Phase Three: Apparel and Footwear Collaborative Engagement

## Overview

The Apparel and footwear collaborative engagement led by the ICCR and supported by KnowTheChain is an initiative in which institutional investors work together to take action on labour rights and forced labour issues in the supply chains of apparel and footwear companies. Investors use their collective influence with companies to drive positive outcomes for workers. The Initiative was set up in 2018 and has been coordinated by the ICCR since then.

KnowTheChain’s methodology revisions for the 2022-23 benchmarks included reducing the focus and weight given to policies and enhancing the focus on the implementation of processes, as well as outcomes for workers. The revised [KnowTheChain benchmark methodology](https://knowthechain.org/wp-content/uploads/KTC-methodology-2022-23.pdf) and [company lists](https://knowthechain.org/company%20list/) for the 2022-23 benchmarks are publicly available on the KnowTheChain website.

This phase of the Apparel and Footwear Collaborative Engagement aims to build on the [previous focus](https://knowthechain.org/investor-action/) of the working group targeting the companies benchmarked by KnowTheChain in 2018. The focus will move to looking at whether companies are adopting robust human rights due diligence approaches to address [forced labour risks](https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Investor-Brief.pdf) in their supply chains in alignment with the UN Guiding Principles, the OECD Guidelines, the ILO core labour standards, and the vast swathe of regulatory [due diligence requirements](https://knowthechain.org/wp-content/uploads/2022-KTC-mHREDD-brief.pdf) coming on stream globally.

Robust due diligence processes examine companies’ own impacts on their supply chains – including through the impact of irresponsible purchasing practices and looking at how they are ensuring that workers’ rights to freedom of association and collective bargaining are protected. Companies should be adopting responsible purchasing practices like prompt payment, accurate forecasting and reasonable lead times as well as ringfencing labour costs as a baseline necessity for responsible business.[[1]](#footnote-1) Without such practices, companies are at risk of creating conditions which make it difficult or impossible for suppliers to comply with supply chain policies on human rights and working conditions.[[2]](#footnote-2)

In the 2021 KnowTheChain Apparel and Footwear Benchmark, 62% of companies disclosed limited information on responsible purchasing practices (such as avoiding practices that increase labour risks, including downward pressure on pricing and sudden changes in workload), however only 14% reported on the adoption and implementation of such practices. Only one benchmarked company disclosed that it ringfences labour costs, such that workers’ wages are not negatively impacted in pricing negotiations. A third (32%) of companies disclosed the length of their payment terms; only 11% reported that their payment times are 30 days, which is industry best practice (and did not report extending payment times during the pandemic).

Model contract clauses, framed by the [Contractual Clauses Project](https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project/), present an alternative to traditional contracting, abandoning supplier-only representations, in place of a joint approach in which companies also take on responsibilities associated with these relationships. In addition to integrating responsibilities relating to responsible purchasing practices of the buyer, the model contract clauses integrate human rights remedy into supplier contracts, reflecting the fact that traditional contract remedies do not provide for remedy for affected workers.

Freedom of association and collective bargaining are enabling rights for supply chain workers which better position workers to achieve their demands collectively.[[3]](#footnote-3) Global Framework Agreements (e.g. those between [H&M, IndustriALL and IF Metall](https://www.industriall-union.org/sites/default/files/uploads/documents/GFAs/HM/hm_gfa2016_eng.pdf) and [Inditex and IndustriALL](https://www.industriall-union.org/industriall-and-inditex-create-a-global-union-committee)) and enforceable labour rights agreements which are legally binding and therefore stronger (e.g. [Lethoso Agreement](https://www.workersrights.org/commentary/landmark-agreements-to-combat-gender-based-violence-and-harassment-in-lesothos-garment-industry/)), are agreements that companies should be engaging in as part of their efforts to redress the imbalance of power between companies and supply chain workers.[[4]](#footnote-4)

In the 2021 KnowTheChain Apparel and Footwear Benchmark, 43% of the companies disclosed working with unions to support freedom of association and collective bargaining in their supply chains. Yet only two companies (5%) could point to concrete examples of how they improved freedom of association in their supply chains, a critical prerequisite to tackling forced labour, pointing to the need for companies to put in place formal and binding agreements between companies and supply chain workers.

## Objective

This phase of the engagement focuses on engaging KnowTheChain companies assessed in the 2018 and 2021 benchmarks. The aim is to push companies to implement the following:

* Worker-centric due diligence that is built on responsible purchasing practices and worker power (e.g., freedom of association and collective bargaining and enforceable labour rights agreements)
* Remedy for workers: Ensuring remedy outcomes for workers in cases of labour rights abuses (such as repayment of unpaid wages or reimbursement of recruitment fees)

The process will involve investors requesting information from and setting measurable targets with companies to effect the sectoral improvements we need to see in the aftermath of the pandemic and improve outcomes for workers.

KnowTheChain data will be a primary source of evidence to inform investor engagement and set appropriate KPIs. Progress can be tracked between benchmark cycles (every two years), with the initial engagement using the 2021 benchmark results as a baseline. Company responses will be fed back to the group as appropriate and next steps agreed upon by the lead investor and/ or the wider group.

ICCR will facilitate, convene, and provide administrative support for the engagements with members of this investor group and collaborate with KnowTheChain in strategy development and execution.

### Engagement Questions

The engagement questions below will form the central asks of the companies over the next phase and will be integrated into the initial letter from lead investors to the target companies. They will form the central aspect of the engagement calls to follow with the aim of setting targets with companies.

1. **Due Diligence**

**Responsible purchasing practices:**

1. **Question ->** Has the company committed to responsible purchasing practices in its contracts with suppliers?
2. **Question ->** Can the company describe how it has adopted responsible purchasing practices in the first tier of its supply chains, which includes planning and forecasting, and how it ring-fences labour costs?

**Freedom of association**

1. **Question->** Does the company work with independent local or global trade unions and/or other legitimate worker representatives to improve freedom of association in its supply chains?
2. **Question ->** Is the company party to a global framework agreement that covers its supply chains and/or an enforceable supply chain labour rights agreement with trade unions or worker organisations?
3. **Remedy**
4. **Question->** Has the company committed to prioritising human rights remediation over traditional forms of remediation in contracts with suppliers? E.g. financial or non-financial compensation / remedy which restores the affected persons to the situation they would have been in had the adverse human rights impacts not occurred.

## Timeline

Members will be invited to join the Initiative from October 2022 but may also join on a rolling basis where opportunities are available.

* **October 2022**: Kick-off engagement call with wider investor group, composed of ICCR/ PRI/ KnowTheChain Investor Statement signatories to discuss the group objective and associated engagement questions and expectations of investors. During this meeting, or shortly thereafter lead and support investors could be identified for each company. At this time KnowTheChain will coordinate with the ICCR to circulate a shared Google doc. in which investors could sign up to lead or support a company engagement. This will be a good opportunity for investors who have led engagements before to provide feedback and/ or updates on previous engagements. It will also be an opportunity to decide whether we continue with previous engagements or start afresh.
* Initial email/letter to companies (Q4 2022) -> Statement to be developed based on engagement questions, which are in turn based on the most salient sector-wide issues in company practice identified in KnowTheChain’s 2021 Apparel and Footwear Benchmark.
* Investor feedback to the group through to 2023 (5 quarterly engagement calls) will be the main way to track progress/ improvement made by companies on specific issues. See above for practicalities in tracking engagements.

### Engagement Process

In support of shareholder efforts, the following will occur:

* Quarterly calls with investors that will include KnowTheChain and other experts to raise awareness and improve education on main focus areas;
* A database of investor involvement, status of engagement and ongoing metrics to assess investor progress by company;
* A campaign by KnowTheChain at the release of the benchmark supported by media and led by the ICCR and other members of the collaborative engagement;
* Workshops on key topics by KnowTheChain and the ICCR at leading investor network and industry association conferences, i.e. PRI, IAHR, ILO, AAFA, etc.

**Lead investors should** set targets/ expectations for individual company practice based on the objectives outlined above and through the use of the aforementioned engagement questions, evidence from KnowTheChain benchmarks, and additional research. The targets should not be related to the number of companies engaged by investors but rather corporate behavioural change on this specific issue area: worker centric due diligence including freedom of association and collective bargaining, and purchasing practices. It should be made clear that lack of progress on specific issues would lead to further action/ escalation by the individual investor or investor group.

### Escalation:

**Scenario 1:** Initial letters sent to companies (Q4 2022) -> scheduling of meeting and constructive dialogue (2023) -> company pledges (2023-24).[[5]](#footnote-5)

**Scenario 2:** Constructive dialogue (Q3 2023), but company pushback/ no pledges/ progress by Q4 2023 -> Additional dialogue with more ICCR members (not just lead/ support) / working groups with companies who have implemented best practice strategies:

* 1. Pledges made: fin
  2. No pledges made: escalation could include writing letter to the company board directly, shareholder resolutions in the US (where appropriate), withholding or voting against the re-election of directors or pre-declaring voting

**Scenario 3:** No initial response -> additional letters and pressure by more members (not just lead/ support). No response by Q3 2023 -> look at options for escalation appropriate to the jurisdiction, asking for disclosure/ commitment (2024 proxy season).

All members of the Initiative are independent fiduciaries and vote in accordance with their own voting principles, policies or guidelines and independent internal investment analysis. All members are responsible and accountable for their own voting decisions, including any pre-declaration or vote solicitation.

Divestment is never a preference of the initiative, however if an individual investor decides to do so it is at their own discretion.

1. Ringfencing labour costs requires engagement with suppliers to assign and set aside the cost of labour based on factors specific to the supplier and the order to ensure that the cost is not infringed upon. See [here](https://actonlivingwages.com/app/uploads/2021/04/ACT-Labour-Costing-Protocol.pdf) for more detail. [↑](#footnote-ref-1)
2. See pp. 46-52 of the [2021 KnowTheChain Apparel and Footwear Benchmark Report](https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Benchmark-Report.pdf) for good practice examples of responsible purchasing practices. [↑](#footnote-ref-2)
3. See pp. 63-65 of the [2021 KnowTheChain Apparel and Footwear Benchmark Report](https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Benchmark-Report.pdf) for examples of freedom of association and collective bargaining in company supply chains. [↑](#footnote-ref-3)
4. See p. 6 of [this report](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_655541.pdf) for further detail on the rationale of various types of agreements affecting the relationship between companies and their supply chain workers. [↑](#footnote-ref-4)
5. Pledges could be in the form of commitments and would not necessarily be expected within the timeframe of the 2023 benchmark. [↑](#footnote-ref-5)