

PROCEDURES FOR REPORTING, MONITORING AND ASSESSING PERFORMANCE AND COMPLIANCE UNDER ARTICLE 12

Background

Article 12 of the ICoCA's Articles of Association ("AoA") provides for oversight of Member companies' and Affiliates' compliance with the Code through reporting, monitoring and assessment of performance and extends to corrective and disciplinary action for violations and alleged violations of the Code. The purpose of the following procedures is to implement the requirements of Article 12 in a manner that is consistent with and faithful to both the AoA and the Code. The Board will review these Procedures on an annual basis.

Article 12 Procedures

I. General

- A. Monitoring, Company Self-Assessment Reporting and Field-Based Review are core functions of the Association. The Secretariat will establish strong internal monitoring capacity to carry out these essential functions as described in these Procedures.
- B. In order to further the development of the specific oversight responsibilities established under Article 12, the Board will develop and maintain performance and compliance indicators ("Indicators") for the relevant sections of the Code. The Indicators will be made publicly available on the ICoCA website over time and may be modified or amended as the ICoCA proceeds with implementation of its oversight functions.
- C. As further detailed in these procedures, Indicators will be used to guide the ICoCA's Article 12 processes to assess Member company and Affiliates performance, including analysis of information obtained in the Monitoring process, identification of compliance concerns and alleged violations of the Code, and recommendations for improved performance against the Code.
- D. Consistent with Article 12.2.10, in carrying out the functions of this Article as set out in these Procedures, the Board shall ensure that the Association appropriately respects legal investigations or proceedings and any rights or privileges attached to those investigations or proceedings. The presence of a legal investigation or proceeding will not necessarily cause suspension of the functions of this Article.

II. Monitoring (Article 12.2.1)

- A. The Secretariat will search for, receive, and review information about Member companies' and Affiliates' compliance with the Code.
- B. The Secretariat will establish relationships with civil society actors (including, for example, human rights organizations and international and local non-governmental organizations), affected communities, governments, other industry members (Affiliates, ICoCA Members, non-members and industry associations), clients, and other stakeholders for the purpose of (i) explaining the function of Monitoring, (ii) educating and facilitating interaction by interested parties with the Secretariat and the ICoCA, and (iii) enabling the Secretariat to access observations, concerns, and alleged violations of the Code by Member companies or Affiliates.

III. Written Self-Assessment Reports by Companies (Article 12.2.2)

- A. As set forth in AoA Article 12.2.2, the Board will determine the format and content as well as the frequency of companies' written assessment of their performance ("Self-Assessment Reports"). The purpose of Self-Assessment Reports will be to carry out the objective stated in the Code for companies to report on their status in implementing and maintaining compliance with the Code. The format and structure of information sought through Self-Assessment Reports will align with the Indicators, thereby enabling the Secretariat to integrate information provided through Self-Assessment Reports with other information obtained through Monitoring in order to identify compliance concerns. The format of Self-Assessment Reports shall be made publicly available and published on the ICoCA website.
- B. Member companies and Affiliates will submit annual Self-Assessment Reports to the Secretariat. The Secretariat shall hold all Self-Assessment Reports and associated data in a confidential database, protected in accordance with the Association's Data Security Policy. In an effort to encourage frank and honest disclosure concerning both successes, challenges and concerns regarding implementation of the Code, all non-public information contained in the Self-Assessment Reports will be covered by confidentiality and non-disclosure rules within the Secretariat that prevent their disclosure to other Members or outside parties without the consent of the Member company or Affiliate.

IV. Dialogue with Member Companies and Affiliates (Article 12.2.5)

- A. At any point following receipt of information through the Company Self-Assessment Reporting, Monitoring, or Field-Based Review processes, the Secretariat may enter into a dialogue with Member Companies or Affiliates aimed at improving performance or addressing specific compliance concerns. Such a dialogue may be requested by the Company or by the Secretariat.

- B. To facilitate greater transparency and a more candid exchange of information between the Company and the Secretariat, the dialogue shall be confidential, and shall be preceded by a written statement of issues/concerns to be addressed for the purpose of facilitating more meaningful discussion.
- C. To the extent information is transferable between Member companies or Affiliates, the dialogue shall also include a sharing of successful performance measures adopted by Member companies or Affiliates with respect to implementing the Code. This information sharing shall better inform Member companies or Affiliates facing challenges to comply with sections of the Code of the methods and procedures adopted by other Member companies or Affiliates to comport with those same sections.
- D. Without breaching the confidentiality of the dialogue with Member companies or Affiliates, the Executive Director, in carrying out the functions of this Article, shall regularly brief the Board on the general nature and scope of the dialogue with Member companies or Affiliates, inclusive of positive and negative trends in Member company or Affiliate performance and Code compliance.
- E. While the principal aim of the dialogue with Member companies or Affiliates is to facilitate improvements in Member company or Affiliate performance, where applicable the dialogue is also intended to identify and convey to Member companies or Affiliates the implications of continued non-compliance, including the potential for referral to the Board of patterns which may rise to the level of a Code violation.

V. Identification and Analysis of Compliance Concerns (Article 12.2.4)

- A. The Secretariat will compile information from the Monitoring and Self-Assessment Reporting processes described herein, and review that information for the purpose of (i) identifying compliance concerns, (ii) assessing the impacts of Member company and Affiliate operations on human rights, (iii) maintaining awareness of Member companies' and Affiliates' efforts to implement the Code, (iv) identifying broader patterns relevant to implementation of the Code in particular complex environments and, (v) identifying good practice.
- B. The Secretariat will identify compliance concerns on the basis of the information compiled, as assessed against the Code and Indicators, with the understanding that performance will be assessed as a whole, and that concerns identified with any one section/paragraph or its corresponding Indicators will not necessarily be determinative of overall compliance.
- C. Before determining the existence of a potential compliance concern, the Secretariat shall endeavor to clarify any ambiguities through engagement with and requests for additional information from Member companies and Affiliates.

- D. Where the Secretariat identifies a potential compliance concern, it shall be submitted to the Executive Director for review and determination of appropriate action

VI. Field-Based Review (Article 12.2.3)

- A. The Executive Director may initiate a Field-Based Review (i) where the review of available information or a human rights risk assessment has identified a need for further monitoring within an area of one or more Member companies or Affiliates operations, or (ii) on request from a Member of the Association or an Affiliate. The Executive Director's decision to initiate a Field-Based Review shall be informed by information collected and analyzed by the Secretariat (e.g., through company Self-Assessment Reporting, reports of compliance concerns, received or identified human rights impacts or risk assessments or other sources) and subject to regular and routine Board oversight. Field-Based Review shall be aimed at improving performance or addressing specific compliance concerns. The Secretariat will develop, and the Board will approve, standard planning and operating processes for Field-Based Review as described in paragraph VI. B.
- B. The Board shall appoint a standing Monitoring Committee ("the Committee"), having equal representation from each pillar of the Board, with responsibility for reviewing plans for and consulting with the Secretariat and within their pillars regarding Field-Based Reviews. The Executive Director shall on a regular basis—as agreed by the Executive Director and the Committee—submit a plan for Field-Based Review to the Committee for consultation and discussion. After consultation with the Committee and unless the Board decides otherwise, the Executive Director may implement the plan. The Executive Director shall consult the Board if she or he decides not to execute the plan and/or to make significant or impacting changes thereto.
- C. In addition, or parallel to the regular and ongoing consultation between the Executive Director and the Monitoring Committee described above, where exigent circumstances warrant, the Executive Director may consult with the Committee regarding immediate Field-Based Review. After such consultation, and (as necessary) adjustment to the Field-Based Review and unless the Board decides otherwise, the Executive Director may implement the proposed immediate Field-Based Review.
- D. Where a Member company or Affiliate is unable to obtain its client's consent to a proposed Field-Based review, and that lack of consent impacts the effectiveness of a Field-Based Review, the Executive Director shall request a discussion with the Member or Affiliate and client to describe the objectives and proposed conduct of Field-Based Review, the protections to be provided to any information compiled as a result of the review, the function of Field-Based

Review within the ICoCA's governance and oversight functions, and how the conduct of proposed Field-Based review might be modified to address any concerns.

VII. Referral of Performance and Compliance Issues to the Board of Directors (Articles 12.2.5 through .6)

- A. Pursuant to Articles 12.2.5, the Executive Director shall refer alleged violations of the Code to the Board. When referred, an alleged violation shall be accompanied by an analysis of the circumstances constituting an alleged violation along with a proposed course of action for the Board's consideration.
- B. Additionally, as set out in 12.2.6, the Board shall review performance and compliance issues referred by the Executive Director or at its own initiative. The Board shall offer observations and advice to Member companies and Affiliates aimed at improving performance or addressing specific compliance concerns.

VIII. Recommendations for Corrective Action (Articles 12.2.7-12.2.10)

- A. Pursuant to Article 12.2.7, if the Board determines that corrective action is required to remedy non-compliance with the Code, the Board shall request a Member company or an Affiliate take corrective action within a specific period of time.
- B. Corrective action shall be designed to bring Company performance into compliance with the Code. In order to ensure completion of corrective action, the Board and Company shall agree to a reasonable time for implementation of the corrective action. During this time, the Board may require more regular and direct reporting to the Board, or monitoring by the Secretariat to ensure implementation and satisfactory completion of the corrective action.
- C. Pursuant to 12.2.7, should a Member company or an Affiliate fail to take reasonable corrective action within the period specified by the Board, or fail to act in good faith in accordance with the Code, the Board shall initiate suspension proceedings in accordance with Article 8.1.5.
- D. As permitted by existing confidentiality and nondisclosure arrangements, the Board may also consider issuing a public statement on the status or outcome of its review of a particular Member company or Affiliate. Considerations of whether to issue a public statement may include a balancing of the benefits and burdens to the Association, the industry at-large, its stakeholders, and the Member company or Affiliate, following consultations with relevant parties.

IX. Duty of Members and Affiliates to Co-operate

- A. As set forth in Articles 12.2.7 and 12.2.8, Members and Affiliates are expected to co-operate in good faith with these procedures. Members and Affiliates that fail to do so risk the potential for referral of the matter to the Board and, potentially, suspension in accordance with procedures developed by the Board pursuant to Articles 8.1.5 and 12.2.7. In the event that the Board determines that the unwillingness of the Member or Affiliate to co-operate is not in good faith, the Member or the Affiliate may face suspension.
- B. A Member or an Affiliate that has endeavored in good faith to obtain the consent of its client to the conduct of Field-Based Review or any other aspect of these procedures shall not be prejudiced by the client's refusal to consent.
- C. Members and Affiliates are further expected to submit truthful and accurate information as part of Self-Assessment Report or other submission as required under these procedures. The Association reserves the right to validate the truthfulness and accuracy of information submitted.

X. Public Reporting by the Association

- A. As set forth in 12.3 the Association will report publicly, no less than annually, on its activities under Article 12. Such reports shall include a general overview of the nature and scope of Association activities, inclusive of relevant or available data, and shall at all times respect existing confidentiality and nondisclosure arrangements
- B. As part of, or together with, this public reporting requirement the Association may also consider regular public reporting on various negative and positive trends including, what may be called, "Industry trends reports."