



International
Code of Conduct
Association

THE INTERNATIONAL CODE OF CONDUCT ASSOCIATION (ICoCA)

Procedures

Article 13: Receiving and processing complaints



PROCEDURES FOR RECEIVING AND PROCESSING COMPLAINTS UNDER ARTICLE 13

BACKGROUND

The purpose of the following procedures is to implement the requirements of Article 13 of the ICoCA's Articles of Association ("AoA") and the commitments contained in Paragraphs 66 through 68 of the Code. These procedures are subject to review on an annual basis by the ICoCA Board of Directors.

ARTICLE 13 PROCEDURES

I. ADMINISTRATION

- A. The Association shall establish a complaints-handling function within the Secretariat, which shall be charged with receiving, recording, responding to, and tracking the status of complaints submitted to the Association.
- B. The Secretariat shall devise and make publicly available a process (including indicative time-lines), for aggrieved individuals, or their representatives, to submit a complaint to the Association. In order to ensure the confidentiality of named persons or entities, and the allegations contained in the complaint, the process shall ensure that complaints submitted to the Association are appropriately protected from external disclosure, except as agreed by the parties or required by applicable law.
- C. Subject to its oversight, the Board may designate a Complaints Committee (referred to in this document as "the Committee") to lead in overseeing the functioning of the complaints mechanism. The Committee shall have equal representation from Directors from each of the three pillars of the Association. Where these procedures call for the Board to take any action, the Board may delegate such action or decision to the Committee.
- D. The Secretariat shall regularly report to the Complaints Committee regarding the status of complaints received.

II. RECEIVING COMPLAINTS

- A. A properly filed complaint should include:
1. Identifying information concerning the Complainant(s);¹
 2. The name of (or other identifying information concerning) the Member that is alleged to have harmed the Complainant;
 3. An allegation of actions or omissions related to the Code by the Member which have harmed the Complainant;
 4. The location(s) and date(s)/time(s) where the alleged actions or omissions occurred;
 5. An attestation from the Complainant or his/her representative that they have reviewed the complaint and that it is true and accurate; and
 6. Contact information for the Complainant, or an authorized representative of the Complainant.
- B. The Secretariat shall prepare and make publicly available on the Association's website a form for submission of complaints. The form shall be made available in English and any additional languages the Board may determine are appropriate. A complaint received in a form other than that provided may be transcribed into the provided form by the Secretariat.
- C. A complaint that does not contain the requirements stated in Paragraph II.A. shall be returned by the Secretariat to the Complainant. When the Secretariat returns a complaint, it shall also provide a short statement identifying the deficiencies that prevent acceptance of the complaint. A Complainant shall be permitted to correct any identified deficiencies and re-submit the complaint.
- D. After it has received a properly-stated complaint, the Secretariat shall assign the complaint a unique identification number and shall acknowledge its receipt in writing to the Complainant. Such acknowledgement shall also inform the Complainant of the rules concerning confidentiality of the ICoCA complaints-handling process and any other rules or instructions as the Board may approve concerning the processing of complaints, including indicative timelines.

III. PRELIMINARY REVIEW OF COMPLAINTS

- A. **Preliminary Review.** Upon receipt of a properly-stated complaint, the Secretariat shall review the complaint, gathering more information as necessary, in order to identify whether:
1. The complaint alleges facts that indicate a possible violation of the Code;
 2. Additional information is needed in order to identify whether the complaint alleges a violation of the Code;

¹ "Identifying information" need not identify the Complainant by name or provide an address, or other information that could subject the Complainant to retaliation. It should, however, provide the Association with sufficient information to understand the relationship between the Complainant and the subject of the complaint (e.g., "local landowner" or "former employee"). In addition, where circumstances do not permit the Complainant to be individually identified, clear contact information for an authorized representative who can speak on Complainant's behalf must be provided. Where a Complainant has not provided individually-identifying information for fear of retaliation, a separate statement should also be provided to the ICoCA Secretariat explaining the reasons why the Complainant fears retaliation. That separate statement will not be shared with any other party, nor will it be treated as part of the complaint unless the Complainant requests that it be included.

3. The allegations of the complaint fall into a category excluded by the Articles of Association or other rules approved by the Board²; or
 4. The complaint alleges activity that, on its face, appears to be criminal under applicable law.
- B. **Inadequate Allegations.** A complaint that does not allege facts indicating a possible violation of the Code cannot be considered and shall be returned to the Complainant along with a short statement explaining why it cannot be considered. Where it appears that additional information is needed in order to identify a potential violation of the Code, the Secretariat shall invite the Complainant to submit that information.
- C. **Excluded Categories.** If the complaint falls within one of the excluded categories, it shall be returned to the Complainant along with a short statement explaining why it cannot be considered.
- D. **Claims Alleging Criminal Activity.** If a complaint contains allegations of activities that, if true, would constitute criminal activity, the Secretariat shall conduct due diligence to determine whether criminal jurisdiction exists within a Competent Authority. Thereafter, without taking any position on the truth of any of the allegations, the Secretariat shall inform the Complaints Committee and the Complainant, including identifying the relevant law enforcement or judicial entity/official. In addition, where a criminal violation is alleged, after notification to and consultation with the Complainant, and at the direction of the Board, the Association may report that violation to one or more Competent Authorities with jurisdiction to investigate and prosecute the crime. Complaints alleging criminal activity shall not be further processed by the Secretariat until a determination is made by the Board regarding whether referral of the matter (or related matters) for criminal prosecution will take place and, if so, whether further processing of the complaint or any of its claims would be appropriate.
- E. Any complaint that is not returned for any of the reasons stated in Paragraphs B through D shall be retained for processing, and the Secretariat shall inform the Complainant and the Board of this result.

IV. PROCESSING OF COMPLAINTS

- A. **Secretariat Review.** Once a complaint has been accepted for processing, the Secretariat shall conduct further review in order to identify the following:
1. Whether the allegations in the complaint have previously been referred either to a grievance procedure established by the Member company or to another grievance procedure or judicial process and its outcome;
 2. Whether the availability and sufficiency of a grievance mechanism or procedure established by the relevant Member company, are in accordance with the criteria contained in Paragraph 67 of the Code;

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AoA Article 13.2.1, describes certain categories of complaints that may not be considered.

3. Whether there are reasons why the complaint is inappropriate to be handled by a company-level grievance procedure; and
4. Whether any other fair and accessible grievance mechanisms are available to the Complainant that may offer an effective remedy.

B. Additional Information. The Secretariat shall contact the Complainant and/or Member to request additional information, as necessary. In the course of its review, the Secretariat may interview persons involved in the prior proceedings (including those responsible for their administration) and may request information from the Member company and/or review electronic or paper records of the prior proceedings.³

C. Adequate Grievance Mechanisms. If the Secretariat assesses that the Member company's grievance mechanism or procedures could be a viable path, the Secretariat shall, within 30 days of receipt of the complaint for processing:

1. Inform the Board of its assessment and the basis for it; and
2. Inform the Complainant of options to pursue their claim, including available fair and accessible grievance procedures that may offer an effective remedy for the harm(s) alleged in the complaint.⁴ Such procedures may include:
 - (a) alternative grievance procedures or mechanisms offered by the client organization on whose behalf the Member is working;
 - (b) relevant grievance mechanisms operated by non-governmental organizations;
 - (c) alternative dispute resolution (e.g., arbitration or mediation) proceedings; or
 - (d) administrative or judicial proceedings offered by Competent Authorities.

D. Inadequate Grievance Mechanisms. If the Secretariat assesses potential deficiencies in a Member company's grievance mechanism or procedures, either based on its review or based on an allegation by the Complainant that a company's grievance mechanism did not or cannot offer an effective remedy, the complaint shall be further processed as follows:

1. **Information to the Board.** The Secretariat shall provide its assessment and observations to the Board, specifically addressing each of the items in Paragraph IV.A. and offering (a) observations on any deficiencies in the Member company's grievance procedure and the effect of such deficiencies on the processing of grievances, (b) any response from the Member company pertaining to the alignment of their grievance mechanism with the requirements of Paragraph 67 of the Code, (c) recommendations on how the relevant grievance mechanism might be amended to address any identified deficiencies, and (d) any other relevant recommendations. Should the Complainant fail to cooperate in good faith in the Secretariat's review, the Secretariat shall confine its observations and recommendations to those pertaining

³ Consistent with the duty to cooperate in good faith provided in AoA Art. 13.2.7, a Member company will be expected to make persons and records available to the Secretariat in a reasonably timely manner that may facilitate review of the prior proceedings, subject to the limitations of applicable law and contractual requirements. Where a Member company is unable to provide access to persons or to records, it shall explain the reasons why and endeavor to make alternative arrangements.

⁴ This time may be extended, as required, where the Complainant or his/her representative fails, for good reason, to timely respond to requests from the Secretariat for additional information.

to deficiencies in the Member company's grievance procedure and how those deficiencies might be addressed through corrective action.

2. **Board Recommendations and Corrective Actions.** Following its receipt and review of the Secretariat's observations and recommendations (if any), and after such additional consultations as it may require, the Board may recommend that the Member company take corrective actions to address identified deficiencies in its operational-level grievance procedure(s).
3. **Response to Claimant and Options for Resolving Complaints.** Where the Board has determined either that a company's grievance mechanism does not meet the requirements of Paragraph 67 of the Code, or that good reason exists why the complaint is inappropriate to be handled by a company-level grievance procedure, within 60 days of receipt of the complaint for processing the Complainant shall be offered his/her choice of the following:⁵
 - (a) **Good Offices:** If the Complainant elects to use good offices, the Board shall direct the Secretariat to exercise the Association's good offices to assist in the resolution of the dispute, subject to the oversight of the Board.
 - (b) **Mediation:** If the Complainant elects mediation the Board shall recommend to the parties that the matter be referred to an independent, external mediator that is mutually agreeable to the parties and approved by the Board.⁶
 - (c) **Information Regarding Alternative Mechanisms:** The Complainant shall also be informed of any other available fair and accessible grievance procedures that may offer an effective remedy for the harm(s) alleged in the complaint, which may include:
 - (i) Alternative grievance procedures or mechanisms offered by the client organization on whose behalf the Member is working;
 - (ii) Relevant grievance mechanisms operated by non-governmental organizations;
 - (iii) Alternative dispute resolution (e.g., arbitration or mediation) proceedings; or
 - (iv) Administrative or judicial proceedings offered by Competent Authorities.

V. FACILITATION TO GRIEVANCE MECHANISMS

If the Complainant seeks support in accessing any grievance mechanism, the Secretariat may offer to facilitate the Complainant's access to such mechanism and its procedures. Facilitation may include providing information and, as necessary, other support to the Complainant or to those administering the alternative grievance mechanism in order to enable that mechanism to fairly address the complaint. The Secretariat must, however, remain neutral in any proceeding and may not act in a representative capacity, either on behalf of the Complainant or the Member company, nor may it provide advice to either the parties with respect to those or any other proceedings.

⁵ This time period may be extended should the circumstances warrant it.

⁶ The Secretariat shall endeavor to identify and develop a list of mediators with an appropriate knowledge and background to handle such matters, and shall make this list available to the Board.

VI. RESOLUTION/CLOSURE OF COMPLAINTS

- A. Should a Complainant elect not to pursue any of the procedures identified by the Secretariat or the Board, or should the Complainant elect to pursue alternative proceedings without the facilitation of the Secretariat, the Secretariat shall close its processing of the Complaint and shall report that to the Committee.
- B. Should a Complainant elect to pursue one of the procedures identified by the Association, or should the parties agree to resolve the subject of the complaint through a mutually-agreed procedure that is capable of offering an effective remedy, the Board may determine that the complaint has been addressed and direct the Secretariat to close the complaint.

VII. REFERRAL TO ICOCA MONITORING AND PERFORMANCE ASSESSMENT (ARTICLE 12) PROCESS.

Closure of a complaint shall not suspend procedures to identify and address deficiencies in grievance procedures or the obligation of the Member Company to respond to recommendations by the Board for corrective action. If at any time the Secretariat's or the Board's consideration of a complaint identifies deficiencies in a Member company's grievance procedure with regard to the requirements of Paragraphs 66 through 68 of the Code, or any other failure to comply with the Code or the Articles of Association, then, in addition to any other actions or recommendations contained in this procedure, the Secretariat or Board may also refer the matter for consideration under the Association's Procedures for Reporting, Monitoring, and Assessment of Performance (AoA Article 12).

VIII. CONFIDENTIALITY

- A. Except as described in Paragraph D below, matters relating to the allegations of the complaint, facts in dispute, and the resolution of any complaint brought to the ICoCA will not be disclosed outside of the parties to (or witnesses involved in) the Complaints process. Parties participating in the ICoCA Complaints process will be required to agree in writing to keep all matters pertaining to the Complaints process confidential and not to disclose it outside of the procedure.
- B. Where a Complainant or witness requests anonymity, the Secretariat will take appropriate steps to ensure that, to the extent possible, personally-identifying information is not disclosed within the complaints processing procedures. Where it is not possible to process a complaint or sufficiently evaluate its allegations without sharing certain personally-identifying information, the Secretariat will explain what information it may need to share with other parties to the process and the reason why it is necessary to share that information. The Complainant will be given the option to withdraw his/her complaint in lieu of having such information shared.
- C. Additional confidentiality rules may be required in the event of referral of a dispute to mediation or to an independent external grievance mechanism.

D. Unless the Board determines otherwise, the Secretariat shall maintain a public register noting only (1) when a complaint was brought, (2) the name of the affected company, (3) the general nature of the alleged violation(s), and (4) the resolution of the complaint or other conclusion to the complaints process.

IX. SANCTION FOR FAILURE TO COOPERATE IN GOOD FAITH OR TAKE CORRECTIVE ACTION

Should the Board determine, after reasonable inquiry, (1) that a Member company has failed, within a reasonable time, to take corrective action after being recommended to do so by the Board, or (2) that a Member company has failed to cooperate in good faith with these procedures, the Board may take further action – to include suspension or actions leading to termination of membership.

X. GUIDANCE TO MEMBERS CONCERNING OPERATIONAL GRIEVANCE MECHANISMS

- A. Subject to review by the Board, the Secretariat shall periodically publish guidance to Members concerning the operation of effective grievance procedures in compliance with Paragraph 67 of the Code. Guidance may:
1. further explain the ICoCA's interpretation of the minimum requirements of Paragraph 67, including how these requirements will be reviewed for purposes of certification, monitoring, and the handling of complaints; and/or
 2. provide guidance on “best practices” on the operation of Code-compliant grievance mechanisms.