

Stichting Investor Loss Compensation Governance Report / Claim Code Compliance Document 2021

INTRODUCTION

1. Stichting Investor Loss Compensation (the **Foundation**) was established in 2021 and promotes and protects the interests of investors and pursues actions aimed at recovery of losses incurred by investors due to violations by listed companies of their reporting obligations. At this moment, the Foundation pursues legal action against Airbus SE in relation to insufficient disclosures in connection with the bribery scandal which resulted in settlements with the French, UK and U.S. authorities in January 2020.
2. This is the Foundation's first annual governance report / Claim Code Compliance document. The Foundation endorsed the version of the claim code of 4 March 2019 (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.
4. In addition, the revised section 3:305a of the Dutch Civil Code (**DCC**)

contains legal criteria for representative organisations. Pursuant to this provision, the Foundation's supervisory board should provide a report regarding the key elements of supervisory activities over the relevant year and the board should publish a report about its activities. Pursuant to the Claim Code 2019, representative organisations should, at least, address the subjects covered by the Claim Code. This document combines these functions.

5. To the extent that arrangements and practices deviate 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**)) consist of (large) institutional investors which have significant experience in dealing with shareholder loss recovery actions all over the world and, in addition, small institutions and retail shareholders. Interested Parties who decide to be involved actively enter into a participation agreement with the Foundation. In the case of (large) institutional shareholders, these participation agreements tend to be the outcome of negotiations between the Foundation and/or its advisors and the prospective Participant (as defined

below). 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. 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. Nevertheless, the Foundation is mindful that this category of investors requires a different treatment than (large) institutionals. To this end, the Foundation is in the process of improving the registration process with the aim to provide retail shareholders with a reliable and user-friendly registration tool.

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 articles 7.1 of the Articles.
11. This document is a document as set out in articles 6.4 and 7.2 of the Articles and Elaboration 1 of Principle I of the Claim Code 2019 and will be published on the Foundation's website: <https://investorclaimsaagainstairbus.com>

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 Investors (as defined in the Articles, the **Investors**).
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. Initial costs of the Foundation were advanced by DRRT Limited (**DRRT**). The Foundation's action against Airbus SE is funded by Therium Capital Management (**Therium**). Pursuant to the funding conditions, 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 Board's and 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. Its fees are entirely contingent upon the outcome of action against Airbus SE and related parties and therefore, DRRT's interest is entirely aligned with the interest of the Participants and the Interested Parties.

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 Participants. This Principle is laid down in article 15.2 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 is funded by Therium. Therium is a third-party litigation funder headquartered in the United Kingdom with branch offices all over the world. More information about Therium can be found on its website, <https://www.therium.com/>
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. In relation to Therium's track record, it is relevant to note that Therium previously funded an investor claim against Steinhoff International Holdings N.V., resulting in a successful outcome for investors.
20. As to Therium's financial soundness and integrity, it is relevant to consider that Therium is a founding member of the Association of Litigation Funders of England and Wales (<https://associationoflitigationfunders.com/>) and adheres to its strict Code of Conduct. Non-exhaustively, this Code of Conduct (i) requires funders to maintain adequate financial resources at all times to meet their obligations to fund all of the disputes they have agreed to fund; (ii) provides that funders must behave reasonably and may only withdraw from funding in specific circumstances and (iii) prevents funders from taking control of litigation or settlement negotiations and from causing the litigant's lawyers to act in breach of their professional duties.
21. 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. Instead, Therium has agreed that it accepts email to its key officers as a legally valid method for service of official documents. The Foundation and Therium agreed that all costs will be assumed by Therium directly, a choice explicitly permitted under Elaboration 4 of Principle III of the Claim Code 2019.
22. 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; he does not act for Therium.
23. The Foundation will provide Therium

with frequent updates. Information will only be disclosed to Therium subject to the relevant confidentiality restrictions.

24. The Foundation and Therium agreed on a budget for conducting proceedings before the court of first instance, costs of (interim) appeals and preliminary questions which may be referred to the Netherlands Supreme Court.
25. If ordered by the (district) court, the Foundation may disclose a redacted version of 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

26. In accordance with the Claim Code 2019, any apparent conflict of interests between the Foundation's engaged advisors, the Supervisory Board and the Board should be avoided. If a direct or indirect conflict of interests 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 6.3 and definition of "Conflicted Member" 7.3, and section 11.9 of the Articles).

PRINCIPLE V: COMPOSITION OF THE BOARD

27. 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. Leo Spigt as chairperson, a former Dutch attorney (*advocaat*) with vast experience in the field of class actions and settlements on a worldwide basis, including the Netherlands;
 - b. Professor Marta Pertegás Sender as secretary, born in Spain, obtained a PhD from Leuven University and currently has a tenure as Full Professor of Private International Law and Transnational Law at Maastricht University and
 - c. Mr. Otto de Vries as treasurer, has had a career as CFO of several large Dutch and international, public and private companies and now works as a coach and consultant and is involved in a number of charities.
28. Pursuant to section 16 of the Articles, the Foundation's financial year ends on 31 December 2022. Although all costs are directly assumed by the Funder, the Foundation's limited financial statements will be prepared after the financial year has lapsed.
 29. 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.

30. The Foundation's website can be found at <https://investorclaimsaagainstairbus.com>. 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: REMUNERATION OF THE MEMBERS OF THE BOARD

31. The Board members each receive EUR 7,500 in management fees for services rendered to the Foundation. In the event that additional efforts are required of the Board members, reasonable, additional fees may be agreed upon.

PRINCIPLE VII: THE SUPERVISORY BOARD

32. 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 chairperson, 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 and has previously been involved in Dutch collective actions being in the supervisory board of Stichting Investor Claims against Fortis and Stichting Steinhoff International Claims;
 - b. Mr. Jeroen Chorus is a former professor of legal history at

Leiden University and a former judge of the Amsterdam Court of Appeal and in that capacity decided several ground-breaking judgements in the collective actions and securities litigation field and

- c. Mr. Christoph Kuzaj is one of the founding partners of Düsseldorf-based law firm Kuzaj Wittmann & Partner and managing director of Therium Deutschland GmbH, the German branch of Therium and sits in the Supervisory Board as Therium's representative.

33. Members of the Supervisory Board receive an annual fee of EUR 7,500. In the event that additional efforts are required of the Supervisory Board members, reasonable, additional fees may be agreed upon.

34. The Board and Supervisory Board convened in one plenary session in 2021, are briefed on a regular basis on relevant developments of the Airbus case and have been closely involved in the drafting of the writ of summons served on Airbus and others on 31 December 2021. The Board and Supervisory Board intend to meet at least three times a year.