



October 13, 2023

via email: hrc-wg-business@un.org

UN Working Group on Business and Human Rights
Thematic Engagement, Special Procedures and Right to Development Division
Special Procedures Branch
UNOG-OHCHR
CH-1211 Geneva 10, Switzerland

Re ESG and BHR QUESTIONNAIRE

Dear UN Working Group on Business and Human Rights,

The BC General Employees' Union (BCGEU) is pleased to make this submission to the UN Working Group on Business and Human Rights (Working Group), as part of the Working Group's consultations in advance of its June 2024 report to the UN Rights Council. We understand that the Working Group's consultations are intended to gather commentary on aligning ESG approaches in the financial sector with the UN Guiding Principles on Business and Human Rights (UNGPs).

Since 2018, the union has been engaging with its portfolio companies on key ESG issues and has filed over fifty shareholder proposals at dozens of issuers. The union has succeeded at securing strong commitments from companies on key issues including human rights, racial equity and environmental issues. BCGEU's shareholder proposals have addressed ESG issues such as the intersection of business and human rights, particularly in relation to the UNGPs, climate change and climate change related reporting matters, sustainability-linked loans, and the free, prior and informed consent of Indigenous peoples.

Through our efforts in the shareholder proposal space, we have seen that financial actors do indeed have an unparalleled ability to influence companies on the implementation of the UNGPs.

We wish to provide the following commentary on some specific questions posed in the Call for Inputs, noting that additional comments and feedback will be provided during the November 8th consultation in which BCGEU will be participating.

General

3. To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?

BCGEU headquarters
4911 Canada Way, Burnaby, BC V5G 3W3
Phone: (604) 291-9611 / 1-800-663-1674
Fax: (604) 291-6030 / 1-800-946-0244

We are located on the unceded and shared traditional territory of the x^wməθk^wəyəm (Musqueam), Skxwú7mesh (Squamish) & Səlíl lwətaʔ (Tseil-Waututh) peoples.

Response:

With regards to sustainable finance, we see sustainability linked loans and bonds as potentially serving an important role in encouraging and promoting responsible business practices. However, we are concerned about 1) the significant control issuers have in determining key performance indicators (KPIs) and sustainability performance targets (SPTs), and 2) the lack of disclosure surrounding KPIs and SPTs, particularly when it appears that such targets may have already been met by an issuer. In response to criticisms about KPIs and SPTs, issuers often point out that the Sustainability Structuring Agent (the issuer's own bank) has signed off on such metrics. In our view, this essentially allows issuers to deflect responsibility for these metrics.

The Sustainability Linked Loans Principles clearly state that borrowers are to drive the process of selecting KPIs¹:

A SLL borrower should clearly communicate to its lenders its rationale for the selection of its KPI(s) (i.e. relevance, materiality, whether it is core to the borrower's overall business) and the motivation for the SPT(s) (i.e. ambition level, benchmarking approach and how the borrower intends to reach such SPTs). Borrowers are encouraged to position this information within the context of their overarching objectives, sustainability strategy, policy, sustainability commitments and/or processes relating to sustainability.

Borrowers are also encouraged to inform lenders of any sustainability standards or certifications to which they are seeking to conform.

...

Appropriate KPIs and SPTs should be determined and set between the borrower and lender group for each transaction. A borrower may elect to structure its SLL with the assistance of one or more "Sustainability Coordinator(s)" and, where appointed, **they will assist with providing market colour regarding the KPIs and SPTs to the borrower**, and facilitate the dialogue between the borrower and the lender group in regard to substantiating the SPTs and answering the ESG-related questions the prospective lender group might have. [emphasis added]

Furthermore, the Guidance on Sustainability Linked Loan Principles states²:

With respect to selection of the sustainability metrics and setting of the SPTs, the obligation to determine that the chosen metric is meaningful – meaning core to the borrower's business – and the related SPT(s) is ambitious – meaning a target that represents a true reach for the borrower – will require significant borrower input since it will have the best understanding of its own business activities.

Our concerns surrounding banks' roles in facilitating less than robust KPIs and SPTs are further encapsulated in the following passage from Deloitte³:

Banks have set public targets for increasing the share of financing that can be categorised as sustainable and have incentivised their employees to meet those, often ambitious, targets. This

¹ <https://www.lsta.org/content/sustainability-linked-loan-principles-sllp/#>

² <https://www.lma.eu.com/guides/guidance-sustainability-linked-loan-principles>

³ <https://emearegulatorystrategy.deloitte.com/post/102iidy/sustainability-linked-lending-in-the-fcas-sights>

creates a potential risk that banks accept weak key performance indicators (KPIs) that are not material to the borrower's sustainability strategy or linked to credible transition pathways.

General

2. How effective are international instruments, institutions and guidance that promotes HRDD, such as by the UN Global Compact, Equator Principles, Principles of Responsible Investment, Investor Alliance for Human Rights, Business for Social Responsibility and other entities, effective in increasing awareness of human rights impacts among investors and other businesses? Please provide examples of participation, integration, or adherence of investors in these instruments and bodies.

Response:

BCGEU has been engaging with Canadian bank issuers regarding the operationalization of free, prior and informed consent (FPIC) of Indigenous peoples. In these engagements, bank issuers often point to the Equator Principles to address human rights and FPIC concerns.

We have expressed our concerns with the practical implications of the Equator Principles, particularly that the EP4 falls short of the minimum expectations set out in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and will not mitigate the material risks and contingent liabilities associated with overlooking FPIC.

Notably, the Equator Principles, which intend to serve as a risk management framework for financial institutions to manage environmental and social risks, do not apply to a company's general corporate financing activities.

Instead of implementing the "identify, protect, mitigate and address" framework within the UNGPs as a way to create proactive risk assessment processes, EP4 remains reactionary by setting forth language to "minimize, mitigate, and compensate" once impacts have already occurred. The overarching theme implicit in EP4 is to presume projects will proceed, with slightly more information about the harms caused to Indigenous peoples.

EP4's weak language and failure to meet the standards set out in the UNGPs and UNDRIP renders it instantly obsolete, especially for those financial institutions seeking to catalyze meaningful partnership with Indigenous peoples.

Finally, we note that the Equator Principles apply to an extremely limited number of transactions. Since the Equator Principles are applied to so few transactions each year, we do not believe they can be relied upon as a means of operationalizing FPIC.

First Peoples Worldwide has a useful background detailing many of the concerns with EP4.⁴

⁴ <https://www.colorado.edu/program/fpw/2019/11/19/first-peoples-response-ep4-critically-weak-equator-principles-puts-global-development>

General

5. What does appropriate investor action entail in the event that a client or portfolio company causes or contributes to a potential or actual adverse human rights impact?

Response:

We believe that appropriate investor action should occur **before** potential or actual adverse human rights impacts occur. Investors should call on portfolio companies to disclose whether they operate their businesses in alignment with the UNGPs, and investors should review company disclosure to ensure that appropriate human rights due diligence practices have been implemented to assess and mitigate such adverse impacts.

While this topic could likely merit its own set of consultations, we feel there is an absence of accountability where a company bathes itself in the UNGPs, but then fails to live up to the letter or spirit of the UNGPs. Currently, we feel the only source of accountability is from investor activism, such as the shareholder proposal work BCGEU undertakes.

General

6. What leverage do investors have to address human rights and climate change issues, and how does it differ based on asset classes and investment types? How does investor leverage differ based on asset classes, stocks and bonds, and lending?

Good practices

1. Please provide examples of any good practices, tools, guidance, policies, etc., regarding the integration of the responsibility to respect human rights by investors, including examples of investors actively preventing or mitigating (including by using leverage or undertaking a responsible exit) any adverse human rights and environment impacts of the businesses in which they invest.

Response: We believe our multi-year engagement with Thomson Reuters Corporation (TRI) on its human rights due diligence practices shows the leverage that equity investors possess, in this case the shareholder proposal mechanism was instrumental. Furthermore, the shareholder proposal mechanism was effective even though the company is majority controlled by one family.

In 2020 BCGEU pointed out that TRI had evolved into a technology company, but its risk mitigation practices were suited for its previous media business. We argued that the result was a mismatch between the risks Thomson Reuters faced, and the framework it employed to manage those risks. BCGEU advocated for TRI to adopt the UNGPs in line with peer companies. TRI declared that there was no “uniform” approach to addressing human rights risk and as such had not adopted any approach. We argued that TRI’s true peers had all adopted the UNGPs, acknowledging that their products could pose human rights risk.

In response to BCGEU’s 2020 shareholder proposal, Glass Lewis found that:

...additional reporting on how the Company is mitigating adverse human rights impacts from its products, and how it ensures it remains in compliance with the UN Global Compact (of which it already is a signatory), would provide shareholders with assurance this is an area that is being thoroughly managed and overseen in a manner that is in the best interests of shareholders.

In 2021, Institutional Shareholder Services (ISS) pointed out that TRI's approach to human rights was no longer applicable or sufficient to the company in its current form as a technology company. It argued that:

[g]iven the controversy the company is involved in and in the absence of clear policies and processes to mitigate these human rights risks and manage future risks as it transforms to an AI technology company, the specific disclosure requested by the proponents could be beneficial to shareholders and their ability to assess the ongoing risks and have comfort that the company and the board are appropriately prioritizing their oversight of these risks. Furthermore, it appears the company's strategy should be informed by the UNGPs as the most widely accepted set of governing principles on human rights risks. In light of the above, support for this shareholder proposal is warranted at this time.

In 2022, TRI disclosed its alignment with the UNGPs and conducted a human rights impact assessment.

Good Practices

2. Are there any specific recommendations to States, businesses (including investors), civil society, UN bodies and National Human Rights Institutions that would assist in ensuring that investors act compatibly with the UNGPs?

Response: We believe that the applicable UN bodies should take some of the features of the UN Global Compact and adapt them for use with the UNGPs. We have found that companies use different language to show their connection to the UNGPs. Some say they are "in alignment with the UNGPs", some say their policies are "informed by the UNGPs" or they say that certain actions are "in accordance with the UNGPs". To reduce the risk of "bluwashing", if businesses with assets or market capitalization over a certain threshold are to refer to the UNGPs in any such manner in their disclosure, they should be required to report their alignment/compliance with the UNGPs in a publicly available centralized database, such as the one employed for the UN Global Compact.

We thank the Working Group for inviting BCGEU to provide its input on this matter. We look forward to expanding on these topics and others in the investor dialogue. Please do not hesitate to reach out if you have any further questions.

Very truly yours,



Paul Finch, Treasurer
B.C. General Employees' Union (BCGEU)