

# QUESTIONS TO THE ENTERPRIZE

4 January 2013

*COMPLAINT FROM LOK SHAKTI ABHIYAN, KOREAN TRANS NATIONAL CORPORATIONS WATCH, FAIR GREEN AND GLOBAL ALLIANCE AND FORUM FOR ENVIRONMENT AND DEVELOPMENT VS POSCO (SOUTH KOREA), ABP/APG (NETHERLANDS) AND NBIM (NORWAY).*

## BACKGROUND

The South Korean, Norwegian and Netherlands National Contact Points (NCPs) have received a notification under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises (the Guidelines) concerning South Korean Pohang Iron and Steel Company (Posco) and two of its investors; the Dutch pension fund ABP and its pension administrator APG and the Norwegian Bank Investment Management (NBIM).<sup>1</sup> The Norwegian and the Netherlands NCP have carried out initial assessments concerning the alleged breaches by ABP/ APG and NBIM and have determined that the issues raised merit further examination.<sup>2</sup>

According to the Norwegian NCP procedures the Specific Instance is now in phase 2, where we will investigate the case.<sup>3</sup> In meeting between the Norwegian NCP and NBIM a written procedure was agreed upon, where the Norwegian NCP would pose questions to NBIM in connection with the above mentioned complaint notification. After consultations with the Netherlands NCP<sup>4</sup>, the Norwegian NCP will hereby pose NBIM the following questions based on the obligation to manage investments

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<sup>1</sup> [http://www.regjeringen.no/upload/UD/Vedlegg/ncp/posco\\_klage.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/posco_klage.pdf) and [http://www.regjeringen.no/upload/UD/Vedlegg/ncp/posco\\_vedlegg.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/posco_vedlegg.pdf)

<sup>2</sup> <http://www.regjeringen.no/upload/UD/Vedlegg/csr/Kontaktpunktet/121126-INITIAL-ASSESSMENT-NBIM.pdf>

<sup>3</sup> Procedural guidance for the Norwegian NCP process: [http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp\\_prosedyrer\\_e.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp_prosedyrer_e.pdf) which is updated according to the Procedural Guidelines adopted at the OECD Ministerial Meeting on 25 May 2011. In addition to the transparency requirements of the Guidelines, the Norwegian NCP complies with the Norwegian Freedom of Information Act. All information will be made public, except when information may cause harm to individuals, reveal business secrets or expose certain details of the mediation process. Initial assessments, final statements, mediated outcomes, press releases and the Norwegian NCP procedures are published on the website [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

<sup>4</sup> Conference between the Norwegian and the Netherlands NCP 12.12.2012, led by Herman Mulder and Hans Petter Graver.

in accordance with the OECD Guidelines, in particular Chapter II (General Policies) paragraph 12<sup>5</sup> and Chapter IV (Human Rights) paragraph 3.<sup>6</sup>

Please inform whether there may be any information that, in the opinion of NBIM, is subject to a duty of confidentiality by or pursuant to law and therefore should be exempted from access according to the Norwegian Freedom of Information Act.<sup>7</sup> Please respond by 16 January 2013. Let us know if you would need extra time to respond or whether you would prefer to present your response to some of the questions in a meeting with the NCP or the secretariat.

#### QUESTIONS RELATING TO THE SIZE OF THE ENTERPRISE:

1. Where does NBIM rank among the largest investors globally?
2. Where does NBIM rank among the largest funds owned by a single owner globally?

#### QUESTIONS RELATING TO THE INVESTMENT IN QUESTION:

3. What is the size of NBIM's investment in Posco in terms of
  - a. percentage of Posco's total shares?
  - b. value (NOK) pr January 2013?
  - c. the average of NBIM's investments in Asian companies?
4. Are there any investment funds that have a larger investment in Posco than NBIM?
5. Which number of investor (ranking 1 as largest investor) is NBIM in Posco?
6. Has NBIM submitted its expectations to Posco, and if yes, when was this last sent?
7. Has NBIM assessed any risks relating to the Posco investment, and which risks are these? Where does Posco rank on these risk assessments? Has Posco been notified about the risk assessment, and when? Has there been any dialogue with Posco about the risk assessment, and if yes, what does this type of dialogue typically entail?
8. Has NBIM been in contact with Posco after the notification of the Specific Instance by the Norwegian NCP? If yes, when and in what way? If any, please inform about e-mail, conference call, site visits to India)? Who made the contact on behalf of NBIM? (responsible investment analyst, portfolio manager or any others)? At which level at the other side did you contact (Chair of the Board, Corporate Responsibility department, IR, PR or Communication, CEO, others) ?
9. Has NBIM been in contact with ABP/ APG concerning Posco after the notification of the Specific Instance by the Norwegian NCP? If yes, when and in what way?
10. What other information has NBIM received regarding Posco's policies, management systems, monitoring, third party audits etc?

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<sup>5</sup> The OECD Guidelines Section A, Chapter II (General Policies) paragraph 12 (A.12): *Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.*

<sup>6</sup> The OECD Guidelines Chapter II (General Policies) commentary 14 state that "*due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of decision-making and risk management systems (...)*".

<sup>7</sup> Act of 19 May 2006 No. 16 relating to the right of access to documents held by public authorities and public undertakings (short title: Freedom of Information Act).



11. What other resources if any (consultants, organisations or others) has NBIM used to gather information regarding Posco?
12. Has NBIM engaged with other investors, for example the International Corporate Governance Network or the Council of Institutional Investors or the Asian Corporate Governance Association or through the UN Principles for Responsible Investment (UNPRI) to reduce the negative impact on human rights in relation to the Posco owned project in India? If yes, with whom, when and in what way?
13. Has NBIM conducted any non-financial due diligence as described in the OECD Guidelines Chapter II and IV related to human rights and environmental adverse impact linked to the investment in Posco at any point in time? If so, what type of risk was identified? How did you identify this risk? Which actions were taken to minimize the risk identified? If no, what are the reasons why NBIM would be cautious against such an involvement?
14. Has NBIM alone or with other investors<sup>8</sup> engaged with relevant industry associations<sup>9</sup> to raise the industry standard awareness in relation to the relevant human rights and environmental risk in the steel industry? If yes, with whom, when and in what way? If no, why?
15. Have you be in contact with Indian authorities regarding Posco's project? If so, what has been discussed? Was governance, improving public policy, regulation, issues relating to corruption or other topics related to the environment in which the company is operating discussed with any authorities, and if yes, which?
16. Have you discussed any Posco findings/due diligence with your portfolio managers? What type of action has been taken if any upon your findings? Which procedures are followed by portfolio managers when due diligence findings show high risk of contribution to human rights violations?
17. If you have a policy not to comment on individual investments or companies, what are the reasons for this? If NBIM cannot provide any comments, the NCP would like to invite NBIM to a meeting to discuss this in more detail.
18. How does NBIM, forward looking, see that NBIM may play an active role in bringing better practices at Posco India?

#### GENERAL QUESTIONS CONCERNING HOW THE ENTERPRIZE MANAGES ITS RESPONSIBLE INVESTMENT POLICY

The NCPs are informed about the mandate of the Council of ETHICS, the NBIMs commitment to the UN Principles for Responsible Investment (UN PRI), including the annual reporting to the UNPRI, as well as NBIMs commitment to the OECDs principles for responsible investment and the OECD Guidelines for Multinational Enterprises (the OECD Guidelines).

19. Does the size of the investment determine whether NBIM engages with a company or are there other factors that are of greater importance, and which are these?
20. Could you please send a copy of the latest annual report to UNPRI?<sup>10</sup>

<sup>8</sup> International Corporate Governance Network, Council of Institutional Investors, Asian Corporate Governance Association or UN Principles for Responsible Investment (UNPRI), eg. the PRI Engagement Clearinghouse.

<sup>9</sup> Such as the World Steel Association <http://www.worldsteel.org/>.

<sup>10</sup> We were not able pr 2. January 2013 to locate the report at <http://unpri.org/reporting/result.php>

21. Has NBIM received any feedback from UNPRI about improvement areas? If yes, what are these, and what has been done?

The NCPs understand that NBIM Responsible Investor Policy<sup>11</sup> concerns ESG issues in general, that NBIM expects companies to manage social and environmental risks that may hurt their profits and the fund's investments and that NBIM in practice highlights children's rights, climate change and water management.<sup>12</sup> Neither child labor, pollution of water or air form basis for this Specific Instance. Hence, no further information on these topics will be requested now. However, in light of the updated OECD Guidelines with a new chapter on human rights, based on the UN Guiding Principles on Business and Human Rights, the questions are the following in relation to NBIM Responsible Investor Policy:

On the basis of these considerations:

22. In which sectors/industries and related to which environmental, social and governance (ESG) issues did NBIM participate in contribution to the development of good international standards in 2011?
23. Does NBIM have any system in place to monitor or in any way screen companies in accordance with its own ethical guidelines where there is a risk that the company that NBIM has invested in could violate or undermine the human rights of others<sup>13</sup>? In addition to the activity of the Council on Ethics, how does NBIM monitor companies to identify such risks? How is information from the Council on Ethics integrated in the NBIM risk management system?
24. How does NBIM prevent and mitigate investing in contributions to adverse impacts:
- i. How does NBIM identify, limit and mitigate its possible contribution to adverse impact that is not covered by NBIMs main engagement themes (Climate change, child labour, water)?
  - ii. How does NBIM engage with companies that might be in violation of indigenous peoples' rights or contribute to serious environmental damage other than those related to children's rights, climate change and water management?<sup>14</sup> How many companies has NBIM engaged with about these issues in 2009-2011?
  - iii. What type of resources (in house experts, consultants etc) does NBIM have to handle other non-main-theme issues?
  - iv. How does NBIM select the companies it engages with? How does NBIM make sure it limits its contribution to the worst type of impacts?
25. How and on what topics does NBIM participate in alliances of investors such as the International Corporate Governance Network, Council of Institutional Investors, Asian Corporate Governance Association or UN Principles for Responsible Investment (UNPRI)?
26. Has NBIM participated in any alliance on issues relating to ethics<sup>15</sup> and human rights other than children's rights? If yes, with whom, when and how? If not, what are the reasons for this?

<sup>11</sup> <http://www.nbim.no/Global/Documents/Governance/Policies/NBIM%20Responsible%20Investor.pdf> Governance: board accountability, shareholder rights, ownership structure, corporate structures and procedures, reporting and transparency

<sup>12</sup> [http://www.nbim.no/Global/Reports/2011/Annual%20report%202011/Arsrapport\\_11\\_ENG\\_web.pdf](http://www.nbim.no/Global/Reports/2011/Annual%20report%202011/Arsrapport_11_ENG_web.pdf)

<sup>13</sup> Such as expelling people from their communities, security forces that receive support from the company and/or are tasked with controlling protests against the company and use excessive force or occupy the school of children in the community etc. See also: <http://www.redflags.info/>

<sup>14</sup> One example may be a reference to the allegations against Posco

<sup>15</sup> The NCP only needs information in this instance about engagement on topics relevant to OECD Guidelines Chapter IV (e.g. it is not necessary to provide information about board salaries, board representation etc)



27. What does NBIM do if it receives notification about concrete incidents relating to a company which NBIM has invested in and that includes human rights risks? Are there different procedures if the notification comes from media, organizations, individuals or others or are the procedures relating to such notifications the same? If different, how are the procedures for each source of notification? Do service providers such as external managers have the same or similar procedures as NBIM?
28. According to the Ethical Guidelines<sup>16</sup> the system is that the bank has the primary responsibility for ethical investments, and the Council on Ethics a secondary responsibility, and thus acts as a safety net for the bank. What kind of cooperation is there between NBIM and the Council on Ethics for mutual exchange of information?
29. How many of your company dialogues in 2011 and 2012 included human rights issues other than child labor?
30. When exercising voting rights at company meetings, how often were human rights issues involved in 2011 and 2012?
31. Does NBIM request disclosure on human rights risks by the entities in which you invest? How is this information assessed?
32. Does NBIM integrate non-financial due diligence in its financial risk management systems and if so, how?

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<sup>16</sup> <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/the-ethical-guidelines.html?id=434894>