

# Stichting Steinhoff International Compensation Claims

## Claim Code Compliance Document 2019

### INTRODUCTION

1. Stichting Steinhoff International Compensation Claims (the **Foundation**) was established in 2018.
2. In its claim code compliance document for 2018, the Foundation endorsed the Claim Code that came into force on 1 July 2011 (the **Claim Code 2011**). On 4 March 2019, the claim code commission published a revised and update version of the claim code (the **Claim Code 2019**).
3. The Claim Code 2019 consists of seven principles (the **Principles**, and each a **Principle**) that are considered to be broadly accepted general guidelines and views on the way claim vehicles and associations should represent collective interests, including – but not limited to – litigation. The Principles contain a set of standards for the founders, board members, supervisory board members, consultants and advisors engaged by the claim vehicle. The Foundation's compliance with the Claim Code 2019 is set out below. Since the Foundation was established well before the publication of the Claim Code 2019, its governance has been modelled on the guidelines contained in the Claim Code 2011. In its governance report for the year 2018, the Foundation reported accordingly.
4. It is not clear from the Claim Code 2019 if it applies to representative organizations established after the date of publication of the Claim Code 2019 only or if it also covers representative organizations established before 5 March 2019. Moreover, another factor is the revised section 3:305a of the Dutch Civil Code (**DCC**) containing legal criteria for representative organisations that are less elaborate than the criteria set

out in the Claim Codes 2011 and 2019 but which apply only to representative organisations pursuing litigation under the revised section 3:305a of the DCC. As the Foundation is not pursuing litigation under the revised section 3:305a of the DCC, the new legal regime does not apply.

5. The most significant difference between the Claim Code 2019 and its predecessor can be found in the newly introduced Principle III, which sets out criteria for the litigation funding agreement – if applicable. Although the Foundation already disclosed certain characteristics of its litigation funding arrangements, it seems advisable to report in accordance with this new Principle III. Therefore, and for the sake of consistency, the Foundation has decided to apply the entire Claim Code 2019. To the extent that arrangements and practices were compliant with the Claim Code 2011 and, following the applicability of the Claim Code 2019, are possible deviations from the Claim Code 2019, part of the justification for these deviations consists of the prior conformity with the Claim Code 2011. After all, being transparent about deviations is also a form of Claim Code compliance.

### PRINCIPLE I: COMPLIANCE WITH THE CLAIM CODE

6. The Foundation's governance has been tailored to the needs of the Foundation and the interested parties it represents, as follows from Principle I of the Claim Code. Against this backdrop, it is important to consider that in terms of losses suffered the Interested Parties (as defined in the articles of association of the Foundation (the **Articles**) mostly consist of (large) institutional investors which have significant experience in dealing with shareholder loss recovery actions all over the world. Interested Parties who decide to be involved actively enter into a participation agreement with the Foundation. These participation agreements tend to be the outcome of negotiations between the Foundation and/or its advisors

and the prospective Participant. In addition, the participation agreement contains several safeguards for Participants and the Foundation's officials and advisors. In addition, the Foundation represents a significant number of retail investors, together representing a critical mass that equals the position of an institutional investor (in accordance with the definition in the Articles of "Interested Party" under (i)). Although these Participants have not negotiated the terms of their participation, they remain at liberty to withdraw their engagement. In the end, the Foundation takes the view that freedom of contract forms the best safety valve for safeguarding Participants' interests.

7. The Foundation currently has a board (the **Board**) consisting of three directors and a supervisory board currently consisting of three members (the **Supervisory Board**).
8. The Board is charged with the management of the Foundation.
9. The compliance of the Foundation with the Claim Code 2019 is discussed annually in a joint meeting of the Board and the Supervisory Board.
10. If and when the Board wishes to deviate from the applicable Claim Code, it will need the prior written approval of the Supervisory Board as set out in article 7.1 of the Articles. Where deviations may arise as a result of guidelines introduced in the Claim Code 2019 with possible retroactive effect, the Supervisory Board has only been able to give its approval retroactively.
11. This document is a document as set out in article 4.2 of the Articles and Elaboration 1 of Principle I of the Claim Code 2019 and will be published on the Foundation's website: <http://steinhoffclassaction.org/>

#### PRINCIPLE II: PROTECTING COLLECTIVE INTERESTS ON A NON-PROFIT BASIS

12. The Foundation acts as a non-profit entity in the collective interests of the parties who suffered losses as a result of the Events (as

defined in the Articles) and, primarily, have entered into a participation agreement with the Foundation (the **Participants**), or, in general, qualify as Interested Parties (as defined in the Articles, the **Interested Parties**).

13. The Foundation does not generate revenues, for instance by requiring Participants to pay a registration fee. Moreover, the Foundation, as a policy, only enters into monetary obligations which are directly assumed by the Foundation's funder. As a result, the Foundation does not need to pay expenses and, therefore, does not need to operate a bank account. The risk of inappropriate use of the Foundation's funds – for which the Claim Code provides important safeguards – is therefore absent.
14. The Foundation entered into a litigation funding agreement (the **Funding Agreement**) with Therium Deutschland IC (**Therium**). Pursuant to the Funding Agreement, Therium assumes several liabilities which otherwise would have been borne by the Foundation. This concerns lawyers' fees and other costs related to litigation, as well as the Supervisory Board's fees. Therium is envisaged to make a return in line with market practice, as laid down in Elaboration 2 of Principle II of the Claim Code 2019.
15. In addition, the Foundation entered into an expert consultancy agreement with DRRT, a US-based law firm. Pursuant to the expert consultancy agreement, DRRT shall reach out to its client base and inform them of the Foundation's activities and provide a number of services relevant for the Foundation's operations, including the design and upkeep of its website and a number of commercial and administrative services. For the avoidance of doubt, DRRT's services do not result in any monetary obligation of the Foundation.
16. Elaboration II.3 of Principle II of the Claim Code 2019 provides that the Articles also include a provision that a liquidation surplus

should be distributed amongst the Foundation's participants. This Principle is laid down in article 17.3 of the Articles. It is worth mentioning, however, that it is unlikely that the Foundation will generate any revenues whatsoever and, therefore, no surplus on winding up will occur.

#### PRINCIPLE III: EXTERNAL FUNDING

17. The Foundation entered into a Funding Agreement with Therium. Therium is a third-party litigation funder headquartered in the United Kingdom with branch offices in Jersey.
18. The Foundation has verified the financial soundness of Therium, its track record and the integrity of its litigation funding practice and resolved that it fits the Foundation's purpose.
19. The Funding Agreement was concluded in writing. Pursuant to the Funding Agreement, the Amsterdam District Court has exclusive jurisdiction and Dutch law applies. The Funder has not chosen residence in the Netherlands, as having procedural documents served on Therium's actual residence is only a limited hurdle. The Foundation and Therium agreed that all costs will be assumed by Therium directly, a choice explicitly allowed under Elaboration 4 of Principle III of the Claim Code 2019.
20. It follows from the Funding Agreement and the Foundation's governance that the Foundation will act independently and autonomously of the Funder. The Foundation's local counsel acts only for the Foundation; it does not act for Therium.
21. The Funding Agreement is confidential, and parties have agreed on conditional information-sharing, to the extent relevant for Therium and that, in the view of the Foundation, information will only be disclosed to Therium subject to the relevant confidentiality restrictions.
22. The Foundation and Therium agreed on a budget for conducting proceedings before the court of first instance, inquiry

proceedings and, if applicable, proceedings pursuant to the Dutch Collective Settlements Act (*Wet collectieve afwikkeling massaschade*).

23. If ordered by the (district) court, the Foundation may disclose the Funding Agreement to the relevant (district) court, provided that the (district) court only reviews the Funding Agreement *in camera* and does not disclose any of its contents in a decision which is shared with the defendants and/or the public through publication on the Dutch judiciary's website.

#### PRINCIPLE IV: INDEPENDENCY OF THE FOUNDATION AND AVOIDING CONFLICTS OF INTERESTS

24. In accordance with the Claim Code 2019, any apparent conflict of interest between the Foundation's engaged advisors, the Supervisory Board and the Board should be avoided. If a direct or indirect conflict of interest between the Foundation and one or more members of the Board or the Supervisory Board were to occur, the relevant (Supervisory) Board member will not take part in the deliberations and decision-making process (sections 7.2 and 7.3 of the Articles).
25. In 2018, the Foundation concluded the expert consultancy agreement with DRRT. The Board has taken the view that the interests of DRRT and the Foundation are fully aligned and that the expert consultancy agreement serves the interests of the Foundation, its Participants and all other Interested Parties. By virtue of Elaboration IV.2 of Principle IV of the Claim Code 2019, in conjunction with article 4.1 of the Articles, this required the Supervisory Board's prior written approval which was granted after due deliberation. This practice, which was compliant with the Claim Code 2011, which applied at the time when the expert consultancy agreement with DRRT was concluded.

#### PRINCIPLE V: COMPOSITION OF THE BOARD

26. The Board of the Foundation consists of three individuals with adequate legal and financial expertise and experience. As a consequence, the Foundation complies with Elaboration III.1 of the Claim Code 2019. The members of the Board are:
- a. Mr. Alexander Reus as chairman, a US-based attorney with vast experience in the field of class actions and settlements on a worldwide basis, including the Netherlands, and vast knowledge of the economic and financial aspects of class actions;
  - b. Mr. Andreas Werner Tilp as secretary, a German attorney with a strong track record in the field of shareholder litigation who acts as the leading lawyer in a German lawsuit on behalf of investors against Steinhoff International Holding N.V.; and
  - c. Mr. Zain Raúl Lundell as treasurer, an attorney admitted in Canada with extensive experience in the field of collective actions in Canada and South Africa. Mr. Lundell acts as the leading lawyer in a South African class action against the Defendants (as defined in the Articles).

27. Due to the absence of any income or expenses, there are no annual financial statements of the Foundation that can be submitted to the Supervisory Board for approval.

28. The Board requires the prior written approval of the Supervisory Board for certain resolutions that can significantly impact the Foundation and/or its objects and its endeavours to achieve its objects. In line with the Claim Code 2019, the conclusion of settlement agreements requires the Supervisory Board's approval. In addition, the Supervisory Board's prior written approval is required for the conclusion of agreements to fund the activities of the Foundation, such as a litigation funding

agreement. Please note that this requirement is stricter than stipulated in the Claim Code 2019.

29. The Foundation's website can be found at <http://steinhoffclassaction.org/>. On this website stakeholders have access to all relevant information, including – but not limited to – the following documents: (i) the Articles, (ii) this Claim Code Compliance Document, (iii) the résumés of the members of the Board and the Supervisory Board, and (iv) updates on any pending litigation.

#### PRINCIPLE VI: RENUMERATION OF THE MEMBERS OF THE BOARD

30. The Board members receive no management fees for services rendered to the Foundation.

#### PRINCIPLE VII: THE SUPERVISORY BOARD

31. The Supervisory Board consists of three individuals with adequate legal and financial expertise and experience, and its composition is therefore fully compliant with Elaboration VII.1 of Principle VII of the Claim Code 2019. The members of the Supervisory Board are

- a. Mr. Karl Peter Puskajler as chairman, is a former judge of the München Court of Appeal and co-author of commentaries on the German law on limited liability companies and on the compensation procedure for minority shareholders;
- b. Mr. Jan Maarten Slagter worked as a lawyer in Amsterdam, before becoming a journalist at the *Financieele Dagblad*. From 2007 to 2014 Mr Slagter was director of the Dutch retail investors' organization Vereniging van Effectenbezitters and, more recently, was programme director at the Nyenrode Business University and member of the supervisory board of KPMG Netherlands. As of 1 January 2017, he is CEO of the International Bureau of Fiscal Documentation.

- c. Mr. Tahir Maepa is a deputy general director at the Public Servants Association, one of South Africa's largest trade unions; a member of the board of the South Africa Government Employee Housing Advising Board; and chairman of Green Dome Investment Group, a community savings project. Mr. Maepa has an educational background in, amongst others, business finance and is considered a spokesperson for individuals directly or indirectly affected by the Steinhoff scandal.
32. Members of the Supervisory Board receive an annual fee of EUR 5,000. In the event that additional efforts are required of the Supervisory Board members, reasonable, additional fees may be agreed upon.
33. The Supervisory Board has held four meetings (one in person, and three by conference call) in 2019 as of the date of this report and is briefed on a regular basis on relevant developments of the Steinhoff case.