Declaration on the Rights of Indigenous People that was adopted within the UN framework in 2007.<sup>31</sup> The Declaration acknowledges the right of indigenous people to self-determination and the protection of their country and living environment. In addition, the Declaration acknowledges the right to maintain, protect and develop the intellectual property of their cultural heritage, traditional knowledge and traditional cultural practices. Therefore, states have to prevent any action “which has the aim or effect of depriving them of their integrity as distinct people, or of their cultural values or ethnic identities”.<sup>32</sup>

The Vienna Declaration and Programme of Action calls upon states to ensure the free and full participation to all aspects of society for indigenous people; in particular the participation in issues and conflicts that are of great interest to them.<sup>33</sup> The previously mentioned UN Declaration on the Rights of Indigenous People also includes the right to full participation and focuses on the importance of fair procedures for conflict solution.<sup>34</sup>

If intended activities will be taking place in people's living environment, all involved communities have to be informed of the intended activities and potential consequences for their land in a timely manner. All communities must also be given the opportunity to participate in a meaningful dialogue.

Based on the special relationship that exists between indigenous communities and the country of their ancestors, international law states that indigenous communities have the right to respond to this intent by means of a negotiation process. This gives them greater influence in decision-making processes, offers them the opportunity to negotiate direct benefits and to speak out in favour or against the plans. This principle is called 'Free, Prior and Informed Consent' (FPIC).

In international law the FPIC principle, among other things, is defined in the Declaration on the Rights of Indigenous People and in the ILO Convention 169.

Article 10 of the Declaration on the Rights of Indigenous People states that "(...) no relocation shall take place without the free, prior and informed consent of the indigenous people concerned and after agreement on just and fair compensation and, where possible, with the option of return."<sup>35</sup>

Equal participation of indigenous women during consultation procedures (based on the FPIC-principle) has to be guaranteed. The Beijing Declaration of Indigenous Women requires that "equal political participation of women in the indigenous and modern structures of socio-political structures and systems at all levels."<sup>36</sup>

## 2.3 Guidelines and initiatives

Although the government of the host country strongly influences the final impact of a company, extractive companies have great influence on the contribution they provide to economic growth, poverty reduction and the extent to which they are involved in human rights violations. With the help of guidelines and industry initiatives, extractive companies can look for new pathways and implementation methods with respect to human rights. Although we acknowledge the relevance of administrative measures and environmental management to prevent human rights violations, in this case study we deliberately exclude standards and initiatives that relate thereto. The focus is on standards and guidelines that have a direct impact on human rights as described in paragraphs 2.2 and 2.3. The two principal overarching standards within this framework are the UN Guiding Principles on Business and Human Rights (Guiding Principles) and the OECD Guidelines for Multinational Companies. In addition a number of specific guidelines with regard to land acquisition, dealing with security forces and operating in conflict areas are discussed.

### 2.3.1 UN Guiding Principles on Business and Human Rights

To more clearly establish what is expected of companies in the field of human rights, within the UN in July 2005, the US professor John Ruggie was appointed as *Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises*. Ruggie was assigned to come up with recommendations that could be supported by companies.<sup>37</sup>

In June 2008, Ruggie presented a policy framework to improve the relationship between companies and human rights: the *Protect, Respect and Remedy framework*. This framework consists of three pillars that mutually enhance one another.<sup>38</sup>



- *Protect*: the state duty to protect against human rights abuses by third parties, including business;
- *Respect*: the corporate responsibility to respect human rights; and;
- *Remedy*: greater access by victims to effective remedy, both judicial and non-judicial.

In the following years, by way of case study and multi-stakeholder consultation, Ruggie and his employees have continued to work on concrete recommendations to implement these three pillars. Ruggie's final report was published in March 2011.<sup>39</sup> This report summarises Ruggie's work in the 2005-2011 period and includes the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." Guiding Principle 15 briefly summarises what companies would have to do to respect human rights within the framework of their responsibility:

- Drafting a policy statement in which the company commits itself to respect human rights;
- Conducting 'human rights due diligence', which means that companies identify the possible adverse human rights effects of their activities; take measures to prevent or mitigate these effects; accounting for how they address these impacts;
- Conducting clear, fair and respectful dialogue with stakeholders;
- Implement complaints mechanisms;
- Setting up processes to achieve recovery of adverse human rights effects caused by the company or where the company contributes to them.

The Human Rights Council of the United Nations formally endorsed the text of the report in June 2011.<sup>40</sup>

### 2.3.2 OECD Guidelines for Multinational Companies

The OECD Guidelines for Multinational Companies are recommendations by governments to multinational companies. They comprise guidelines and standards for responsible business conduct in the field of labour, human, and consumer rights as well as regarding environment and corruption, in line with relevant legislation.<sup>41</sup> According to the guidelines companies have to respect the human rights of those that are influenced by their activities. In the 2011 update, the recommendations have been brought entirely in line with the Ruggie Framework; 'due diligence' is included as a method to avoid and mitigate the risks of adverse effects. The guidelines are voluntary and cannot be enforced by governments. Some governments have set up contact points where stakeholders file a complaint on the conduct of companies.<sup>42</sup>

### 2.3.3 UN Global Compact

The UN Global Compact is an international network of companies that operate under the flag of the United Nations.<sup>43</sup> The UN Global Compact has set up ten principles on human rights, labour rights, the environment and anti-corruption.<sup>44</sup> Companies can endorse, implement and report on the UN Global Compact criteria. In the field of human rights the companies that participate in the UN Global Compact programme endorse the following two principles:

- Companies have to support and respect the protection of internationally determined human rights.
- Companies have to be able to demonstrate that they have no share in violations of human rights.

### 2.3.4 IFC Performance Standards

Since the beginning 2012, the International Finance Corporation, which is part of the World Banking Group that focuses on private sector investments, uses a new *Sustainability Framework* to assess the social and environmental impact of its investments. The *Performance Standards*, which include guidelines for specific themes and industries, are an essential part of this *Environmental and Social Risk Assessment*. There are 3 performance standards relevant to land acquisition and FPIC: <sup>45</sup>

- Performance Standard 1 concerns stakeholder engagement for projects that have a negative impact on indigenous people, stating a company has to ask for Free, Prior and Informed Consent (FPIC). This is described in further detail in Performance Standard 7. With regard to non-indigenous local communities, Performance Standard 1 states that involved parties have to be given the opportunity to participate and that this has to be well documented - also called *Informed Consultation and Participation (IPC)*. <sup>46</sup> *consultation* is a dialogue that has to start on time, where

So in the stakeholder engagement a distinction is made between the local community in a broader sense and indigenous people in a narrower sense (as a vulnerable group within a local community), to the extent that they have to give permission for the go-ahead of a given project. Therefore, in the stakeholder analysis the involved parties have to be carefully identified. The company itself also has to make sure that representatives of local communities represent the views of their communities.

- Performance Standard 5 on “Land Acquisition and Involuntary Resettlement” states: “The client will engage with Affected Communities, including host communities, through the process or stakeholder engagement described in Performance Standard 1.” So Performance Standard 5 refers to the engagement process with involved parties. <sup>47</sup>
- Performance Standard 7 on “Indigenous People” describes, among other things, when there may be indigenous people and under which circumstances the principle of Free, Prior and Informed Consent (FPIC) should be applied. <sup>48</sup>

### 2.3.5 Equator Principles

The Equator Principles are designed to assess a credit application within the framework of project financing. Only projects that meet the ten principles are eligible for financing. Financial institutions choose themselves how and for which projects they apply the principles. <sup>49</sup> All credit applications are classified in three risk categories (A-C). For projects in risk categories A and B the applicant has to go through a *social and environmental risk assessment*, which has to be based on the IFC Performance Standards for projects in non-OECD countries (see above). Principle 5 states that the applicant has to consult the communities involved and in case of significant impact the principle of *Free, Prior and Informed Consent* has to apply. <sup>50</sup>

### 2.3.6 Guidance on Responsible Business in Conflict-Affected and high risk areas

The guideline for responsible business in ‘high risk areas’ and/or conflict countries has been developed by a form of cooperation of UN Global Compact, the Principles for Responsible Investment (PRI) and a group of experts from the business community, the financial industry and civil society. The guideline has been developed for companies that want to respect the ten principles of the Global Compact in ‘high risk areas’ and conflict countries.

The document is split up into four main categories: core activities, relationships of a company with the government, stakeholder engagement and having a positive impact. For each of

these main categories, challenges and opportunities are described and several concrete guidelines have been outlined.<sup>51</sup> In 2013 a follow up report was published in which experiences of companies and investors are described that aim to do responsible business in 'high risk areas' and/or conflict countries.<sup>52</sup>

### **2.3.7 Voluntary Guidelines on the Responsible Governance of Tenure of Land and other Natural Resources**

It is of importance that extractive companies act wisely and responsibly when buying, tenure and/or using land in developing countries. The Committee on World Food Security (CFS) adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (CFS Guidelines) in May 2012 after a participatory process. These guidelines give guidance for good governance in relation to land ownership, land rights and land tenure systems, as well as guidance in terms of women's rights, FPIC and meaningful consultation with communities.<sup>53</sup>

### **2.3.8 Voluntary Principles on Security and Human Rights**

The Voluntary Principles on Security and Human Rights are the result of an international agreement between governments, companies and civil society organisations. They are voluntary guidelines for multinational companies in the extractive industries, based on the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials with the objective to ensure safety, respect for human rights and fundamental freedoms.

The document is split up into three main categories: risk analysis, the relationship with public security personnel and the relationship with private security personnel. For each of these main categories, challenges and opportunities are described and several concrete guidelines have been outlined.<sup>54</sup>

## Chapter 3 Influence of financial institutions on human rights

### 3.1 Responsibilities with regard to human rights

Companies can be financed in different ways: with borrowed capital such as loans, revolving credit, project financing, the issue of bonds and with their own equity by issuing shares. Both through lending money to companies as well as in assisting in the issuing of shares and bonds and by purchasing them, banks and insurance companies, each in their own way, facilitate the activities of these companies. In this manner they can both strengthen the financial position of companies that respect human rights as well as strengthen the financial position of companies who are possibly involved in human rights violations.

The different forms of financing are briefly described below. Banks play an important role in all these forms of financing. Insurance companies finance companies mainly by investments in shares and corporate bonds.

- *Loans*: the easiest way to raise money is to borrow it. In most cases this money is borrowed from commercial banks. Loans can be short or long term. Short term loans have a duration of less than one year. They are mainly used for working capital for the daily activities of a company. Long-term loans have a duration of at least one year, but usually three to ten years. Long-term loans are mainly used to finance expansion plans, which only generate yield in the long term. Long-term loans are often provided by a syndicate, a group of banks brought together by one or more *bookrunners* or *arrangers*.
- *Issuance of shares*: by issuing shares on the stock exchange, a company can increase its own equity. When a company issues shares for the first time, this is called an Initial Public Offering (IPO). If the shares of a company are already being traded on the stock exchange, it is called a secondary issue of shares. Investment banks often underwrite the issuing of shares. This means that the investment banks take over the risk of the company. They buy the company issues for the total amount and are subsequently responsible for selling the shares to other investors (for example asset management companies, pension funds, investment companies or other banks).
- *Issuance of bonds*: issuing bonds is basically splitting up a loan into small pieces and selling each piece separately. Bonds are issued by governments on a large scale, but also by companies. Bonds are sold on the capital market, to private investors and financial institutions. In order to issue bonds, companies often need assistance from one or more investment banks. Just as with the issuing of shares, they underwrite the issue of bonds.
- *Managing of shares*: Financial institutions can buy company shares. This gives the company new equity capital and gives the financial institution a direct influence on the strategy of the company. The scope of this influence depends on the number of shares held.

Four types can be distinguished in the management of shares by financial institutions:

- *Proprietary trading*: trading by the bank on their own account. In this case the shares are held by the bank and thus control is the greatest;
- *Collective investment scheme*: a fund that is set up and managed by the financial institution that invests in shares. A lot of different investors who are the formal owners of the shares participate in the fund, but as it is the bank that actually manages the fund, the bank has great influence;

- *Private banking*: the bank invests money from a wealthy private person in shares. This private person is the owner of the shares, but because the bank actually manages the money, the bank has great influence;
- *Mandates*: the financial institution invests the money of a pension fund or another institutional investor in shares. This investor is the owner of the shares, but because the bank actually manages the money, the bank has great influence.
- *Management of bonds*: Just as with shares, financial institutions can buy and manage company bonds (for themselves or for clients). The difference between managing shares and bonds is that the owner of a bond is not a co-owner of the company.

Through their investments, regardless of the type of financing, financial institutions are related to human rights violations if they have a business relationship with the company that causes the violation. This business relationship exists if they invest in the company, regardless of the size of the investment<sup>i</sup>, as the Dutch Contact Point of the OECD recently concluded in a case concerning investor APG's minority stake in Posco.<sup>55</sup>

According to the OECD guidelines the responsibility to help prevent or mitigate violation comes with the business relationship, even when a financial institution did not cause this violation itself.<sup>56</sup> The Norwegian Contact Point of the OECD also recently stated, in October 2013, that investors with a minority stake in a company bear responsibility for preventing human rights violations. The Norwegian Contact Point makes it clear that no one expects minority investors to provide a solution as that is the responsibility of the company itself. Nevertheless, it is expected that investors use their influence to discuss the situation with the company that violates human rights: "Although minority shareholders may need to exercise more creativity to obtain leverage than majority shareholders, they should bear in mind that leverage is not a mathematical calculation that automatically equates to the percentage of ownership. Leverage can be increased using a range of contractual and non-contractual techniques and exercised alone or together with others, and over a period of time and through different settings."<sup>57</sup> To clarify, an article in the Responsible Investor makes a comparison with supply chain responsibility when analysing the OECD guidelines: financial institutions should accept a certain extent of responsibility for human rights violations of companies they have financed in the same way that companies accept responsibility for possible human rights violations in their supply chain.<sup>58</sup>

So financial institutions have a special responsibility with respect to human rights because they, as shareholders of a company or by way of their mandate or contractual agreements, can influence the companies in which they invest.<sup>59</sup> Due to this, they are able to bring attention to human rights, encourage companies to improve their human rights performance and to prevent human rights violations. If violations have taken place, financial institutions can encourage companies to acknowledge the negative consequences of their activities, repair the damage as much as possible and compensate the victims. In this way, financial institutions can provide a negative or a positive contribution to the conduct of companies with respect to human rights.<sup>60</sup>

### 3.2 Financial institutions and the Guiding Principles

Pursuant to the "Guiding Principles on Business and Human Rights" described in paragraph 2.3.1, financial institutions bear a responsibility to respect human rights, both in their own operational management as well as in their business relationships with the companies they invest in.

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<sup>i</sup> In its statement, the OECD focused on involvement by shareholders. It cannot be concluded that other types of investment do not entail involvement.

Although the Guiding Principles do not specifically elaborate on the role of financial institutions, they do point out that “the responsibility to respect human rights applies fully and equally to all businesses, regardless of the sector in which they operate.”<sup>61</sup> As such the Guiding Principles also apply to financial institutions.

What is expected of a company, in this case a financial institution, depends both on the severity of a human rights violation as well as on the nature of the involvement of the company in the violation at hand. The Guiding Principles state: “the scope of due diligence to meet the corporate responsibility to respect human rights is not a fixed sphere, nor is it based on influence. Rather, it depends on the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those activities.”<sup>62</sup>

Financial institutions also acknowledge that the Guiding Principles should not be seen as purely voluntary guidelines. The Thun Group of Banks is an informal grouping of seven international banks: Barclays, BBVA, Credit Suisse, ING Bank, RBS Group, UBS and UniCredit. In October 2013 the Thun Group of Banks published a discussion paper on the Guiding Principles. The discussion paper explains how human rights policy can be used for retail and private banking, corporate and investment banking and asset management.<sup>63</sup> Spurred by three recent developments, the Thun Group considers the Guiding Principles as ‘law in the making’.<sup>64</sup> The three recent developments are:

- The OECD guidelines and IFC guidelines now explicitly mention the Guiding Principles.
- In October 2011, the European Commission presented a new EU strategy Corporate Social Responsibility 2011-2014. The European Commission states that CSR can no longer be considered as a voluntary company initiative. The new strategy considers the Guiding Principles as a minimum standard for all European companies. The EU strategy states that investments should also fall under CSR policy.
- In April 2012 the EU and the United States accepted seven principles on responsible investment. The principles refer to the OECD guidelines.

As a result of this, the Thun Group states that Guiding Principles 16 - 21 apply to financial institutions. These Principles are further elaborated in paragraph 3.3.

### **3.3 Instruments to prevent involvement in human rights violations**

Principle 15 of the Guiding Principles states the three activities that companies could undertake to give meaning to their responsibility to respect human rights. In the principles 16 - 21 these three activities are described further.<sup>65</sup> How financial institutions could apply these principles in relationship to the companies they grant financial services to is described in the following paragraphs.

#### **3.3.1 Human rights policy**

The financial institution could draft a policy statement in which the organisation commits itself to respect human rights. According to principle 16 of the Guiding Principles this declaration has to:

- be approved at the highest level of the company;
- be based on relevant internal and/or external expertise;
- clarify what the company, regarding human rights, expects of its personnel, business partners and other parties that are directly linked to its activities, products or services;
- be publicly available and be both internally as well as externally communicated to personnel, business partners and other relevant parties;

- be further elaborated in an operational policy and procedures that are required to anchor the policy statement throughout the entire company.<sup>66</sup>

As such the policy statement of the financial institution also has to clarify what the financial institution expects from the companies to which it has granted financial services. In turn, these expectations would have to be based on the three requirements the Guiding Principles expects of the companies: drafting a policy statement, conducting human rights due diligence and establishing processes for recovery of adverse effects.

### 3.3.2 Screening

Just like other companies, financial institutions would also have to set up a screening process to identify, prevent and mitigate the adverse effects of their activities on human rights (Guiding Principle 17). This is also called human rights due diligence, which can consist of the following elements:

- Identifying and assessing the current and potential adverse human rights effects in which they can be involved through their own activities or through the activities of their business relationships. This process is called an *human rights impact assessment* (GP 18);
- The results of the human rights impact assessment have to be integrated with relevant internal functions and processes and appropriate measures have to be taken (GP 19);
- The implemented measures have to be adhered to in order to determine whether the adverse human rights effects have been effectively addressed (GP 20);
- Reporting externally on the measures that have been taken to address adverse human rights effects (GP 21).<sup>67</sup>

For financial institutions this means that they, or an external data provider, make a human rights impact assessment of their portfolio of loans, investments and other financial services. In this way, they are able to analyse which companies they grant financial services to possibly have adverse effects on human rights through their activities. They then have to assess in which industries and countries the risk of such adverse effects occurring is high. Based on this analysis they can determine for which companies it is necessary to take additional measures to try to address or prevent adverse effects on human rights.

This means that the financial institution, for all companies they invest in or to which they grant financial services, will have to assess whether the company takes its responsibility to respect human rights seriously. The financial institution does not have to conduct human rights due diligence themselves for the activities of these companies. But the financial institution does have to assess whether this process has been set up properly by the respective company. This check is best included as standard in procedures and company processes. The intensity of the check may differ, depending of the determined impact on human rights or the risks that are associated with to a given industry or country.

When the financial institution does identify, prevent and mitigate the adverse effects on human rights it is ideally controlled by an internal check and monitoring system. Internal procedures with respect to clients (Know Your Customer, KYC), compliance and risk management will have to be adapted to this. When it appears that there is invested in, or financial services are granted to companies that do not take their responsibility to respect human rights seriously, the internal control and monitoring system has to ensure that the response of the financial institution is adequate.

### 3.3.3 Engagement

A Eurosif study (September 2013) describes engagement by financial institutions as the dialogue between management and directors of a company on the one hand and investors in that company on the other. By proactively entering into dialogue with a company, financial institutions can obtain information and influence the conduct of that company. This way, they can contribute to improved sustainability performance.<sup>68</sup>

Also, the UK Financial Reporting Council's UK Stewardship Code attaches great importance to engagement as part of *stewardship* because it protects and increases the value of a company, which ultimately also benefits the owner.<sup>69</sup>

Engagement, or entering into dialogue with a company with which a business relationship is maintained, can proactively or reactively be deployed by one financial institution or by a collaboration of several financial institutions.

Eurosif distinguishes the following phases in the engagement process:<sup>70</sup>

- Defining: write a policy for engagement, including objectives and subject;
- Observing: identify companies with a risk and select those that will be eligible for engagement;
- Acting: set reasonable objectives and a corresponding strategy for each company and start with engagement;
- Responding: after the first results, evaluate whether the strategy has to be adjusted (further engaging, collaboration with other financial institutions) or that the engagement process should be terminated;
- Communicating: measure the results and communicate them to clients and other stakeholders.

With respect to human rights, engagement is mainly relevant when it is apparent that a company does not give sufficient attention to human rights, the company has not properly conducted a human rights due diligence process or the context in which a company operates or intends to operate imposes large or additional human rights risks. By way of dialogue, a financial institution can encourage a company in such a case to take its responsibility to respect human rights seriously. The different treaties, guidelines and initiatives, as described in Chapter 2, can serve as a basis for dialogue and can help investors to communicate clear expectations to the companies.

When it appears that there is invested in, or financial services have been granted to companies that, due to their actions or omissions have caused adverse effects on or contributed to human rights violations, it is important that there is clarity regarding the causes of violations and the way a company wants to prevent these violations in the future. In addition, it is important that the respective companies set up legitimate processes to recover these adverse effects or participate in these processes (Guiding Principle 21). For financial institutions this means on the one hand that they are informed by a reactive engagement process with the involved companies on the nature and causes of the violation(s). In addition, they can encourage companies to take appropriate measures and set up recovery processes. When the investment has directly and greatly contributed to the adverse human rights effects, by for example being the principal financier of a specific project, financial institutions can participate in such a recovery process themselves.



However, there is a limit to the influence that financial institutions have on the companies in which they invest. Financial institutions often have many thousands of investments, but only invest to a limited extent in the required internal capacity to combat human rights risks resulting from these investments. Therefore, it is usually not possible to enter into discussions with all companies with a possible risk. Financial institutions must therefore select companies based on several factors: risk, reputation, materiality, regional or thematic focus and level of share ownership. The actual impact of a company on the environment or the society is not always the decisive selection criterion. In 2011, the Danish Institute for Human Rights, in collaboration with UN Global Compact, introduced the Arc of Human Rights Priorities. This report clarifies that in some situations the impact of the activities of a company on human rights is so great that this should be given priority in the selection of engagement candidates.<sup>71</sup>

The leverage of financial institutions have with regard to the companies with which they maintain business relationships is determined by the interaction of several factors, such as the nature and the reputation of the financial institution, the nature of the relationship with the respective company, the degree to which the company is also addressed by other financial institutions on its human rights performance, the extent and the duration of the investment and the potential influence of the poor ESG performance on the profit and reputation of the company.<sup>72</sup>

Ultimately, it is the company that determines how great a priority is given to respect of human rights in its company activities. When a company does not consider respecting human rights to be an important issue, or each times chooses to operate in areas where human rights violations cannot be prevented, an engagement process will not lead to preventing or mitigating human rights violations. Also, not all companies are open to 'interference' from their shareholders.

So whether an engagement process is successful is largely determined by the financial institution's degree of influence, the nature, the frequency and the context of the human rights violations as well as the willingness of a company to communicate with its stakeholders and to improve its human rights performance.

#### 3.3.4 Exclusion

When an engagement process does not appear to lead to any agreements with a given company or if the company itself does not adhere to the agreements, financial institutions can choose to terminate the business relationship with this company. The company is then put on an exclusion list or blacklisted.

There are also examples where engagement is not sensible. For example when a company is involved in specific activities that always lead to severe violations, if a company is active in such a vulnerable area that violations cannot be avoided or if it is clear that other financial institutions have concluded an intensive engagement process with the intended company on the same topic without any effect. If from the initial screening it appears that human rights violations are severe and structural and everything indicates that corrective measures have little chance of succeeding, then this is ground for disinvestment.

In this respect, the Guiding Principles state that: "There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship."<sup>73</sup>

A recent study shows that opposition amongst financial institutions to exclude companies that behave in an irresponsible way is decreasing and that more companies are being excluded as a result of involvement in human rights violations. In Europe, between 2009 and 2011, the use of this responsible investment strategy increased by 54% and is now applied to an amount of more than € 2,340 billion.<sup>74</sup> The study further shows that the exclusion of large, listed companies by single, individually operating financial institutions will rarely cause them to change structurally, but that when financial institutions coordinate their activities and are supported in this by public opinion and the media, they are able to push boundaries.<sup>75</sup>

### 3.3.5 Reporting

The Guiding Principles also monitor the external reporting of the measures that have been taken to address adverse effects on human rights. From GP21 it follows that financial institutions have to report on what is done and what is achieved in this field. The report makes clear what steps the financial institution has taken and what conclusions were drawn.<sup>76</sup>

### 3.3.6 Application of instruments in different forms of financing

Screening, engagement and exclusion can be applied to all forms of financing. The possibilities and applicable scenarios do however vary for each financing category. Here we will discuss the most common forms of financing described in this report.

- **Providing credits**

In the case of loans and other forms of credits it is important that prior to committing to an agreement, the nature of the activities, the conduct of the potential client and the resulting impact on human rights is thoroughly analysed. When the potential client impact does not meet its human rights policy, the bank can still enter into an engagement process with the client prior to committing to the agreement. Important agreements on future improvements can be included in the credit agreement. Once committed to a credit agreement, financing can only be terminated in exceptional situations, for example when the client has not been honest about the information provided to the bank. In this case credit can be frozen. In practice this seldom occurs.

If the potential client impact does not meet its human rights policy, the bank can also decide to exclude a company from financing. This means that it is not allowed to invest in this company or its subsidiaries.

In addition, banks have the option to exclude specific transactions and/or activities of clients in specific regions. This means that it is allowed to invest in the company, but not in specific underlying projects or subsidiaries of the company. In case of such a partial exclusion, banks cannot however be assured that their monies are not used for undesirable purposes, for funds can be reallocated internally. The only way to ultimately be sure is by not investing in the respective company at all. A written declaration is no guarantee.

- **Investing in shares and corporate bonds**

Because in general shares can be purchased and sold easily, screening and engagement can be both applied prior to purchasing shares as well as when shares are already held. This gives the investor many ways to integrate responsibility for human rights in its investment decisions.

Moreover, financial institutions that hold company shares can also play a role as an active shareholder by actively using the voting rights that come with holding shares.<sup>77</sup> In a majority of cases a financial institution can cast a vote on each of the agenda items being voted on during an Annual General Meeting (AGM) of a company for each share it holds in that company. Most agenda items are formulated by the management of the respective company. By voting in favour of or against an item on the agenda of the management, shareholders can show the extent to which they are satisfied with the current company's current sustainable performance and plans.

In addition, shareholders also have the option to put resolutions on the agenda if they want attention for specific activities and/or themes, such as human rights. Voting in Annual General Meetings is a powerful instrument. By proactively voting and submitting or supporting relevant resolutions, financial institutions can give a clear signal to the company in which areas they expect improvement. If a majority of the shareholders of a company votes against an agenda item, the management is forced to find an alternative. Also, if a majority of votes is in favour of a resolution that asks the company to draft a human rights policy, the company is obliged draft such a policy.

There are two major differences regarding possible actions between investing in shares and corporate bonds. Firstly, bondholders don't have a right to vote. So voting at an Annual General Meeting is not possible. Secondly, corporate bonds are generally less liquid. This means that these are more difficult to purchase and sell. Therefore it is important for financial institutions that invest in corporate bonds to properly use the instruments of screening and engagement, prior to the moment the bonds are issued as well.

- **Helping with the issuance of shares or bonds**

As with ownership of shares or bonds, financial institutions can influence companies by screening, engaging and /or excluding (potential) investments. However, one major difference is that the influence of the financial institution disappears once the shares or bonds are issued. So if a company does not meet the human rights policy of the financial institution, it is important that prior to the issuance of shares or bonds the financial institution starts an engagement process with the company.

## Chapter 4 Case study methodology

### 4.1 Case study objective

With this case study it is assessed whether 16 financial institutions, the companies of banking groups and insurance groups selected within the framework of the *Fair Bank Guide* and the *Fair Insurance Guide*, adhere to international human rights standards in their investment practice. To this end, the extent to which the selected banks and insurance companies, in the business relationships they maintain with 10 extractive companies, deploy the instruments of screening, engagement and exclusion as a means of preventing human rights violations, is assessed. Assessing human rights policy and reporting, as described in paragraphs 3.3.1 and 3.3.5, falls outside the scope of this case study.

The case study focuses on the business relationships that the 16 Dutch banks and insurance companies, by way of banking services, insurance investments and asset management, had with ten selected extractive companies that have possibly been involved in violations of human rights over the past four years. 'Possibly involved' means that these companies are associated with human rights violations by several authoritative sources. The alleged involvement of the ten selected companies, in violations of human rights will be briefly described in Chapter 5.

For the financial institutions that have business relationships with the selected companies in the mining industry and the oil and gas industry, it will be assessed whether 'due diligence' is applied with regard to their business relationships, whether they use their influence to encourage their business relationships, companies in the mining industry and the oil and gas industry to fulfil their responsibility to respect human rights. Wherever violations of human rights have taken place, it is assessed whether financial institutions work with their business relationships on adequate recovery work and compensation for victims. Furthermore, the objectives financial institutions formulate with regard to the actual prevention or decrease in human rights violations associated with the selected extractive companies, the extent to which actual agreements with the companies are made and the consequences attached to these agreements are assessed.

### 4.2 Case study group

In this case study it is assessed whether 16 financial institutions, banking groups and insurance groups selected within the *Fair Bank Guide* and the *Fair Insurance Guide*, adhere to international standards in the field of human rights in their investment practice.

Table 1 gives an overview of the 10 banking groups that are included in the *Fair Bank Guide*, including the brand names they use in the Netherlands for banking services.<sup>i</sup>

**Table 1 Banking groups included in the *Fair Bank Guide***

Banking group	Brand names for banking services in the Netherlands
ABN Amro	ABN Amro Bank, MoneYou
Aegon	Aegon Bank, Knab
ASN Bank <sup>i</sup>	ASN Bank

<sup>i</sup> Nine banking groups have been selected by the *Fair Bank Guide* based on their market share of the Dutch market for current and savings accounts. Triodos Bank has been selected as the tenth banking group because the bank has a special position in the Dutch banking market. For background information, please see: [http://www.eerlijkebankwijzer.nl/media/25244/eerlijke\\_bankwijzer\\_13e\\_update\\_130425\\_rev\\_130617.pdf](http://www.eerlijkebankwijzer.nl/media/25244/eerlijke_bankwijzer_13e_update_130425_rev_130617.pdf)

Banking group	Brand names for banking services in the Netherlands
Delta Lloyd	Delta Lloyd Bank
ING	ING Bank, Nationale-Nederlanden Bank, WestlandUtrecht Bank
NIBC	NIBC Bank
Rabobank	Rabobank, Friesland Bank
Triodos	Triodos Bank
SNS Reaal	SNS Bank, Region.Bank
Van Lanschot	Van Lanschot

Table 2 gives an overview of the 10 insurance groups that are included in the *Fair Insurance Guide*, including the brand names that they use in the Netherlands for insurance.<sup>ii</sup>

**Table 2 Insurance groups included in the *Fair Insurance Guide***

Insurance group	Brand names for insurance in the Netherlands
Achmea	Achmea, Agis, Avéro, Centraal Beheer, FBTO, Inshared, Interpolis, OZF, Prolife, Syntrus, Woonfonds, Zilveren Kruis
Aegon	Aegon, Kroodle, Optas
Allianz	Allianz, Allsecur, London Verzekeringen, Royal Nederland, Zwolsche Generale
APG	Loyalis
ASR Netherlands	a.s.r., Budgio, Crisper, de Amersfoortse, Ditzo, Europeesche Verzekeringen, Ardanta
Delta Lloyd	ABN Amro Verzekeringen, Be Frank, Delta Lloyd, Erasmus Leven, Nationaal Spaarfonds, Ohra
Generali	Generali
ING	AZL, ING, Movir, Nationale-Nederlanden
Legal & General	Legal & General
SNS Reaal	Proteq, Reaal, Zelf, Zwitserleven

A comparison of Table 1 and Table 2 shows that four of the banking groups selected for the *Fair Bank Guide*, namely Aegon, Delta Lloyd, ING and SNS Reaal, are also included in the *Fair Insurance Guide*. This brings the total number of financial institutions to be researched to 16.

All business relationships of these financial institutions with the selected companies, including the business relationships of their sister companies and subsidiaries at home and abroad, are relevant to this study. The assessment distinguishes between three types of business relationships: banking services, insurance investments and asset management.

<sup>i</sup> ASN Bank is a wholly owned subsidiary of SNS REAAL, but is treated separately because the bank carries its own formal policy and is part of the ten largest banks in the Dutch savings market on its own account.

<sup>ii</sup> The ten insurance groups with the largest market share in the life insurance market have been selected. For further explanation of the implications of the assessment of insurance at group level go to: <http://www.eerlijkeverzekeringswijzer.nl/veelgestelde-vragen/>  
For more background information: [http://www.eerlijkeverzekeringswijzer.nl/media/51999/beleidsonderzoek\\_eerlijke\\_verzekeringswijzer\\_16\\_sept.\\_13.pdf](http://www.eerlijkeverzekeringswijzer.nl/media/51999/beleidsonderzoek_eerlijke_verzekeringswijzer_16_sept._13.pdf)

## 4.3 Definitions

In this case study the following definitions are used:

- *Financial or business relationship*: a relationship between a bank or insurance group and an extractive company as a result of one or more banking services, one or more insurance investments or one or more investments within the framework of asset management.
- *Banking services*: all forms of credits granted by the bank, investments on the bank's own account and financial services within the framework of *investment banking* (underwriting, mergers & acquisitions, etc.).
- *Investments within the framework of asset management*: investments for clients, through collective investment schemes, institutional mandates and discretionary management for private clients. Within this study, investments in insurance premiums by the insurance company itself do not fall under investments within the framework of asset management.
- *Insurance investments*: Investments of insurance premiums by the insurance company that are on the balance sheet of the insurance company. This category includes both the investments for the account and the risk to the insurance company as well as the investments for the account and the risk to the policy holder on the balance sheet of the insurance company.
- *Extractive companies*: the case study focuses on ten companies that are active in the mining, processing and trade of/in oil, gas and mineral raw materials, and that are possibly involved in the violations of human rights of local communities in the areas where they operate.

## 4.4 Research design

### 4.4.1 Selection of extractive companies

As a first step in this study, 10 extractive companies have been selected. Those companies are involved in, or are associated with, human rights violations according to several independent sources, such as OECD National Contact Points, International Health Tribunal and declarations from the companies themselves. In the selection process, the following selection criteria have been taken into account:

- Companies are involved or associated with severe human rights violations related to land rights, FPIC, environmental damage, environmental disasters and operating in conflict areas.
- The respective human rights violations are sufficiently substantiated/underpinned by reliable sources.
- The human rights violations are not dated (not older than 4 years). This means that the companies were possibly involved in human rights violations in the past four years (1 July 2009 to 1 July 2013), still are or had to repair the damage of previous violations in the past years.
- The companies are preferably listed.

Based on the abovementioned criteria the following ten companies have been selected:

1. Barrick Gold	Canada
2. Freeport-McMoran Copper & Gold	United States
3. GlencoreXstrata	Switzerland
4. Goldcorp	Canada
5. Oil and Natural Gas Corporation (ONGC)	India
6. PetroChina / CNPC	China
7. Posco	South Korea
8. Royal Dutch Shell	The Netherlands
9. Trafigura	The Netherlands
10. Vedanta Resources	United Kingdom

Of these ten companies, their involvement in violations of human rights is briefly described in a short profile. Each time reference is made to more detailed reports. Because both the companies as well as the nature, the frequency and the severity of the human rights violations have unique characteristics, for each company it is indicated what relevance the inclusion of the company has within the framework of this study.

#### 4.4.2 Establishing business or financial relationships

The study of the business relationships between the 16 financial institutions and the 10 extractive companies is conducted as follows:

- Based on public sources it is researched whether the financial institutions have maintained business relationships with the selected mining, oil and gas companies, by way of banking services, insurance investments and/or investments within the framework of asset management.
- The case study focuses on the period 1 July 2009 to 1 July 2013. Business relationships that are committed to after 1 July 2009, or have been deliberately extended beyond this date, fall within the case study period. Outstanding loans granted before 1 July 2009, fall outside the period, unless the loan deliberately extended beyond 1 July 2009. Because investments may be sold without any problems in the short term, it is assumed that investments purchases prior to 2009 but still held after 1 January 2010 fall within this period. In Trafigura's case, a different period applies, namely 7.5 years. Therefore, we have chosen to also include the possible responses of financial institutions on the illegal dumping of chemical waste in the Ivory Coast in the assessment, as well as the entire process of compensation.
- In Chapter 6 of this case study it is stated for each financial institution to which of the selected companies they have granted banking services or in which of the selected companies the financial institution has invested within the framework of insurance investments or asset management. The banks that are included in the *Fair Bank Guide* will basically be assessed on banking services and asset management. The insurance companies that are included in the *Fair Insurance Guide* are basically assessed on insurance investments and asset management. Banking and insurance companies that are included both in the *Fair Bank Guide* as well as in the *Fair Insurance Guide* are assessed on all three categories. Table 3 indicates on which type of financing each of the financial institutions have been assessed.

**Table 3 Types of financing on which financial institutions are assessed**

Financial institution	Banking services	Asset management	Insurance investments
ABN Amro	x	x	
Achmea		x	x
Aegon	x	x	x
Allianz		x	x
APG (Loyalis)		x	x
ASN	x	x	
ASR			x
Delta Lloyd	x	x	x
Generali		x	x
ING	x	x	x
Legal & General		x	x
NIBC	x	x	
Rabobank	x	x	
SNS Reaal	x	x	x
Triodos	x	x	
Van Lanschot	x	x	

- In case no business relationship with the companies were found, the extent to which this is an accurate representation of reality has been verified. Except for American subsidiaries of insurance companies, insurance investments portfolio's are usually not transparently disclosed. Therefore, insurance companies have been additionally and explicitly asked to provide transparent access to their portfolio. If the financial institution indicates information contrary to what could be determined based on public sources to maintain a business relationship with one or more organisations, this relationship will be treated in the same way as the business relationships found based on the public sources.

#### 4.4.3 Analysis and assessment

The analysis of the implementation of 16 financial institutions' responsibility to respect human rights has been conducted as follows:

- With the financial institutions that maintain a business relationship with the companies chosen for this study, a structured interview was held that covered the instruments they use to improve extractive companies respect for human rights. This also applies to the financial institutions that maintain no business relationship with the selected companies, but do use instruments to improve the respect for human rights by one or more of the 10 selected companies.



The interview elaborated on all instruments that financial institutions can apply. These include e.g. how companies are being screened, whether and how engagement takes place, the duration of the talks, the level at which talks take place, the content of the talks and the agreements that are made with the companies. The financial institutions have been asked to substantiate the answers with evidence with respect to the companies: the evidence can take the form of screening reports, engagement programmes and objectives, monitoring reports, interview reports, correspondence, company plans, progress reports, specific agreements with clients, contracts, etc. In order not to endanger the client confidentiality, the investigators were prepared to sign a confidentiality statement and no documents have been copied. Banks had the option to provide particular documents anonymously.

- By comparing the research results with the predetermined assessment framework (see paragraph 4.5), the activities of the financial institutions have been assessed. Depending on the types of investment found, each financial institution has got one, two or three scores: a score for banking services, a score for insurance investments and a score for asset management.
- Whenever the financial institution was not prepared to substantiate answers with relevant evidence, the respective answers were not included in the financial institution's score. For the assessment, the lack of substantiation is particularly decisive regarding the elements on screening, engagement and agreements made. For the elements on screening, the financial institution should demonstrate the content of their screening through the provision of policy papers, questionnaires or other tools. For the elements on engagement the financial institution had to demonstrate that dialogues with companies on human rights are held and that agreements were made.
- The case study report will describe and analyse what the financial institutions do to encourage and improve the respect of human rights by extractive companies. Based on the case study findings, recommendations will be made on how financial institutions can, where necessary, better anchor their responsibility with respect to this topic in their investment processes.

#### **4.5 Assessment framework**

Banks will be assessed on both banking services and asset management. Insurance companies are assessed on both insurance investments and asset management. Banking and insurance companies are assessed on all three categories (see Table 3). The result is a maximum of three scores for each financial institution on a scale of 1 to 10.

The extent to which banks, insurance companies and asset management companies meet the specific elements researched is based on evidence. If evidence is lacking, no points are granted. In the case of asset management companies and insurance companies, company specific evidence is required. Whenever an insurance company or asset manager was able to show relevant evidence for more than half of the companies in which it invests, a point has been granted. In the case of banking services, different evidence requirements applied and company specific evidence was not required. Whenever a bank could demonstrate, based on at least two anonymous documents, that it complies with an element, the point is granted. The score is determined by adding up the elements that have been complied with and divide this by the total applicable number.

A financial institution that did not cooperate with the case study and/or is not transparent gets a score of 1. A financial institution that grants no services to the selected companies and where this choice is not based on the screening of companies (elements 1-2 and 7 cannot be demonstrated) scored 'inactive'.

The results are included in a profile where a description of the financial institution, including its activities and the evidence submitted for substantiation, is given. However, no detailed or confidential information on specific exclusions or engagement processes are included in the profile.

The scores that are granted to the financial institutions for banking services, asset management and insurance investments will be based on the following elements:

The financial institution screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:

1. Incidentally;
2. Structurally;

When screening extractive companies, attention is paid to the following questions:

3. Whether the company has drafted a policy statement in which the company commits itself to respect human rights;
4. Whether and how the company identifies what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);
5. Whether the company sets up processes to recover the adverse human rights effects caused by the company or which the company contributes to, and whether this actually leads to compensation.
6. Ensuring all efforts by the company actually lead to the absence or at least to a measurable decrease of human rights violations;
7. If the screening of extractive companies makes clear that a company insufficiently identifies what the adverse human rights effects are, or that it insufficiently takes measures to prevent or mitigate these effects or insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted. When assessing this criterion the main focus will be on the business relationships that the financial institution maintains with the selected companies. If a financial institution has excluded a selected company from investment, the following additional information is required:
  - Why a company has been excluded from investment;
  - When a company is excluded from investment;
  - Objective and course of any prior engagement process;
  - Whether and how often the decision to exclude has been evaluated.
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote;
9. When there are serious indications that extractive companies to which the financial institution grants banking services, or in which the financial institution invests are involved in human rights violations, the financial institution starts a dialogue on how a company can fulfil their responsibility to respect human rights:

If the financial institution engages with mining, oil and gas companies, the following additional information is required:

- What the concrete objectives of engagement are;
- When the engagement process is considered to be successful or unsuccessful;
- When the engagement process is evaluated;
- When the engagement process is concluded.

By engaging with the mining, oil and gas companies the financial institution can influence companies to:

10. Drafting a policy statement in which the company commits itself to respect human rights;
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);
12. Establishing processes to remedy the adverse human rights effects caused by the company or which the company contributes to;
13. Ensuring all efforts by the company actually lead to the absence or at least to a measurable decrease of human rights violations;
14. When there are serious indications that extractive companies to which the financial institution grants banking services, or in which the financial institution invests are involved in human rights violations, the financial institution establishes concrete agreements on how to fulfil their responsibility to respect human rights;

The financial institution establishes concrete agreements with extractive companies on the following topics:

15. A policy statement in which the company commits itself to respect human rights;
16. Establishing a human rights due diligence process;
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;
18. The absence of a measurable decrease of human rights violations;
19. The financial institution establishes agreements (with mining, oil and gas companies) in terms of credit agreements or services contracts;
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;
21. If no agreements can be made with the mining company or the oil and gas company, or if the company does not adhere to the agreements, the financial institution chooses, within a reasonable period of time, to terminate the business relationship. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies;
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.

There are 22 elements in total. Element 8 is not applicable to banks and insurance companies that do not invest in extractive companies. Element 19 is not applicable to financial institutions that only invest in mining, oil and gas companies. Elements 8-22 are not applicable to financial institutions that can convincingly demonstrate element 7. Element 22 is not applicable for financial institutions that can demonstrate all other elements.

For the financial institutions where no business relationship was found with some or all of the companies chosen for this study, the extent to which the lack of a business relationship is a direct consequence of the Responsible Investment Policy of the respective organisation has been verified. To this end, the financial institution was asked to still answer questions 1, 2 and 7 for these companies and to provide or show the exclusion criteria and exclusion list. If financial institutions do not provide services to the selected companies, but do nevertheless use instruments to improve the respect of human rights in one or more of the 10 selected companies, the interview questions have been asked in case this was desired by the financial institution.

**4.6 Planning**

The following planning has been used for this case study:

Date	Activity
23 August 2013	Concept methodology, profiles of companies and investments were sent to financial institutions.
18 September 2013	End of feedback period methodology and investments found
23 September 2013	Distributing final methodology and start of interviews financial institutions
11 October 2013	End of interview period financial institutions
23 October 2013	Financial institutions received concept scores
22 November 2013	End of feedback period for financial institutions
4 December 2013	Financial institutions received final report
12 December 2013	Press release was sent to the financial institutions under embargo by the Project group for the <i>Fair Insurance Guide</i> and the <i>Fair Bank Guide</i> (PREVEB)
17 December 2013	Publication

## Chapter 5 Involvement of extractive companies in human rights violations

### 5.1 Introduction

In this chapter ten companies that were possibly involved in human rights violations in the past four years (1 July 2009 – 1 July 2013), that still are involved or that had to repair the damage of previous violations in the past four years, are described. This case study focuses on the investments of Dutch financial institutions in these ten companies.

In this chapter a short profile is included for each of the ten selected companies. In this profile their possible involvement in violations of human rights is briefly described. It is not intended to provide a comprehensive overview of all possible violations of each company; the attention is focused on one or more cases. The profiles always include violations that are not older than four years or a settlement of a violation that has taken place in the past four years. This is the reason that the company has been selected. If it is relevant for the case, incidents falling outside the case study period are described as well.

The described human rights violations in this chapter are severe and real. In each of the described cases it is clear that human rights are at stake. However, no statement is made in this case study on the culpability of a company in the described human rights violations. Though it is plausible, following protests that have been filed by local communities, official complaints filed at the OECD or Global Compact or reports published by civil society organisations, that the companies were involved or associated with the alleged human rights violations in some way, and/or had to repair the damage of previous violations in the past years.

For each company profile reference is made to more detailed reports with regard to the described human rights violations under the header 'further reading'. This concerns information on the company itself, case study reports and news from several stakeholders and does not necessarily depict the position of Amnesty International or one of the other partner organisations within the *Fair Bank Guide* and *Fair Insurance Guide* coalition.

This study focuses on the extent to which Dutch financial institutions, in their investment practice, adhere to international standards in the field of human rights. First and foremost this creates the responsibility for investors to be thoroughly informed by the company and other stakeholders on the specific culpability of a company in the human rights violations and asks for proof on this matter. Because both the companies as well as the nature, the frequency and the severity of the described human rights violations have unique characteristics, it will be indicated what relevance the inclusion of this specific company has in this study for each company.

### 5.2 Barrick Gold

#### 5.2.1 Company profile

The Canadian company Barrick Gold Corporation (Barrick Gold) is one of the world's main gold producers. Besides gold, its main product, Barrick Gold also mines silver and copper. According to Barrick Gold's 2012 annual report, the company currently has 24 goldmines concentrated in three regional divisions: North America, South America, Australia and the Pacific Ocean.<sup>78</sup>

### 5.2.2 Involvement in violation of human rights

On the one hand Barrick Gold applies an extensive range of policy papers and instruments to prevent human rights violations. Barrick Gold endorses a position statement of trade organisation International Council on Mining and Metals (ICMM) that comprises obligations related to FPIC. In November 2010, Barrick Gold officially announced that it adopted the Voluntary Principles on Security and Human Rights.<sup>79</sup>

However, the policy is in stark contrast to the severe and frequent human rights violations with which Barrick Gold is associated: violent and sometimes even fatal confrontations with police and safety personnel, violence and rape of women and forced shifts for independently operating miners.

In 2009, Barrick Golds' Porgera goldmine in Papua New Guinea supported a special police unit by way of food, fuel and shelter. The company claimed to have done so to improve compliance of laws and legislation as well as respect for human rights.<sup>80</sup> It concerned a special police unit that was established to cope with a deterioration of law and order. The same unit drove residents away, by clearing and burning 50 homes of the Wuangima clans/community in the Porgera goldmine area. By maintaining ties with the police, Barrick Gold was indirectly linked to these gross violations of civil rights.<sup>81</sup>

In addition, Porgera mine security guards hired by Barrick Gold were themselves frequently guilty of sometimes fatal violence in the past years, including the rape of women.<sup>82</sup>

Around the North Mara mine in Tanzania security guards and local policemen hired by Barrick Gold and deployed at its request, were themselves guilty of violations of undermining civil rights.<sup>83</sup> The violations concerned violent and sometimes even fatal confrontations, violence and the rape of women as well as forced shifts of miners from the informal sector.<sup>84</sup> Barrick, after conducting an own investigation, has acknowledged the violence with regard to women and claims to be trying to end these violations.<sup>85</sup>

The company does this, among other things, by setting up complaints mechanisms and organising compensation for victims. However, civil society organisations consider these measures to be insufficient and judge that the way Barrick Gold applies the measures can even lead to additional damage to victims.<sup>86</sup>

In the case of the Pascua Lama mine in Chile, Barrick Gold Corporation is accused of destroying three glaciers and polluting drinking water, the soil and the air. This violation of environmental standards undermines the right to an adequate standard of living, the right to food and the right to drinking water. As a result of the alleged violations, the Chilean environmental agency has conducted an investigation, closed the mine indefinitely and in May 2013 fined Barrick Gold with 12 million dollars.<sup>87</sup>

Both the Pascua-Lama mine in Chile/Argentina and the Porgera mine in Papua New Guinea are the subject of official complaints at the OECD. Taken from a random sample of European investors by Novethic Research, it was found that in 2012, 33% of the investors had excluded Barrick Gold from investment due to poor Environmental Social Governance (ESG) performance.<sup>88</sup> The percentage among Dutch pension funds is lower, at 19%. However, from a VBDO and Profundo study into the implementation of Dutch pension fund's human rights policy, it appeared that 25% of the respondents had an engagement process with the company.<sup>89</sup>

### 5.2.3 Relevance of the case

In Tanzania and Papua New Guinea Barrick Gold, in its relationship with security personnel, has not successfully ensured the safety and fundamental freedoms of the local community, particularly women. The way Barrick Gold have set up complaints mechanisms and tried to organise compensation for victims is also under fire. The human rights at stake in this case are mainly civil rights and women's rights.

In Chile, with the Pascua Lama project, Barrick Gold very much affects the living environment of people in the environment of its mining industry activities. The human rights at stake in this case are mainly socio-economic rights, in particular the right to an adequate standard of living, including the right to food, the right to clean drinking water, and the rights of indigenous communities.

### 5.2.4 Further reading

- Barrick Gold, July 2013: "2012 responsibility report"
- Protest Barrick, April 2013: report "Debunking Barrick"
- Barrick Gold, June 2013: "A framework of remediation initiatives in response to violence against all women in Porgera valley".
- 77 global organizations, June 2013: "letter to the United Nations High Commissioner of Human Rights"
- Mining Watch Canada, March 2011: "Request for Review Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises"
- Amnesty International, January 2010: report "Undermining Rights: Forced Evictions and Police Brutality around the Porgera Mine, Papua New Guinea"
- Norwegian Pension Fund, August 2008: followed advice to Ministry of Finance to exclude Barrick Gold.
- Facing finance, November 2012, "violence at North Mara"
- Barrick Gold, May 2011, "Statement from Barrick Gold Corporation concerning the North Mara Mine, Tanzania"
- Bloomberg, December 2010 "Shooting gold diggers at African mine seen amid record prices"
- Banktrack: June 2013, Banktrack: "Dodgy deal: Pascua lama."
- Mining.com, June 2013, "Chile's court launches probe on why Barrick's Pascua-Lama fine was reduced. "
- Barrick Gold, June 2013: "Update Barrick Gold on Pascua lama"
- Financial Post, May 2013: "Barrick fined \$ 16m for Pascua-Lama violation"

## 5.3 Freeport-McMoran Copper & Gold

### 5.3.1 Company profile

Freeport-McMoran Copper & Gold (Freeport-McMoran) is an US mining company specialised in mining gold, copper and molybdenum. The activities of the company mainly concentrate on the copper mining industry in Chile and Indonesia, but the company is also active in North America and the Democratic Republic of Congo.<sup>90</sup>

### 5.3.2 Involvement in violation of human rights

Freeport-McMoran's human rights policy is based on compliance with the Universal Declaration of Human Rights and the legislation of host countries. The company claims, among other things, to adhere to the Voluntary Principles on Security and Human Rights.<sup>91</sup>

Freeport-McMoran Grasberg copper and gold mine in the Indonesian province of West Papua has caused a lot of environmental damage. Freeport-McMoran dumps waste in the Otomina and Ajkwa rivers. Dumping toxic mining industry waste in rivers is extremely harmful to the river and surrounding ecosystems. Both the two valleys in the area as well as the rivers are severely polluted due to the dumping of mining industry waste.<sup>92</sup> This pollution has led to the violation of several socio-economic rights due to polluting drinking water and a significant reduction in potential for hunting and fishing: the right to an adequate standard of living, the right to food and the right to clean drinking water has been undermined.

Freeport-McMoran has tried to limit the spread of residues with dikes, but this only reduces the problem. Entirely restoring rivers after this type of waste dumping has occurred is usually impossible.<sup>93</sup> Considering the enormous impact of this type of waste dumping to the environment, in Australia, the United States and Canada strong limitations have been implemented against this type of waste dumping. In these states no mine is allowed to dump waste in rivers. The World Bank also refuses to support mining industry projects where this type of waste dumping occurs. Indonesia, together with Papua New Guinea, is one of the few countries in the world where there are no limitations on dumping waste in rivers.<sup>94</sup>

Violations of civil rights and political rights are caused by security forces employed by the Indonesian government, but are paid by Freeport-McMoran. Their actions regularly lead to violent and sometimes fatal confrontations with residents, employees and advocacy groups.<sup>95</sup>

From a random sample taken from European investors by Novethic Research, in 2012 40% of the investors had excluded Freeport-McMoran from investment due to poor Environmental Social Governance (ESG) performance.<sup>96</sup> In September 2012, the New Zealand's Public Pension Superfund decided to exclude Freeport-McMoran from investment "because the human rights policy of Freeport-McMoran does not offer sufficient guarantees."<sup>97</sup>

### 5.3.3 Relevance of the case

Freeport-McMoran greatly affects the living environment of people in the vicinity of its mining industry activities. In addition, the company, in its relationship with public security personnel, does not successfully ensure the safety and the fundamental freedoms of employees and the local community. The human rights at stake in this case are civil rights and political rights as well as socio-economic rights; in particular the right to clean drinking water, the right to a decent standard of living and the rights of indigenous communities. Striking in the Freeport-McMoran case is the strong relationship between human rights violations and environmental pollution. Sticking to a form of waste dumping that has been generally disapproved raises questions about the responsible business intentions of Freeport-McMoran. In addition, the



case of Freeport-McMoran is interesting because a lot of investors have judged, after conducting a due diligence process, that the violations are so severe and structural, or that corrective measures seem to have little chance of succeeding, that they must exclude the company from investment. This raises questions on the effectiveness of engagement processes of other investors with regard to this company.

#### 5.3.4 Further reading

- Freeport-McMoran, March 2013: “Voluntary Principles on Security and Human Rights”
- 2012, “Annual Report to the Plenary”
- SOMO, July 2013, “Private Gain – Public Loss: Mailbox Companies, Tax Avoidance and Human Rights”, p. 81-84.
- Earthworks and MiningWatch Canada, February 2012, “Troubled Waters: How mine Waste dumping is Poisoning our Oceans, Rivers, and Lakes
- Singapore Management University, June 2012: “Submission on Oil & Gas industry discussion paper”
- Norwegian Ministry of Finance, February 2006: “The recommendation from the Council on Ethics (Freeport)”

## 5.4 Goldcorp

### 5.4.1 Company profile

Goldcorp Inc. (Goldcorp) is a Canadian gold producer involved in mining, exploration and developing gold in Canada, the United States, Mexico and Central and South America.<sup>98</sup> Goldcorp expects a strong increase in the gold production (70% in the coming five years) as a result of taking on 4 mines in South America and Canada.<sup>99</sup>

### 5.4.2 Involvement in violation of human rights

Goldcorp is involved in human rights violations at the Marlin-mine in Guatemala. As of 2005, the Marlin-mine has been in production and falls under the authority of Goldcorp's wholly owned subsidiary Montana Exploradora. The Maya's in communities around the Marlin mine in Guatemala have accused Goldcorp from the beginning of not respecting human rights by illegally purchasing communal land and deteriorating their living environment by damaging houses as well as polluting the water and the environment. This has led to escalating social conflicts regarding the rights of indigenous people where the FPIC-principle has not been applied and the land has been exploited.<sup>100</sup>

In May 2010, the Inter-American Commission on Human rights (IACHR) demanded that the Guatemalan government ceased operations in the Marlin gold mine. The IACHR stated the mine polluted the rivers and the water resources of eighteen indigenous communities in the western province of San Marcos.<sup>101</sup> After conducting a research, the Guatemala government on July 8 2011 informed the IACHR that they considered the operations in the Marlin mine to be in accordance with the law and saw no grounds for suspension of mining operations. In December 2011, the IACHR responded by withdrawing the claim with respect to suspending the mining industry activities.<sup>102</sup>

In 2008, under pressure from residents, advocacy groups and investors, Goldcorp commissioned an independent Human Rights Impact Assessment (HRIA) for the Marlin mine. The primary objective of the HRIA was to assess the consequences of the presence and the activities of the Marlin mine on human rights. Following the published HRIA, Goldcorp acknowledged that the human rights performance of the company in the Marlin mine was not in line with its own ambitions in this field and the expectations of its stakeholders. In 2010 and 2011 Goldcorp published on its website how the company has given substance to the recommendations in the HRIA.<sup>103</sup>

However, the protests of the local community have not stopped. This problem not only plays a role in Guatemala, but also in other Goldcorp mines in South America. As recently as August 2012, Goldcorp was still found guilty of human rights violations in several mines in South America by the International People's Tribunal, a variant of the Permanent People's Tribunal, which denounces damage caused by multinationals throughout South America.<sup>104</sup> This fits in with the wider protest of communities in South America against the increasingly more dominant mining industry. Between 2005 and 2011 the total revenues of Canadian mining industry companies increased from 8.6 million dollars to 935 million, while the revenues from South American countries, and in many cases the community as well, are considered to be insufficient.<sup>105</sup> As recently as July 2013, the Guatemalan president Otto Pérez Molina introduced a new law to parliament in order to set a two-year moratorium on new metal mining industry projects. Other reforms, such as an increase of the royalties from the mining industry, have also put an end to the tensions with the predominantly indigenous communities that oppose this industry.<sup>106</sup>

There are different opinions on the current human rights policy of Goldcorp towards these and other mines in South America. Several investors consider the proactive approach of Goldcorp following the incidents as a positive example and have concluded engagement processes. On the other hand, several investors have sold their shares due to the environmental pollution and human rights violations. As recently as 2012, the company was excluded from investment by the Danish pension fund SamPension.<sup>107</sup>

### 5.4.3 Relevance of the case

The human rights violations with which Goldcorp is associated as a result of the Marlin-mine case in Guatemala have occurred because of the careless or disrespectful actions of Goldcorp towards the local communities in the area where the company operates. Human rights at stake in this case are mainly socio-economic rights, such as the right to an adequate standard of living (including the right to housing, which also includes the right not to be forced out of one's home) and rights of indigenous communities, including free, prior and informed consent. In addition it concerns more than just the Marlin-mine. Goldcorp is one of the fastest growing mining companies in the region with an expected increase in gold production of 70% in the coming five years as a result of taking on 4 mines in South America and Canada. This raises the question about the extent to which investors will try to prevent potential future human rights violations by encouraging the company to implement the necessary measures at these mines in advance.

### 5.4.4 Further reading

- Health Tribunal, 16 July 2013, "Goldcorp found guilty; human rights violations, health harms, environmental contamination".
- OECD National Contact Point Canada, "Final Statement of the Canadian National Contact Point on the Notification dated December 9, 2009, concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises"
- Goldcorp, April 2011, "Goldcorp's Second Update to the Marlin Mine HRA Report" Guatemalan Ministry of Energy and Mines Report (Appendix 8), May 2011,
- Goldcorp, May 2010: "Human Rights Impact Assessment Marlin Mine"
- OECD Watch, December 2009: "Case overview: Human rights violations at Goldcorp's gold mine in Guatemala."

## 5.5 GlencoreXstrata

### 5.5.1 Company profile

GlencoreXstrata is a Swiss company active in the mining, metallurgy, oil and agriculture industries. GlencoreXstrata is listed as being active in more than 50 countries on 6 continents. GlencoreXstrata was established in May 2013 after Xstrata was taken over by Glencore.<sup>108</sup> Glencore was a private company for decades, until they went public in 2011.<sup>109</sup>

### 5.5.2 Involvement in violation of human rights

Prior to the merger, both companies were involved in several human rights violations, but Xstrata had a better reputation in the field of human rights than Glencore.<sup>110</sup>

With the Katanga Mining Limited (KML) and Kamoto Copper Company GlencoreXstrata has obtained a huge amount of copper from the Democratic Republic of Congo. The mines are situated in a very troubled region where militias have financed their conflicts by selling raw materials from the resource-rich country. GlencoreXstrata has been accused of conducting careless due diligence procedures in this area. There are also frequent reports of land and water pollution, tax evasion, not respecting the human rights of independent miners working in the informal sector and a lack of meaningful consultation with the local community.<sup>111</sup>

Recent studies show that GlencoreXstrata is now in the planning phase of new projects and fails to deploy decent human rights due diligence in order to identify, prevent and mitigate the adverse human rights effects of its activities.

If realised, the Tampakan Copper-Gold Mine in the Philippines, of which GlencoreXstrata is an important shareholder, would be the principle open mine (in which minerals are mined to the surface) in the Philippines and one of the largest of its kind in the world. The proposed mining area is located in the South of Mindanao, an area with a lot of unspoiled forests and the ancestral domain of indigenous B'laan communities. An extensive Human Rights Impact Assessment study by the Institute for Development and Peace (INEP) in July 2013 clarifies that, among other things, the rights of indigenous people to an adequate standard of living (including the right to food, the right to clean drinking water, the right to health, and the right to life) are at stake. Approximately 5,000 people would have to make way for the mine. The destruction of large unspoiled forests poses an additional severe risk to the water supply and in this way to the entire region's farmers.<sup>112</sup> Preparations for the project started as early as 1990, but the project is still in the exploration phase and GlencoreXstrata recently stated that it cannot guarantee the planned opening in 2019, partly due to tough legislation and a provincial ban on the surface industry as of 2010.<sup>113</sup>

The United Nations Development Programme (UNDP) studied the possible social and environmental effects of the Falcondo Lomo Miranda mine in the Dominican Republic in order to determine whether GlencoreXstrata should be granted an environmental permit for the mine. The conclusion of that study was that GlencoreXstrata, in its own case study, did not pay sufficient attention to the social and environmental effects of mining. Granting a permit was not recommended. Therefore, in June 2013 the Dominican government decided not to grant a permit to GlencoreXstrata for the start of the proposed Falcondo Lomo Miranda mine.<sup>114</sup>

### 5.5.3 Relevance of the case

GlencoreXstrata greatly affects the living environment of people in the environment of its mining industry activities. In addition, the company cannot guarantee the safety and fundamental freedoms of employees, miners in the informal sector or the local community. Human rights at stake in this case are mainly socio-economic rights, such as the right to an adequate standard of living (including the right to housing, which also includes the right not to be forced out of one's home) and rights of indigenous communities (including *Free, Prior and Informed Consent*). It is striking for GlencoreXstrata that shortcomings in policy and implementation of due-diligence has led to the company being insufficiently able to identify, prevent and mitigate the adverse effects of its activities on human rights. This is all the more worrying considering the fact that GlencoreXstrata is present in conflict areas such as the Democratic Republic of Congo. The chances are that the company's mining activities will lead to the further disruption of the political, economic and social system, instead of GlencoreXstrata contributing to a peaceful future, local economic development and better opportunities for the local community.

In addition, it is possible that the merger of two companies can have both an adverse as well as a positive effect on the human rights performance of the new company. Therefore, this case offers the opportunity to verify the extent to which investors have acknowledged these risks and how they have acted subsequently. The presence of GlencoreXstrata in conflict areas further raises the question of the extent to which additional criteria are applied to acknowledge and control human rights risks in these areas.

### 5.5.4 Further reading

- Peyer, Chantal and Mercier, Francois, 2012: "Glencore in the Democratic Republic of Congo: profit before human rights and the environment"
- Sweeney, John, 14 April 2013: "Mining giant Glencore accused in child labour and acid dumping row"
- UNDP, June 2013: "El Proyecto the Loma Miranda no responde a exigencias de desarrollo sostenible del país".
- Bloomberg, 23 May, "UNDP Rejects Glencore Exploration at Dominican Nickel Mine"
- The Argentina Independent, June 2013: "Dominican Republic: government rejects Glencore's mining bid"
- Mines and Communities, October 2012: "Environmental groups call for halt to Xstrata's Falcondo mine, Dominican Republic"
- Hamm, Brigitte, Schax, Anne and Scheper Christian, July 2013: "Human rights impact assessment of the Tampakan copper-gold project"
- SMI inc, 12 June 2013: "Response to INEF's human rights impact assessment for Tampakan copper-gold project"

## 5.6 Oil and Natural Gas Corporation (ONGC)

### 5.6.1 Company profile

Oil and Natural Gas Corporation Limited (ONGC) is an Indian multinational and one of the main Asia-based oil and gas exploration and production companies.<sup>115</sup> The company was founded on August 14, 1956 by the Indian State, which currently holds approximately 94% of the shares. ONGC has several direct and indirect subsidiaries in 14 countries, including Syria, Sudan, South Sudan, Myanmar, Brazil, Venezuela, and Nigeria.<sup>116</sup>

### 5.6.2 Involvement in violation of human rights

Sudan has been ravaged by conflicts for decades. Although in January 2011 the south of the country voted for independence from the North with an overwhelming majority, the community in the western region suffers. Darfur still suffers from the attacks of rebel groups and militias armed by the government. Hundreds of thousands have fled.<sup>117</sup> The oil mining area on the border between North Sudan and South Sudan is home to very serious human rights violations. Companies operating in this area are in an extremely difficult situation. ONGC has significant interests in oil consortia in this area.

In addition, ONGC was involved in the construction of the Shwe gas pipeline, a double pipeline of more than 1,000 kilometres able to transport 12 million tonnes of crude oil annually and 12 billion cubic metres of natural gas from Myanmar to China. The construction of the pipeline started in October 2010. Little public information is available on the progress of the project and environmental experts and activists have urged authorities to increase transparency and to deal with local complaints from people whose land has been confiscated without any compensation.<sup>118</sup> Because human rights violations in Myanmar still take place on a large scale, civil society organisations fear for a recurrence of violations that took place at the pipeline in Yadana, which was built in the nineties. The Yadana pipeline was a symbol of human rights violations e.g. murder, rape, torture and the forced labour of the ethnic minorities. Despite serious objections against the project by activists and the local community, the pipeline was put into operation in July 2013.<sup>119</sup> Earthrights International, eight Korean NGOs and trade unions accuse Daewoo International and the Korea Gas Corporation (KOGAS) of violating the OECD guidelines in the exploration, the development and the exploitation of the Shwe natural gas project. Daewoo International is the operator of the joint venture developing the Shwe Project, in which the ONGC Videsh subsidiary also participates. According to the complaint, human rights violations such as forced evictions and violations of the right to freedom of speech have occurred in the project. The organisations also argue that the companies have not succeeded in providing information to local communities on the project and the local community did not participate in environmental impact reports. On November 27, 2008 the Korean NCP rejected the complaint on all counts.

Despite the presence of ONGC in areas with high risks of human rights violations and conducting controversial projects, they have no solid human rights policy and the right of victims to compensation is not publicly acknowledged.<sup>120</sup>

Between 2008 and 2012, a group of about twenty investors, cooperating in the Sudan Engagement Group (SEG), entered into an intensive dialogue with ONGC. In its annual report in 2012, one of these investors (MN Services) states that in 2010 ONGC received a “final warning” with regard to amending its human rights policy.<sup>121</sup>

### 5.6.3 Relevance

ONGC is not transparent and does not take responsibility for previous violations. It also lacks a solid policy. Given the lack of information on the Shwe gas pipeline, the extent to which the company has respected the safety and the fundamental freedoms of employees and the local community in the past four years is unclear. Human rights at stake in this case are mainly civil rights and socio-economic rights. This is all the more worrying considering the fact that the company is present in several high risk areas. The chances are that the activities of the company will lead to a further disruption of the political, economic and social system, instead of ONGC contributing to a peaceful future, local economic development and better opportunities for the local community. Within the framework of this study it will be researched how investors have assessed the setting up of the policy and implementation of due-diligence by ONGC and whether they have made concrete objectives and agreements to combat human rights violations. The presence of ONGC in conflict areas further raises the question of the extent to which additional criteria are applied to acknowledge and control human rights risks in these areas.

### 5.6.4 Further reading

- The Irrawaddy, 29 July 2013, “China Begins Receiving Natural Gas from Shwe Pipeline”
- SOMO, July 2013, “Private Gain – Public Loss: Mailbox Companies, Tax Avoidance and Human Rights”. p. 70-74.
- Earthrights International on behalf of the Shwe Gas Movement (SGM), 29 October 2008 “Complaint to the South Korean National Contact Point under the specific instance procedure of the OECD Guidelines for Multinational Enterprises regarding natural gas development by Deawoo International and Korea Gas Corporation in Myanmar”

## 5.7 PetroChina / China National Petroleum Corporation (CNPC)

### 5.7.1 Company profile

China National Petroleum Corporation (CNPC) is the largest energy company in China and one of the world's leading oil companies. PetroChina, the listed subsidiary of CNPC, went public in 1999. The parent company, the Chinese state oil company CNPC, manages over 86 percent of the shares and in this way determines the strategy of the company.

### 5.7.2 Involvement in violation of human rights

Very serious human rights violations take place in the oil mining area on the border between North Sudan and South Sudan. In July 2008, the chief prosecutor of the International Criminal Court (ICC) Luis Moreno-Ocampo found the President of Sudan, Omar Hassan Ahmad Al Bashir, guilty of committing genocide, crimes against humanity and war crimes. The court ultimately rejected the genocide charges. Companies operating in this area find themselves in a virtually impossible situation where they indirectly contribute to human rights violations.<sup>122</sup> Despite international economic sanctions, CNPC is the main investor in the country's oil industry.

PetroChina, which is not active in Sudan itself, is frequently linked to the activities of its parent company CNPC in Sudan and in Myanmar. CNPC is the largest foreign oil company in Sudan and operates in several oil consortia in North and South Sudan. In these oil companies, CNPC works in joint ventures with the Sudanese state oil company; a government that is charged with war crimes and crimes against humanity by the International Criminal Court.<sup>123</sup>

In January 2009 more than 80 civil society organisations sent an open letter to the United Nations Global Compact (UNGC) in support of a formal complaint against CNPC. According to the civil society organisations, CNPC has neglected the possibility of positively influencing the Sudan government, though CNPC denies involvement in the humanitarian crisis in Darfur. The Global Compact was asked to revoke CNPC's membership but, in July 2009, Global Compact management announced that PetroChina was allowed to remain a participant of the Global Compact because CNPC had a positive influence on the development of Sudan and CNPC was involved in drafting the "Guidance on Responsible Business in Conflict-Affected and High-Risk Areas" guideline.<sup>124</sup>

In addition, CNPC is one of the responsible parties for the Shwe gas project. The project concerns a double pipeline of more than 1,000 kilometres that is able to transport 12 million tonnes of crude oil annually and 12 billion cubic metres of natural gas from Myanmar to China. The construction of the pipeline started in October 2010. Little public information is available on the progress of the project. Environmental experts and activists have urged authorities to increase transparency and to deal with local complaints of civilians.<sup>125</sup> The pipeline is associated with land confiscation, forced labour, arbitrary arrests and detentions as well as various violations of the rights of ethnic minorities in the region where the pipeline has been constructed.<sup>126</sup>

Because human rights violations in Myanmar still take place on a large scale, civil society organisations fear a recurrence of violations that took place at the Yadana pipeline, which was built in the nineties. The Yadana pipeline was a symbol of human rights violations e.g. murder, rape, torture and the forced labour of ethnic minorities. Despite the very serious objections against the project by activists and the local community, the pipeline was put into operation in July 2013.<sup>127</sup>



At least seven investors that managed assets of approximately 544 billion Euros are of the opinion that the company is indeed operating in violation of the Global Compact criteria and have excluded PetroChina, the listed arm of CNPC, from investment.<sup>128</sup> Pension fund manager APG has conducted an engagement process with both PetroChina as well as CNPC for over 3 years but eventually excluded the company because it *“refuses to speak about the political and human rights risks of its activities. Each conversation on the political context and the relationships with the regime or the activities of the army to protect the oil operations has been avoided. CNPC does not take structural measures to map out the consequences of its operations for the environment or local communities. Given the lack of adequate policy, we are concerned about the consequences of instability and military presence for the safety of the employees and the local community.”*<sup>129</sup>

### 5.7.3 Relevance of the case

Given the lack of information on the Shwe gas pipeline, it is unclear the extent to which the company has respected the safety and the fundamental freedoms and land rights of employees and the local community in this project in the past four years. It is however clear that CNPC is little transparent, non-responsive and that there are shortcomings in policy and due-diligence. Also the relationship the company has with the Sudanese government is worrying. Chances are that here the activities of the company lead to a further disruption of the political, economic and social system, instead of CNPC contributing to a peaceful future, local economic development and better circumstances for the local community.

Human rights at stake in this case are mainly civil rights, but also socio-economic rights. The presence of CNPC in conflict areas further raises the question the extent to which additional criteria are applied to acknowledge and control human rights risks in these areas. In addition the case of CNPC is interesting because it is clear several investors have unsuccessfully concluded an intensive engagement process. This raises questions on the effectiveness of this means for other investors if there are no consequences linked to it.

### 5.7.4 Further reading

- China National Petroleum Corporation website, July 2013:
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- Asian tiger, April 2011: “Oil companies complicit to human rights violations”
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<http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1260724/2008/01/18/PGGM-stopt-belegging-in-China-door-mensenrechten.dhtml>
- Earthrights International on behalf of the Shwe Gas Movement(SGM), 29 October 2008  
“Complaint to the South Korea National Contact Point under the specific instance procedure of the OECD Guidelines for Multinational Enterprises regarding natural gas development by Deawoo International and Korea Gas Corporation in Myanmar”
- Amnesty International, November 2006, “Appeal by Amnesty International to the Chinese Government on the occasion of the China-Africa Summit for Development and Cooperation”

## 5.8 Posco

### 5.8.1 Company profile

Posco is a Korean company with several products and services: the company is the fifth largest steel producer in the world, is active in the construction industry and exploits power stations and also trades in steel products, chemical products and car parts.<sup>130</sup>

### 5.8.2 Involvement in violation of human rights

Posco is accused of not respecting human rights in India and/or supporting governments involved in human rights violations. The authorities acquired the land without providing sufficient information to the local community, without consulting them and without granting adequate compensation to the residents that depend on their land for their livelihood. This has meant that the human rights of thousands of people have been violated for many years.<sup>131</sup>

In collaboration with an Indian and a Korean partner, Fair Green & Global and an alliance of Dutch civil society organisations filed an official complaint at the OECD in 2012 regarding suspected violations of OECD guidelines by Posco India concerning the planned construction of an iron mine, a steel plant and a power station. The complaint concerns the intention to expel 20,000 people, including indigenous people that enjoy special legal protection under the Indian Forest Rights Act. In addition, the environment would also be polluted as a result of constructing the iron mine and the steel plant.

In its preliminary decision (June 2013), the South Korean National Contact Point for the OECD concluded that it was not Posco but the Indian government that was responsible.<sup>132</sup> In July 2013 the UN Human Rights Commissioner asked the Indian government for clarification on the intention to expel 20,000 people. The Indian government is now conducting an investigation.<sup>133</sup>

### 5.8.3 Relevance of the case

The human rights violations with which Posco is associated in this case have occurred because of the relationship the company has with the Indian government and as a result of a doubtful due diligence process or disrespectful dealing with the local communities in the area the company wants to operate. Posco would have to conduct a human rights impact assessment in consultation with the local community. Human rights at stake in this case are mainly socio-economic rights, such as the right to an adequate standard of living (including the right to housing, which also includes the right not to be forced out of one's home) and the rights of indigenous communities. An important principle developed to ensure the rights of indigenous people during the development of projects that influence their wellbeing and living environment is that the indigenous people grant their *Free, Prior and Informed Consent (FPIC)*. It is striking for Posco that shortcomings in policy and implementation of due diligence have led to the company being insufficiently able to identify, prevent and mitigate the adverse effects of its activities on human rights. Within the framework of this study it will be researched how investors have assessed Posco setting up policies, setting up a due diligence process and FPIC mechanisms and whether they have made concrete objectives and agreements to combat human rights violations.

### 5.8.4 Further reading

- Amnesty International, India: victims of forced evictions in Odisha must receive effective remedy and reparation, 5 July 2013.

- OECD Watch, June 2013: “Lok Shakti Abhiyan et al. vs Posco”
- Netherlands National Contact Point OECD, March 2013: “*Meldingen*” (Reports)
- International Human Rights Clinic, 2013: “The price of steel: human rights and forced evictions in the Posco-India project” Posco India, “Commitment”
- Amnesty International UK & India: Orissa steel project threatens human rights, March 2011

## 5.9 Royal Dutch Shell

### 5.9.1 Company profile

Royal Dutch Shell is a British-Dutch oil and gas company with operations spread over seventy countries worldwide. With a turnover of US\$ 467.2 billion and a profit of US\$ 26.8 billion in the year 2012, it was one of the largest companies in the world. Besides mining of oil and gas, Shell is also involved in the refining, transport and marketing of oil, gas and derivatives.<sup>134</sup>

### 5.9.2 Involvement in violation of human rights

Shell has been active in the Niger delta since as early as 1958. It operates through a subsidiary, Shell Petroleum Development Company (SPDC), a joint venture that is 55 percent owned by the Nigerian National Petroleum Corporation and 30 percent owned by Shell.<sup>135</sup>

In the 90s Shell was accused of being responsible for large scale pollution as a result of oil spills and subsequent gross violations of human rights. The protests in Ogoniland, in the early 90s, were so intense that Shell had to leave the area. A UNEP report from 2011 shows that Ogoniland has been extremely polluted by oil production and that Shell was particularly culpable in this area.<sup>136</sup>

On August 28 2008, a malfunction in the Trans-Niger pipeline caused a massive oil spill in Bodo Creek, Ogoniland (Nigeria). The oil flowed into the swamp and the creeks for weeks, covering them with a thick layer of oil and killing the fish people depend on for their livelihood.<sup>137</sup> On 2 February 2009, a second leak was reported in the same area, harming the environment even more.<sup>138</sup> In August 2011 Shell acknowledged responsibility for the two oil spills.<sup>139</sup> In June 2013 there was an oil spill where a fire broke out. According to Shell, oil theft caused the fire.<sup>140</sup> Amnesty International and the Nigerian National Coalition on Gas Flaring and Oil Spills (NACGOND) has raised serious questions about this version of events and call for an independent case study into the events prior to the fire, for which eight Shell subcontractors have been arrested in connection with possible involvement.<sup>141</sup>

In January 2013, a Dutch court ruled that Shell was guilty of causing oil pollution in Nigeria in 2008 in one of the 4 cases because they had insufficiently taken measures to combat sabotage.<sup>142</sup> In another case against Shell, filed by the widow of one of the executed leaders of the Ogoni community in the United States, the Supreme Court ruled that they have no jurisdiction on the overseas conduct of foreign-based companies.<sup>143</sup>

In 2011, Amnesty International and Friends of the Earth filed a complaint at the Dutch National Contact Point (NCP) of the OECD. They argued that Shell paints a distorted picture of the situation in the Niger Delta by frequently referring to sabotage of pipelines while serious flaws in the case study system into the causes of oil spills prevent the company from being able to make a factual assessment.

The NCP did not provide a final judgement on whether the guidelines were violated or not, but did advise Shell to take a cautious attitude with regard to sabotage figures because the data on which it relies is not uncontroversial.<sup>144</sup> In March 2013, the National Contact Point ultimately concluded that Shell has not violated the OECD Guidelines for Multinational Enterprises.<sup>145</sup> In early August 2013, Mutiu Sunmonu (the highest level executive of Shell Nigeria) said that Shell will largely withdraw from oil mining in the Niger Delta due to the "recklessness" and the scope of the oil theft.<sup>146</sup> In following news releases the withdrawal was denied. In the new context it is not clear how seriously Shell has taken its responsibility for clearing up the pollution.

Except for causing serious environmental and health damage, in the 1990s Shell was also linked to human rights violations by Amnesty due to security services (soldiers and officers) hired by Shell. In the 1990s, the Nigerian authorities arrested and executed nine representatives of the Ogoni community that protested against the pollution. Shell was suspected of cooperating in this with the Nigerian government. In 2009, Shell reached a settlement of US\$ 15.5 million with the families of the executed activist Ken Saro Wiwa and other Ogoni leaders.<sup>147</sup> Such serious violations of civil rights as occurred in the 90s have not occurred again. However, collaboration with the Nigerian army and the police continued. Between 2007 and 2009, Shell supposedly spent approximately US\$ 400 million on hiring Nigerian soldiers and police officers with poor reputations when it comes to corruption and human rights.<sup>148</sup>

Many of the important factors worsening the situation in the Niger delta, such as a weak government and oil theft, are only partially within the sphere of influence of the company. Due to this and because it concerns a Dutch company, only a few Dutch investors have excluded Shell.<sup>149</sup> Investors that have conducted an engagement process with the company, such as F&C who have already been holding dialogues on the activities in Nigeria with Shell for eight years, insist on a cleaning plan for the entire delta that has to be outlined in collaboration with the government.<sup>150</sup>

### 5.9.3 Relevance of the case

The oil spills greatly affect the living environment of people in the areas surrounding Shell's activities. The strong relationship between human rights violations and environmental pollution is striking in the case of Shell. In addition, due to its relationship with public security personnel there are risks to the safety and the fundamental freedoms of the local community. Human rights at stake in this case are civil rights and socio-economic rights, mainly the right to an adequate standard of living, the right to clean drinking water and the right to health.

The significant influence of the Nigerian government on the described violations raises the question of how investors apply additional criteria to acknowledge and control human rights risks. Additionally, in this case the issue of 'whether a court can rule on human rights violations that take place in another country' is particularly relevant. How do investors feel about this and to what extent do investors use their influence to guide this discussion?

### 5.9.4 Further reading

- Amnesty International, 2013, Bad Information. Oil spill case studies in the Niger Delta.
- OECD Watch, June 2013: "The Dutch NCP finds that Shell bases statements on oil spills on flawed case study"
- Dutch National Contact Point for the OECD Guidelines, March 2013, "Final report of the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises on the Specific Instance notified by Amnesty International, Friends of the Earth International and Friends of the Earth Netherlands concerning communications by Royal Dutch Shell about the cause of oil spills in the Niger Delta."
- Amnesty International, 2011, The True tragedy, delays and failures in tackling oil spills in the Niger Delta
- Amnesty International, June 2009: "Nigeria: Petroleum, Pollution and Poverty in the Niger Delta"
- Novethics Research, June 2013: "Controversial companies: Do investor blacklist make a difference?", p. 24 -26
- UNEP, August 2011: "Environmental Impact assessment of Ogoniland"
- UNEP, August 2011: "Environmental Assessment of Ogoniland"

## 5.10 Trafigura

### 5.10.1 Company profile

Trafigura is a leading logistics company specialised in purchasing, processing and distributing physical raw materials, with three quarters of its profit coming from oil trading. Trafigura operates in 15 important world markets and has branches in 56 countries.<sup>151</sup>

### 5.10.2 Involvement in violation of human rights

In August 2006, Trafigura transferred a large amount of toxic waste – the remains of an industrial process called *caustic washing* – to a local company that had this dumped in Abidjan, the capital of the Ivory Coast. This not only led to an environmental disaster, but also meant a gross violation of human rights. The Ivorian authorities reported 15 to 17 deaths, which they attributed to exposure to the toxic waste substances. In addition, more than 100,000 people sought medical help. Besides the consequences for the living environment and the health of people, a lot of people were also affected in their livelihood because the Ivorian government stopped agricultural, fishing and small commercial activities and had vegetable and fruit crops destroyed in order to prevent further spread of the health problems.<sup>152</sup>

Although Trafigura claims to have had no share in the disaster, on February 13, 2007, after the arrest of two members of the senior management by the Ivorian authorities, the company settled with the government in Ivory Coast for an amount of US\$ 195 million. In exchange for this amount, the government refrained from its plan to prosecute. Trafigura stated only to have acquiesced to the settlement for reasons of sympathy for the affected community. A large part of the amount paid was destined for the environmental recovery of the area and compensation for the victims. This process was completed in July 2012, although questions about its effectiveness remain.<sup>153</sup>

On December 23, 2011, Trafigura was fined 1 million Euros by the Amsterdam Court because the company was found guilty of illegally exporting waste substances to the Ivory Coast and concealing the harmful nature of these substances in mid-2006. The Dutch Criminal Court did not want to comment on the (effects of) dumping in the Ivory Coast itself.<sup>154</sup>

In response to the disaster, Trafigura has made steps in the field of responsible business, but has still not developed a solid human rights policy that defines the responsibility of the company with regard to respecting human rights, opportunities for victims to receive compensation and a vision indicating how the company wishes to prevent the recurrence of violations.<sup>155</sup> This is all the more worrying given the foundation of the Mining Group in 2012, a 100% subsidiary of Trafigura that sets up and develops mining industry activities in places like Peru, the Democratic Republic of Congo (DRC), Angola, Mongolia and Tanzania.<sup>156</sup>

### 5.10.3 Relevance of the case

The strong relationship between human rights violations and environmental pollution is striking in the case of Trafigura. Human rights at stake in this case are mainly the right to health, including the right to a healthy living environment, access to clean drinking water, food and housing and right to medical care. Considering the lack of a human rights policy and the expansion of Trafigura's mining industry activities in high risk areas such as the Democratic Republic of Congo (DRC) and Angola, one would like to hear from investors the extent to which they use their influence to make Trafigura aware of its responsibilities.

#### 5.10.4 Further reading

- Amnesty International, Greenpeace Netherlands, July 2013: Trafigura, “responsibility”.
- Amnesty International, Greenpeace Netherlands, August 2012: ““The Toxic Truth: about a company called Trafigura, a ship called the Probo Koala, and the dumping of toxic waste in Côte d’Ivoire”.
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- Trafigura, November 2012: “Declaration of the Board of Directors of Trafigura Management BV”.
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- Amsterdam court website  
[www.jurisdiction.nl/Organisatie/Gerechtshoven/Amsterdam/Nieuws/Pages/FineimposedonTrafigura.aspx](http://www.jurisdiction.nl/Organisatie/Gerechtshoven/Amsterdam/Nieuws/Pages/FineimposedonTrafigura.aspx)Trafigura, September 2009: “Trafigura’s response to professor Ibeanu’s report”
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## 5.11 Vedanta Resources

### 5.11.1 Company profile

Originally, Vedanta Resources (Vedanta) was an Indian mining and metallurgy company. The British-based company mines bauxite, copper, zinc, lead, silver and iron ore (amongst other materials) in Zambia, Namibia, South Africa, Liberia, Ireland and Australia. Some important subsidiaries are Sterlite Industries, Hindustan Zinc and Sesa Goa.<sup>157</sup>

### 5.11.2 Involvement in violation of human rights

In Vedanta's plans to construct a bauxite mine in the Niyamgiri Hills, Orissa (India), the company has not sufficiently taken the local community (the Dongria Kondh) into account. The mine project poses a serious threat to the natural environment in the region, which the communities depend upon for their food and livelihood.<sup>158</sup>

Moreover, Vedanta has not given the local community a voice in the preparation of the construction plans. Although Vedanta initially got a permit from the Indian government to start the construction work, this permit was revoked in 2005 as a result of the major environmental and social risks and because Vedanta had not been transparent regarding the intended location.<sup>159</sup>

In the following years (promised) amendments by Vedanta seemed to lead to approval of the project, but in August 2010 the Indian government forbade Vedanta from constructing the bauxite mine. However, in October 2010 it appeared that Vedanta had started expanding an aluminium refinery that would make use of the bauxite from the Niyamgiri Hills. The Indian government ordered Vedanta to stop the construction of this refinery.<sup>160</sup> A statement from the British National Contact Point (NCP) of the OECD and an case study report by a 'Committee of experts' preceded the Indian government's decision.<sup>161</sup> In 2009, the British NCP ruled that Vedanta had violated the OECD Guidelines for Multinational Enterprises. Following the NCP ruling, Vedanta drafted a new human rights policy, but the implementation of this policy is doubted by various NGOs.<sup>162</sup>

As of December 2012, Vedanta's refinery is no longer operational as a consequence of a lack of bauxite.<sup>163</sup> Furthermore, the Indian government has condemned Vedanta Resources several times in 2012 and 2013 for its flawed safety procedures and the structural pollution of water, soil and air in other mines in the country. In April 2013, the Orissa Mining Corporation appeal was rejected by the Indian Supreme Court.<sup>164</sup> Moreover, the Supreme Court ruled that those most affected by the proposed mine had to have a casting vote. To this end, as of April 2013, 12 Dongria villages were consulted. All villages unanimously decided to vote against the mine because they felt their religious, cultural and social rights would be endangered if the mine became operational.<sup>165</sup>

The lack of an adequate human rights policy, the severity and frequency of the recurring human rights violations and the company's uncooperative attitude during engagement processes have led to several investors, including the Norwegian Government Pension Fund and the Dutch pension fund managing organisation PGGM, giving up on their commitment to improve Vedanta's conduct and have excluded the company from investment.<sup>166</sup> From a random sample held among European investors by Novethic Research in 2012, 60% of the investors had excluded Vedanta from investment due to poor Environmental Social Governance (ESG) performance.<sup>167</sup> During the Annual Shareholders Meeting of 2012, 12.34% of all shareholders voted against all resolutions in the meeting, due to which Vedanta was forced to answer additional questions about its policies.<sup>168</sup>



### 5.11.3 Relevance of the case

The human rights violations Vedanta is associated with in the mining and refinery case in India have occurred due to careless or disrespectful dealings with the local communities within the area the company operates. Human rights at stake in this case are mainly socio-economic rights, such as the right to an adequate standard of living (including the right to food, housing, the right to health, the right to clean drinking water) and the rights of indigenous communities. An important principle developed to ensure the rights of indigenous people during the development of projects that influence their wellbeing and living environment the granting of free, prior and informed consent by indigenous people. This is expressed in Article 32 of the UN Declaration on the Rights of Indigenous People. It is striking in Vedanta's case that shortcomings in policy and implementation of due diligence processes has led to the company being insufficiently able to identify, prevent and mitigate the adverse effects of its activities on human rights. Within the framework of this study it will be researched how investors have assessed setting up policies, the implementation of due diligence processes and FPIC mechanisms with regard to indigenous people and whether they have made concrete objectives and agreements to combat human rights violations. In addition, the case of Vedanta is interesting because a lot of investors have conducted due diligence processes and judged that the violations are so severe and structural and/or everything seems to indicate that corrective measures have little chance of succeeding; ultimately choosing to exclude them from investment. This raises questions on the effectiveness of other investors' engagement processes.

### 5.11.4 Further reading

- Novethic Research, June 2013: "Controversial companies: Do investor blacklist make a difference?", p. 21-23
- Amnesty International, 2012: "Vedanta's perspective uncovered: policies cannot mask practices"
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## Chapter 6 Case study results for each financial institution

### 6.1 ABN Amro

#### 6.2 Profile

In the autumn of 2008, the Dutch government took over the Dutch activities of ABN Amro and Fortis Bank Netherlands.<sup>169</sup> As of April 2010, the offices of Fortis and ABN Amro were merged and the name Fortis Bank Netherlands gradually disappeared. The legal merger between the two banks came into effect on 1 July 2010.<sup>170</sup>

The new ABN Amro Group N.V. now has 23,059 employees in 23 countries. In the Netherlands, where the bank generates 82% of its revenue, there are 408 offices and ABN Amro is an important player on the consumer and business market. Internationally, the bank is mainly active in financing the energy, raw materials and transport industries. Furthermore, the bank conducts extensive private banking activities in the Netherlands, Europe and Asia.<sup>171</sup>

At the end of 2012, the ABN Amro's equity and liabilities amounted to € 394.4 billion, of which € 216 billion came from money entrusted to the bank by clients (private individuals and companies).<sup>172</sup> The total assets were invested in:<sup>173</sup>

- Mortgage and other loans to private individuals (45%)
- Loans to companies (25%)
- Investments in shares, bonds and Derivatives (11%)
- Loans to other banks (12%)
- Other (7%)

Besides the money on the bank's balance sheet, at the end of 2012 ABN Amro also managed € 163.1 billion in assets for third parties.<sup>174</sup> This mainly concerns private banking for wealthy private individuals in the Netherlands, the rest of Europe and Asia, but also the collective investment scheme of subsidiary Neuflyze OBC (France). This company manages € 35 billion in assets.<sup>175</sup>

#### 6.2.1 Human rights policy

In its human rights policy, ABN Amro gives a clear definition of the activities the bank does not want to be involved in - either directly or indirectly. ABN Amro expects its clients to respect the Universal Declaration of Human Rights, the International Covenant on Civil rights and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the *human rights due diligence process* and the fundamental conventions of the International Labour Organisation. The policy applies to its own capital. As for its asset management activities, ABN Amro has still not drafted a human rights policy.

#### 6.2.2 Banking services

ABN Amro can grant banking services by assisting in the issue of shares and bonds, or by providing loans. ABN Amro has granted banking services to the following selected companies since the bank adopted its current form (1 July 2010):

- **GlencoreXstrata**

- In May 2011 Glencore International entered into a credit facility of US\$ 11,265 million (€ 7,595.99 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 2,925 million (€ 1,972.33 million) one-year LIBOR+110,000bps loan and a US\$ 8,340 million (€ 5,623.66 million) three-year loan. The credit facility was used to refinance Glencore's credit facility from May 2010 and for general corporate affairs. ABN Amro Bank participated with an amount of € 144.69 million in the syndicate of 97 banks that granted the loan.<sup>176</sup>
- In May 2011, Glencore International issued new shares on the London and Hong Kong stock exchanges. The total value of the issuance was US\$ 10.05 billion (€ 7,021.73 million). The issuance was divided into two parts: a part consisting of € 6,834.83 million (London) and a part consisting of € 186.90 million (Hong Kong). The yield of the issuance was used for general corporate affairs. ABN Amro Bank participated with an amount of € 83.49 million in the syndicate of 27 banks that assisted in the issuance.<sup>177</sup>
- In September 2011, the Canadian company Viterro, which trades in cereal grains and produces food ingredients, entered into a four-year LIBOR+185.000bps credit facility of CAD\$ 2,065.75 million (€ 1,524.32 million) with a syndicate of banks. This credit facility was used for acquisitions, general corporate affairs and refinancing. ABN Amro Bank participated with an amount of € 50.81 million in the syndicate of 23 banks that granted the loan.<sup>178</sup>

In December 2012, Viterro was taken over by Glencore International.<sup>179</sup> This means that it cannot be expected that ABN Amro Bank screened Glencore at the time the loan to Viterro was granted, because at that point in time Viterro was not a subsidiary of Glencore. However, ABN Amro Bank can use its influence on Glencore now, because the loan contract between ABN Amro Bank and Viterro (which is now a subsidiary of Glencore) still runs until September 2015.
- In April 2012, Glencore International entered into a one-year credit facility of US\$ 4,435 million (€ 3,367.05 million) with a syndicate of banks. This credit facility was used for refinancing outstanding loans. ABN Amro Bank participated with an amount of € 91.83 million in the syndicate of 40 banks that granted the loan.<sup>180</sup>
- In March 2013, Glencore International entered into a five-year LIBOR+210,000bps credit facility of US\$ 8,320 million (€ 6,417.22 million) with a syndicate of banks. This credit facility was used for the purchase of crude oil from Rosneft and for general corporate affairs. ABN Amro Bank participated with an amount of € 175.01 million in the syndicate of 29 banks that granted the loan.<sup>181</sup>
- In June 2013, Glencore International entered into a credit facility of US\$ 17,340 million (€ 13,025.81 million) with a syndicate of banks. This loan was divided into three parts: a US\$ 5,920 million (€ 4,447.10 million) one-year loan, a US\$ 7,070 million (€ 5,310.98 million) three-year loan and a US\$ 4,350 million (€ 3,267.72 million) five-year loan. This credit facility was used to refinance the US\$ 4,435 loan from April 2012, the loan of US\$ 8,370 million from May 2010 and for general corporate affairs. ABN Amro Bank participated with an amount of € 159.5 million in the syndicate of 78 banks that granted the loan.<sup>182</sup>

From the interview held with ABN Amro and the evidence provided by ABN Amro the following appeared on the instruments ABN Amro applies to bring its own 'Responsible Investment' policy in banking services into practice, mainly with regard to the extractive companies involved in human rights violations:

- **Screening**

If a new credit application is received, the potential new client is asked to fill in a questionnaire. This questionnaire is linked to an assessment system that elucidates whether a company achieves or falls short of the industry standard. From access to this questionnaire it appears that ABN Amro asks for policies, due diligence procedures and compensation procedures. In addition, use is made of a standard screening process based on different data providers and public sources. The track record and reputation of a potential new client with regard to human rights is further researched by this method. Next, the abovementioned information is entered into to an industry specific assessment matrix. The depth of the case study depends on the track record of the respective company, the nature of financing and the location of respective activities. In the case of project financing, this risk analysis will be a lot more extensive than, for example, trade financing. Advice is then given to the credit commission based on this. When a negative advice is given, the credit commission may decide not to grant credit. Each client is assessed again at least once a year. Each application for renewal of a loan leads to a new screening process. In addition, ABN Amro applies an event-driven review. Should there be an issue in the field of human rights after the client being accepted but prior to the annual review, an additional screening is conducted.

Based on the ABN Amro human rights policy, industry specific assessment matrix and two anonymous examples of a client analysis, ABN Amro is granted elements 1 - 6.

In 2014, ABN AMRO agreed in writing to deploy more instruments to screen companies in the field of human rights.<sup>183</sup> This is conducted by expanding the minimum requirements ABN AMRO sets its clients with regard to human rights. Based on this information, element 22 is granted.

- **Engagement**

Regular talks were held with each client. The frequency of client talks depends on the nature of financing and the extent to which there is room for discussion, but on average it is conducted once annually. For clients where conditions are incorporated into the credit agreement, the extent to which the conditions are met is verified. If an existing client has a bad reputation, the client is asked for additional information for verification purposes and with regard to the follow-up. Projects are regularly visited as part of the engagement process.

Based on access to anonymous examples of client assessments, it is plausible that ABN Amro speaks to clients about human rights policy, human rights due diligence and compensation. Based on this, ABN Amro is granted elements 9 - 12. It is also plausible that a plan of action is drafted and that the extent to which these plans are complied with is assessed. Based on this, ABN Amro is granted elements 14 and 20. However, it is not always assessed whether the actions of the company actually lead to a reduced impact. Moreover, based on the evidence seen, it cannot be determined whether the abovementioned has taken place with the ten selected companies and based on the evidence provided it cannot be determined that the conditions and the agreements in the credit agreement are included. The content of the agreements made is also not clear. Therefore no points are granted for the other elements.

- **Exclusion**

ABN Amro has a list of excluded activities, which includes the violation of human rights as well as child labour, slave labour and conflict diamonds. Clients who don't meet the expectations of ABN Amro are not granted financing. However, ABN Amro applies no public exclusion list with regard to companies that violate human rights. Based on the evidence provided, it cannot be concluded that ABN Amro refrains from financing if an engagement does not proceed successfully. Based on this information, elements 7 and 21 are not granted.

**Table 4 Assessment banking services ABN Amro**

Element	Complies
<b>Screening</b>	
1. The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
2. The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
3. Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	Yes
4. Whether and how the company identifies the adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	Yes
5. Whether the company sets up processes to recover the adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation.	Yes
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease.	Yes
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	No
<b>Engagement</b>	
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services where motions/resolutions aimed at improving human rights are put to the vote;	N/A
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>	
10. Drafting a policy statement in which the company commits itself to respect human rights;	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	Yes

Element	Complies
13. Ensuring that that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>	
15. A policy statement in which the company commits itself to respect human rights;	No
16. Establishing a human rights due diligence process;	No
17. Setting up processes to remedy adverse human rights effects caused or contributed to by the company;	No
18. The absence of a measurable decrease in human rights violations;	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts;	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies;	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of its services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	Yes
<b>Score: 6</b>	<b>13 of the 21 elements</b>

### 6.2.3 Asset management

The asset management arm of ABN Amro may be involved in the selected companies by way of managing shares and/or bonds.

Table 5 shows the shares of the selected companies managed by ABN Amro. In total, ABN Amro manages € 28 million of the selected companies' shares.

**Table 5 Shares managed by ABN Amro**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
Neuflize OBC Investissements	France	419,212	0.04	6.78	31 May 2013
<b>Total value</b>				<b>6.78</b>	

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Goldcorp</b>					
Neuflize OBC Investissements	France	563,800	0.07	12.87	31 May 2013
Bethmann Bank	Germany	34,410	0.00	0.79	31 May 2013
<b>Total value</b>				<b>13.66</b>	
<b>Royal Dutch Shell</b>					
Neuflize OBC Investissements	France	155,590	0,00	4.05	30 April 2013
Bethmann Bank	Germany	136,906	0,00	3.53	31 May 2013
<b>Total value</b>				<b>7.58</b>	
<b>Total value of all shares</b>				<b>28,02</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

Table 6 shows the bonds of the selected companies managed by ABN Amro. In total ABN Amro manages € 3.4 million of the selected companies bonds.

**Table 6 Bonds managed by ABN Amro**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
Neuflize OBC Asset Management	France	0.00	0.23	December 2011
<b>Total value</b>			<b>0.23</b>	
<b>GlencoreXstrata</b>				
Neuflize OBC Asset Management	France	0.01	2.64	December 2011
<b>Total value</b>			<b>2.64</b>	
<b>Royal Dutch Shell</b>				
Neuflize OBC Asset Management	France	0.00	0.23	December 2011
<b>Total value</b>			<b>0.23</b>	
<b>Vedanta Resources</b>				
Neuflize OBC Asset Management	France	0.01	0.31	December 2011
<b>Total value</b>			<b>0.31</b>	
<b>Total value of all bonds</b>			<b>3.41</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

From the interview held with ABN Amro and the evidence provided by them, it appears that the following has been applied to the instruments that ABN Amro uses to bring its own 'Responsible Investment' policy into practice in asset management, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

Currently, an external provider screens for arms dealing. ABN Amro claims to apply the same approach with regard to human rights. However, this is not currently being documented. Elements 1 - 6 are therefore not granted.

- **Engagement**

Currently there are no voting or engagement activities performed with the companies in its portfolio with regard to human rights. Engagement processes are applied for an external collective investment scheme, but there is no specific elaboration on human rights. Elements 8 - 20 are therefore not granted.

ABN Amro is of the opinion that there is not currently a basis to enter into an engagement process with companies in its asset management activities. On the one hand because ABN Amro predominantly invests passively in fixed interest values and on the other hand because ABN Amro predominantly manages capital for private individuals, for which it is not ABN Amro but the client who decides whether to invest in a company and for which a mandate to enter into an engagement process on behalf of clients is lacking. The remaining amount is diversified over many companies and is partially invested in other funds and mandates, due to which fragmentation of the investments in different companies is increased further.

The *Fair Bank Guide* is of the opinion that when an asset managing company invests in one or more of the selected extractive companies, this asset managing company should use instruments to monitor the human rights performance of these companies and, if necessary, help improve them. Thus this same responsibility applies to small or passive investments. With regard to its private clients, ABN Amro can also formulate minimum requirements. In addition, ABN Amro can inform its clients and actively encourage them to take the human rights performance of the companies in which they want invest into account.

- **Exclusion**

Currently, ABN Amro does not exclude companies based on human rights violations. Element 7 is therefore not granted.

As of next year, ABN Amro has agreed in writing to use more instruments to prevent granting services to extractive companies, through its investments within the framework of asset management, that take their responsibility to respect human rights insufficiently seriously.<sup>184</sup>

**Table 7 Assessment of ABN Amro asset management**

Element	Complies/number of relevant companies	Complies
<b>Screening</b>		
1. The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment;	0/5	No
2. The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment;	0/5	No
3. Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	0/5	No
4. Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these	0/5	No



Element	Complies/number of relevant companies	Complies
effects and accounts for how it addresses these effects (human rights due diligence);		
5. Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/5	No
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/5	No
7. If it appears from the screening of extractive companies that a company insufficiently identifies adverse human rights effects, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	No	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services where motions/resolutions aimed at improving human rights are put to the vote;	0/5	No
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	0/5	No
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	0/5	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/5	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/5	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/5	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services or in which the financial institution invests to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	0/5	No
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	0/5	No

Element	Complies/number of relevant companies	Complies
16. Establishing a human rights due diligence process;	0/5	No
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	0/5	No
18. The absence of a measurable decrease of human rights violations;	0/5	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	0/5	No
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies;	0/5	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.		Yes
<b>Score: 1</b>	<b>1 (1 of 21 elements)</b>	

#### 6.2.4 Conclusions

Table 8 gives an overview of the scores that ABN Amro has received in this case study.

**Table 8 Scores ABN Amro**

Type of financing	Score
<i>Banking services</i>	6
<i>Asset management</i>	1

## 6.3 Achmea

### 6.3.1 Profile

Achmea Holding N.V. is the largest insurance company in the Netherlands. Achmea insures over 7 million clients for damage, healthcare and income under the brands: Achmea, Agis, Avéro, Centraal Beheer, FBTO, Interpolis, Zilveren Kruis, Syntrus, Inshared, OZF, Prolife and Woonfonds.<sup>185</sup> Apart from the Netherlands, Achmea also operates in 7 other European countries. Achmea also grants banking and mortgage services under the brand names Achmea, Centraal Beheer, FBTO and Staalbankiers.<sup>186</sup> In 2012, its premium turnover was € 20.4 billion, of which € 13.5 billion was comprised of premiums for healthcare insurance and € 1.2 billion was made outside the Netherlands.<sup>187</sup> In 2012, Achmea paid out € 19.3 billion.<sup>188</sup>

Achmea's shares are largely owned by two parties: the Vereniging Achmea (65% stake) and Rabobank (29% stake).<sup>189</sup>

At the end of 2012, Achmea owned total assets with a value of € 94.8 billion. € 84.6 billion came from insurance investments and bank loans, divided amongst the different investment categories as follows:<sup>190</sup>

- Investments for the risk of policy holders, mainly in shares and bonds: 30%
- Government bonds: 26%
- Mortgage loans: 19%
- Corporate bonds: 14%
- Deposits with banks: 3%
- Derivatives: 3%
- Real estate: 2%
- Shares: 1%
- Alternative investments: 1%

Achmea is also active in the field of asset management. At the end of 2012, the subsidiary Syntrus Achmea managed € 63.7 billion for institutional investors (pension funds) and subsidiary Staalbankiers managed € 1.9 billion for wealthy individual clients.<sup>191</sup>

### 6.3.2 Human rights policy

From its public human rights policy it is clear that Achmea expects companies to endorse the human rights defined in international declarations and treaties, though no expectations with regard to due diligence processes or compensation are defined in the policy. There is also no special attention paid to the rights of indigenous peoples.

### 6.3.3 Insurance investments

Within the framework of insurance investments, Profundo has identified no investments made by Achmea in the selected companies. However, Achmea indicates that it has invested in the following eight companies:

- |   |               |
|---|---------------|
| • Barrick Gold                                | Canada        |
| • China National Petroleum Corporation (CNPC) | China         |
| • Freeport-McMoran Copper & Gold              | United States |
| • GlencoreXstrata                             | Switzerland   |
| • Goldcorp                                    | Canada        |
| • Oil and Natural Gas Corporation (ONGC)      | India         |
| • Posco                                       | South Korea   |

- Royal Dutch Shell

The Netherlands

From the interview held with Achmea and the evidence they provided, it appears that the following instruments have been applied to bring Achmea's responsible investment policy into the practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

An external party annually assesses the companies in which Achmea invests. This UN Global Compact screening means that the extent to which a company complies with the principles of the UN Global Compact within its sphere of influence is assessed. This also includes the support and respect of international human rights and checking the extent to which a company ensures it is not complicit in the violation of human rights. However, this screening does not consequently assess any required recovery work and/or compensation for victims. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations.

- **Engagement**

The starting point for Achmea is an assessment by an external specialised agency. In addition, Achmea applies two forms of engagement, namely regular engagement and 'enhanced engagement'. In the case of regular engagement, Achmea participates in the engagement programme of its permanent engagement provider. This provider conducts the engagement on behalf of a group of clients, including institutional investors. The engagement provider does this based on its own case studies and insights. An unsuccessfully concluded engagement process does not currently lead to exclusion by Achmea. According to Achmea, a further statement of its position will follow.

The conditions of 'enhanced engagement' are entirely different. Here, Achmea provides significant input themselves. Based on a thematic approach, Achmea selects the companies with which they want to engage. Next, engagement objectives are outlined in consultation with its external advisor. Initially, an engagement period is always three years so as to ensure the effectiveness of the process. Prior to and after the engagement process, Achmea has pursued improvement objectives and results, such as those reported by the engagement provider and assessed by an independent party.

All eight companies in which Achmea invests, whether through asset management or insurance investments, are or were engaged by Achmea in the past. However, in two cases, the engagement process does not elaborate on human rights issues but on other topics. In the engagement processes, consequent objectives are determined with respect to human rights policy and improved implementation of due diligence systems. These objectives predominantly focus on policy and procedures. In engagement processes attention to recovery work and/or compensation for victims is often lacking. An actual decrease in violations is rarely included as a concrete objective.

- **Exclusion**

Companies that consistently violate the principles of the UN Global Compact are blacklisted by the external screening party. This blacklist is compared to the blacklist of another external agency. When a company is blacklisted by both agencies for two years, the company is excluded. Currently, Achmea has excluded one of the ten selected companies, Vedanta, on violation of human rights grounds. One of the other companies, CNPC (a PetroChina subsidiary) is excluded, but not the parent company. Based on this information, Achmea complies with element 7. PetroChina is demonstrably excluded as a result of an unsuccessful engagement process. Based on this information, element 21 is granted to Achmea.

As of next year, Achmea has agreed in writing to use more instruments to prevent granting services to extractive companies that take their responsibility to respect human rights insufficiently seriously. Based on this information, element 22 is granted to Achmea.<sup>192</sup>

Table 9 shows how Achmea have scored in the different assessment elements for insurance investments, as described in paragraph 4.5. This leads to the final assessment according to the method applied in this study.

**Table 9 Assessment of Achmea's insurance investments**

Element	Complies/number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	8/8	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	8/8	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	8/8	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	8/8	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/8	No
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/8	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.		Yes
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	7/8	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	6/8	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	5/8	Yes

Element	Complies/number of relevant companies	Complies
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	5/8	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	3/8	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3/8	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	5/8	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	5/8	Yes
16. Establishing a human rights due diligence process;	5/8	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	2/8	No
18. The absence of a measurable decrease in human rights violations;	2/8	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	5/8	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	1	Yes
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	1	Yes
<b>Score: 7</b>	<b>15 of 21 elements</b>	

#### 6.3.4 Asset management

The asset management arm of Achmea may be involved in the selected companies by way of managing shares and/or bonds.

Table 10 shows the shares of the selected companies managed by Achmea. In total, Achmea manages € 8.1 million worth of shares in the selected companies.

**Table 10 Shares managed by Achmea**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Royal Dutch Shell</b>					
Achmea Collective investment scheme Management	Netherlands	314,051	001	8,.0	31 May 2013
<b>Total value</b>				<b>8.10</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

Table 11 shows the bonds of the selected companies managed by Achmea. In total, Achmea manages € 6.0 million worth of bonds in the selected companies.

**Table 11 Bonds managed by Achmea**

Investor	Country	% of bonds	Value (€m)	Date of reporting
<b>GlencoreXstrata</b>				
Achmea Collective investment scheme Management	Netherlands	0.02	5.98	April 2013
<b>Total value</b>			<b>5.98</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

From the interview held with Achmea and the evidence provided, it appeared that the instruments that Achmea uses to bring its responsible investment policy into practice for asset management is similar to the instruments applied for insurance investments, as described in paragraph 6.3.3.

Table 12 shows how Achmea scored for the different elements of assessment for asset management, as described in paragraph 4.5.

**Table 12 Assessment asset management Achmea**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	2/2	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	2/2	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	2/2	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due	2/2	Yes

Element	Complies/ number of relevant companies	Complies
diligence);		
5. Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/2	No
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/2	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	1	Yes
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	2/2	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	2/2	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	2/2	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	2/2	Yes
12. Establishing processes to remedy adverse human rights effects caused by the company or contributed to by the company;	1/2	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	1/2	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	2/2	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	2/2	Yes
16. Establishing a human rights due diligence process;	2/2	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	1/2	No
18. The absence of a measurable decrease in human rights violations	0/2	No



Element	Complies/ number of relevant companies	Complies
takes place;		
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts;	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	2/2	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies;	1	Yes
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.		Yes
<b>Score: 7</b>	<b>15 of the 21 elements</b>	

### 6.3.5 Conclusions

Achmea shows that it takes its responsibility for respecting human rights sufficiently seriously.

Table 13 gives an overview of the scores that Achmea has received in this case study

**Table 13 Scores Achmea**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Insurance investments</i>	7
<i>Asset management</i>	7

## 6.4 Aegon

### 6.4.1 Profile

Aegon N.V. is one of the largest financial institutions in the world when it comes to life insurance, pensions and investments.

Aegon Bank offers savings accounts and mortgage loans to private individuals in the Netherlands and mediates between other Aegon products (investments, insurance and pensions).<sup>193</sup>

The Dutch insurance company, Aegon N.V., is one of the largest financial institutions in the world when it comes to life insurance, pensions and investments. At the end of 2012, Aegon N.V. had over 24,400 employees, divided between more than twenty countries in Europe, North and South America and Asia. In 2012, the Aegon Group had approximately 47 million clients worldwide and total assets with a value of € 366.1 billion.

In 2012, they had a premium turnover of € 19.5 billion, of which € 3.7 billion came from the Netherlands.<sup>194</sup>

At the end of 2011, Aegon Bank owned total assets with a value of € 6.8 billion, of which € 5.3 billion was deposited as savings.<sup>195</sup>

At the end of 2012, Aegon's insurance company owned total assets with a value of € 299.9 billion in insurance investments.<sup>196</sup> 49% of the insurance investments came from insurance contracts where Aegon guarantees a certain benefit and 51% from contracts (such as annuity policies) of which the investment risk is borne by the client. At the end of 2012, the insurance investments were divided as follows:<sup>197</sup>

- Corporate bonds: 36%
- Collective investment scheme (investing in shares and bonds): 26%
- Shares: 13%
- Government bonds: 7%
- Mortgage loans to private individuals: 7%
- Money market and deposits with banks: 5%
- Mortgage loans companies: 2%
- Real estate: 1%
- Other: 3%

Besides insurance investments, at the end of 2012 the Aegon asset management companies managed another € 157.9 billion in assets for third parties (mainly institutional investors).<sup>198</sup> €3.6 billion of the investments consist of 'impact investments'. These are investments in e.g. sustainable energy, social housing and sustainable timber production.<sup>199</sup> Aegon sells its products under the Aegon brand<sup>200</sup> as well as under the labels Knab, Kroodle, Onna-Onna, Kruidvat Verzekeringen, Eneco Bronsparen and Menzis Zorgsparen.

### 6.4.2 Human rights policy

Aegon expects companies that they do business with to respect the principles of the UN Global Compact. The Global Compact policy demands that a business checks the extent to which a company supports and respects international human rights within its sphere of influence and ensures that it is not complicit with the violation of human rights. However, the Aegon policy for the mining, oil and gas industries goes beyond the Global Compact and also assesses the extent to which potential investments comply with the 'UN Protect, respect and remedy' framework and the FPIC principles.

### 6.4.3 Banking services

No investments in the selected companies were identified for Aegon Bank.

The mining, oil and gas industries fall outside the strategic scope of the Aegon Bank as far as lending is concerned. In accordance with the predetermined assessment method, the score 'active' is not granted for the financing type of banking services.

### 6.4.4 Insurance investments

However, the insurance arm of Aegon can be involved in the selected companies by way of investments in their shares and bonds. Table 14 shows the bonds of the selected companies in which the insurance arm of Aegon has invested. In total, the insurance arm of Aegon has invested € 319 million the selected companies' bonds.

**Table 14 Insurance investments in bonds by Aegon**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
Stonebridge Life Insurance	United States	0.3	3.84	March 2013
Transamerica Financial Life Insurance	United States	0.19	21.52	March 2013
Transamerica Life Insurance	United States	0.44	49.58	March 2013
Western Reserve Life Assurance	United States	0.21	24.08	March 2013
<b>Total value</b>			<b>99.02</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>				
Transamerica Financial Life Insurance	United States	0.02	2.34	March 2013
Transamerica Life Insurance	United States	0.18	22.57	March 2013
Western Reserve Life Assurance	United States	0.01	1.56	March 2013
<b>Total value</b>			<b>26.47</b>	
<b>GlencoreXstrata</b>				
Transamerica Advisors Life Insurance	United States	0.00	0.31	March 2013
Transamerica Financial Life Insurance	United States	0.07	17.17	March 2013
Transamerica Life Insurance	United States	0.16	40.63	March 2013
Western Reserve Life Assurance	United States	0.07	17.49	March 2013
<b>Total value</b>			<b>75.60</b>	
<b>Posco</b>				
Transamerica Life Insurance	United States	0.02	1.83	March 2013
<b>Total value</b>			<b>1.83</b>	

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Royal Dutch Shell</b>				
Stonebridge Life Insurance	United States	0.02	3.89	March 2013
Transamerica Advisors Life Insurance	United States	0.09	16.80	March 2013
Transamerica Financial Life Insurance	United States	0.18	33.16	March 2013
Transamerica Life Insurance	United States	0.25	46.24	March 2013
Western Reserve Life Assurance	United States	0.09	16.32	March 2013
<b>Total value</b>			<b>116.41</b>	
<b>Total value of all bonds</b>			<b>319.33</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

From the interview held with Aegon the evidence provided, it appeared that the following instruments have been applied by Aegon to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

With the policy for responsible investment, which in practice means a Global Compact screening process, an external provider analyses the companies in which Aegon invests annually. The Global Compact screening process means that they check the extent to which a company supports and respects international human rights within its sphere of influence and ensures it is not complicit in the violation of human rights. Any required recovery work and/or compensation for victims is not consequently assessed. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations. However, the Aegon industry policy for the mining, oil and gas industries goes beyond the Global Compact and also assesses the extent to which potential investments comply with the 'UN Protect, respect and remedy' framework and FPIC principles. Aegon makes use of two research agencies to screen companies on these points. Based on this information and demonstrated screening reports, Aegon is granted elements 1 - 5. Element 6 is not granted as screening on human rights never leads to the immediate exclusion of companies. Initially, an engagement process is always entered into first. Based on this information, element 7 is not granted.

- **Engagement**

From analysis it appears that Aegon, with the exception of one company, votes at the annual meetings of all selected companies in which it invests. Aegon is currently investigating how it can improve alignment and engagement activities for a company.

Companies that consistently violate the principles of the UN Global Compact can be included by Aegon in an engagement programme at group level. Of the 8 selected companies in which Aegon invests, seven companies are or were included in an engagement process. Engagements are conducted either by Aegon Asset Management, or by an externally specialised agency. In addition, Aegon sometimes participates in collective engagement programmes. The intensity of engagement is greatest if Aegon sets up an engagement process itself or participates in it. From the evidence provided, it appears that, although policy and implementation is consequently assessed, compensation is not structurally included in the engagement objectives. Aegon is informed extensively by the company and other involved stakeholders. In one of the seven engagements, Aegon (invited by an NGO) has started talks with representatives of involved communities. In another engagement process Aegon was invited by the respective company to go on site to gain better insight into the human rights situation. Aegon tries to come to clear agreements with the companies in the talks. In some cases they succeed in this, in other cases the company does not cooperate and the engagement ends unsuccessfully. There are however, no consequences for the whole corporate group linked to an unsuccessful engagement.

- **Exclusion**

Although an engagement often takes place at group level, the extent to which the instrument of exclusion is applied by Aegon varies. In the Netherlands, it is ultimately up to the responsible investment committee to determine whether the company remains in the portfolio. The engagement programme has now been running for three years and Aegon still has not excluded any companies on the basis of human rights violations. This is different for one of its fiduciary subsidiaries who, following two unsuccessful engagements at group level, decided to exclude two of the ten selected companies. Up to now, Aegon Netherlands has not yet taken that decision. This difference is partly caused by Aegon Netherlands’ investment strategy, which endorses a lot of passive investments in index funds. This means that the benchmark is followed without making changes, even when the responsible investment committee is informed of the fact that a number of companies from the benchmark do not comply with its responsible Investment Policy.

Table 15 shows how Aegon scored for insurance investments on the different elements of assessment, as described in paragraph 4.5. This leads to the final assessment according to the method applied in this study.

**Table 15 Assessment of Aegon’s insurance investments**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	5/5	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	5/5	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	5/5	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	5/5	Yes
5.Whether the company sets up processes to remedy adverse human	5/5	Yes

Element	Complies/ number of relevant companies	Complies
rights effects caused or contributed to by the company and whether this actually leads to compensation;		
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/5	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0/5	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote;	5/5	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	5/5	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	5/5	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	5/5	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	3/5	Yes
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	2/5	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violation;	4/5	Yes
The financial institution establishes concrete agreements with extractive companies on the following topics:		
15. A policy statement in which the company commits itself to respect human rights;	4/5	Yes
16. Establishing a human rights due diligence process;	4/5	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	3/5	Yes
18. The absence of a measurable decrease in human rights violations;	2/5	No
19. The financial institution documents the agreements made (with	N/A	N/A

Element	Complies/ number of relevant companies	Complies
mining, oil and gas companies) in credit agreements or services contracts;		
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	4/5	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies;	0/5	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	No	No
<b>Score: 7</b>	<b>15 of the 21 elements</b>	

#### 6.4.5 Asset management

The asset management arm of Aegon may be involved in the selected companies by way of managing shares and/or bonds.

Table 16 shows the shares of the selected companies managed by Aegon. In total, Aegon manages € 604.7 million worth of shares in the selected companies.

**Table 16 Shares managed by Aegon**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
Aegon Capital Management	Canada	57,608	0.01	0.93	31 May 2013
Aegon Investment Management	The Netherlands	464,536	0.05	10.78	28 February 2013
<b>Total value</b>				<b>11.71</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>					
Aegon Capital Management	Canada	2,362	0.00	0.05	31 May 2013
Aegon Investment Management	The Netherlands	440,952	0.05	10.76	28 February 2013
<b>Total value</b>				<b>10.81</b>	
<b>GlencoreXstrata</b>					
Aegon Investment Management	The Netherlands	1,614,011	0.01	7.25	28 February 2013
Kames Capital	Scotland	4,250,525	0.03	16.00	30 April 2013
<b>Total value</b>				<b>23.25</b>	

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Goldcorp</b>					
Aegon Capital Management	Canada	401,448	0.05	9.17	31 May 2013
Aegon Investment Management	The Netherlands	375,879	0.05	9.39	28 February 2013
<b>Total value</b>				<b>18.56</b>	
<b>Oil and Natural Gas Corporation</b>					
Aegon Investment Management	The Netherlands	195,724	0.00	0.86	28 February 2013
<b>Total value</b>				<b>0.86</b>	
<b>Posco</b>					
Aegon Investment Management	The Netherlands	16,704	0.02	4.17	28 February 2013
<b>Total value</b>				<b>4.17</b>	
<b>Royal Dutch Shell</b>					
Aegon Investment Management	The Netherlands	3,361,638	0.10	87.00	28 February 2013
Kames Capital	Scotland	16,843,564	0.57	447.75	17 June 2013
<b>Total value</b>				<b>534.75</b>	
<b>Vedanta Resources</b>					
Aegon Investment Management	The Netherlands	45,472	0.02	0.54	14 March 2013
<b>Total value</b>				<b>0.54</b>	
<b>Total values all shares</b>				<b>604.65</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker* ([www.thomsonone.com](http://www.thomsonone.com)), viewed in July 2013.

Table 17 shows the bonds of the selected companies managed by Aegon within the framework of asset management. In total, the asset management arm of Aegon manages € 68 million worth of bonds in the selected companies.

**Table 17 Bonds managed by Aegon**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Freeport-McMoran Copper &amp; Gold</b>				
Transamerica Funds	United States	0.05	5.81	March 2013
Transamerica Partners	United States	0.06	7.71	March 2013
Transamerica Series Trust	United States	0.01	0.65	March 2013
<b>Total value</b>			<b>14.17</b>	
<b>GlencoreXstrata</b>				
Transamerica Funds	United States	0.18	46.46	March 2013
Transamerica Premier Funds	United States	0.00	0.84	March 2013



Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Total value</b>			<b>47.30</b>	
<b>Posco</b>				
Transamerica Funds	United States	0.00	0.34	March 2013
<b>Total value</b>			<b>0.34</b>	
<b>Royal Dutch Shell</b>				
Transamerica Partners	United States	0.03	4.74	March 2013
Transamerica Series Trust	United States	0.01	1.15	March 2013
<b>Total value</b>			<b>5.89</b>	
<b>Total value of all bonds</b>			<b>67.70</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

From the interview held with Aegon and the evidence provided, it appeared that the instruments Aegon uses to bring its responsible investment policy into practice for asset management is equal to the instruments applied for insurance investments, as described in paragraph **Fout! Verwijzingsbron niet gevonden.**

Table 18 shows how Aegon scored for the different elements of assessment for asset management, as described in paragraph 4.5.

**Table 18 Assessment of Aegon's asset management**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	8/8	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	8/8	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	8/8	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	8/8	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	5/8	Yes
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/8	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0/8	No

Element	Complies/ number of relevant companies	Complies
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	7/8	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	7/8	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	7/8	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	7/8	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	4/8	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3/8	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	6/8	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	6/8	Yes
16. Establishing a human rights due diligence process;	5/8	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	4/8	No
18. The absence of a measurable decrease in human rights violations;	3/8	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	5/8	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	0/8	No

Element	Complies/ number of relevant companies	Complies
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	No	No
<b>Score: 6</b>	<b>13 of the 21 elements</b>	

#### 6.4.6 Conclusions

Table 19 gives an overview of the scores that Aegon has received in this case study. The difference in scores is solely a result of a difference in the company names found. The human rights policy and the implementation of policies for both categories are basically the same.

**Table 19 Scores Aegon**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Insurance investments</i>	7
<i>Asset management</i>	6

## 6.5 Allianz

### 6.5.1 Profile

Allianz Netherlands is a part of the German Allianz Group. Allianz is one of the largest financial institutions in the world. In the Netherlands Allianz is active in the field of damage and life insurance and the company has 1.3 million clients. The damage insurance arm of Allianz Netherlands also comprises of income, traffic and private insurance. Allianz operates under the brand names Allianz and Allsecur.<sup>201</sup>

In 2012, the Allianz Group had a premium turnover of € 72.1 billion<sup>202</sup> and paid out € 48.9 billion in claims.<sup>203</sup> In 2012, Allianz Netherlands had a premium turnover of € 990 million.<sup>204</sup> At the end of 2012, the Allianz Group owned total assets with a value of € 694.6 billion.<sup>205</sup> € 599.5 billion from investments and loans was divided among the different investment categories as follows:<sup>206</sup>

- Corporate bonds: 33%
- Government bonds: 27%
- Investments at the risk of policy holders, mainly in shares and bonds: 12%
- Loans to banks: 12%
- (Mortgage) loans to private individuals: 8%
- Shares: 5%
- Real estate: 2%
- Other: 1%

Besides its own capital, the Allianz Group also manages assets for third parties, with a total volume of € 1,438 billion at the end of 2012. Of this 86% is managed by the US subsidiary PIMCO, the largest bond investor in the world.<sup>207</sup> In the Netherlands, Allianz has manages € 6 billion in assets.<sup>208</sup>

### 6.5.2 Human rights policy

Allianz Netherlands does not have its own human rights policy. As far as this topic is concerned, Allianz Netherlands adopts the guidelines of Allianz Group. Currently these guidelines are not made public officially.

### 6.5.3 Insurance investments

The insurance arm of Allianz can be involved with the selected companies through investments in their shares and bonds. Table 20 shows the bonds of the selected companies in which the insurance arm of Allianz has invested. In total, the insurance arm of Allianz has invested € 248 million in bonds with the selected companies.

**Table 20 Insurance investments in bonds by Allianz**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
Allianz Global Risks US Insurance Company	United States	0.03	3.12	March 2013
Allianz Life Insurance Company of North America	United States	1.25	143.57	March 2013
Allianz Life Insurance Company of New York	United States	0.01	1.40	March 2013
Allianz of America	United States	0.00	0.50	March 2013
<b>Total value</b>			<b>148,59</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>				
Allianz Global Risks US Insurance Company	United States	0.01	1.17	March 2013
Allianz Invest Austria	Austria	0.00	0.39	May 2013
Allianz Life Insurance Company of North America	United States	0.36	46.77	March 2013
Allianz Life Insurance Company of New York	United States	0.01	1.56	March 2013
Allianz of America	United States	0.00	0.52	March 2013
<b>Total value</b>			<b>50.41</b>	
<b>GlencoreXstrata</b>				
Allianz Global Risks US Insurance Company	United States	0.01	3.11	March 2013
Allianz Life Insurance Company of North America	United States	0.11	28.33	March 2013
Allianz Life Insurance Company of New York	United States	0.00	0.78	March 2013
Allianz of America	United States	0.00	1.06	March 2013
<b>Total value</b>			<b>33.28</b>	
<b>Posco</b>				
Allianz of America	United States	0.01	0.51	March 2013
<b>Total value</b>			<b>0.51</b>	

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Royal Dutch Shell</b>				
Allianz Global Risks US Insurance Company	United States	0.04	7.77	March 2013
Allianz Life Insurance Company of North America	United States	0.03	6.49	March 2013
Allianz of America	United States	0.00	0.03	March 2013
Euler Hermes North America Credit Insurance Company	United States	0.01	1.17	March 2013
<b>Total value</b>			<b>15.46</b>	
<b>Total value of all bonds</b>			<b>248.25</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

Allianz has not cooperated in this case study. For insurance investments, in accordance with the predetermined assessment method, a score 1 has been granted.

#### 6.5.4 Asset management

The asset management arm of Allianz may be involved in the selected companies by way of managing shares and/or bonds.

**Fout! Verwijzingsbron niet gevonden.** shows the shares of the selected companies managed by Allianz. In total, Allianz manages € 1,443.2 million worth of shares for the selected companies.

**Table 21 Shares managed by Allianz**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
Allianz Global Investors France	France	19,000	0.00	0.44	28 February 2013
Allianz Global Investors Kapitalanlagegesellschaft	Germany	2,850,765	0.28	45.86	31 May 2013
Allianz Global Investors U.S.	United States	1,861,757	0.19	42.64	31 March 2013
NFJ Investment Group	United States	10,349,458	1.03	237.07	31 March 2013
<b>Total value</b>				<b>326.01</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>					
Allianz Customised Global Equity Fund	United States	14,351	0.00	0.39	30 June 2012
Allianz Global Investors France	France	19,300	0.00	0.47	28 February 2013
Allianz Global Investors Italia	Italy	25,524	0.00	0.66	31 March 2013
Allianz Global Investors Kapitalanlagegesellschaft	Germany	2,868,125	0.30	68.57	31 May 2013

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
Allianz Global Investors Taiwan	Taiwan	41,860	0.00	1.08	31 March 2013
Allianz Global Investors U.S.	United States	2,001,970	0.21	51.69	31 March 2013
NFJ Investment Group	United States	8,447,798	0.89	218.10	31 March 2013
Pacific Investment Management Company	United States	565	0.00	0.02	31 March 2013
<b>Total value</b>				<b>340.98</b>	
<b>GlencoreXstrata</b>					
Allianz Global Investors Kapitalanlagegesellschaft	Germany	3,113,100	0.02	11.77	31 May 2013
Allianz Global Investors U.S.	United States	13,807	0.00	0.05	31 May 2013
Allianz Invest Kapitalanlagegesellschaft	Austria	80,000	0.00	0.30	31 May 2013
<b>Total value</b>				<b>12.12</b>	
<b>Goldcorp</b>					
Allianz Global Investors Italia	Italy	13,172	0.00	0.34	31 March 2013
Allianz Global Investors Kapitalanlagegesellschaft	Germany	2,960,350	0.36	67.60	31 May 2013
<b>Total value</b>				<b>67.94</b>	
<b>Oil and Natural Gas Corporation</b>					
Allianz Global Investors Taiwan	Taiwan	190,085	0.00	0.78	30 June 2012
<b>Total value</b>				<b>0.78</b>	
<b>Posco</b>					
Allianz Global Investors Korea	South-Korea	356	0.00	0.08	31 March 2013
Allianz Global Investors Taiwan	Taiwan	156	0.00	0.04	31 December 2012
Allianz Global Investors U.S.	United States	26,51	359.665	0.09	31 March 2013
NFJ Investment Group	United States	1,529,871	0.51	90.17	31 March 2013
<b>Total value</b>				<b>90.38</b>	
<b>Royal Dutch Shell</b>					
Allianz Global Investors France	France	12,581	0.00	0.55	28 February 2013
Allianz Global Investors Italia	Italy	43,000	0.00	1.14	30 April 2013
Allianz Global Investors Kapitalanlagegesellschaft	Germany	3,365,139	0.10	87.41	31 May 2013
Allianz Global Investors	Taiwan	7,805	0.00	0.20	31 December 2012

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
Taiwan					
Allianz Global Investors U.S.	United States	1,925,481	0.09	91.02	31 May 2013
Allianz Invest Kapitalanlagegesellschaft	Austria	55,000	0.00	1.42	31 May 2013
Allianz Netherlands Asset Management	The Netherlands	1,960,000	0.05	50.52	31 May 2013
Allianz Popular Asset Management	Spain	2,170	0.00	0.05	31 December 2012
Allianz UK Equity Fund	United Kingdom	0,00	34.041	0.95	30 June 2012
NFJ Investment Group	United States	6,613,302	0.35	331.73	31 May 2013
PIMCO Commercial Mortgage Securities Trust	United States	271,059	0.01	7.03	31 December 2012
PIMCO Europe	United Kingdom	1,269,842	0.03	32.92	31 December 2012
<b>Total value</b>				<b>604.94</b>	
<b>Total value of all shares</b>				<b>1.443,15</b>	

Source: Thomson ONE Banker, "Share ownership", Thomson ONE Banker ([www.thomsonone.com](http://www.thomsonone.com)), viewed in July 2013.

Table 22 shows the bonds of the selected companies managed by the asset management arm of Allianz. In total, Allianz manages € 469.0 million worth of bonds for the selected companies.

**Table 22 Bonds managed by Allianz**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
PIMCO Advisors	United States	0.46	52.26	March 2013
PIMCO Funds Global Investors	Ireland	0.06	6.94	March 2013
<b>Total value</b>			<b>59.20</b>	
<b>China National Petroleum Corporation</b>				
Allianz Global Investors Luxembourg	Luxembourg	0.00	1.65	February 2013
PIMCO Advisors	United States	0.00	2.61	July 2013
PIMCO Funds Global Investors	Ireland	0.00	1.36	July 2013
<b>Total value</b>			<b>5.62</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>				
PIMCO Advisors	United States	1.33	170.60	March 2013
PIMCO Funds Global Investors	Ireland	0.48	61.07	March 2013
<b>Total value</b>			<b>231.67</b>	
<b>GlencoreXstrata</b>				



Investor	Country	% of bonds	Value (€ m)	Date of reporting
Allianz Global Investors France	France	0.01	1.96	December 2012
Allianz Global Investors KAG	Germany	0.01	1.70	February 2013
Allianz Global Investors Luxembourg	Luxembourg	0.04	9.74	February 2013
Allianz Global Investors UK	United Kingdom	0.00	0.17	March 2013
Allianz Invest Austria	Austria	0.00	0.90	May 2013
PIMCO Advisors	United States	0.10	25.01	March 2013
PIMCO Funds Global Investors	Ireland	0.22	55.13	March 2013
<b>Total value</b>			<b>94,61</b>	
<b>Posco</b>				
Allianz Invest Austria	Austria	0.00	0.19	May 2013
<b>Total value</b>			<b>0.19</b>	
<b>Royal Dutch Shell</b>				
Allianz Invest Austria	Austria	0.00	0.20	May 2013
PIMCO Advisors	United States	0.30	56.92	March 2013
PIMCO Funds Global Investors	Ireland	0.00	0.15	March 2013
<b>Total value</b>			<b>57.27</b>	
<b>Vedanta Resources</b>				
Allianz Global Investors France	France	0.04	7.77	March 2013
Allianz Global Investors Luxembourg	Luxembourg	0.09	5.28	February 2013
Allianz Invest Austria	Austria	0.03	1.55	May 2013
PIMCO Advisors	United States	0.02	1.30	March 2013
PIMCO Funds Global Investors	Ireland	0.07	4.56	March 2013
<b>Total value</b>			<b>20.46</b>	
<b>Total value of all bonds</b>			<b>469.02</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

Allianz has not cooperated in this case study. For asset management, in accordance with the predetermined assessment method, a score 1 has been granted.

### 6.5.5 Conclusions

Table 23 gives an overview of the scores that Allianz has received in this case study.

**Table 23 Scores Allianz**

Type of financing	Score
<i>Insurance investments</i>	1
<i>Asset management</i>	1

The *Fair Insurance Guide* and the *Fair Bank Guide* have responded as follows to the Allianz's decision not to cooperate with this case study:

“The *Fair Insurance Guide* and the *Fair Bank Guide* regret that four insurance groups, namely Allianz, Delta Lloyd, Generali and Legal & General, did not want to cooperate with the ‘extractive companies and human rights’ case study.

This is all the more serious because the case study shows that these four insurance companies invest heavily in several of the extractive companies selected for this case study.

With their dismissive attitude, these insurance companies do not serve the interest of their clients or their other stakeholders. After all, these two groups must now wonder whether their insurance company pays sufficient attention to human rights in their investment practice.

In accordance with the predefined and communicated methodology, the four insurance groups have achieved the lowest score (1).

It is conspicuous that earlier this year, in the first *Fair Insurance Guide* policy case study, three of these four insurance companies also scored poor (1) on their human rights policy and Delta Lloyd got achieved no better than insufficient (4).

The *Fair Bank Guide* and the *Fair Insurance Guide* urge the four insurance companies to take their clients and other stakeholders, including a lot of Dutch civilians, seriously. Clients and other stakeholders deserve transparency as to what happens with their money and want to know whether Allianz, Delta Lloyd, Generali and Legal & General give respect for human rights sufficient attention in their investment practice.”

## 6.6 APG

### 6.6.1 Profile

APG insurance company provides insurance products and administrative services in the field of income security, which includes disability, family pensions and saving and investing. Loyalis, APG's insurance company, is a subsidiary of APG Group N.V. (APG), a Dutch pension fund manager for 34 government, construction and education employee pension funds. In total, APG manages the pensions of approximately 4.5 million (former) employees in the public and private industry. APG Group has two shareholders, Pension fund ABP (92.16 percent stake) and *Sociaal Fonds Bouwnijverheid* (7.84 percent stake).<sup>209</sup>

In 2012, APG realised a turnover of € 1.4 billion.<sup>210</sup> € 372.4 million of this came from the premium turnover of insurance subsidiary Loyalis.<sup>211</sup>

At the end of 2012, APG owned total assets with a value of € 5.2 billion, of which € 2.9 billion was comprised of Loyalis insurance investments.<sup>212</sup> The division of these insurance investments amongst the different investment categories was as follows:<sup>213</sup>

- Government bonds (30%)
- Corporate bonds (45%)
- Shares (7%)
- Real estate (7%)
- Private equity (2%)
- Infrastructure (1%)
- Other (8%)

Besides its own insurance investments, APG manages approximately € 324 billion in assets for Dutch pension funds in the government & education, construction, housing corporations, medical specialists, sheltered employment, cleaning & window cleaning, brick manufacturing and flowers and plants wholesaler industries.<sup>214</sup>

### 6.6.2 Human rights policy

APG expects companies they deal with to respect the principles of the UN Global Compact and sells its interests if dialogue does not lead to improvement. The Global Compact human rights policy means that a business checks the extent to which a company supports and respects international human rights within its sphere of influence and ensures it is not complicit in the violation of human rights. In 2013 Loyalis fully transferred the asset management of the investments in government and corporate bonds to APG Asset Management, due to which (as of 2013) the responsible investment policy of APG is also applicable to these investments.

### 6.6.3 Insurance investments

The insurance company within APG may be involved in the selected companies by way of investments in shares and/or bonds. Loyalis indicates that, within the framework of insurance investments, it invests in the following companies:

- |                                  |                 |
|----------------------------------|-----------------|
| • Barrick Gold                   | Canada          |
| • Freeport-McMoran Copper & Gold | United States   |
| • GlencoreXstrata                | Switzerland     |
| • Goldcorp                       | Canada          |
| • Posco                          | South Korea     |
| • Royal Dutch Shell              | The Netherlands |

These investments amount to € 1.3 million. In addition Loyalis has € 2.2 million worth of bonds in Glencore Finance Europe.

From the interview held with APG's insurance company and APG Asset Management and the evidence provided by them, it appeared that the following instruments have been applied by the APG insurance company to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

All shares and bonds of APG's insurance company are annually screened by an external data provider. Global Compact screening means that they check the extent to which a company supports and respects international human rights within its sphere of influence and ensures it is not complicit in the violation of human rights. Any required recovery work and/or compensation for victims is not consequently assessed. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations. Based on this information, elements 1 - 4 are granted.

- **Engagement**

As far as engagement activities are concerned, a distinction should be made between shares and bonds. In 2013, APG's insurance company fully transferred the asset management of the investments in government and corporate bonds to APG asset management, due to which (as of 2013) the responsible investment policy of APG is also applicable to these investments. Loyalis has also indicated it owns bonds in Glencore. Commissioned by Loyalis, APG asset management is conducting an engagement process with this company. However, this is not substantiated by evidence and is therefore not included in the assessment.

In addition, 20 percent of the portfolio is managed by external managers and according to them, the shares found in six of the ten selected companies fall under the management of State Street Global Advisors. Its voting rights on five of the six APG Asset Management shares are cast by State Street, in line with the respective voting policy. Based on evidence provided, a point is granted for element 8. Currently, no engagement is applied to externally managed share portfolios. Due to this, elements 9 -18 and 20 are not granted.

- **Exclusion**

Loyalis can decide not to invest in certain companies if there is a reason to do so. For example, when companies violate the principles of the Global Compact and appear unwilling to change their conduct and/or refuse to enter into dialogue with APG. The listed subsidiary is currently one of the ten selected companies on the list excluded due to involvement in human rights violations, namely PetroChina. Based on the exclusion list of Loyalis, a point has been granted for element 21.

**Fout! Verwijzingsbron niet gevonden.** shows how Loyalis scored for the different elements of assessment for insurance investments, as described in paragraph 4.5.

**Table 24 Assessment insurance investments Loyalis**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6/7	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6/7	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	6/7	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	6/7	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/7	No
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/7	No
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.		Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations.	0/7	No
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	0/7	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/7	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/7	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/7	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking	0/7	No

Element	Complies/ number of relevant companies	Complies
services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;		
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	0/7	No
16. Establishing a human rights due diligence process;	0/7	No
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	0/7	No
18. The absence of a measurable decrease in human rights violations;	0/7	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	N/A	N/A
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	0/7	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.		No
<b>Score: 3</b>	<b>6 of the 21 elements</b>	

#### 6.6.4 Asset management

APG's asset managing company may be involved in the selected companies by way of managing shares and/or bonds. Table 25 shows the APG Asset Management investments found by Profundo in the selected companies.

**Table 25 Insurance investments in shares Loyalis**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
APG Asset Management	The Netherlands	3,495,779	0.35	80.07	31 March 2013
<b>Total value</b>				<b>80.07</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>					
APG Asset Management	The Netherlands	2,236,569	0.24	57.74	31 March 2013
<b>Total value</b>				<b>57.74</b>	
<b>GlencoreXstrata</b>					

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
APG Asset Management	The Netherlands	5,455,773	0.04	23.56	31 December 2012
<b>Total value</b>				<b>23.56</b>	
<b>Goldcorp</b>					
APG Asset Management	The Netherlands	1,855,059	0.23	48.67	31 March 2013
<b>Total Value</b>				<b>48.67</b>	
<b>Posco</b>					
APG Asset Management	The Netherlands	64,505	0.07	15.96	31 December 2012
<b>Total value</b>				<b>15.96</b>	
<b>Royal Dutch Shell</b>					
APG Asset Management	The Netherlands	25,388,873	1.00	687.33	23 October 2012
<b>Total value</b>				<b>687.33</b>	
<b>Vedanta Resources</b>					
APG Asset Management	The Netherlands	805,060	0.30	7.45	14 March 2013
<b>Total value</b>				<b>7.45</b>	
<b>Total value of all shares</b>				<b>920.78</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

Within the framework of asset management, APG has indicated that it also invests in Trafigura and the Oil and Natural Gas Corporation (ONGC).

From the interview conducted with APG Asset Management and the evidence provided by them, it appeared that the following instruments have been applied by APG Asset Management to bring the responsible investment policy for third parties into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

All shares and bonds managed by APG Asset Management are screened by an external data provider annually. Global Compact screening means that they check the extent to which a company supports and respects international human rights within its sphere of influence and ensures it is not complicit in the violation of human rights. Any required recovery work and/or compensation for victims is not consequently assessed. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations. Based on this information, elements 1 - 4 are granted.

- **Engagement**

APG’s asset managing company votes on the Annual General Meetings of companies they have invested. APG Asset Management publishes its voting behaviour and gives an explanation of how and why they have voted. Based on this information, a point is granted for element 8. APG Asset Management invests on behalf of clients in nine of the ten selected companies. They have a dialogue or have had a dialogue in the past with all ten of the companies. APG Asset Management conducts the talks independently.

APG Asset Management indicates that they have had an intensive engagement process with all selected companies it invests in. The exclusion of PetroChina was also preceded by a long engagement process. These engagement processes consist of correspondence, talks both on the phone as well as face-to-face meetings and in some cases a visit to the location (in the case of Barrick, Posco and Shell). APG Asset Management has shown no interview reports, but in several public newsletters and responsible investment reports, five of these engagement processes are reported on. Based on this information, element 9 is granted. From the evidence provided it can be concluded that attention to human rights policy is given in five engagement paths and in five of the nine engagement processes demonstrable attention to human rights due diligence is paid. APG Asset Management tries to arrive at clear agreements with the companies in the talks. In some cases this succeeds, in other cases the company does not cooperate. Based on this information, elements 10,11,14,15, 16 and 20 are granted to APG. However, it cannot be concluded from the evidence provided that attention to recovery work, compensation for victims and the resulting impact of a measure taken by a company is paid in a majority of the engagement processes. Based on this information, no points are granted for elements 12, 13, 17 and 18.

- **Exclusion**

APG Asset Management can decide not to invest in certain companies if there is a reason to do so. For example, when companies violate the principles of the Global Compact or appear to be unwilling to change their conduct and refuse to enter into a dialogue with APG Asset Management. After many years of dialogue, APG has concluded that its efforts with PetroChina have not led to the desired effects. PetroChina has been excluded due to involvement in human rights violations. Based on APG’s exclusion list and information on these engagement processes in APG’s active shareholder reports, a point has been granted for element 21. A decision to exclude is always preceded by an engagement process so element 7 is therefore not granted.

Table 26 shows how APG scored on different elements of assessment for asset management, as described in paragraph 4.5.

**Table 26 Assessment of APG’s asset management**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6/9	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6/9	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	6/9	Yes



Element	Complies/ number of relevant companies	Complies
4. Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	6/9	Yes
5. Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/9	No
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/9	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0/10	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	9/9	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	6/10	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	5/9	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	5/9	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	2/9	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	4/9	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	6/9	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	5/9	Yes
16. Establishing a human rights due diligence process;	5/9	Yes

Element	Complies/ number of relevant companies	Complies
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	2/9	No
18. The absence of a measurable decrease in human rights violations;	4/9	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	6/9	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	1	Yes
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	No	No
<b>Score: 6</b>	<b>13 of the 21 elements</b>	

### 6.6.5 Conclusions

Table 27 gives an overview of the scores that APG (Loyalis) has received in this case study.

**Table 27 Scores APG (Loyalis)**

Type of financing	Score
<i>Insurance investments</i>	3
<i>Asset management</i>	6

## 6.7 ASN Bank

### 6.7.1 Profile

ASN Bank is a Dutch bank that wants to contribute to a sustainable society. ASN Bank is mainly active in the private market in the Netherlands, but now also grants loans to sustainable energy companies. ASN Bank is a wholly owned subsidiary of SNS Reaal, but is treated separately because the bank carries out its own formal policy and is independently one of the ten largest banks in the Dutch savings market.

At the end of 2012, ASN Bank had more than 110 employees and more than 587,600 clients in the Netherlands.<sup>215</sup> Its total assets amounted to € 10.6 billion, of which € 9.8 billion was savings.<sup>216</sup> At the end of 2012, the total assets were invested as follows:<sup>217</sup>

- Mortgage loans (44%)
- Investments in government bonds (29%)
- Loans to Dutch municipalities, provinces, water boards, water utility companies, healthcare organisations, housing corporations and educational organisations (17%)
- Loans to banks (6%)
- Loans to sustainable energy companies (2%)
- Other (2%)

Besides the money on the bank's balance sheet at the end of 2012, ASN Bank also managed a number of collective investment schemes, mandates and private banking accounts with the total of assets managed amounting to € 1.7 billion.<sup>218</sup>

### 6.7.2 Human rights policy

The ASN human rights policy is described in detail in the ASN Bank paper on human rights. The ASN human rights policy is based on The Universal Declaration of Human Rights (UDHR) and all international standards that arise from it, such as the "UN Guiding Principles on Business and Human Rights". ASN Bank expects companies it invests in to respect civil, political, economic, social and cultural rights and the rights of special and/or vulnerable groups, such as children, women, minorities and indigenous peoples. The ASN human rights policy applies to its investments in countries through government bonds and its investments in companies through credit, shares and bonds.

### 6.7.3 Banking services

No investments in the selected companies were identified for ASN Bank.

The mining industry and the oil and gas industry fall outside the geographic and strategic scope of the ASN Bank as far as lending is concerned. For banking services, in accordance with the predetermined assessment method, the score granted is 'inactive'.

### 6.7.4 Asset management

No investments are identified for either ASN Bank or ASN Asset management.

Investments in mining, oil and gas companies within the framework of asset management are a direct consequence of ASN Bank's Responsible Investment Policy. Therefore, in accordance with the predetermined assessment method, a score could be granted for asset management.

From the interview with ASN Bank and the evidence provided, it appeared that the following instruments have been applied to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- Screening**  
 Before the analyst investigates a company, they determine the research category. Firstly, this is done by mapping out the risks of the respective industry. These risks are documented in an industry profile. Next, the analyst establishes for each company whether they are operating in high-risk countries and conducting high-risk activities. The more the company operates in high-risk countries, high-risk industries or high-risk activities, and the larger the risks are, the higher the conditions the company has to comply with. There are therefore subsequent checks on human rights policy and the implementation of a potential investment’s human rights policy. When a company is involved in severe human rights violations, it does not qualify for inclusion in the ‘universe’. Based on this information, elements 1 and 2 are granted.
- Exclusion**  
 ASN Bank does not work with exclusion but with inclusion. Companies are only included in the ‘universe’ if they comply with the ASN investment criteria. All companies that meet the ASN investment policy are included in the ASN universe, which is publicly available. Investments are only allowed in companies that are included in this universe. None of the ten selected companies are included in the ASN investment universe. Based on this information and following insight into the ASN investment universe, element 7 is granted.

Table 28 shows how ASN Bank scored in the different assessment elements for asset management, as described in paragraph 4.5.

**Table 28 Assessment of ASN Bank’s asset management**

Element	Complies
<b>Screening</b>	
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	Yes
<b>Score: 10</b>	<b>3 of the 3 elements</b>

**6.7.5 Conclusions**

Table 29 gives an overview of the scores that ASN Bank has received in this case study.

**Table 29 Scores ASN Bank**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Asset management</i>	10

## 6.8 ASR Netherlands

### 6.8.1 Profile

ASR Nederland N.V. is one of the largest insurance companies on the Dutch insurance market.<sup>219</sup> The Dutch government has been the 100% owner of ASR Netherlands since 2008 when they acquired it from former banking and insurance company Fortis Holding.<sup>220</sup> ASR Netherlands' insurance products are administered by the following brands: ASR, de Amersfoortse (business market), Ditzo (damage, travel, healthcare), Europeesche Verzekeringen (travel, recreation) and Ardanta (funeral).<sup>221</sup> In 2012, ASR Netherlands achieved a premium turnover of € 4.3 billion and the company paid out € 5.7 billion in claims.<sup>222</sup> At the end of 2012, ASR Netherlands owned total assets with a value of € 44.5 billion, of which € 40.0 billion was comprised of investments and loans. The division of the different investment categories was as follows:<sup>223</sup>

- Corporate bonds: 24%
- Government bonds: 24%
- Shares: 23%
- Mortgage and other loans to private individuals: 10%
- Loans to banks: 6%
- Derivatives: 6%
- Real estate: 4%
- Other: 2%

Within ASR Nederland, asset management is conducted by the Financial Markets department, with real estate investments managed by subsidiary ASR Vastgoed Vermogensbeheer (ASR Vastgoed Vermogensbeheer).<sup>224</sup> As of recently, ASR Vastgoed Vermogensbeheer also offers management of investments in (direct) real estate for third parties. ASR Vastgoed Vermogensbeheer's first collective investment scheme had a volume of € 380 million.<sup>225</sup>

### 6.8.2 Human rights policy

The ASR Human rights policy is part of the ASR SRI policy, which is published on the ASR website.<sup>226</sup> The published human rights policy indicates that companies and governments have to adhere to human rights conventions and is applied to both countries (government loans) as well as companies (shares and corporate bonds).

ASR have indicated that the ASR SRI policy is currently assessed with the intention to publish all details more extensively, e.g. on the website, in the annual report and through other publications.

### 6.8.3 Insurance investments

Table 30 shows the shares of the selected companies in ASR Netherlands' collective investment scheme. This concerns funds managed by an external manager, BNP Paribas. In total, these funds manage € 39.3 million worth of shares in the selected companies.

**Table 30 Insurance investments ASR Netherlands in shares**

Collective investment scheme	# shares	% of shares	Value (€ m)	Date of reporting
<b>Posco</b>				
ASR Fonds Aziëfond	688	0.00	0.22	31 October 2012
<b>Total value</b>			<b>0.22</b>	
<b>Royal Dutch Shell</b>				
ASR Fonds Aandelenfond	80,051	0.00	2.12	31 October 2012
ASR Fonds Europafond	194,850	0.01	5.03	30 November 2012
ASR Fonds Nederlandfond	1,236,790	0.03	31.91	30 November 2012
<b>Total value</b>			<b>39.06</b>	
<b>Total value of all shares</b>			<b>39.28</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker* ([www.thomsonone.com](http://www.thomsonone.com)), viewed in July 2013.

ASR Netherlands indicates that the products they manage are predominantly in Euros. Due to this, they cannot invest in 6 of the 10 selected companies. The other 4 companies are excluded by ASR Netherlands due to its SRI-policy and on human rights and ethical grounds. Ergo, there is no investment in these companies.

BNP Paribas investments in Posco and Shell concern insurance products that are no longer offered and which are from the past when ASR was a part of Fortis Group, and at the time Fortis Investments managed its funds for investment insurance. Fortis IM was then purchased by BNP Paribas (France). ASR no longer offers the respective insurance products on the market and tries to shift these policy holders to its new ASR funds, but is hindered in this process by long-term policy contracts that cannot be easily broken or changed. In 2011, ASR sent letters to all these policy holders encouraging them to shift voluntarily, but as of yet this has not yet happened on a large scale. From evidence provided it appears that ASR has started a major transition process in which, as of November 2013, it will structurally convert the old funds into new funds to which the internal investment policy of ASR applies. It won't be until the end 2014 that most of these funds are replaced.

From the interview held with ASR Netherlands and the evidence provided, it appeared that the following instruments have been applied bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

The screening elements in the demonstrated screening reports for the products under its own management are a lot more detailed and comprehensive than the published ASR human rights policy. Companies are excluded if there is continuous, systematic or gross violation of human rights, based on the International Bill of Human Rights. ASR sets the benchmark and each company in the existing portfolio is screened every six months by two external agencies. Based on the ASR SRI-policy and the human rights screening process by this agency, the extent to which the companies meet the nine international human rights treaties, whether the companies have developed a sufficient policy, whether there are due diligence processes and whether any damage is recovered is all researched. ASR demands that investments managed by external asset management companies are also screened based on the UN Global Compact human rights criteria.

Based on the screening reports that ASR have provided, points are granted for elements 1 - 6.

- **Engagement**

Because the externally managed funds (in which investments are found in two companies) concerns ASR funds, the investments found are treated as ASR investments in the study. For these investments it is researched what instruments ASR uses to encourage the manager of these funds, BNP Paribas, to apply screening and engagement processes with regard to human rights. We consider making hard agreements on engagement objectives, considering the limited influence of ASR within such funds, to not be applicable. ASR was initially not informed of the investments discovered as they claim they fall outside its direct control. ASR has several funds managed by BNP Paribas. In this case study ASR has shown that it asks BNP Paribas for clarification on the human rights performance of the companies invested in. In addition, ASR has shown that for other funds, where it has more influence, they ordered BNP Paribas to remove a company as a result of human rights issues. Based on this information, element 9 has been granted.

However, in its communication with BNP Paribas, ASR does not go into detail on the importance of a human right policy, due diligence, compensation and impact. Moreover, BNP Paribas was only contacted after Profundo brought these investments to its attention. For this reason, no points are granted for elements 10-14. By now, September 2013, BNP Paribas has decided to enter an engagement process with Posco on the basis of human rights violations (UN Global Compact screening).

ASR's own engagement policy dates back to 2012 and is currently applied to a limited extent. ASR addresses companies on products, processes and conduct that are in violation of the ASR SRI criteria. ASR only enters into engagement processes with companies if they invest in them with funds they manage themselves. Because ASR does not invest in the ten selected companies with investment products they manage themselves, there is no engagement between ASR and them.

By way of a written declaration, ASR has informed us that next year they will use more instruments in the several funds that fall under the management of BNP Paribas, to prevent granting services to extractive companies that take their responsibility to respect human rights insufficiently seriously. Based on this information, element 22 is granted to ASR.

In addition, ASR participates in a project (Good Engagement) with Triodos (the Netherlands) and AXA Investment Managers (the Dutch arm of the French insurance group). The objective of this project is to investigate how engagement is best applied and what the principal success factors for effective engagement are, both for investors in shares and in corporate bonds. ASR is willing to revise its engagement policy following the outcome of this project.

- **Exclusion**

If a company does not meet the ASR SRI policy, a negative recommendation is given by the external SRI research provider. This has led to the exclusion of four of the ten selected companies; the other 6 companies do not fall within its investment remit. ASR has substantiated this with a list of exclusions. Because ASR could demonstrate that it has applied this policy to its managed assets and marketed funds since 2008, and because it actively works towards replacing the old funds with new funds for which its responsible investment policy applies, we assume that the four companies are consequently excluded. Based on this information, a point has been granted for element 7.

Table 31 shows how ASR Netherlands has scored in the different assessment elements, as described in paragraph 4.5. This leads to the final assessment according to the method applied in this study.

**Table 31 Assessment of ASR Netherlands' insurance investments**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/4	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/4	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	4/4	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	4/4	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	4/4	Yes
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	4/4	Yes
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	4/4	Yes
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	N/A	N/A
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	2/2	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	0/2	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/2	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how	0/2	No



Element	Complies/ number of relevant companies	Complies
it addresses these effects (human rights due diligence);		
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/2	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	N/A	N/A
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	N/A	N/A
16. Establishing a human rights due diligence process;	N/A	N/A
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	N/A	N/A
18. The absence of a measurable decrease in human rights violations;	N/A	N/A
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	N/A	N/A
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	N/A	N/A
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	Yes	Yes
<b>Score: 7</b>	<b>9 of the 13 elements</b>	

#### 6.8.4 Asset management

No investments have been identified in the selected companies by ASR Vastgoed Vermogensbeheer. For the type of financing asset management, in accordance with the predetermined assessment method, the score “inactive” has been granted.

#### 6.8.5 Conclusions

ASR Netherlands shows to take its responsibility with regard to respecting human rights sufficiently seriously.

Table 32 gives an overview of the scores that ASR Netherlands has received in this case study.

**Table 32 Scores ASR Netherlands**

Type of financing	Score
<i>Insurance investments</i>	7
<i>Asset management</i>	Inactive

## 6.9 Delta Lloyd

### 6.9.1 Profile

Delta Lloyd Group is a listed Dutch financial institution with products and services in the field of insurance, pensions, investments and banking. Delta Lloyd focuses on consumers, but also on small and large companies, multinationals and pension funds.<sup>227</sup> They predominantly sell products under three brands: Delta Lloyd, Ohra and ABN Amro Insurances. In the field of pension products, Delta Lloyd works in concert with BinckBank in a joint-venture called BeFrank. Erasmus Leven is an insurance company that mainly deals with life insurance policies and mortgage related insurance, the Nationaal Spaarfonds is mainly active online with damage insurance and Cyrte Investments is an investment boutique in which several funds are managed for institutional investors.<sup>228</sup>

At the end of 2012, Delta Lloyd had 5,276 permanent employees in the Netherlands, Belgium and Germany.<sup>229</sup> At the end of 2012, the total assets of the group amounted to € 80 billion.<sup>230</sup> The premium revenue for 2012 was € 5.2 billion, of which € 4.0 billion came from the Netherlands. The net paid out claims and benefits were € 4.6 billion.<sup>231</sup>

At the end of 2012, Delta Lloyd owned total assets with a value of € 80 billion, including € 73.4 billion in investments and loans.<sup>232</sup> These were divided over the different investment categories as follows.<sup>233</sup>

- Government bonds: 23%
- Corporate bonds: 15%
- Shares: 20%
- Mortgage loans: 23%
- Other loans: 9%
- Derivatives: 4%
- Real estate: 3%
- Other investments: 3%

Besides its own insurance investments, at the end of 2012 Delta Lloyd also managed € 7.5 billion of assets of third parties (private clients and institutional investors).<sup>234</sup>

### 6.9.2 Human rights policy

The Delta Lloyd investment policy is largely found in the policy paper 'Responsible Investment Policy'. The policy is largely limited to a number of basic conditions for investments. Delta Lloyd respects human rights (such as those defined in United Nations treaties and the OECD Guidelines for Multinational Enterprises) and expects the companies in which they invest to do the same. Delta Lloyd excludes companies that severely violate the Global Compact Principles.

### 6.9.3 Banking services

No investments by Delta Lloyd bank were identified in the selected companies. For banking services, in accordance with the predetermined assessment method, the score 'inactive' is granted.

### 6.9.4 Insurance investments and asset management

The insurance company and asset management arm of Delta Lloyd may be involved in the selected companies by way of managing shares and/or bonds.

Table 33 shows the shares of the selected companies managed by Delta Lloyd. In total, Delta Lloyd manages € 46.6 million worth of shares in the selected companies.

**Table 33 Shares managed by Delta Lloyd**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Posco</b>					
Delta Lloyd	The Netherlands	16,904	0.00	0.44	31 March 2013
<b>Total value</b>				<b>0.44</b>	
<b>Royal Dutch Shell</b>					
Delta Lloyd Asset Management	The Netherlands	1,773,694	0.05	4615	30 April 2013
<b>Total value</b>				<b>46.15</b>	
<b>Total value of all shares</b>				<b>46.59</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

According to Delta Lloyd, the interest in Royal Dutch Shell is higher, at € 110 million (as of 30 June 2013)

Delta Lloyd has informed us that they did not wish to cooperate with this case study. For asset management and insurance investments, in accordance with the predetermined assessment method, a score 1 is granted.

### 6.9.5 Conclusions

Table 34 gives an overview of the scores that Delta Lloyd has received in this case study.

**Table 34 Scores Delta Lloyd**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Insurance investments</i>	1
<i>Asset management</i>	1

Delta Lloyd has responded as follows to the request to cooperate with this study:

"Delta Lloyd appreciates that various studies are conducted in the field of human rights, but for us it is important that we assess our operational management in detail and determine what is realistic. This is the reason we don't participate in all studies. We have made a conscious choice in this. For example, Delta Lloyd Group commits itself to international sustainability treaties and Delta Lloyd Group assesses our sustainability against internationally acknowledged benchmarks. We develop policy and establish improvement actions based on these benchmarks and assess our plans using realistic analysis instead of a checklist."<sup>235</sup>

The *Fair Insurance Guide* and the *Fair Bank Guide* have responded as follows the decision by Delta Lloyd to not cooperate with this case study:

The *Fair Insurance Guide* and the *Fair Bank Guide* regret that four insurance groups, namely Allianz, Delta Lloyd, Generali and Legal & General, did not want to cooperate with the 'extractive companies and human rights' case study.

This is all the more serious because the case study shows that these four insurance companies invest heavily in several of the extractive companies selected for this case study.

With their dismissive attitude, these insurance companies do not serve the interest of their clients or their other stakeholders. After all, these two groups must now wonder whether their insurance company pays sufficient attention to human rights in their investment practice.

In accordance with the predefined and communicated methodology, the four insurance groups have achieved the lowest score (1).

It is conspicuous that earlier this year, in the first *Fair Insurance Guide* policy case study, three of these four insurance companies also scored poor (1) on their human rights policy and Delta Lloyd got achieved no better than insufficient (4).

The *Fair Bank Guide* and the *Fair Insurance Guide* urge the four insurance companies to take their clients and other stakeholders, including a lot of Dutch civilians, seriously. Clients and other stakeholders deserve transparency as to what happens with their money and want to know whether Allianz, Delta Lloyd, Generali and Legal & General give respect for human rights sufficient attention in their investment practice."

## 6.10 Generali

### 6.10.1 Profile

Generali Insurance group is a subsidiary of the Italian Assicurazioni Generali S.p.A. (or Generali Group). Generali Group is one of the largest insurance companies in Europe. The company is active in more than 60 countries, employs 80,000 people and has more than 65 million clients worldwide.<sup>236</sup>

In the Netherlands, Generali Insurance group is active in the field of life and damage insurance. In 2012, Generali Life insurance realised a premium turnover of € 195.8 million and at the end of 2012 owned total assets with a value of € 4.5 billion.<sup>237</sup>

In 2012, Generali Group realised a premium turnover of € 69.6 billion.<sup>238</sup> At the end of 2012, the company owned total assets with a value of € 441.7 billion, of which € 392.7 billion was comprised of investments and loans.<sup>239</sup> These loans and investments were divided over the different investment categories as follows:<sup>240</sup>

- Government bonds: 35%
- Corporate bonds: 27%
- Investments at the risk of policy holders, mainly in shares and bonds: 14%
- Other fixed interest investments: 8%
- Cash money: 5%.
- Real estate: 4%.
- Shares: 4%.Other: 3%.

Besides its own insurance investments, asset management company subsidiary Generali Investments manages € 9.4 billion in assets for third parties.<sup>241</sup>

### 6.10.2 Human rights policy

Generali Group has decided to adopt the ethical guidelines as formulated by the Norwegian state pension fund. Generali excludes companies that are involved in systematic violation of human rights.<sup>242</sup>

### 6.10.3 Insurance investments and asset management

The insurance company and asset management arm of Generali may be involved in the selected companies by way of managing shares and/or bonds.

Table 35 shows the shares of the selected companies managed by Generali. In total Generali have € 44.3 million of shares in the managed selected companies.

**Table 35 Shares managed by Generali**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Freeport-McMoran Copper &amp; Gold</b>					
Generali Fund Management	Luxembourg	16,700	0.00	0.43	31 December 2012
<b>Total value</b>				<b>0.43</b>	
<b>GlencoreXstrata</b>					
Generali Investments	France	346,133	0.00	1.46	31 March 2013

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
France Generali Investments Italy	Italy	465,784	0.00	1.75	30 April 2013
<b>Total value</b>				<b>3.21</b>	
<b>Goldcorp</b>					
Generali Fund Management	Luxembourg	15,000	0.00	0.42	31 December 2012
<b>Total value</b>				<b>0.42</b>	
<b>Posco</b>					
Generali PPF Asset Management	Czech Republic	2,400	0.00	0.15	31 January 2013
<b>Total value</b>				<b>0.15</b>	
<b>Royal Dutch Shell</b>					
Generali Fund Management	Luxembourg	94,262	0.00	2.37	28 February 2013
Generali Investments France	France	0,00	39.000	1.01	31 March 2013
Generali Investments Italy	Italy	1,410,786	0.04	36.71	30 April 2013
<b>Total value</b>				<b>40.09</b>	
<b>Total value of all shares</b>				<b>44,30</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

Table 36 shows the bonds in the selected companies managed by Generali. In total Generali has € 7.5 million of bonds in the managed selected companies.

**Table 36 Bonds managed by Generali**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>GlencoreXstrata</b>				
Generali Asset Management	Italy	0.01	2.37	June 2013
Generali Asset management companies Lux	Luxembourg	0.00	1.20	March 2013
Generali Finances	France	0.01	1.89	March 2013
Generali Fund Management	Luxembourg	0.00	0.67	February 2013
Generali Investments SIVAC	Luxembourg	0.01	1.41	March 2013
<b>Total value</b>			<b>7.54</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

Generali has not cooperated in this case study. For asset management and insurance investments, in accordance with the predetermined assessment method, a score 1 has been granted.

**6.10.4 Conclusions**

Table 37 gives an overview of the scores that Generali has received in this case study.

**Table 37 Scores Generali**

Type of financing	Score
<i>Insurance investments</i>	1
<i>Asset management</i>	1

The *Fair Insurance Guide* and the *Fair Bank Guide* have responded as follows on Generali's decision not to cooperate with this case study:

The *Fair Insurance Guide* and the *Fair Bank Guide* regret that four insurance groups, namely Allianz, Delta Lloyd, Generali and Legal & General, did not want to cooperate with the 'extractive companies and human rights' case study.

This is all the more serious because the case study shows that these four insurance companies invest heavily in several of the extractive companies selected for this case study.

With their dismissive attitude, these insurance companies do not serve the interest of their clients or their other stakeholders. After all, these two groups must now wonder whether their insurance company pays sufficient attention to human rights in their investment practice.

In accordance with the predefined and communicated methodology, the four insurance groups have achieved the lowest score (1). It is conspicuous that earlier this year, in the first *Fair Insurance Guide* policy case study, three of these four insurance companies also scored poor (1) on their human rights policy and Delta Lloyd got achieved no better than insufficient (4).

The *Fair Bank Guide* and the *Fair Insurance Guide* urge the four insurance companies to take their clients and other stakeholders, including a lot of Dutch civilians, seriously. Clients and other stakeholders deserve transparency as to what happens with their money and want to know whether Allianz, Delta Lloyd, Generali and Legal & General give respect for human rights sufficient attention in their investment practice.”



## 6.11 ING

### 6.11.1 Profile

ING Bank is part of the ING Group (ING), a Dutch financial institution that provides services worldwide in the fields of banking, investing, life insurance and pensions.

ING Insurance is also part of ING Group. Brand names for insurance products in the Netherlands are Nationale-Nederlanden, AZL and Movir.

Worldwide, ING has more than 85 million clients in Europe, the United States, Canada, Latin America, Asia and Australia: private individuals, small and medium-sized enterprises, large companies, organisations and governments.<sup>243</sup> At the end of 2012, ING had over 84,700 employees. The total assets of the group amounted to € 1,169 billion.<sup>244</sup>

As a condition for obtaining approval by the European Commission for Dutch state aid in 2008, ING had to prepare a restructuring plan to demonstrate the company's long term viability and set out measures to prevent unfair competition. The core of this plan comprises of the complete splitting of banking activities on the one hand and insurance activities (including asset management) on the other.<sup>245</sup> This plan has been partially conducted and the ING Group has sold various parts. However, at the end of 2012, consent was reached with the European Commission on a revision of the restructuring plan, due to which the divestment of the insurance company and asset management, as well as a part of the Dutch consumer bank activities, must be completed in 2016. In 2016, ING plans to continue its retail, direct and business banking.<sup>246</sup>

At the end of 2012, ING Bank owned total assets with a value of € 836.1 billion, of which € 460.4 billion comprised of money entrusted by private and business clients.<sup>247</sup> At the end of 2012, the total assets were invested in the following areas:<sup>248</sup>

- Mortgage and other loans to private individuals (40%)
- Investments in bonds, shares and Derivatives (25%)
- Loans to companies (19%)
- Loans to governments (6%)
- Loans to banks (5%)
- Other (6%)

In 2012, ING Insurance achieved a gross premium turnover of € 20.3 billion, of which € 5.3 billion came from the Netherlands.<sup>249</sup> In 2012, the Dutch subsidiary Nationale-Nederlanden Life Levensverzekering Maatschappij achieved a gross premium turnover of € 3.6 billion and the company paid out € 4.6 billion in benefits.<sup>250</sup>

At the end of 2012, ING Insurances owned total assets with a value of € 339.9 billion, of which € 252.4 billion comprised of insurance investments by the company in activities ING Insurance plans to continue. (A part of the balance, amounting to € 61.2 billion, consists of activities that are divested).<sup>251</sup> These investments were divided among the following areas:<sup>252</sup>

- Shares: 38%
- Corporate bonds: 28%
- Government bonds: 20%
- Mortgage loans: 5%
- Bonds (unspecified): 3%
- Derivatives: 2%
- Real estate: 0%
- Other: 3%

At the end of 2012, ING Investment Management (part of ING Insurance) managed total capital worth € 321.5 billion. Of this, € 171.5 billion was invested on behalf of third parties through collective investment schemes, mandates from private individuals and institutional investors.<sup>253</sup>

### 6.11.2 Human rights policy

ING expects its clients to adhere to the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the Children's Rights and Business Principles and the IFC Performance Standards where applicable. By way of references to the abovementioned international guidelines, ING formulates expectations with regard to a human rights declaration, Ruggie's human rights due diligence process, management systems and procedures with respect to employment rights and Free Prior and Informed Consent for indigenous peoples. ING's human rights policy applies to all parts of its company. However, the application can vary for each activity.

### 6.11.3 Banking services

ING Bank can grant banking services to the selected companies by assisting in the issue of shares and bonds or by providing loans. ING Bank has granted banking services to the following selected companies:

- **Barrick Gold**

- In September 2009, Barrick Gold Corp issued new shares with a total value of US\$ 3,501.01 million (€ 2,416.40 million). The yield of the share issue was used for general corporate affairs. ING Bank participated with an amount of € 20.14 million to the syndicate of 30 banks that assisted in the share issue.<sup>254</sup>

- **China National Petroleum Corporation**

- In April 2011, CNPC (HK) Overseas Capital, a subsidiary of CNPC, brought new bonds with a total value of US\$ 1.850 million (€ 1,274.10 million) to the market. These bonds issues were divided into three parts: the first consisting of € 482.09 million five-year 3.125% bonds, the second of € 344.35 million 30-year 5.95% bonds and the third of € 447.66 million 10-year 4.5% bonds. The yield of these bond issues was used for general corporate affairs. ING Bank participated with an amount of € 63.71 million in the syndicate of 12 banks that assisted in the bond issue.<sup>255</sup>
- In April 2012, CNPC issued new bonds with a total value of US\$ 1,150 million (€ 872.16 million). This bond issue was divided into two parts: the first consisting of € 379.20 million 10-year 3.950% bonds and the second consisting of € 492.96 million five-year 2.750% bonds. The yield of this bond issue was used for general corporate affairs. ING Bank participated with an amount of € 43.61 million in the syndicate of 12 banks that assisted in the issuance.<sup>256</sup>
- In April 2013, CNPC General Capital issued new bonds with a total value of US\$ 2,000 million (€ 1,530.2 million). This bond issue was divided into three parts: the first consisting of € 382.55 million five-year 1.950% bonds, the second consisting of € 573.83 million three-year 1.45% bonds and the third consisting of € 573.83 million 10-year 3.4% bonds. The yield of this bond issuance was used for general corporate affairs. ING Bank participated with an amount of € 109.30 million in the syndicate of 14 banks that assisted in the issuance.<sup>257</sup>

- **Freeport-McMoran Copper & Gold**

- In April 2010, Plains Exploration & Production Company, an US oil and gas producer, entered into a five-year LIBOR+200,000bps credit facility of US\$ 1,400 million (€ 155.16 million) with a syndicate of banks. This credit facility was used acquisitions, general corporate affairs and refinancing. ING Bank participated with an amount of € 45.11 million in the syndicate of 21 banks that granted the loan.<sup>258</sup>
- In August 2010, Plains Exploration & Production Company renewed the loan from April 2010 to a five-year LIBOR+175,000bps credit facility of US\$ 1,400 million (€ 1,067.1 million). This credit facility was used for general corporate affairs and refinancing. ING Bank participated with an amount of in the syndicate of € 60.98 million 21 banks that granted the loan.<sup>259</sup>
- In May 2011, Plains Exploration & Production Company renewed the loan of August 2010 to a five-year LIBOR+250,000bps credit facility of US\$ 1,400 million (€ 945 million). This credit facility was used for general corporate affairs and refinancing. ING Bank participated with an amount of € 28.35 million in the syndicate of 21 banks that granted the loan.<sup>260</sup>
- In May 2013, Plains Exploration & Production Company was acquired by Freeport-McMoran Copper & Gold.<sup>261</sup> This means ING Bank cannot be expected to have screened Glencore at the time the three abovementioned loans were granted to Plains Exploration & Production Company, because at the time this company was not yet a subsidiary of Freeport-McMoran Copper & Gold. However, ING Bank can now use its influence on Freeport-McMoran Copper & Gold as the latest loan contract between ABN Amro Bank and Plains Exploration & Production Company (now a subsidiary of Freeport-McMoran Copper & Gold) still runs until May 2015.
- In November 2012, Freeport-McMoran entered into a one-year LIBOR+300,000bps credit facility of US\$ 2,000 million (€ 1,542.4 million) with a syndicate of banks. This credit facility was used for the acquisition of Plains Exploration & Production Co and McMoRan Exploration. ING Bank participated with an amount of € 57.84 million in the syndicate of 17 banks that granted the loan.<sup>262</sup>
- In November 2012, Freeport-McMoran entered into a credit facility of US\$ 3,750 million (€ 2,892 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 3,000 million (€ 2,313 million) five-year LIBOR+225,000bps loan and a US\$ 750 million (€ 578.4 million) five-year LIBOR+300,000bps loan. The credit facility was used to acquire Plains Exploration & Production Co and McMoRan Exploration. ING Bank participated with an amount of € 166.67 million in the syndicate of 15 banks that granted the loan.<sup>263</sup>

- **GlencoreXstrata**

- In October 2009, Glencore International entered into a one-year credit facility of US\$ 1,220.00 million (€ 818.01 million) with a syndicate of banks. This credit facility was used for refinancing a loan from 2008. ING Bank participated with an amount of € 327.2 million in the syndicate of 26 banks that granted the loan.<sup>264</sup>
- In November 2009, Glencore International entered into a one-year LIBOR+125,000bps credit facility of US\$ 600 million (€ 401.4 million) with a syndicate of banks. This credit facility was used for the financing of basic metals and as working capital. ING Bank participated with an amount of € 48.17 million in the syndicate of 6 banks that granted the loan.<sup>265</sup>
- In May 2010, Glencore International entered into a credit facility of US\$ 9,745 million (€ 7,624.49 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 1,375 million (€ 1,075.80 million) one-year LIBOR+150,000bps loan and a US\$ 8,370 million (€ 6,548.69 million) three-year LIBOR+200,000bps loan. The credit facility was used to refinance a credit facility of US\$ 8.18 billion and for general corporate affairs. ING Bank participated with an amount of € 152.49 million in the syndicate of 94 banks that granted the loan.<sup>266</sup>
- In October 2010, Glencore International entered into a one-year credit facility of US\$ 1,215 million (€ 877.35 million) with a syndicate of banks. This credit facility was used to refinance a credit facility from 2009. ING Bank participated with an amount of € 350.94 million in the syndicate of 30 banks that granted the loan.<sup>267</sup>
- In May 2011, Glencore International issued new shares on the London and Hong Kong stock exchanges. The total value of the issue was US\$ 10.05 billion (€ 7,021.73 million). The issue was divided into two parts: the first consisting of € 6,834.83 million (London) and the second consisting of € 186.90 million (Hong Kong). The yield of the issue was used for general corporate affairs. ING Bank participated with an amount of € 83.49 million in the syndicate of 27 banks that assisted in the issue.<sup>268</sup>
- In March 2012, Glencore Finance issued new bonds with a total value of € 1,609.24 million. This bond issue was divided into two parts: the first consisting of € 1,250 million six-year 4.125% bonds and the second consisting of £300 million (€ 359.24 million) 10-year 5.5% bonds. The yield of this bond issue was used for general corporate affairs. ING Bank participated with an amount of € 402.31 million in the syndicate of 4 banks that assisted in the issuance.<sup>269</sup>
- In May 2011, Glencore International entered into a credit facility of US\$ 11,265 million (€ 7,595.99 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 2,925 million (€ 1,972.33 million) one-year LIBOR+110,000bps loan and a US\$ 8,340 million (€ 5,623.66 million) three-year loan. The credit facility was used to refinance the Glencore credit facility from May 2010 and for general corporate affairs. ING Bank participated with an amount of € 144.69 million in the syndicate of 97 banks that granted the loan.<sup>270</sup>
- In April 2012, Glencore International entered into a one-year credit facility of US\$ 3,100 million (€ 2,361.27 million) with a syndicate of banks. This credit facility was used for the merger with Xstrata and for general corporate affairs. ING Bank participated with an amount of € 48.85 million in the syndicate of in 31 banks that granted the loan.<sup>271</sup>

- In April 2012, Glencore International entered into a one-year credit facility of US\$ 4,435 million (€ 3,367.05 million) with a syndicate of banks. This credit facility was used for refinancing outstanding loans. ING Bank participated with an amount of € 91.83 million in the syndicate of 40 banks that granted the loan.<sup>272</sup>
- In October 2012, Glencore International entered into a one-year credit facility of US\$ 2,200 million (€ 1,696.64 million) with a syndicate of banks. This credit facility was used as working capital. ING Bank participated with an amount of € 56.55 million in the syndicate of 19 banks that granted the loan.<sup>273</sup>
- In October 2012, Glencore International entered into a one-year credit facility of US\$ 755 million (€ 583.62 million) with a syndicate of banks. This credit facility was used for refinancing and the issuance of bonds. ING Bank participated with an amount of € 38.65 million in the syndicate of 25 banks that granted the loan.<sup>274</sup>
- In March 2013, Glencore International entered into a five-year LIBOR+210,000bps credit facility of US\$ 8,320 million (€ 6,417.22 million) with a syndicate of banks. This credit facility was used for the purchase of crude oil from Rosneft and for general corporate affairs. ING Bank participated with an amount of € 175.01 million in the syndicate of 29 banks that granted the loan.<sup>275</sup>
- In June 2013, Glencore International entered into a credit facility of US\$ 17,340 million (€ 13,025.81 million) with a syndicate of banks. This loan was divided into three parts: a US\$ 5,920 million (€ 4,447.10 million) one-year loan, a US\$ 7,070 million (€ 5,310.98 million) three-year loan and a US\$ 4,350 million (€ 3,267.72 million) five-year loan. This credit facility was used to refinance the US\$ 4,435 million loan from April 2012, the US\$ 8,370 million loan from May 2010 and for general corporate affairs. ING Bank participated with an amount of € 179.67 million in the syndicate of 78 banks that granted the loan.<sup>276</sup>
- **Posco**
  - In April 2010, Zhangjiagang Pohang Stainless Steel, a subsidiary of Posco, entered into a four-year LIBOR+320,000bps credit facility of US\$ 135 million (€ 99.44 million) with a syndicate of banks. This credit facility was used for refinancing and expansion of a US\$ 60 million loan entered into in April 2009 and for general corporate affairs. ING Bank participated with an amount of € 24.86 million in the syndicate of 4 banks that granted the loan.<sup>277</sup>
  - In August 2011, Posco (Guangdong) Steel Co, a subsidiary of Posco, entered into a credit facility of US\$ 122.60 million (€ 95.27 million) with a syndicate of banks. This loan was divided into two parts: a € 50.51 million five-year loan and a € 44.76 million three-year loan. This credit facility was used for capital expenditures. ING Bank participated with an amount of € 19.05 million in the syndicate of 5 banks that granted the loan.<sup>278</sup>
  - In April 2012, Posco Electrical Steel India, a subsidiary of Posco, entered into an eight-year LIBOR+283,000bps credit facility of US\$ 83.78 million (€ 62.89 million) with a syndicate of banks. This credit facility was used for investments. ING Bank participated with an amount of € 31.45 million in the syndicate of 2 banks that granted the loan.<sup>279</sup>

- In April 2013, Zhangjiagang Pohang Stainless Steel, a subsidiary of Posco, extended the four-year LIBOR+320,000bps credit facility of US\$ 135 million (€ 103.06 million) with a syndicate of banks. This credit facility was used for refinancing and working capital. ING Bank participated with an amount of € 25.77 million in the syndicate of 4 banks that granted the loan.<sup>280</sup>
- **Trafigura**
  - In April 2006, Trafigura Management entered into an one-year LIBOR+90,000bps credit facility of US\$ 600 million (€ 488.88 million) with a syndicate of banks. This credit facility was used for refinancing a loan from 2005 and for general corporate affairs. ING Bank participated with an amount of € 28.52 million in the syndicate of 25 banks that granted the loan.<sup>281</sup>
  - In April 2007, Trafigura Management entered into a credit facility of US\$ 1,100 million (€ 823.24 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 370 million (€ 276.91 million) three-year LIBOR+90,000bps loan and a US\$ 730 million (€ 546.33 million) one-year LIBOR+70,000bps loan. This credit facility was used to refinance the loan entered into in April 2006 and for general corporate affairs. ING Bank participated with an amount of € 82.32 million in the syndicate of 29 banks that granted the loan.<sup>282</sup>
  - In March 2008, Trafigura Management entered into a credit facility of US\$ 1,600 million (€ 1,020 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 550 million (€ 351 million) one-year LIBOR+65,000bps loan and a US\$ 1,050 million (€ 670 million) three-year LIBOR+85,000bps loan. This credit facility was used to refinance the loan entered into in April 2007 and for general corporate affairs. ING Bank participated with an amount of € 102 million in the syndicate of 30 banks that granted the loan.<sup>283</sup>
  - In March 2009, Trafigura Management entered into a one-year LIBOR+175,000bps credit facility of US\$ 520 million (€ 383 million) with a syndicate of banks. This credit facility was used for refinancing of the one-year loan from March 2008 and for general corporate affairs. ING Bank participated with an amount of € 25.5 million in the syndicate of 19 banks that granted the loan.<sup>284</sup>
  - In March 2010, Trafigura Management issued new five-year 6.375% bonds for the first time, with a total value of € 400 million on the Eurobond market. The yield of this bond issue was used for general corporate affairs. ING Bank participated with an amount of € 100 million in the syndicate of four banks that assisted in the issuance.<sup>285</sup>
  - In March 2010, Trafigura Management entered into a credit facility of US\$ 2,325 million (€ 1,694 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 625 million (€ 455 million) one-year LIBOR+160,000bps loan and a US\$ 1,700 million (€ 1,239 million) three-year LIBOR+250,000bps loan. This credit facility was used to refinance the one-year loan entered into in March 2009 and for the three-year loan entered into in March 2008. ING Bank participated with an amount of € 96.8 million in the syndicate of 36 banks that granted the loan.<sup>286</sup>

- In March 2011, Trafigura Management entered into a credit facility of US\$ 3,175 million (€ 2,269 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 676 million (€ 483 million) one-year loan and a US\$ 2,499 million (€ 1,786 million) three-year loan. This credit facility was used to refinance the loan entered into in March 2010 and for general corporate affairs. ING Bank participated with an amount of € 151.3 million in the syndicate of 44 banks that granted the loan.<sup>287</sup>
- In November 2011, Trafigura Management entered into a one-year credit facility of US\$ 500 million (€ 370.1 million) with a syndicate of banks. This credit facility was used as working capital. ING Bank participated with an amount of € 74.02 million in the syndicate of nine banks that granted the loan.<sup>288</sup>
- In May 2012, Trafigura Trading (Shanghai) Co entered into a one-year credit facility of CNY707 million (€ 88.79 million) with a syndicate of banks. This credit facility was used as working capital. ING Bank participated with an amount of € 13.81 million in the syndicate of six banks that granted the loan.<sup>289</sup>
- In February 2013, Trafigura Management entered into a credit facility of US\$ 4,265 million (€ 3,259.74 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 1,360 million (€ 1,039.45 million) one-year LIBOR+130,000bps loan and a US\$ 2,905 million (€ 2,220.29 million) three-year LIBOR+190,000bps loan. This credit facility was used to refinance the one-year loan entered into in March 2012 and a three-year loan from March 2011 that was extended in March 2012. ING Bank participated with an amount of € 148.02 million in the syndicate of 37 banks that granted the loan.<sup>290</sup>

From the interview held with ING and the evidence provided, it appeared that ING has applied instruments the following to bring its own 'Responsible Investment' policy at banking services into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

If a new large client seeks to open an account, the extent to which a company operates in line with international standards is assessed. This does not necessarily have immediate consequences, but there is always a screening process. When a client wants to borrow money, initial screening is used as basis for any additional screening. The initial screening is expanded to include a screening of the nature, the location and the risk profile of the requested financing. In this case the client has to meet minimum criteria or be willing to work on them. In the case of project financing, the extent to which the requested financing complies with the Equator Principles criteria is also researched. In the 2012 ING sustainability report, ING indicates the number of requests that are screened for project financing for each industry and how often this screening has led to a positive recommendation, a negative recommendation, or approval with conditions. An existing client is screened at least once every three years, but in practice is often passed over. In addition to regular screening, ING also conducts continuous reputation screening using an external data provider. Each client is viewed at least once a year and each application for renewal of a loan leads to new screening.

Based on the ING human rights policy, the 2012 ING sustainability report on and two anonymous examples of a client analysis, elements 1 - 4 are granted to ING.

In a written response, ING indicates that implementing the *ESR framework* set up in 2013 will intensify its screening instruments and criteria in 2014. Therefore, element 22 is granted to ING.

- **Engagement**

Talks are regularly conducted with the relevant account manager of each client. The frequency of client talks depends on the nature of the financing and the extent to which there is room for discussion. When an existing client has a poor score following reputation screening, the client is asked for additional information for verification purposes and with regard to any follow-up. The extent to which the conditions have been met is also verified for clients who have conditions included in the credit agreement. In the case of project financing, ING uses local consultants to monitor projects. Projects are also regularly visited as part of the engagement process.

Based on access to anonymous examples of client assessments and interview reports, it is plausible that ING speaks to clients about its human rights policy and human rights due diligence. Based on this, ING has been granted elements 9 - 11. It is also plausible that a plan of action is drafted and the extent to which these plans are complied with is assessed. Based on this, ING has been granted elements 14 and 21. Based on anonymous email correspondence and clauses from anonymous credit agreements, it is plausible that ING includes conditions in credit agreements and monitors their compliance. The conditions either concerned the policy or the due diligence procedures of the respective company. Based on this information, elements 19 and 20 have been granted. However, it is not always assessed whether a company takes sufficient action to compensate victims. Whether the actions of the company actually lead to a reduction in harmful impacts is also not structurally assessed. Moreover, based on the evidence viewed it cannot be determined whether the abovementioned has taken place with regard to the ten selected companies. Therefore, no points are granted for the other elements.

- **Exclusion**

Clients and/or specific transactions that do not meet ING's human rights expectations are put on a 'restricted list' and are excluded from financing. However, ING does not use a public exclusion list. From viewing this list it appears that 1 of the 10 selected companies is on the 'fully restricted list'. This means ING is not allowed to invest in this company or its subsidiaries at all. Based on this information, element 7 has been granted. In addition, three of the ten selected companies are on the 'partly restricted list'. This means ING is allowed to invest in the company, but not in specific controversial projects.

Considering the evidence provided, it is plausible that ING withdraws financing if a company does not adhere to the agreements. However, because it was not clear in the evidence provided that this concerned a human rights issue, element 21 has not been granted.

**Table 38 Assessment of ING's banking services**

Element	Complies
<b>Screening</b>	
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	Yes



Element	Complies
5. Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	No
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	No
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	Yes
Engagement	
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	N/A
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>	
10. Drafting a policy statement in which the company commits itself to respect human rights;	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>	
15. A policy statement in which the company commits itself to respect human rights;	Yes
16. Establishing a human rights due diligence process;	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	No
18. The absence of a measurable decrease in human rights violations;	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	Yes
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	Yes
21. Within a reasonable period of time, the financial institution chooses to	No

Element	Complies
terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	Yes
<b>Score 7</b>	<b>14 of the 21 elements</b>

#### 6.11.4 Insurance investments

ING's insurance can be involved in the selected companies by investing in bonds. Table 39 shows the bonds of the selected companies in which ING's insurance arm has invested. ING's insurance arm has invested € 329.9 million worth of bonds with the selected companies.

**Table 39 ING's Insurance investments in bonds**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
ING Life Insurance & Annuity	United States	0.41	45.88	March 2013
ING USA Annuity and Life Insurance	United States	0.20	23.05	March 2013
Reliastar Life Insurance Company of New York	United States	0.07	7.69	March 2013
Reliastar Life Insurance Company	United States	0.11	12.68	March 2013
<b>Total value</b>			<b>89.30</b>	
<b>China National Petroleum Corporation</b>				
ING Life Insurance & Annuity	United States	0.02	11.30	March 2013
<b>Total value</b>			<b>11.30</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>				
ING Life Insurance & Annuity	United States	0.35	44.95	March 2013
ING USA Annuity and Life Insurance	United States	0.02	2.88	March 2013
Reliastar Life Insurance Company of New York	United States	0.01	0.85	March 2013
Reliastar Life Insurance Company	United States	0.06	7.29	March 2013
<b>Total value</b>			<b>55.97</b>	
<b>GlencoreXstrata</b>				
ING Life Insurance & Annuity	United States	0.18	45.37	March 2013
ING USA Annuity and Life Insurance	United States	0.05	12.43	March 2013

Investor	Country	% of bonds	Value (€ m)	Date of reporting
Reliastar Life Insurance Company of New York	United States	0.03	8.55	March 2013
Reliastar Life Insurance Company	United States	0.07	17.31	March 2013
<b>Total value</b>			<b>83.66</b>	
<b>Goldcorp</b>				
Reliastar Life Insurance Company of New York	United States	0.08	1.55	March 2013
Reliastar Life Insurance Company	United States	0.34	6.22	March 2013
<b>Total value</b>			<b>7.77</b>	
<b>Royal Dutch Shell</b>				
ING Life Insurance & Annuity	United States	0.09	16.24	March 2013
ING USA Annuity and Life Insurance	United States	0.15	27.20	March 2013
Reliastar Life Insurance Company of New York	United States	0.02	4.66	March 2013
Reliastar Life Insurance Company	United States	0.18	33.81	March 2013
<b>Total value</b>			<b>81.91</b>	
<b>Total value of all shares</b>			<b>329.91</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

- **Screening**

ING Insurance works with an integrated approach. This means that screening on human rights criteria is included in a financial analysis of a company. The analysis is conducted by the "mainstream" analysts and not by a separate ESG department. The analysts integrate ESG criteria in the *investment case* for each company. To this effect, information and data from two independent research providers (screening) is used. The financial analysts are supported by the *responsible investment* team, consults with them on a weekly basis. In addition to the data, the analyst concentrates on what is realistic for the specific investment case and draws clear conclusions. Next, the fund managers include this in its investment decisions. From evidence provided, it appears that ING conducts structural screening within the framework of insurance investments, using an external agency. Whether companies meet the requirements of different human rights treaties and whether there are due diligence processes in place is researched during screening. Any required recovery work and/or compensation for victims is not consequently assessed. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations. Based on this information, elements 1 - 4 have been granted.

- **Engagement**

In the case of a negative score as a result of screening and/or serious controversies, questions are formulated and the analyst contacts the respective company. So dialogue and engagement are included in the investment process at an early stage of the agreement. ING is in regular contact with the companies in which they invest. In addition,

ING sometimes chooses to act in concert with other investors (for example in Eumedion or as with UN PRI). ING has an engagement process with three out every ten companies in which they invest and has shown relevant evidence for each of these companies. Based on this information, the evidence provided and an active shareholder report, it can be concluded that ING uses its influence to enter into engagement talks and votes for motions/resolutions aimed at improving human rights. Therefore, elements 8 and 9 are granted to ING. Because ING only enters into engagement talks with a minority of the companies in which they invests, no points can be granted for the other elements.

- **Exclusion**

Companies and/or specific transactions that do not meet the expectations of ING in the field of human rights are put on a 'restricted list' and excluded from financing (see Paragraph 1.1.3). This list is also applicable to insurance investments. However, ING uses no public exclusion list. From viewing this list it appears that 1 of the 10 selected companies excluded. Based on this information, element 7 is granted.

**Table 40 Assessment of ING's insurance investments**

Element	Complies/ number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/6	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/6	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	4/6	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	4/6	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/6	No
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/6	No
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	1/10	Yes
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.		Yes
9. The extent to which the financial institution grants banking services		Yes

Element	Complies/ number of relevant companies	Complies
to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;		
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	0/6	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/6	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/6	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/6	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;		No
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	0/6	No
16. Establishing a human rights due diligence process;	0/6	No
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	0/6	No
18. The absence of a measurable decrease in human rights violations;	0/6	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	0/6	No
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	0/6	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	0/6	No
<b>Score: 3</b>	<b>7 of the 21 elements</b>	

### 6.11.5 Asset management

Table 41 shows the shares of the selected companies managed by ING Group for third parties. In total, ING manages € 398.1 million worth of shares in the selected companies.

**Table 41 Shares managed by ING**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
ING Investment Management	The Netherlands	2,135,838	0.21	48.92	31 March 2013
ING Investment Management Co	United States	675,546	0.07	15.48	31 March 2013
ING Securities Investment & Trust Co.	Taiwan	5,885	0.00	0.16	31 December 2012
<b>Total value</b>				<b>64.56</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>					
ING Investment Management	The Netherlands	4,544,003	0.48	117.32	31 March 2013
ING Investment Management Co	United States	1,310,096	0.4	33.82	31 March 2013
ING Securities Investment & Trust Co.	Taiwan	7,452	0.00	0.20	31 March 2013
<b>Total value</b>				<b>151.34</b>	
<b>GlencoreXstrata</b>					
ING Investment Management	The Netherlands	715,726	0.01	2.69	30 April 2013
ING Investment Management Co	United States	963,794	0.01	4.06	31 March 2013
<b>Total value</b>				<b>6.75</b>	
<b>Goldcorp</b>					
ING Investment Management	The Netherlands	776,055	0.10	20.37	31 March 2013
ING Investment Management Co	United States	661,037	0.08	17.35	31 March 2013
<b>Total value</b>				<b>37.72</b>	
<b>Oil and Natural Gas Corporation</b>					
ING (L) Invest Emerging Markets	United States	676,879	0.01	2.80	30 September 2012
ING (L) Invest India Focus	India	40,858	0.00	0.16	30 April 2012
ING Investment Management	Netherlands	1,370,518	0.02	6.13	31 March 2013
ING Investment Management Asia Pacific	Hong Kong	40,858	0.00	0.17	31 July 2012

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
ING Investment Management India Private	India	156,053	0.00	0.69	31 May 2013
ING Securities Investment & Trust Co	Taiwan	186,743	0.00	0.76	30 June 2012
<b>Total value</b>				<b>10.71</b>	
<b>Posco</b>					
ING (L) Invest Emerging Markets (CN)	United States	16,609	0.02	4.24	30 September 2012
ING Investment Management (Netherlands)	Netherlands	28,627	0.03	6.55	31 March 2013
ING Investment Management Asia Pacific (Hong Kong) Ltd.	Hong Kong	6,434	0.01	1.47	31 March 2013
ING Investment Management Co. LLC	United States	61,349	0.03	4.56	31 March 2013
ING Investment Management Korea Ltd.	South Korea	6,747	0.01	1.54	31 March 2013
<b>Total value</b>				<b>18.36</b>	
<b>Royal Dutch Shell</b>					
ING Investment Management	Netherlands	1,648,655	0.07	59.39	31 March 2013
ING Investment Management Co	United States	1,328,160	0.05	48.60	31 March 2013
ING Investment Management	Korea	264	0.00	0.01	31 March 2013
ING Securities Investment & Trust Co	Taiwan	15,061	0.00	0.41	30 June 2012
<b>Total value</b>				<b>108.41</b>	
<b>Vedanta Resources</b>					
ING Investment Management Co	United States	22,599	0.01	0.27	31 March 2013
<b>Total value</b>				<b>0.27</b>	
<b>Total value of all shares</b>				<b>398.12</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker* ([www.thomsonone.com](http://www.thomsonone.com)), viewed in July 2013.

Table 42 shows the bonds of the selected companies managed by the asset management arm of ING Group. In total, ING Group manages € 114.5 million worth of bonds in the selected companies on behalf of third parties.

**Table 42 Bonds managed by ING**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Barrick Gold</b>				
ING International Advisory	Luxembourg	0.00	0.31	February 2013
ING Investment	United States	0.05	5.12	December 2012
ING Investment Management	The Netherlands	0.03	3.04	April 2013
ING Investments	United States	0.01	1.00	March 2013
<b>Total value</b>			<b>9.47</b>	
<b>China National Petroleum Corporation</b>				
ING International Advisory	Luxembourg	0.00	0.88	February 2013
<b>Total value</b>			<b>0.88</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>				
ING International Advisory	Luxembourg	0.09	12.15	February 2013
ING Investment	United States	0.12	15.33	March 2013
ING Investment Management	United States	0.01	0.92	April 2013
ING Investment Management	The Netherlands	0.02	2.38	April 2013
ING Investments	United States	0.01	1.38	March 2013
<b>Total value</b>			<b>32.16</b>	
<b>GlencoreXstrata</b>				
ING Asset Management	Belgium	0.01	2.17	February 2013
ING Fund Management	The Netherlands	0.00	0.35	October 2011
ING International Advisory	Luxembourg	0.08	19.90	February 2013
ING Investment	United States	0.06	14.40	December 2012
ING Investment Management	United States	0.00	0.11	March 2013
ING Investment Management	The Netherlands	0.03	6.36	April 2013
<b>Total value</b>			<b>43.29</b>	
<b>Goldcorp</b>				
ING Investment	United States	0.12	2.18	March 2013
ING Investment Management	United States	0.01	0.11	April 2013
ING Investment Management	The Netherlands	0.07	1.36	April 2013
<b>Total value</b>			<b>3.65</b>	
<b>Royal Dutch Shell</b>				
ING International Advisory	Luxembourg	0.00	0.47	February 2013
ING Investment	United States	0.01	2.15	December 2012
ING Investment Management	United States	0.03	5.31	March 2013
ING Investments	United States	0.02	4.61	March 2013
<b>Total value</b>			<b>12.54</b>	



Vedanta Resources				
ING International Advisory	Luxembourg	0.17	10.18	February 2013
ING Investment Management	The Netherlands	0.04	2.33	March 2013
<b>Total value</b>			<b>12.51</b>	
<b>Total value of all bonds</b>			<b>114.50</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

- **Screening**

ING IM works with an integrated approach. This means that screening on human rights criteria is included in the financial analysis of companies. Analysts integrate ESG criteria in the *investment case* for each company. To this effect, information and data from two independent research providers (screening) is used. The financial analysts are supported by the *responsible investment* team, which consults them on a weekly basis. In addition to the data, the analyst concentrates on what is realistic for the specific investment case and draws clear conclusions. Next, the fund managers include this in their investment decisions. From evidence provided, it appears that, within the framework of insurance investments, ING conducts structural screenings through an external agency. Whether companies meet the requirements of different human rights treaties and whether there are due diligence processes in place is researched during screening. Any required recovery work and/or compensation for victims is not consequently assessed. The same applies to the extent to which the efforts of the company actually lead to the absence of human rights violations. Based on this information, elements 1 - 4 have been granted.

- **Engagement**

In the case of a negative score as a result of the screening and/or serious controversies, questions are formulated and the analyst contacts the respective company. So dialogue and engagement are included in the investment process at an early stage of the agreement. ING is in regular contact with the companies in which they invest. In addition, ING IM sometimes chooses to act in concert with other investors (for example in Eumedion or as with UN PRI).

ING has an engagement process with three in every eight of the ten companies with which it invests. ING has shown evidence for each of these companies. Based on this information, the evidence provided, and an active shareholder report, it can be concluded that ING uses its influence to enter into engagement talks and votes for motions/resolutions aimed at improving human rights. Therefore, elements 8 and 9 are granted to ING. Due to a lack of evidence and because ING only enters into engagement talks with a minority of the companies in which they invest, no points can be granted for the other elements.

- **Exclusion**

ING has no public exclusion list. Within the framework of asset management, ING does not currently exclude any companies in advance on the merits of human rights violations. It is also not demonstrated whether an unsuccessful engagement process leads to exclusion. Based on this information, no points are granted for elements 7 and 21.

**Table 43 Assessment of ING's asset management**

<b>Element</b>	<b>Complies/number of relevant companies</b>	<b>Complies</b>
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/8	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	4/8	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	4/8	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	4/8	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	0/8	No
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	0/8	No
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.		Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;		Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	0/8	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/8	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	0/8	No
13. Ensuring that all efforts by the company actually lead to the	0/8	No

Element	Complies/number of relevant companies	Complies
absence of human rights violations or at least to a measurable decrease;		
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;		No
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	0/8	No
16. Establishing a human rights due diligence process;	0/8	No
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	0/8	No
18. The absence of a measurable decrease in human rights violations;	0/8	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	0/8	No
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	0/8	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	0/8	No
<b>Score: 3</b>	<b>6 of the 21 elements</b>	

### 6.11.6 Conclusions

Table 44 gives an overview of the scores that ING has received in this case study.

**Table 44 ING's Scores**

Type of financing	Score
<i>Banking services</i>	6
<i>Insurance investments</i>	3
<i>Asset management</i>	3

## 6.12 Legal & General

### 6.12.1 Profile

Legal & General Netherlands is an insurance company that offers income security products. It is a 100% subsidiary of the UK listed insurance company Legal & General Group Plc. This company has 8 million clients worldwide and has been in business for more than 175 years.

In the Netherlands Legal & General is operational since 1984 and has more than 150,000 clients.<sup>291</sup> In 2012, Legal & General Netherlands had a premium turnover of around € 198 million and at the end of 2012 Legal & General Netherlands had an invested capital of 2.3 billion. This was divided among the various investment categories as follows:<sup>292</sup>

- Government and corporate bonds: 67%
- Shares: 29%
- Loans: 2%
- Derivatives: 2%

In 2012, Legal & General Group realised a premium turnover of £5.7 billion (€ 7 billion) worldwide.<sup>293</sup> At the end of 2012, the total assets amounted to £346.3 billion (€ 423.2 billion). Of this, £321.9 billion (€ 393.4 billion) came from investments and loans, which were divided amongst the various investment categories as follows:<sup>294</sup>

- Shares (48%)
- Government and corporate bonds (47%)
- Real estate (2%)
- Derivate (2%)
- Other (1%)

Besides its own insurance investments, at the end of 2012, asset management subsidiary Legal & General Investment Management managed assets for third parties that amounted to £405.9 billion (€ 496.1 billion).<sup>295</sup>

### 6.12.2 Human rights policy

Legal & General respects the Universal Declaration of Human Rights of the UN.<sup>296</sup>

### 6.12.3 Insurance investments and asset management

Legal & General may be involved in the selected companies by way of managing shares and/or bonds.

Table 45 shows the shares of the selected companies managed by Legal & General. In total, Legal & General manage € 5,818.7 million worth of shares in the selected companies.

**Table 45 Shares managed by Legal & General**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Barrick Gold</b>					
Legal & General Asset Management (France)	France	21,572	0.00	0.41	31 March 2013
Legal & General Investment Management	United Kingdom	6,720,065	1.54	46.98	November 2012 – March 2013
<b>Total value</b>				<b>47.39</b>	
<b>Freeport-McMoran Copper &amp; Gold</b>					
Legal & General Asset Management (France)	France	3,108	0.00	0.08	31 March 2013
Legal & General Investment Management	United Kingdom	4,010,759	0.42	103.55	31 March 2013
<b>Total value</b>				<b>103.63</b>	
<b>GlencoreXstrata</b>					
Legal & General Investment Management	United Kingdom	132,339,624	1.00	498.29	30 April 2013
<b>Total value</b>				<b>498.29</b>	
<b>Goldcorp</b>					
Legal & General Asset Management (France)	France	15,069	0.00	0.40	31 March 2013
Legal & General Investment Management	United Kingdom	3,062,287	0.38	80.35	31 March 2013
<b>Total value</b>				<b>80.75</b>	
<b>Oil and Natural Gas Corporation</b>					
Legal & General Investment Management	United Kingdom	470,809	0.01	2.10	31 May 2013
<b>Total value</b>				<b>2.10</b>	
<b>Posco</b>					
Legal & General Investment Management	United Kingdom	51,392	0.06	11.27	31 May 2013
<b>Total value</b>				<b>11.27</b>	
<b>Royal Dutch Shell</b>					
Legal & General Investment Management	United Kingdom	198,235,071	6.32	5,035.44	19 February 2013
<b>Total value</b>				<b>5,035.44</b>	
<b>Vedanta Resources</b>					
Legal & General Investment Management	United Kingdom	3,331,964	1.25	39.80	3 June 2013
<b>Total value</b>				<b>39.80</b>	

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Total value of all shares</b>				<b>5,818.67</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

Table 46 shows the bonds of the selected companies managed by the asset management arm of Legal & General. In total, Legal & General manages € 26.3 million worth of bonds in the selected companies.

**Table 46 Bonds managed by Legal & General**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>Freeport-McMoran Copper &amp; Gold</b>				
Legal & General Investment Management	United Kingdom	0.11	13.75	March 2013
<b>Total value</b>			<b>13.75</b>	
<b>GlencoreXstrata</b>				
Legal & General	France	0.00	0.30	March 2013
Legal & General Investment Management	United Kingdom	0.05	12.01	March 2013
<b>Total value</b>			<b>12.31</b>	
<b>Posco</b>				
Legal & General Investment Management	United Kingdom	0.00	0.21	March 2013
<b>Total value</b>			<b>0.21</b>	
<b>Trafigura</b>				
Legal & General Investment Management	United Kingdom	0.10	0.82	March 2013
<b>Total value</b>			<b>0.82</b>	
<b>Total value of all bonds</b>			<b>27.09</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013.

Legal & General informed us that they would not cooperate with the interview for this case study. The company is also unwilling to send in or show specific screening and engagement reports. Legal & General did, however, send a number of public documents. Because Legal & General only cooperated in this study to a limited extent, and based on the information provided, no assessment can be conducted for asset management and insurance investments. In accordance with the predetermined assessment method, a score 1 is granted to Legal & General.

#### 6.12.4 Conclusions

Table 47 gives an overview of the scores that Legal & General has received in this case study.

**Table 47 Scores Legal & General**

Type of financing	Score
<i>Insurance investments</i>	1
<i>Asset management</i>	1

Legal & General has responded as follows to the request to cooperate with this case study:

“Legal & General Netherlands has no investments in the researched companies and is prepared to cooperate. The case study does, however, also concern the investment policy of Legal & General UK. Providing the requested detailed information is in violation of the policy of L&G UK and L&G UK is therefore not prepared to cooperate.”<sup>297</sup>

The *Fair Insurance Guide* and the *Fair Bank Guide* have responded as follows on Legal & General’s decision not to cooperate with this case study:

The *Fair Insurance Guide* and the *Fair Bank Guide* regret that four insurance groups, namely Allianz, Delta Lloyd, Generali and Legal & General, did not want to cooperate with the ‘extractive companies and human rights’ case study.

This is all the more serious because the case study shows that these four insurance companies invest heavily in several of the extractive companies selected for this case study.

With their dismissive attitude, these insurance companies do not serve the interest of their clients or their other stakeholders. After all, these two groups must now wonder whether their insurance company pays sufficient attention to human rights in their investment practice.

In accordance with the predefined and communicated methodology, the four insurance groups have achieved the lowest score (1).

It is conspicuous that earlier this year, in the first *Fair Insurance Guide* policy case study, three of these four insurance companies also scored poor (1) on their human rights policy and Delta Lloyd got achieved no better than insufficient (4).

The *Fair Bank Guide* and the *Fair Insurance Guide* urge the four insurance companies to take their clients and other stakeholders, including a lot of Dutch civilians, seriously. Clients and other stakeholders deserve transparency as to what happens with their money and want to know whether Allianz, Delta Lloyd, Generali and Legal & General give respect for human rights sufficient attention in their investment practice.”

## 6.13 NIBC

### 6.13.1 Profile

NIBC Bank was founded in 1945 by the Dutch government with the objective to provide financing for the reconstruction of the Netherlands after the World War II. The bank has traditionally focused on financing projects and long-term assets in several (international) industries such as shipping, oil and gas services, infrastructure, sustainable energy and commercial real estate.<sup>298</sup>

At the end of 2011, more than 640 people were employed at NIBC Bank. The total assets of the bank amounted to € 28.6 billion, of which € 6.6 billion comprised of money entrusted by private and business clients.<sup>299</sup> At the end of 2011, the total assets of NIBC Bank was invested as follows:<sup>300</sup>

- Loans to companies (32%)
- Mortgage loans to private individuals (31%)
- Investments in shares, corporate bonds and Derivatives (20%)
- Cash money (9%)
- Loans to banks (7%)
- Other (1%)

Besides the total assets of NIBC Bank, at the end of 2011, NIBC Holding managed another € 4.3 billion worth of assets for clients.<sup>301</sup>

### 6.13.2 Human rights policy

The bank carries out due diligence with regard to its clients (a form of human rights-effect reporting). This is intensified for activities in sensitive industries, countries or transactions. The NIBC human rights policy is based on the Universal Declaration of Human Rights (UDHR) and the UN Guiding Principles on Business and Human Rights.

### 6.13.3 Banking services

No investments by NIBC in the selected companies have been identified.

The mining industry and oil and gas industries fall outside the strategic scope of NIBC as far as lending is concerned. For banking services, in accordance with the predetermined assessment method, the score 'inactive' has been granted.

### 6.13.4 Asset management

No investments have been identified for the NIBC within the framework of asset management.

The mining industry and oil and gas industries fall outside the strategic scope of the NIBC as far as asset management is concerned. For asset management, in accordance with the predetermined assessment method, the score 'inactive' has been granted.

### 6.13.5 Conclusions

Table 48 gives an overview of the scores that the NIBC has received in this case study.



**Table 48 Scores NIBC**

<b>Type of financing</b>	<b>Score</b>
<i>Banking services</i>	Inactive
<i>Asset management</i>	Inactive

## 6.14 Rabobank

### 6.14.1 Profile

The Rabobank group is an international financial service provider founded on cooperative principles and active in the fields of banking, asset management, leasing, insurance and real estate. Rabobank has a cooperative structure: the 136 local Rabobanks in the Netherlands, that jointly have nearly 2 million members, are the joint owners of Rabobank. Rabobank Netherlands supports the local banks and is the holding company for the Dutch and foreign subsidiaries and affiliates. The local Rabobanks serve millions of Dutch private and business clients with a full range of financial services. Rabobank International aspires to a global position as the leading food and agriculture bank.<sup>302</sup>

At the end of 2012, the Rabobank group had approximately 5,630 employees spread over 43 countries. In the Netherlands the group has more than 7.4 million private clients and 826 branches.<sup>303</sup>

At the end of 2012, equity and liabilities of the Rabobank group amounted to € 752.4 billion, of which € 334.3 billion comprised of money entrusted to the bank by private and business clients.<sup>304</sup> Of this, € 213.9 billion were the savings of the local Rabobanks, Robeco Direct and Friesland Bank.<sup>305</sup>

At the end of 2012, the total assets of the Rabobank group were invested as follows:<sup>306</sup>

- (Mortgage) loans to private individuals (29%)
- Loans to companies (35%)
- Investments in shares, bonds and derivatives (17%)
- Loans to banks (5%)
- Money with central banks (9%)
- Other (5%)

Besides the money on the bank's balance sheet, at the end of 2012, the Rabobank Group managed € 221.2 billion in assets for clients through subsidiaries Robeco, Schretlen & Co. and private banking.<sup>307</sup> In early 2013, Rabobank sold Robeco to the Japanese Orix.<sup>308</sup>

### 6.14.2 Human rights policy

The Rabobank group endorses the ILO conventions and the Universal Declaration of Human Rights. In addition, its human rights policy comprises of expectations for companies, which are in line with the principles from the Ruggie Framework. Also, *Free Prior and Informed Consent* is required for activities that have consequences for indigenous peoples.

### 6.14.3 Banking services

It has been verified whether Rabobank group has made investments within the framework of banking services in one or more of the selected companies as part of this study. The results are summarised below:

The Rabobank can grant banking services by assisting in the issue of shares and bonds or the provision of loans. To Rabobank has granted banking services to the following selected companies:

- **GlencoreXstrata**

- In May 2010, Glencore International entered into a credit facility of US\$ 9,745 million (€ 7,624.49 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 1,375 million (€ 1,075.80 million) one-year LIBOR+150,000bps loan and a US\$ 8,370 million (€ 6,548.69 million) three-year LIBOR+200,000bps loan. The credit facility was used to refinance a credit facility of US\$ 8.18 billion and for general corporate affairs. Rabobank participated with an amount of € 152.49 million in the syndicate of 94 banks that granted the loan.<sup>309</sup>
- In May 2011, Glencore International issued new shares on the London and Hong Kong stock exchanges. The total value of the issue was US\$ 10.05 billion (€ 7,021.73 million). The issue was divided into two parts: the first with a value of € 6,834.83 million (London) and the second with a value of € 186.9 million (Hong Kong). The yield of the issue was used for general corporate affairs. Rabobank participated with an amount of € 83.49 million in the syndicate of 27 banks that assisted in the issue.<sup>310</sup>
- In May 2011, Glencore International entered into a credit facility of US\$ 11,265 million (€ 7,595.99 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 2,925 million (€ 1,972.33 million) one-year LIBOR+110,000bps loan and a US\$ 8,340 million (€ 5,623.66 million) three-year loan. The credit facility was used to refinance Glencore's credit facility of from May 2010 and for general corporate affairs. Rabobank participated with an amount of € 144.69 million in the syndicate of 97 banks that granted the loan.<sup>311</sup>
- In September 2011, Viterra, a subsidiary of GlencoreXstrata, entered into a four-year LIBOR+185,000bps credit facility of CAD\$ 2,065.75 million (€ 1,524.32 million) with a syndicate of banks. This credit facility was used for acquisitions, general corporate affairs and refinancing. Rabobank participated with an amount of € 121.95 million in the syndicate of 23 banks that granted the loan.<sup>312</sup>

Viterra was taken over by Glencore International in December 2012.<sup>313</sup> This means that Rabobank cannot be expected to have screened Glencore when the loan was granted to Viterra as Viterra was not yet a subsidiary of Glencore. However, Rabobank can now use influence on Glencore as the loan contract between Rabobank and Viterra (now a subsidiary of Glencore) still runs until September 2015.

- In April 2012, Glencore International entered into a one-year credit facility of US\$ 3,100 million (€ 2,361.27 million) with a syndicate of banks. This credit facility was used for the merger with Xstrata and for general corporate affairs. Rabobank participated with an amount of € 48.85 million in the syndicate of 31 banks that granted the loan.<sup>314</sup>
- In April 2012, Glencore International entered into a one-year credit facility of US\$ 4,435 million (€ 3,367.05 million) with a syndicate of banks. This credit facility was used for refinancing of outstanding loans. Rabobank participated with an amount of € 91.83 million in the syndicate of 40 banks that granted the loan.<sup>315</sup>
- In October 2012, Glencore International entered into a one-year credit facility of US\$ 2,220 million (€ 1,712.06 million) with a syndicate of banks. This credit facility was used as working capital. Rabobank participated with an amount of € 57.07 million in the syndicate of 19 banks that granted the loan.<sup>316</sup>

- In March 2013, Glencore International entered into a five-year LIBOR+210,000bps credit facility of US\$ 8,320 million (€ 6,417.22 million) with a syndicate of banks. This credit facility was used for the purchase of crude oil from Rosneft and for general corporate affairs. Rabobank participated with an amount of € 175.01 million in the syndicate of 29 banks that granted the loan.<sup>317</sup>
- In June 2013, Glencore International entered into a credit facility of US\$ 17,340 million (€ 13,025.81 million) with a syndicate of banks. This loan was divided into three parts: a US\$ 5,920 million (€ 4,447.10 million) one-year loan, a US\$ 7,070 million (€ 5,310.98 million) three-year loan and a US\$ 4,350 million (€ 3,267.72 million) five-year loan. This credit facility was used to refinance the US\$ 4,435 million loan from April 2012, the US\$ 8,370 million loan from May 2010 and for general corporate affairs. Rabobank participated with an amount of € 179.67 million in the syndicate of 78 banks that granted the loan.<sup>318</sup>
- **Trafigura**
  - In March 2009, Trafigura Management entered into a one-year LIBOR+175,000bps credit facility of US\$ 520 million (€ 383 million) with a syndicate of banks. This credit facility was used for refinancing of the one-year loan from March 2008 and for general corporate affairs. Rabobank participated with an amount of € 17.7 million in the syndicate of 19 banks that granted the loan.<sup>319</sup>
  - In March 2010, Trafigura Management entered into a credit facility US\$ 2,325 million (€ 1,694 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 625 million (€ 455 million) one-year LIBOR+160,000bps loan and a US\$ 1,700 million (€ 1,239 million) three-year LIBOR+250,000bps loan. This credit facility was used to refinance the one-year loan entered into in March 2009 and for the three-year loan entered into in March 2008. Rabobank participated with an amount of € 9.41 million in the syndicate of 36 banks that granted the loan.<sup>320</sup>
  - In August 2010, Trafigura Management entered into a one-year credit facility of C\$ 250 million (€ 186.9 million) with a syndicate of banks. This credit facility was used for trade financing. Rabobank participated with an amount of € 62.3 million in the syndicate of three banks that granted the loan.<sup>321</sup>
  - In March 2011, Trafigura Management entered into a credit facility US\$ 3,175 million (€ 2,269 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 676 million (€ 483 million) one-year loan and a US\$ 2,499 million (€ 1,786 million) three-year loan. This credit facility was used to refinance the loan entered into in March 2010 and for general corporate affairs. Rabobank participated with an amount of € 35.8 million in the syndicate of 44 banks that granted the loan.<sup>322</sup>
  - In March 2011, Trafigura Management entered into a one-year credit facility of US\$ 250 million (€ 179 million) with a syndicate of banks. This credit facility was used for trade financing and as working capital. Rabobank participated with an amount of € 35.7 million in the syndicate of three banks that granted the loan.<sup>323</sup>
  - In August 2011, Trafigura Holding entered into a one-year LIBOR+115,000bps credit facility of US\$ 1,000 million (€ 689.5 million) with a syndicate of banks. This credit facility was used for general corporate affairs and as working capital. Rabobank participated with an amount of € 68.95 million in the syndicate of 15 banks that granted the loan.<sup>324</sup>

- In March 2012, Trafigura Management entered into a credit facility of US\$ 1,099.83 million (€ 832.90 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 445 million (€ 337.09 million) one-year LIBOR+125,000bps loan and a US\$ 635 million (€ 481.01 million) one-year LIBOR+125,000bps loan. This credit facility was used to refinance the one-year loan entered into in March 2011. Rabobank participated with an amount of € 38.44 million in the syndicate of 20 banks that granted the loan.<sup>325</sup>
- In August 2012, Trafigura AG entered into a one-year LIBOR+125,000bps credit facility of US\$ 1,305 million (€ 1,057.83 million) with a syndicate of banks. This credit facility was used as working capital and for general corporate affairs. Rabobank participated with an amount of € 121.59 million in the syndicate of 18 banks that granted the loan.<sup>326</sup>
- In February 2013, Trafigura Management entered into a credit facility of US\$ 4,265 million (€ 3,259.74 million) with a syndicate of banks. This loan was divided into two parts: a US\$ 1,360 million (€ 1,039.45 million) one-year LIBOR+130,000bps loan and a US\$ 2,905 million (€ 2,220.29 million) three-year LIBOR+190,000bps loan. This credit facility was used to refinance the one-year loan entered into in March 2012 and a three-year loan from March 2011 that was extended into March 2012. Rabobank participated with an amount of € 78.37 million in the syndicate of 37 banks that granted the loan.<sup>327</sup>

From the interview held with Rabobank group and the evidence provided, it appeared that Rabobank has applied the following instruments to bring its own 'Responsible Investment' policy into practice, mainly with regard to mineral mining companies involved in human rights violations:

- **Screening**

Rabobank has a risk management system, named GAIA, which includes all wholesale clients. All clients are screened at least once every 18 months. The relationship manager partially bases the assessment of a credit application on externally available or purchased information, the risk management department and the sustainability department. With the information found, Rabobank then investigates the extent to which the companies meet Rabobank's human rights policy. The human rights policy comprises of expectations in line with the principles of the Ruggie Framework for companies. This means that companies are expected to have developed sufficient policies, that here are due diligence processes and that any damage is repaired.

Based on the Rabobank group human rights policy and access to the GAIA screening procedure, elements 1 - 5 are granted. Because Rabobank did not show any company specific screening reports or the like, elements 6 and 7 cannot be assessed properly. These elements are not granted.

- **Engagement**

When it appears from screening or from other signals that a client does not meet the expectations as described in the Rabobank group human rights policy, this is discussed with the client and a plan of action is prepared. Additionally, an engagement process is started if there are signals from the media or third parties that a client of Rabobank is involved in human rights violations. Rabobank verifies the facts with the respective client and, where relevant, takes further action. Finally, engagement processes can be initiated on the basis of the Ethics Commission. In principle, the commission meets once every six weeks to judge advice requests.

In the interview, Rabobank made a plausible case to prove they hold talks with the two selected companies in which they invest. This evidence came from insight into the risk management system provided by Rabobank. However, because Rabobank is not allowed to show any company specific documents, no clear judgement can be given on the content of the engagement talks and the agreements made. Moreover, based on the evidence viewed, it cannot be determined that concrete agreements are made and that these are included in the credit agreement. Therefore no points are granted for the other elements.

- **Exclusion**

Rabobank does not publish its exclusion list. Clients that do not meet the expectations of Rabobank are not granted financing but because Rabobank has not shown any company specific screening reports or the like, elements 7 and 15 cannot be properly assessed. These elements are not granted.

Table 49 shows how Rabobank group has scored in the different elements of assessment, as described in Paragraph 4.5. This leads to the final assessment according to the method applied in this study.

**Table 49 Assessment of the Rabobank group's banking services**

<b>Element</b>	<b>Complies</b>
<b>Screening</b>	
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	Yes
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	No
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	No
<b>Engagement</b>	
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	N/A
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	Yes

Element	Complies
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>	
10. Drafting a policy statement in which the company commits itself to respect human rights;	No
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	No
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	No
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	No
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	No
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>	
15. A policy statement in which the company commits itself to respect human rights;	No
16. Establishing a human rights due diligence process;	No
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	No
18. The absence of a measurable decrease in human rights violations;	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	No
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	No
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining company or the oil and gas company to reduce or prevent violation of human rights or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	No
22. The financial institution makes a firm commitment in writing to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	No
<b>Score: 3</b>	<b>6 of the 21 elements</b>

#### 6.14.4 Asset management

No investments by Rabobank were identified within the framework of asset management. For asset management, in accordance with the predetermined assessment method, the score 'inactive' has been granted.

### 6.14.5 Conclusions

A lack of insight into evidence means we are unable to make a complete assessment of Rabobank. The current score can be considered to be a reflection of flawed transparency in this field.

Table 50 gives an overview of the scores that Rabobank group has received in this case study.

**Table 50 Scores Rabobank group**

<b>Type of financing</b>	<b>Score</b>
<i>Banking services</i>	3
<i>Asset management</i>	Inactive



## 6.15 SNS Reaal

### 6.15.1 Profile

SNS Reaal is a Dutch financial institution that mainly focuses on the Dutch retail market, including small and medium-sized enterprises (SMEs). The range consists of three core product groups: mortgages and financing to SMEs, capital growth (saving and investing) and insurance (life, damage, disability) and pensions.<sup>328</sup> Insurance is offered under the brand names Proteq Dier & Zorg, Reaal, Zelf.nl and Zwitserleven.<sup>329</sup>

At the end of 2012, SNS Reaal had more than 6,700 employees.<sup>330</sup> The total assets of the group then amounted to € 133.6 billion, of which €8.3 billion came from bank activities.<sup>331</sup> The Dutch government has owned SNS Reaal since February 2013.<sup>332</sup>

In 2012, the insurance activities of SNS Reaal realised a gross premium income of € 3.5 billion.<sup>333</sup> At the end of 2012, the total assets of the insurance activities amounted € 56.5 billion, of which € 49.2 billion comprised of insurance investments.<sup>334</sup> These insurance investments were divided over the various investment categories as follows:<sup>335</sup>

- Government bonds: 36%
- Investments for own risk of policy holders, mainly in shares and bonds: 29%
- Corporate bonds: 26%
- Mortgage loans: 6%
- Shares: 3%
- Loans to banks: 1%
- Derivatives: 1%
- Real estate: 0%

At the end of 2012, SNS Asset Management, the asset management subsidiary of SNS Reaal, managed total assets worth € 45.9 billion, of which 57% (€ 26.2 billion) were for the bank and insurance arms of the SNS Reaal Group and 43% (€ 19.7 billion) for third parties through collective investment schemes and mandates.<sup>336</sup>

### 6.15.2 Human rights policy

SNS Bank endorses the Universal Declaration of Human Rights; no investment is made in companies that are active in countries where human rights are systematically violated. The OECD guidelines are also adhered to.

The asset managing company within SNS Reaal, SNS Asset Management, has its own policy: the Fundamental Investment Principles. These are the general guidelines in which SNS Asset Management commits itself to respect international human rights treaties. These guidelines are further elaborated in specific policies for important industries. In the case of the mining industry and oil and gas industries, both falling within the thematic focus of SNS Asset Management, screening is based on the SNS AM Extractives Industry Framework. It is outlined within this framework how general investment criteria for these industries are developed into clear exclusion criteria and clear guidance with regard to engagement. From the Extractives Framework it appears that SNS Asset Management screens mining, oil and gas companies for the various elements of the Ruggie Principles: policy, implementation and compensation.

### 6.15.3 Banking services

No investments by SNS Bank and SNS Regiobank were identified in the selected companies. For banking services, in accordance with the predetermined assessment method, the score “inactive” is granted.

### 6.15.4 Insurance investments

Table 51 shows the shares of the selected companies managed by SNS Reaal. In total, SNS Reaal manages for € 82.39 million worth of shares in the selected companies.

**Table 51 Shares managed by SNS Reaal**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Royal Dutch Shell</b>					
SNS Collective Investment Schemes	The Netherlands	2,067,670	unknown	53.71	31 December 2012
Zwitsereven Collective Investment Schemes	The Netherlands	1,104,047	unknown	28.68	31 December 2012
<b>Total value</b>				<b>82.39</b>	

Source: Thomson ONE Banker, “Share ownership”, *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013; SNS Collective Investment Schemes, “Annual report 2012”, *SNS Collective Investment Schemes*, 31 December 2012; Zwitsereven Collective Investment Schemes, “Annual report 2012”, *Zwitsereven Collective Investment Schemes*, 31 December 2012.

Table 52 shows the bonds of the selected companies managed by the asset management arm of SNS Reaal. In total, SNS Reaal manages € 13.96 million worth of bonds in the selected companies.

**Table 52 Bonds managed by SNS Reaal**

Investor	Country	% of bonds	Value (€ m)	Date of reporting
<b>GlencoreXstrata</b>				
SNS Collective Investment Schemes	The Netherlands	unknown	7.32	December 2012
Zwitsereven Collective Investment Schemes	The Netherlands	unknown	3.58	December 2012
Zwitsereven Institutional Collective Investment Schemes	The Netherlands	unknown	0.97	December 2012
<b>Total value</b>			<b>11.87</b>	
<b>Royal Dutch Shell</b>				
Zwitsereven Collective Investment Schemes	The Netherlands	unknown	0.69	December 2013
Zwitsereven Institutional Collective Investment Schemes	The Netherlands	unknown	1.40	December 2013
<b>Total value</b>			<b>2.09</b>	
<b>Total value of all bonds</b>			<b>13.96</b>	

Source: Bloomberg Database, "Aggregated holdings", *Bloomberg database*, viewed in July 2013; SNS Collective Investment Schemes, "Annual Report 2012", *SNS Collective Investment Schemes*, 31 December 2012; Zwitserleven Collective Investment Schemes, "Annual report 2012", *Zwitserleven Collective investment scheme*, 31 December 2012; Zwitserleven Institutional Collective Investment Scheme, "Annual report 2012", *Zwitserleven Institutional Collective Investment Schemes*, 31 December 2012.

These investments were made by SNS Asset Management on behalf of the insurance company within the group (insurance investments) and on behalf of external clients (asset management). It is unknown how the investments were divided over these categories and this was also not clarified by SNS Reaal. The policy and instruments that SNS Asset Management uses apply to both categories. Therefore, after analysis, the same score will be granted to both categories.

From the interview held with SNS Asset Management and the evidence provided, it appeared that SNS Reaal has applied the following instruments to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

Each company within the universe is screened for environmental and social issues at least once every quarter by both the own team of analysts as well as by an external agency. For each industry relevant indicators are determined. In the case of the mining industry and oil and gas industries, which both fall within SNS Reaal's thematic focus, screening is conducted based on the Fundamental Investment Principles and the SNS AM Extractives Industry Framework. It is outlined within this framework how general investment criteria for these industries are developed into clear exclusion criteria and clear guidance for engagement.

From the Extractives Framework it appears that SNS Asset Management screens mining, oil and gas companies with regard to the different elements of the Ruggie Principles: policy, implementation and compensation. From the 6 company profiles that SNS Asset Management has written for the selection committee, it appears that policy and implementation are assessed and that, where relevant, compensation is taken into account in the screening profiles. The efforts already being made by the company are also taken into account as is the extent to which the efforts of the company have actually led to the absence of human rights violations or a measurable decrease in them. In addition, there is continuous screening on incidents. In the case of situations that are marked as violations of the Fundamental Investment Principles, advice for exclusion or responsive engagement is given to the SNS AM selection committee, which then makes a decision.

Based on this information, elements 1 - 6 are granted to SNS Asset Management.

- **Engagement**

SNS Asset Management actively votes on all companies in which it has shares and in the case of an Annual General Meeting with an engagement candidate it will follow up its vote with a letter that communicates and explains its voting behaviour.

In general, SNS Asset Management prefers engagement above exclusion. In its voting and engagement activities, SNS Asset Management is supported by an external specialised agency. Because the mining industry and oil and gas industry are part of its sectoral focus, the instrument of proactive engagement is also applied. This means that, although a company may not be in violation of its own policy, they still try to implement improvements in company policy and practice through dialogue. This way, SNS Asset Management wants to work to improve within the industry and prevent companies violating its investment principles in the future.

An engagement process has been started with the three selected companies that SNS Reaal maintains business relationships with. The frequency and intensity of the engagement talks varies for each of the three engagement processes. On the one hand this has to do with the time in which an engagement has started and on the other hand the willingness of the company to engage.

Prior to an engagement process, SNS Asset Management sets clear objectives and tries to reach agreements with the companies through the talks. In some cases this succeeds, in other cases the company does not cooperate. Based on company specific evidence, it appears that there is a consequent assessment and that concrete agreements are made on policy, human rights due diligence and the extent to which the efforts of the company actually lead to the absence of human rights violations or a measurable decrease in them. The talks also elaborate on the importance of repair work and compensation for victims. However, there are still no demonstrable agreements that have been made to this effect.

Based on this information, SNS Reaal Asset Managing has been granted elements 8 - 16 and 18 - 20.

In a written declaration, SNS AM promises to make compensating victims on a more structural basis the subject of talks and of concrete agreements in engagement processes as of next year. Based on this information, element 22 has been granted.

- **Exclusion**

In the Extractives Framework SNS Asset Management gives a number of practices that SNS Asset Management considers unacceptable and for which it excludes a company from investment. SNS Asset Management has excluded three of the ten selected companies in this study after screening and based on ESG criteria. If an engagement process is unsuccessful, the responsible analyst may decide to propose to the SNS AM selection committee that the company be an exclusion candidate. From the evidence provided, it appears that this has also been applied as described.

Based on this information, SNS Asset Management has been granted elements 7 and 21.

**Table 53 Assessment of SNS Reaal's insurance investments**

Element	Complies/number of relevant companies	Complies
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	3/3	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	3/3	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	3/3	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	3/3	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company	3/3	Yes

Element	Complies/number of relevant companies	Complies
and whether this actually leads to compensation;		
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3/3	Yes
7. Whether, if it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	Yes	Yes
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	2/3	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	3/3	Yes
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	3/3	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	3/3	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	2/3	Yes
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3/3	Yes
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	3/3	Yes
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	3/3	Yes
16. Establishing a human rights due diligence process;	3/3	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	1/3	No
18. The absence of a measurable decrease in human rights	3/3	Yes

Element	Complies/number of relevant companies	Complies
violations;		
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	3/3	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	1	Yes
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.		Yes
<b>Score: 10</b>	<b>20 of the 21 elements</b>	

#### 6.15.5 Asset management

The investments mentioned as insurance investments are made by SNS Asset Management on behalf of the insurance company within the group (insurance investments) and on behalf of external clients (asset management). It is unknown how the investments are divided over these types of financing and this was not clarified by SNS Reaal. SNS Asset Management applies the same policy and instruments to both types of financing. Therefore, after analysis, the same score will be granted to both types of financing.

### 6.15.6 Conclusions

**Fout! Verwijzingsbron niet gevonden.** gives an overview of the scores that SNS Reaal has received in this case study.

**Table 54 Scores SNS Reaal**

<b>Type of financing</b>	<b>Score</b>
<i>Banking services</i>	inactive
<i>Insurance investments</i>	10
<i>Asset management</i>	10

## 6.16 Triodos

### 6.16.1 Profile

Triodos Bank finances companies, organisations and projects with additional value in the social, ecological and cultural fields, with the support of savers and investors that opt for social responsible business and a sustainable society.

At the end of 2012, Triodos Bank had 788 employees and more than 437,000 clients in the Netherlands, Belgium, the UK, Spain and Germany.<sup>337</sup>

At the end of 2012, the total assets of Triodos Bank amounted to € 5.3 billion, of which € 4.6 billion comprised of money entrusted by private and business clients.<sup>338</sup> The total assets of Triodos Bank then was invested as follows:<sup>339</sup>

- Loans to companies and organisations (55%)
- Loans to banks (16%)
- Investments in government bonds (12%)
- Loans to lower governments (3%)
- Loans to private individuals (4%)
- Cash money (7%)
- Other (4%)

Besides the money on the bank's balance sheet, at the end of 2012, Triodos Investment Management also managed assets for clients, in the form of collective investment schemes and private banking mandates, amounting to € 2.8 billion.<sup>340</sup>

### 6.16.2 Human rights policy

As a minimum requirement, Triodos has formulated a policy where companies that directly or significantly contribute to, or benefit from; structural and gross violations of human rights by the government or other parties are excluded. Companies are also expected to meet international standards.

### 6.16.3 Banking services

No banking services provided to the selected companies were identified for Triodos Bank.

The mining industry and oil and gas industries fall outside the geographic and strategic scope of the Triodos Bank as far as lending is concerned. For banking services, in accordance with the predetermined assessment method, the score 'inactive' has been granted.

### 6.16.4 Asset management

No investments in the selected companies have been identified for Triodos Investment Management.

Not investing in the selected mining, oil and gas companies within the framework of asset management is a direct consequence of the Triodos Investment Management Responsible Investment Policy. Therefore, for asset management, in accordance with the predetermined assessment method, a score will be granted.



From the evidence provided by Triodos it appeared that the following instruments have been applied to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

Of all potential investments, it has been assessed whether they meet the minimum requirements. Having a human rights policy and a social impact assessment mean investments are subject to certain requirements. Compensation and the impact of a decision taken by a company are only assessed when controversies are discovered. Based on this information, elements 1 and 2 were granted.

- **Exclusion**

Triodos Investment Management does not work with exclusion but with inclusion. Companies are only included in the universe if they meet the minimum requirements. All companies that meet the Triodos Investment Management policy are included in the universe, which is publicly available. Investment in companies is only allowed if they are included in this universe. None of the ten selected companies are included in the Triodos Investment Management investment universe. Based on this information and access to the Triodos Investment Management investment universe, element 7 has been granted.

Table 55 shows how Triodos Investment Management has scored on the different assessment elements, as described in paragraph 4.5. This leads to the final assessment for both insurance investments as well as for asset management, according to the method applied in this study.

**Table 55 Assessment asset management Triodos**

Element	Judgement
<b>Screening</b>	
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	Yes
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	Yes
<b>Score: 10</b>	<b>3 of the 3 elements</b>

### 6.16.5 Conclusions

Table 56 gives an overview of the scores that Triodos has received in this case study.

**Table 56 Scores Triodos**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Asset management</i>	10

## 6.17 Van Lanschot

### 6.17.1 Profile

Van Lanschot is the oldest independent bank in the Netherlands (with a history dating back to 1737). Van Lanschot provides banking and asset management services to wealthy private individuals in the Netherlands and Belgium, entrepreneurs and their companies, business professionals and executives, entrepreneurs in the healthcare industry and associations and foundations. In the institutional market, Van Lanschot focuses on asset management mandates through its subsidiary Kempen & Co.<sup>341</sup> At the end of 2012, Van Lanschot had 2,015 employees and 28 offices in the Netherlands, 7 in Belgium and branches in Switzerland and the United States.<sup>342</sup>

At the end of 2012, the total assets of Van Lanschot amounted to € 18 billion. Of this, € 11.4 billion consisted of money entrusted by private and business clients.<sup>343</sup> At the end of 2012, the total assets were invested as follows:<sup>344</sup>

- Mortgage and other loans to private individuals (48%)
- Loans to companies (28%)
- Investments (10%)
- Loans to other banks (2%)
- Cash money (9%)
- Other (3%)

Besides the money on the bank's balance sheet, at the end of 2012, Van Lanschot managed total assets of € 40.9 billion for clients. Of this, € 29 billion was discretionarily managed.<sup>345</sup>

### 6.17.2 Human rights policy

Van Lanschot has developed policy requirements which are highly dependent on the size of the company. Larger borrowers are expected to formulate a human rights policy in line with the Universal Declaration of Human Rights and the UN Protect, Respect and Remedy Framework. In the case of smaller borrowers, of which the client base of Van Lanschot basically consists, there are no hard requirements with regard to a human rights policy, but clients are asked to provide information to show they will try to identify, prevent and reduce involvement in human rights violations. Grievance mechanisms may also be discussed here.

The ESG-policy of Kempen Capital Management, Van Lanschot's asset management company, is based on international treaties and conventions. The United Nations Global Compact (UNGC) and the Guiding Principles on Business and Human Rights form the basis of its human rights policy.

### 6.17.3 Banking services

No investments by Van Lanschot Bank have been identified in the selected companies. For banking services, in accordance with the predetermined assessment method, the score "inactive" has been granted.

### 6.17.4 Asset management

Van Lanschot's asset management company, Kempen Capital Management, may be involved in the selected companies by way of managing shares and/or bonds.

Table 57 shows the shares of the selected companies managed by Van Lanschot. In total, Van Lanschot manages € 15.95 million worth of shares in the selected companies.

**Table 57 Shares managed by Van Lanschot**

Investor	Country	# shares	% of shares	Value (€ m)	Date of reporting
<b>Royal Dutch Shell</b>					
Kempen Capital	The Netherlands	632,404	0.02	15.95	28 February 2013
<b>Total value</b>				<b>15.95</b>	

Source: Thomson ONE Banker, "Share ownership", *Thomson ONE Banker (www.thomsonone.com)*, viewed in July 2013.

From the interview held with Van Lanschot's asset management company and the evidence provided, it appeared that the following instruments have been applied to bring its responsible investment policy into practice, mainly with regard to extractive companies involved in human rights violations:

- **Screening**

Each quarter, all companies from its own and from external investment portfolios are screened by an external agency. This agency does this based on the 60 principal international treaties, including 18 relevant human right treaties. Based on this information and a number of screening reports, elements 1 - 6 have been granted.

- **Engagement**

In general, Van Lanschot's asset management company has a preference for engagement above exclusion. In its voting and engagement activities, Van Lanschot's asset management company is supported by an external specialised agency. When screening shows that a company violates relevant human rights treaties, that company is then granted an 'observe' or an 'engage' status. In case of an 'observe status' a company is closely monitored, after which an engagement process can be started. In case of an engage status, the company is engaged on behalf of Van Lanschot's asset management company. Van Lanschot's asset management company is informed by the agency of all engagement activities and, where relevant, Van Lanschot's asset management company engages in the telephone calls with the company. At this stage Van Lanschot's asset management company portfolio managers discuss the engagement topics during company presentations with the respective companies.

The external agency operates on behalf of approximately 75 (institutional) investors, which can all participate in an engagement. An engagement process started with a company in the extractive industry is often committed to on behalf of all different investors. Based on screening, Van Lanschot's asset management company has currently selected around 30 companies for engagement. A selection method aimed at the mineral extracting industry is in the making. In the future, Van Lanschot's asset management company wants to be more actively involved in these engagement processes.

Van Lanschot's asset management company votes on all companies in which it has shares. From screening reports and engagement reports it appears that Van Lanschot's asset management company is in dialogue with companies in which it invests. Prior to an engagement process, Van Lanschot's asset management company defines clear objectives. Human rights due diligence, compensation and the impact of the company have been discussed with those companies. Based on this information, elements 9 - 14, 16, 17 and 20 have been granted. However, no clear agreements were made human rights policy and the eventual mitigation of a company's impact. Element 18 is therefore not granted. Van Lanschot's asset management company has demonstrated that for a specific company it was not relevant to enter into dialogue on the human rights policy with this company. Therefore element 15 is considered to be not applicable.

In addition, Van Lanschot's asset management company uses its influence not only in its own funds but also hold talks with the companies they are involved with if they violate human rights through investments in external funds. In addition, they are engaged with the fund managers using an external agency to implement changes. In the interview, Van Lanschot's asset management company indicated that they invest in three of the other ten selected companies through external funds. From engagement reports it appears that there was engagement with each of these three companies. Because investments for clients in external funds are not taken into account in this study, these companies are not included in the assessment.

- **Exclusion**

Van Lanschot's asset management company does not currently exclude any companies based on human rights violations. This may change in the future. Based on this information, the elements 7 and 21 have not been granted.

Table 58 shows how Van Lanschot's asset management company scored in the different assessment elements, as described in paragraph 4.5. This leads to the final assessment according to the method applied in this study.

**Table 58 Assessment asset management Van Lanschot**

Element	Complies/number of companies relevant	Judgement
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	1/1	Yes
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	1/1	Yes
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	1/1	Yes
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	1/1	Yes
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	1/1	Yes

<b>Element</b>	<b>Complies/number of companies relevant</b>	<b>Judgement</b>
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	1/1	Yes
7. Whether it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	0/1	No
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	1/1	Yes
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	1/1	Yes
By holding talks with the mining, oil and gas companies the financial institution can influence companies into:		
10. Drafting a policy statement in which the company commits itself to respect human rights;	n/a	Yes
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	1/1	Yes
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	1/1	Yes
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	1/1	Yes
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	1/1	Yes
The financial institution establishes concrete agreements with extractive companies on the following topics:		
15. A policy statement in which the company commits itself to respect human rights;	N/A	N/A
16. Establishing a human rights due diligence process;	1/1	Yes
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	1/1	Yes

Element	Complies/number of companies relevant	Judgement
18. The absence of a measurable decrease in human rights violations;	0/1	No
19. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	N/A	N/A
20. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	1/1	Yes
21. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	0/1	No
22. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.		No
<b>Score: 8</b>	<b>16 of the 21 elements</b>	

### 6.17.5 Conclusions

Van Lanschot shows that it takes its responsibility for respecting human rights sufficiently seriously.

Table 59 gives an overview of the scores that Van Lanschot has received in this case study.

**Table 59 Scores Van Lanschot**

Type of financing	Score
<i>Banking services</i>	inactive
<i>Asset management</i>	8

## Chapter 7 Overview of results and conclusions

### 7.1 Overview of Dutch financial institutions' investments

Chapter 7 gives a summary of the involvement of the 16 financial institutions researched in the financing of the following ten selected extractive companies since July 2009 (except for Trafigura, where financing from January 2006 has been assessed).

1. Barrick Gold	Canada
2. Freeport-McMoran Copper & Gold	United States
3. GlencoreXstrata	Switzerland
4. Goldcorp	Canada
5. Oil and Natural Gas Corporation (ONGC)	India
6. PetroChina / CNPC	China
7. Posco	South Korea
8. Royal Dutch Shell	The Netherlands
9. Trafigura	The Netherlands
10. Vedanta Resources	UK

A part of the amounts that were attributed to the banks are based on estimations due to their participation in the issue of shares and bonds and loans and a lack of detailed data. The different categories cannot be added up or compared to one another directly, because in some cases this would lead to duplications. The influence that a financial institution has on the company may also vary for each financing category.

The 16 financial institutions that have been researched in this case study are the banking and insurance groups included in the *Fair Bank Guide* and the *Fair Insurance Guide*.

For the *Fair Bank Guide*, the following 10 banking groups in the Netherlands have been selected:<sup>i</sup>

- ABN Amro
- Aegon
- ASN Bank
- Delta Lloyd
- ING Group
- NIBC
- Rabobank
- Triodos
- SNS Reaal
- Van Lanschot

For the *Fair Insurance Guide*, the following 10 insurance groups in the Netherlands have been selected:<sup>ii</sup>

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<sup>i</sup> Nine banking groups have been selected by the Fair Bank Guide based on their market share on the Dutch market for current and savings accounts. Triodos Bank has been selected as the tenth banking group because the bank has a specific position on the Dutch banking market. For background information, please see: [http://www.eerlijkebankwijzer.nl/media/25244/eerlijke\\_bankwijzer\\_13e\\_update\\_130425\\_rev\\_130617.pdf](http://www.eerlijkebankwijzer.nl/media/25244/eerlijke_bankwijzer_13e_update_130425_rev_130617.pdf)

<sup>ii</sup> For an overview of the insurance groups, with subsidiaries and brands, please see: <http://www.eerlijkeverzekeringwijzer.nl/overzicht-scores/>  
For further explanation on the (implication of the) assessment of the insurance companies on a corporate level: <http://www.eerlijkeverzekeringwijzer.nl/veelgestelde-vragen/>  
For further background: [http://www.eerlijkeverzekeringwijzer.nl/media/51999/beleidsonderzoek\\_eerlijke\\_verzekeringwijzer\\_16\\_sept.\\_13.pdf](http://www.eerlijkeverzekeringwijzer.nl/media/51999/beleidsonderzoek_eerlijke_verzekeringwijzer_16_sept._13.pdf)

- Achmea
- Aegon
- Allianz
- APG
- ASR
- Delta Lloyd
- ING Group
- Generali
- Legal & General
- SNS Reaal

Four of the selected banking groups, Aegon, Delta Lloyd, ING and SNS Reaal, belong to the same parent group as four of the insurance groups. This means that in total 16 financial institutions are included in this case study.

An analysis of the different categories shows that Legal & General and Allianz are the principal shareholders of the selected companies. Together with ING, Allianz is also the major bondholder of the selected companies. As far as assisting in the issue of shares and bonds is concerned, and also as far as providing loans is concerned, ABN Amro, ING and Rabobank are the only financiers.

The Dutch financial institutions ASN Bank, NIBC and Triodos are believed not to be involved in the financing of the selected companies in any way.

**Table 60 Summary of involvement in selected companies (€ million)**

Financial institution	Country	Shares	Bonds	Issue of Shares	Issue of Bonds	Loans
ABN Amro	The Netherlands	28.02	3.41	83.49		621.84
Achmea	The Netherlands	8.10	5.98			
Aegon	The Netherlands	604.65	387.03			
Allianz	Germany	1,443.15	717.27			
APG (Loyalis)	The Netherlands	920.78				
ASN Bank	The Netherlands					
ASR	The Netherlands	39.28				
Delta Lloyd	The Netherlands	46.59				
Generali	Italy	44.30	7.54			
ING	The Netherlands	398.12	444.41	103.63	718.93	2,796.42
Legal & General	The Netherlands	5,818.67	27.09			
NIBC	The Netherlands					
Rabobank	The Netherlands			83.49		1,439.82
SNS Reaal	The Netherlands	82.39	13.96			
Triodos	The Netherlands					
Van Lanschot	The Netherlands	15.95				



The results for each category are summarised in more detail in the three tables below:

- Shares (S) and Bonds (B) (Table 61);
- Issue of shares and bonds (Table 62);
- Loans (Table 63).

Table 61 shows the most recent information as far as the ownership/management of shares and bonds by the selected financial institutions is concerned. In the shares category, Legal & Generali is by far the main investor with € 5.8 billion, followed by Allianz (€ 1.4 billion). In the bonds category, Allianz (€ 717.3 million) and ING (€ 444.4 million) are the main investors.

**Table 61 Shares and bonds in owned/managed by the selected financial institutions (€ million)**

Company	ABN Amro		Achmea		Aegon		Allianz		APG (Loyalis)		ASR		Delta Lloyd		Generali		ING		Legal & General		SNS Reaal		Van Lanschot	
	S	B	S	B	S	B	S	B	S	B	S	B	S	B	S	B	S	B	S	B	S	B	S	B
Barrick Gold	6.78	0.23			11.71	99.02	326.01	207.79	80.07								64.56	98.77	47.39					
Freeport-McMoran					10.81	40.64	340.98	282.08	57.74					0.43			151.34	88.13	103.63	13.75				
GlencoreXstrata		2.64		5.98	23.25	122.90	12.12	127.89	23.56					3.21	7.54		6.75	126.95	498.29	12.31			11.87	
Goldcorp	13.66				18.56		67.94		48.67					0.42			37.72	11.42	80.75					
Oil and Natural Gas Corporation					0.86		0.78										10.71		2.10					
PetroChina / CNPC								5.62										12.18						
Posco					4.17	2.17	90.38	0.70	15.96	0.22	0.44	0.15					18.36		11.27	0.21				
Royal Dutch Shell	7.58	0.23	8.10		534.75	122.30	604.94	72.73	687.33	39.06		46.15	40.09				108.41	94.45	5.035.44		82.39	2.09	15.95	
Trafigura																			0.82					
Vedanta Resources		0.31			0.54			20.46	7.45								0.27	12.51	39.80					
<b># companies</b>	<b>5</b>		<b>2</b>		<b>8</b>		<b>9</b>		<b>7</b>	<b>2</b>		<b>2</b>		<b>5</b>		<b>9</b>		<b>9</b>		<b>2</b>		<b>1</b>		
<b>Total value</b>	<b>28.02</b>	<b>3.41</b>	<b>8.10</b>	<b>5.98</b>	<b>604.65</b>	<b>387.03</b>	<b>1.443.15</b>	<b>717.27</b>	<b>920.78</b>	<b>0</b>	<b>39.28</b>	<b>0</b>	<b>46.59</b>	<b>0</b>	<b>44.30</b>	<b>7.54</b>	<b>398.12</b>	<b>444.41</b>	<b>5.818.67</b>	<b>27.09</b>	<b>82.39</b>	<b>13.96</b>	<b>15.95</b>	<b>0</b>

Table 62 shows the involvement of the selected financial institutions in the issuing of shares and bonds for the selected companies since July 2009. Only ABN Amro, ING and Rabobank are active in this category. ING is the main financier in both in the issue of shares (€ 103.63 million) and bonds (€ 718.93 million).

**Table 62 Involvement of selected financial institutions in the issue of shares and bonds**

Company	ABN Amro		ING		Rabobank	
	shares	bonds	shares	bonds	shares	bonds
Barrick Gold			20.14			
CNPC				216.62		
Freeport-McMoran						
GlencoreXstrata	83.49		83.49	402.31	83.49	
Trafigura				100.00		
<b>Total value</b>	<b>83.49</b>	<b>0</b>	<b>103.63</b>	<b>718.93</b>	<b>83.49</b>	<b>0</b>
<b># companies</b>	<b>1</b>		<b>4</b>		<b>1</b>	

Finally, Table 63 shows the involvement of the selected financial institutions in providing loans to the selected companies. Only ABN Amro, ING and Rabobank are active here. ING (€ 2,769.42 million) and Rabobank (€ 1,439/82 million) are the main financiers, as far as providing loans is concerned.

**Table 63 Involvement in loans to the selected companies**

Company	ABN Amro	ING	Rabobank
Barrick Gold			
CNPC			
Freeport-McMoran		358.95	
GlencoreXstrata	621.84	1,614.05	971.56
Goldcorp			
Oil and Natural Gas Corporation			
Posco		101.13	
Royal Dutch Shell			
Trafigura		722.29	468.26
Vedanta Resources			
<b># companies</b>	<b>1</b>	<b>4</b>	<b>2</b>
<b>Total value</b>	<b>621.84</b>	<b>2,796.42</b>	<b>1,439.82</b>

## 7.2 Cooperation in this case study

Interviews were held with 11 of the 16 financial institutions about why they do not invest in (some of) the researched companies and the ways they influence the companies in which they do invest. Where relevant, the researched insurance companies and asset management companies were as transparent and helpful when completing and/or categorising any missing financial data.

However, four financial institutions, namely Allianz, Delta Lloyd, Generali and Legal & General have not cooperated in this case study. Delta Lloyd indicated that they did not want to cooperate with the study. Legal & General Netherlands informed us that they were not in a position to cooperate with this study. The general evidence that Legal & General sent as input for this study provided insufficient basis for drafting an assessment. Allianz and Generali did not respond at all to (repeated) requests for a response or cooperation.

Therefore, to these four insurance companies a score 1 has been granted for the asset management and insurance investments categories in accordance with the predetermined assessment method.

For each of these insurance companies, investments in the selected extractive companies have been identified within the framework of insurance investments and/or asset management. Of all financial institutions researched, Allianz and Legal & General are the main shareholders in the ten selected companies.

## 7.3 Assessment of banking services

### 7.3.1 Overview of results

Table 64 gives an overview of the research results with regard to whether and how the researched Dutch banking groups use the instruments of screening, engagement and exclusion to help prevent and solve violations of human rights. With regard to each question it is indicated for how many banks the question is relevant and how many banks could answer the question positively. In the last column the percentage of positive answers (compared to the number of banks for which the question is relevant) is shown. Aegon Bank, ASN Bank, NIBC and SNS Bank, Triodos Bank and Van Lanschot, are not included in this overview because they, as far as their banking services are concerned, are not active in the mining industry and oil and gas industries. Delta Lloyd Bank is not included in this overview as it did not cooperate with this case study.

The extent to which banks meet the specific elements has been researched based on evidence provided. Because banks, due to their trust-based relationship with their clients, are not in a position to show company specific documents, it was decided that this study would not stick to the requirement of company specific evidence for the banks. When based on at least two anonymous documents, a bank could demonstrate that a given element was complied with and the point was granted. If evidence was lacking, no points were granted.

**Table 64 Overview of instruments used by banks**

Element	Number of relevant banks	Number of positive scores
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	3	3
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	3	3
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	3	2
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	3	2
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	3	2
6.Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3	1
7. Whether, if it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	3	1
<b>Engagement</b>		
8. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	3	3
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
9. Drafting a policy statement in which the company commits itself to respect human rights;	3	2
10. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	3	2
11. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	3	1
12. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	3	1
13. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	3	2

Element	Number of relevant banks	Number of positive scores
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
14. A policy statement in which the company commits itself to respect human rights;	3	1
15. Establishing a human rights due diligence process;	3	1
16. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	3	0
17. The absence of a measurable decrease in human rights violations;	3	0
18. The financial institution documents the agreements made (with mining, oil and gas companies) in credit agreements or services contracts.	3	1
19. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	3	1
20. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	3	1
21. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	3	2

### 7.3.2 Analysis of results

The results shown in Table 64, concerning with the instruments of screening, engagement and exclusion used by researched Dutch banking groups to help prevent violations of human rights caused by the activities of the companies in which they invest and improve the overall impact on human rights these same companies, can be summarised as follows:

- **Screening**

ING, Rabobank and ABN Amro have all demonstrated that they structurally screen their banking services based on human rights criteria. The relationship manager makes the assessment of a credit application that is partially based on externally available or purchased information, and internal information from the risk management department and the sustainability department of the banking groups themselves. All three banks screen their clients regularly, at least once every two years. In addition, all three banks complement regular screening with continuous screening when controversies arise. Each application for renewal of a loan leads to new screening. The depth of the research depends on the track record of the respective company, the nature of financing and the location of the respective activities. In practice, risk analysis will be more comprehensive for project financing than for trade financing.

All three banks have demonstrated that they screen for the existence of a human rights policy and the implementation of those policies. In addition, Rabobank and ABN Amro also screen for compensation of victims. ABN Amro is the only bank that also investigates whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease during their screening process.

Based on the assessed evidence, it could not be determined whether the abovementioned has also taken place with the ten selected companies.

- **Engagement**

All three banks have demonstrated that they regularly enter into talks with their clients. The frequency of client talks depends on the nature of financing and the extent to which there is room for discussion. When screening or other signals indicate that a client does not meet ING, Rabobank and ABN Amro's expectations, this is discussed with the client.

The banks talk to each client regularly. The frequencies of client talks depends on the nature of financing and the extent to which there is room for discussion, but on average talks are conducted once a year. When clients have conditions in the credit agreement, the extent to which these are met is also researched. If an existing client has a poor result after reputation analysis, the client is asked for additional information for verification purposes and with regard to a proper follow-up.

Based on access to anonymous examples of client assessments, it is plausible that ABN Amro Bank and ING Bank speak to clients about human rights policy and human rights due diligence. It is also plausible that a plan of action is drafted and that the extent to which these plans are complied with is assessed. In addition, it is plausible that ABN Amro speaks to the clients about the importance of compensation.

It has however not been assessed whether the actions of the company actually lead to reduced impact on human rights. Based on the evidence provided, it could not be determined whether ABN Amro included conditions for lending and client agreements in the credit agreement. Also the content of the agreements made was not clear.

Based on anonymous email correspondence and clauses from anonymous credit agreements, it is plausible that ING includes conditions in credit agreements and that they are monitored for compliance. The conditions were either related to the human rights policy or the due diligence procedures of the respective company.

Because Rabobank has not shown any company specific or anonymous documents, no clear judgement could be made on the content of the engagement talks and the agreements made.

Based on the assessed evidence it could not be determined whether the abovementioned has also taken place with the ten selected companies in this study.

- **Exclusion**

All three banks indicate that clients who do not meet their expectations on human rights do not receive financing, or do so only under conditions. Due to a lack of evidence, ABN Amro and Rabobank could not substantiate this statement.

Through access to their the exclusion list, an anonymous site letter and an anonymous clause from the credit agreement ING Bank did substantiate the claim that, where necessary, it includes conditions in credit agreements and places companies that seriously violate human rights on a 'restricted list', which means the companies are fully excluded from financing.

## 7.4 Assessment of insurance investments

### 7.4.1 Overview of results

Table 65 gives an overview of the research results with regard to whether and how the researched Dutch insurance companies use the instruments of screening, engagement and exclusion to help prevent violations of human rights and minimise and/or recover damage done. For each question it is shown for how many insurance companies the question is relevant as well as how many insurance companies could answer the question positively. In the last column, the percentage of positive answers (compared to the number of insurance companies for which the question is relevant) is shown. The insurance companies of Delta Lloyd Bank, Allianz, Delta Lloyd, Generali and Legal & Generali are not included in this overview because they did not cooperate with this study.

The extent to which insurance companies meet the specific elements is researched based on evidence. If evidence was lacking, no points were granted. If an insurance company was able to show relevant evidence for more than half of the companies in which it invests, element requirements were met.

**Table 65 Overview of instruments used by insurance companies**

Element	Number of relevant insurance companies	Number of positive scores
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6	6
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	6	5
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	6	5
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	6	5
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	6	3
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease.	6	2
7. If it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	6	3
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the	5	5



Element	Number of relevant insurance companies	Number of positive scores
vote.		
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	6	5
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	6	3
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	6	3
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	6	2
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	6	2
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	6	3
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	6	3
16. Establishing a human rights due diligence process;	6	2
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	6	1
18. The absence of a measurable decrease in human rights violations;	6	2
19. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	6	3
20. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.	6	3
21. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	6	3

## 7.4.2 Analysis of results

The results shown in Table 65 relate to the use of screening, engagement and exclusion by the six researched Dutch insurance companies. The four financial institutions that did not cooperate with this study are not included in these results. The results can be summarised as follows:

- **Screening**

All six researched insurance companies have demonstrated that they screen their insurance investments based on human rights criteria. For this purpose, all insurance companies make use of an external data provider.

As part of the screening process, five of the six insurance companies investigate whether a company has sufficient human rights policies and whether a company identifies what the adverse human rights effects of their activities are and takes measures to prevent or mitigate these effects. APG, Aegon and Achmea apply Global Compact compliant screening on their insurance investments using an external data provider. Global Compact screening means that they check the extent to which a company supports and respects international human rights within its sphere of influence and ensures it is not complicit in the violation of human rights.

As a part of the screening process, Aegon, ASR and SNS Reaal, three of the six insurance companies, investigate whether necessary recovery work is conducted and whether victims are compensated. In addition, ASR and SNS Reaal also investigate whether all efforts of a company actually lead to the absence of human rights violations or a measurable decrease.

- **Engagement**

Except for ING and APG, all insurance companies were able to demonstrate that they conduct engagement talks and vote in Annual General Meetings of the companies in which they invest. Half of the insurance companies can demonstrate that the human rights policy of a company and a correct implementation of that policy are actively discussed during these talks. However, only two of the six insurance companies encourage, through talks with the company, that all efforts of that company actually lead to the absence of human rights violations. The insurance companies of Aegon and SNS Reaal are the only insurance companies that were able to demonstrate an active dialogue on the extent to which recovery work and/or compensation takes place with the companies in which they invest.

When it comes to the extent to which clear agreements are made during engagement processes, fewer insurance companies meet the relevant elements. A mere three of the six insurance companies make clear agreements (Aegon, Achmea and SNS Reaal).

- **Exclusion**

The use of exclusion is currently only exerted by half of the insurance companies. APG's and ING's screening of investments never leads to exclusion immediately. An engagement process is always initiated first. Despite the fact that the Aegon responsible investment committee is informed of the fact that a number of companies from the benchmark do not meet their own Responsible Investment Policy, up to now and as a result of a passive investment strategy, Aegon Netherlands has not excluded a single company based on human rights violations.

Three of the six insurance companies (Achmea, APG and SNS Reaal) could demonstrate that an unsuccessful engagement process sometimes leads to exclusion.

## 7.5 Assessment of asset management

### 7.5.1 Overview of results

Table 66 gives an overview of the research results with regard to whether and how the researched Dutch asset management companies use screening, engagement and exclusion to help prevent or solve violations of human rights. With regard to each question it is shown for how many asset management companies the question is relevant and how many banks could answer the question positively. In the last column, the percentage of positive answers (compared to the number of asset management companies for which the question is relevant) is shown. NIBC is not included in this overview because NIBC, as far as asset management is concerned, are not active in the mining industry and oil and gas industries. Allianz, Delta Lloyd, Generali and Legal & Generali are not included in this overview because they did not cooperate with this study. The asset management companies of ASN and Triodos are only included for elements 1, 2 and 7. The extent to which asset management companies meet the specific elements is researched based on evidence. If evidence was lacking, no points were granted. When an asset management company was able to show relevant evidence for more than half of the companies in which it invests, compliance with an element was demonstrated.

**Table 66 Overview of instruments used by asset management companies**

Element	Number of relevant asset management companies	Number of positive scores
<b>Screening</b>		
1.The financial institution incidentally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	9	8
2.The financial institution structurally screens extractive companies on human rights aspects prior to deciding on a loan, service or investment:	9	8
3.Whether the company has drafted a policy statement in which the company commits itself to respect human rights;	7	5
4.Whether and how the company identifies adverse human rights effects, takes measures to prevent or mitigate these effects and accounts for how it addresses these effects (human rights due diligence);	7	5
5.Whether the company sets up processes to remedy adverse human rights effects caused or contributed to by the company and whether this actually leads to compensation;	7	2
6. Whether all efforts of the company actually lead to the absence of human rights violations or at least to a measurable decrease.	7	2
7. Whether, if it appears from the screening of extractive companies that a company insufficiently identifies what the adverse human rights effects are, insufficiently takes measures to prevent or mitigate these effects and insufficiently accounts for how it addresses these effects, a loan, investment or service is not granted.	9	4

Element	Number of relevant asset management companies	Number of positive scores
<b>Engagement</b>		
8. The financial institution votes for motions/resolutions aimed at improving human rights at the annual meetings of extractive companies to which the financial institution grants banking services and where motions/resolutions aimed at improving human rights are put to the vote.	7	6
9. The extent to which the financial institution grants banking services to, invests in, or holds talks with extractive companies on how they fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	7	6
<i>By holding talks with the mining, oil and gas companies the financial institution can influence companies into:</i>		
10. Drafting a policy statement in which the company commits itself to respect human rights;	7	5
11. Identifying what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	7	5
12. Establishing what the adverse human rights effects are, taking measures to prevent or mitigate these effects and accounting for how it addresses these effects (human rights due diligence);	7	2
13. Ensuring that all efforts by the company actually lead to the absence of human rights violations or at least to a measurable decrease;	7	2
14. The financial institution establishes concrete agreements with extractive companies to which the financial institution grants banking services, or in which the financial institution invests, to fulfil their responsibility to respect human rights when there are serious indications that they are involved in human rights violations;	7	5
<i>The financial institution establishes concrete agreements with extractive companies on the following topics:</i>		
15. A policy statement in which the company commits itself to respect human rights;	6	4
16. Establishing a human rights due diligence process;	7	5
17. Establishing processes to remedy the adverse human rights effects caused or contributed to by the company;	7	1
18. The absence of a measurable decrease in human rights violations;	7	1
19. The financial institution continues to monitor whether extractive companies adhere to the agreements made;	7	5
20. Within a reasonable period of time, the financial institution chooses to terminate the business relationship if no agreements can be made with the mining, oil or gas	7	2

Element	Number of relevant asset management companies	Number of positive scores
company or if the company does not adhere to the agreements. When assessing this criterion, the main focus will be on the business relationships that the financial institution maintains with the selected companies.		
21. By way of an official written declaration, the financial institution promises to use more instruments within 1 year to prevent the provision of services to extractive companies that take their responsibility to respect human rights insufficiently seriously.	7	2

### 7.5.2 Analysis of results

The results demonstrated in Table 66 relate to the use of screening, engagement and exclusion by the 9 researched Dutch asset management companies. The four financial institutions that did not cooperate with this case study are not included in these results. The results can be summarised as follows:

- **Screening**

Except for ABN Amro's asset management company, which currently does not screen its investments based on human rights criteria, all asset management companies have demonstrated that they structurally screen their insurance investments based on human rights criteria. For this purpose, all asset management companies make use of an external data provider.

Except for ABN Amro, all asset management companies investigate whether a company has sufficient human rights policies and whether a company identifies what the adverse human rights effects are and takes measures to prevent or mitigate these effects as part of the screening. However, only two of the seven relevant asset management companies (Van Lanschot and the SNS Reaal) also investigate whether necessary recovery work is conducted, whether victims are compensated and whether all efforts of a company actually lead to the absence of human rights violations or a measurable decrease.

- **Engagement**

Based on the evidence provided and an active shareholder report, it can be determined that all other researched asset management companies use their influence by conducting engagement talks and making use of their voting rights.

Because ING only conducts engagement talks with a minority of the companies in which it invests, ING has been granted no points for the other elements.

The six other relevant asset management companies provide a very different and more encouraging picture. All five are able to demonstrate that they actively ask that attention is paid to, and agreements are made on, the desired human rights policy of a company and/or a correct implementation of that policy in conducted talks. However, only one asset management company (Van Lanschot) has paid attention to the extent to which recovery work and/or compensation takes place; only two of the seven asset management companies have paid attention to the extent to which all efforts of a company actually lead to the absence of human rights violations; and SNS Reaal is the only one that makes concrete agreements on this subject.

Currently, ABN Amro's asset management companies do not vote at all as to whether a dialogue on human rights is entered into with the companies in their portfolio.

ABN Amro is of the opinion that there is no basis for entering into an 'engagement process' with companies involved in its current asset management activities. On the one hand because ABN Amro largely invests passively in fixed interest values and on the other because ABN Amro largely manages assets for private individuals; private individuals are the ones who decide which companies to invest in, not ABN Amro. As such a mandate for starting engagement processes on behalf of these clients is lacking. The remaining amount is diversified among many companies and is also partially invested in other funds and mandates, due to which the fragmentation of investments increases further.

The *Fair Bank Guide* is, however, of the opinion that when investing in selected companies, an asset management company has a responsibility to use instruments to monitor, and if necessary improve, the human rights performance of these companies. This responsibility also applies to small or passive investments. With regard to its private clients, ABN Amro could still formulate minimum requirements. In addition, ABN Amro can inform its clients of human rights issues and encourage them to take human rights performance into account.

- **Exclusion**

Only 4 of the nine researched asset management companies (Achmea, ASN, SNS Reaal and Triodos) exclude companies when screening shows that companies do not meet their human rights criteria.

The asset management companies of Achmea, APG and SNS Reaal are currently the only asset management companies that have excluded companies based on human rights criteria after an unsuccessful engagement process.

The asset management companies of ASN and Triodos do not work with exclusion but with inclusion. Companies are only included in the universe when they meet the ASN and Triodos investment criteria. All companies that meet the ASN and Triodos investment policy are included in the universe, which is publicly available. Investments are only allowed in companies that are included in this universe. None of the ten selected companies are included in the investment universe of ASN or Triodos.

## 7.6 Principal conclusions and overview scores

### 7.6.1 Investments

The 16 financial institutions which were researched in this case study have jointly invested billions of Euros in the ten selected extractive companies. Within this group of 16 financial institutions the highest investments were made by the following bank and insurance groups:

- As far as the provision of loans to the selected companies is concerned, ING Bank (€ 2.8 billion) and Rabobank (€ 1.4 billion) were the main financiers in the past four years.
- With a total investment of € 5.8 billion, Legal & General is by far the largest shareholder in the ten companies, followed by Allianz (€ 1.4 billion).
- The principal important bondholders of the ten companies are Allianz (€ 717 million) and ING Group (€ 444 million).

Of the 16 financial institutions, only ASN Bank, NIBC and Triodos are in no way involved in the financing of the selected ten companies. NIBC Bank is not active in the mining industry

and oil and gas industry and was therefore not interviewed for this case study. ASN Bank and Triodos Bank indicated that refraining from investments in the ten selected companies is a direct consequence of their 'Responsible Investment' policy. This has been researched further in this study by interviewing ASN and Triodos on aspects of the assessment elements.

Four of the 16 financial institutions (Allianz, Delta Lloyd, Legal and General and Generali) did not cooperate with this case study (see also Paragraph 7.6.6). As NIBC was not interviewed for this case study and 4 financial institutions did not cooperate, we have done interviews with 11 financial institutions.

### 7.6.2 Results for all financial institutions

By interviewing 11 of the 16 financial institutions, this case study has aimed to verify whether - and if yes, how - they have used their influence to positively contribute to the conduct of companies with respect to human rights and whether they use the instruments of "screening", "voting", "engagement" and "exclusion". The case study results with regard to these financial institutions are summarized below.

From the interviews it appears that, as far as asset management is concerned, all 11 financial institutions researched, except ABN Amro, have demonstrated that they structurally screen their potential investments based on human rights criteria. This virtually always takes the form of company analysis purchased from external research agencies. A negative result with regard to the conduct of companies with respect to human rights does not usually have any direct consequences for the investment decisions. Less than half of the banks, insurance companies and asset management companies immediately exclude companies as a result of negative screening results.

Most financial institutions researched influence the companies in which they invest by entering into 'engagement processes' with them. A large majority of the financial institutions researched, approximately 90 percent<sup>7</sup>, has demonstrated that they enter into dialogue with a portion of the companies in which they invest on how they fulfil their responsibility to respect human rights. In the case of share ownership, active use is made of voting rights. Moreover, more than half of the financial institutions established concrete agreements on the way companies fulfil their responsibility to respect human rights.

However, from the case study it also appears that the engagement processes usually have non-committal results. Less than a quarter of the financial institutions choose to terminate a business relationship within a reasonable period if no agreements can be made with the respective mining company or oil and/or gas company, or if the company does not adhere to the agreements made.

When applying screening and engagement, 73 percent of the researched banks, insurance companies and asset management companies predominantly focus on encouraging mining and oil and gas companies to implement policies and to take process measures.<sup>8</sup> Agreements made virtually always concern drafting a human rights policy or implementing process measures.

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<sup>7</sup> This is the case at all banking groups and insurance company groups except for the asset management company of ABN Amro and the insurance company of APG.

<sup>8</sup> This is the case for all banking groups and insurance company groups, except for the insurance company of Aegon, the asset management company of Van Lanschot and SNS Reaal insurance and asset management.

Recovery work and compensation for victims after human rights violations have taken place, receives much less attention. One third of the financial institutions enter into engagement with the companies on the importance of recovery work and compensation for victims.<sup>9</sup> Only 10 percent of the financial institutions make concrete agreements on this subject.<sup>10</sup>

The same assessment applies to the desired impact of implemented human rights policies and measures taken on by companies. A third of the financial institutions researched enter into engagement talks on the desired result of policies and process measures.<sup>11</sup> SNS Reaal is the only party that was able to demonstrate clear formulation of objectives with regard to the desired impact of activities on human rights.

### 7.6.3 Banking services

Many banking groups are not able, or do not want to, show certain documents on companies due to the client confidentiality which needs to be respected between them and the companies they invest in. For this reason, banks were allowed to show de-identified documents. Banks have been granted scores for specific elements if they were able to show at least two de-identified documents which indicated that the bank meets the required element. The scores for banking services are therefore not comparable with those for asset management and insurance investments.

Although, based on the evidence submitted by ABN Amro Bank, ING Bank and Rabobank, it could not be determined whether they apply screening and engagement specifically to the ten selected companies in this study. All three of these banks have made clear that they pay attention to the impact of the activities of their business clients on human rights in their screening and engagement processes. Moreover, with various anonymous documents, ABN Amro Bank and ING Bank have provided access to the type of engagement talks that they conduct with business clients active in the mineral extracting industry. In addition, ING Bank has demonstrated that agreements made on human rights are sometimes included in the credit agreement. Therefore, ABN Amro Bank and ING Bank were respectively granted a score of 6 and 7 for their banking services.

Rabobank did not show any anonymous reports, due to which no positive assessment was possible for most elements. Rabobank is granted a score 3, which translates as largely insufficient.

### 7.6.4 Asset management

The nine asset managers we have interviewed take a leading position in this research, by actively taking responsibility for human rights. They score 6.6 on average.

Yet there are great differences amongst the various asset managers. While the asset managers of ABN Amro and ING score very low, 1 point and 3 points respectively, the other asset managers manage to gain sufficient or even outstanding scores. The asset managers of APG and Aegon both score 6, Achmea asset management scores 7 points, the asset manager of Van Lanschot scores 8 and the asset managers of ASN, SNS Reaal and Triodos manage to score 10 points.

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<sup>9</sup> The insurance company of Aegon, the asset management company of Van Lanschot and SNS Reaal (insurance and asset management) speak about compensation for victims and reparation work in talks.

<sup>10</sup> The insurance company of Aegon and the asset management company of Van Lanschot are the only ones who make agreements about reparation work and compensation for victims.

<sup>11</sup> The insurance company of Aegon, the asset management company of Van Lanschot and SNS Reaal (insurance and asset management) are the only ones to take this topic into consideration.



By engaging with nearly all of the selected companies they invest in, Aegon, Achmea and APG show that they take their responsibility with regard to human rights seriously. The asset manager at Van Lanschot invests in only one of the selected companies. In this particular case, Van Lanschot engages with the company and tries to come to clear agreements with regard to human rights. Van Lanschot also engages with the companies in which they invest through externally managed funds. The asset manager of SNS Reaal sets clear goals prior to the engagement process, and tries to reach the defined goals by means of clear agreements with companies. To this end, SNS Asset Management screens (potential) investments thoroughly by means of a comprehensive policy document focused on the mining, oil and gas sector.

The asset managers of ASN and Triodos apply a methodology based on inclusion of suitable investments. This means that only companies that live up to their criteria for sustainable investments are included in their investment universe. The list of these companies is open to the public. ASN and Triodos only invest in companies that are included in this universe. None of the ten selected companies complies with the ASN and Triodos sustainability and human rights criteria. Therefore none of the ten selected companies was included in the ASN and Triodos investment universes.

#### 7.6.5 Insurance investments

The six insurance companies that we interviewed only just score sufficiently. They scored 5.7 points on average. However, as with asset management, there are great differences amongst the insurance companies.

SNS Reaal gets the highest score due to its consistent use of screening, engagement and exclusion at a high level. The insurance company of SNS Reaal scores 10 points. The insurance companies of ING and APG lag far behind. Both insurance groups score no more than 3 points for their insurance investments. At Loyalis, the insurance company of APG, this is due to the fact that no engagement is applied for its externally managed stocks. ING Insurance Management only enters into engagement discussions with a minority of the companies with whom it maintains business relations.

The insurance companies of Achmea (7), ASR (7) and Aegon (7) take their responsibilities concerning human rights seriously, as is indicated by their scores. Regarding its internally managed funds, ASR does not invest in the selected companies at all, as these companies do not meet the requirements of the ASR sustainability and human rights policy. Nevertheless, ASR fails to score maximum points due to investments in the selected companies by an externally managed ASR fund that is not offered actively to clients anymore.

#### 7.6.6 No cooperation with the case study

Four financial institutions have not cooperated with this case study. These are Allianz, Delta Lloyd, Generali and Legal & General. Delta Lloyd stated that it did not want to cooperate. Legal & General Nederland pointed out that it was not able to cooperate. The general information it has provided was insufficient to make a proper assessment. Allianz and Generali have not responded at all to repeated requests for cooperation.

For this reason these four insurance companies score 1 point in the categories where investments were found, i.e. asset management and insurance investments. This is in accordance with the previously agreed assessment methodology.

For these insurance companies we have identified investments in the selected extractive companies. Allianz and Legal & General even turned out to be the largest shareholders in the ten selected companies among the studied financial institutions.

### 7.6.7 Overview of the scores

Table 67 provides an overview of the scores of the 10 banking groups.

**Table 67 Overview of scores per banking group**

Banking group	Bank investments	Asset management
ABN Amro	6	1
Aegon		6
ASN		10
Delta Lloyd		1
ING	7	3
NIBC		
Rabobank	3	
SNS Reaal		10
Triodos		10
Van Lanschot		8

Table 68 provides an overview of the scores of the 10 insurance groups.

**Table 68 Overview scores per insurance group**

Insurance group	Insurance group	Asset management
Achmea	7	7
Aegon	7	6
Allianz	1	1
APG (Loyalis)	3	6
ASR	7	
Delta Lloyd	1	1
Generali	1	1
ING	3	3
Legal & General	1	1
SNS Reaal	10	10

### 7.6.8 Commitments

A number of financial institutions have made commitments to improve the implementation of their human rights policies. ABN Amro (bank investments and asset management), ASR, ING Bank (bank investments), Achmea (insurance investments and asset management) and SNS Reaal (insurance investments and asset management) have promised in writing that as of next year, they will make use of more instruments to avoid investing in extractive companies that do not take sufficient responsibility for respecting human rights.

## Chapter 8      Recommendations Fair Bank Guide / Fair Insurance Guide

Based on the results of the 'Extractive Companies and Human Rights' case study, the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide make the following recommendations to the banking and insurance groups that were examined in this research project:

1. Too often, the human rights policies of financial institutions do not apply to all the institution's subsidiaries. Neither do these policies apply to all types of financing. Human rights policies are only convincing when they are applied to all bank services, insurance investments and all sorts of asset management provided by the financial institution.
2. When screening companies, banks, insurance companies and asset managers should pay more attention to the impact of a company's activities on the human rights of affected communities. They should especially focus on the right to information, the right to an adequate standard of living, the right to health and the right to water. Improvements could be made by paying more attention to grievance mechanisms, rehabilitation and compensation.
3. Financial institutions select companies to engage with on the basis of several elements. These elements are: risks, reputation, substance, regional or thematic focus, and amount of assets. This is the accepted practice. However, according to the Dutch Fair Bank Guide and the Dutch Fair Insurance Guide, in some situations the impact of the company's activities on human rights is so big that this should get priority while selecting candidates to engage with.
4. Banks, insurance companies and asset managers often only proceed to engage with companies after they have noticed an infringement of their human rights policy or when incidents have taken place. Financial institutions could enhance their influence by engaging with companies when they do not (yet) violate human rights. Such a proactive approach could lead to prevention of violations of human rights.
5. In their engagements with companies banks, insurance companies and asset managers mainly focus on encouraging mining, oil and gas companies and other extractive companies to implement policies and procedural measures to address human rights issues. However, this approach neglects the fact that the result is more important than the process, i.e. companies should have a more positive impact on human rights. This is an important principle that should take a central role in the discussions that financial institutions have with these companies.
6. Banks and insurance companies, and to a lesser extent also asset managers, should set clearer goals as well as create interim goals when engaging with companies. In order to be able to monitor the results, they should use, as often as possible, Key Performance Indicators (KPI). While discussing with companies they should try to come to specific agreements, which focus on actually reaching these goals, with the companies. Using the first results and the fact whether the set goals have been reached (or not), they can evaluate and decide whether they either should end the engagement process or that they could adjust their strategies through means of, for example, cooperation with other financial institutions or entering the discussion at another level.
7. Insurance companies and asset managers do not often apply screening, engagement and exclusion procedures to passive or externally managed funds. The responsibility of a financial institution, however, also applies to these kinds of funds. Although the possibilities for applying screening, engagement and exclusion procedures are different from the possibilities that exist in active or internally managed funds, possibilities do exist. The Dutch Fair Bank Guide and the Dutch Fair Insurance Guide expect that insurance companies and asset managers that choose to invest in passive or externally managed funds should actively make use of these instruments if they wish to continue investing in these kind of funds.

8. Most of the financial institutions choose engagement as their main instrument to exert influence on companies. Engagement certainly can be a strong instrument, but there are situations in which it is not effective or does not make sense. For example when a company is involved in certain activities that will undoubtedly lead to severe violations, or if a company is active in an area that is so vulnerable that it would be unrealistic to believe that violations would not occur. Consequently, in case that an initial screening already points out that the violations of human rights committed by a company are severe and structural, and when it is highly unlikely that corrective measures would be effective, this should be a reason for a financial institution not to invest in, or disinvest from, this particular company. Many financial institutions presently do not use the instrument of exclusion on any meaningful scale.
9. Also when an engagement process has ended without achieving the predetermined goals of engagement, exclusion is hardly ever applied. There are only a few financial institutions that take decisive action to the result of an engagement process. However, without a clear link to (future) investment decisions, an engagement process fails to create needed pressure and can most of the times be regarded as ineffective.
10. Financial institutions should share information. Although the human rights policies of many financial institutions are quite similar, there are quite a few differences with regard to the specific companies whom they have engaged with, and with regard to the ones which they have excluded. If financial institutions would properly coordinate and combine their research and engagement activities, they would not only make better use of their limited capacities, but they would also be able to set up more fruitful engagement processes.
11. Dutch banking groups could and should be a lot more transparent with regard to their investments, engagement processes and exclusions. Without disrespecting the duty of care they have towards clients, they could and should be more transparent in the information they provide to society. More transparency and accountability are required, both regarding their bank services and their asset management activities. They could take the following steps in this regard:
  - Publish an annual overview of the number of companies with whom the bank, insurance company or asset manager has exchanged information regarding social and environmental issues (GRI indicator FS10).
  - Publish records of the engagement processes with individual companies or publish a detailed, and externally monitored overview of the goals and success rates of the engagement processes.
  - Publish an overview of the voting behaviour on shareholder resolutions for the shares that the bank or asset manager invests in.
  - Ensure that the annual sustainability report is audited by an independent auditor. This auditor should check whether GRI standards are taken into account and whether there is information in the report regarding each of the GRI criteria. These audits should be more than just a conclusion that there is no reason to believe that the given information would be contrary to the GRI standards. They should also assess whether sufficient information has been provided with regard to decisive criteria (like FS6 and FS10)
12. The Dutch Fair Insurance Guide calls on the four insurance groups who did not wish to cooperate with this research project - Allianz, Delta Lloyd, Generali and Legal & General - to take their clients and other stakeholders, such as many Dutch civilians, seriously. Clients and other stakeholders deserve to know what their money is used for and whether Allianz, Delta Lloyd, Generali and Legal & General pay sufficient attention to human rights with regard to their investments.

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