

Rules of Procedure of the Complaints and Disputes Mechanism for International RBC Agreements^{1 2}

As of 1 March 2021

Definitions

Article 1

Definitions:

- 1.1 *Stakeholder*: any person who has suffered harm as a result of a breach of the Agreement caused or contributed to by an Enterprise or by any other entity to which the Enterprise is directly affiliated.³ Legal entities may be considered Stakeholders if the specific interests which they represent according to their activities and objects as stated in their articles of association have been harmed as a result of a breach of the Agreement.
If agreed in the Agreement, it may also be a group to which the Stakeholder belongs.
- 1.2 *Committee*⁴: independent body established by the Parties to the Agreement to rule on disputes arising from the Agreement and complaints.
- 1.3 *Agreement*: the written declaration that forms the basis for the cooperation between industry organisations and companies, government, trade unions and civil-society organisations in a particular sector and which all parties in that sector participating in the International RBC Agreement have signed. The signed agreements that form part of the joint Complaints & Disputes Mechanism (CDM) are listed in Annex 1.
- 1.4 *Party to the Agreement*: signatory to the Agreement on behalf of industry organisations, civil-society organisations, trade unions, companies or governments.
- 1.5 *Mandated Party*: a natural person or legal entity mandated by a Stakeholder to represent him/her throughout the procedure.
- 1.6 *Dispute*: the definition is as stated in the individual agreements.
- 1.7 *Complaint*: the definition is as stated in the individual agreements.
- 1.8 *OECD Guidelines*: the OECD Guidelines for Multinational Enterprises, as amended in 2011 and any specific guidelines on certain sectors published by the OECD.

¹ The Dutch version is the authoritative text in the event of differences in interpretation between the Dutch and English versions.

² The information and explanation document on the website contains further information about the complaints and disputes procedure and on terms from these procedural rules.

³ According to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, an enterprise can "cause", "contribute to" or "be directly linked to" adverse human rights impacts.

⁴ In the Agreement, the Committee is referred to as the "Complaints and Disputes Committee."

- 1.9 *Enterprise*: a company that is a Party to an Agreement or has signed the declaration by enterprises concerning an Agreement (=affiliated company).
- 1.10 *Secretariat*: the secretariat for the Agreement that assists the Parties (as defined in the Agreement).
- 1.11 *Steering Group*: governing body of the Agreement, consisting of equal representation of five groups, namely industry organisations, affiliated companies (which may be members of an industry organisation), trade unions, civil-society organisations and governments. The Steering Group is tasked with overseeing compliance with the Agreement and supervising its implementation.
- 1.12 *UNGPs*: the United Nations Guiding Principles on Business and Human Rights, published in 2011.

Composition and task

Article 2

1. The Committee consists of three members for each agreement.
2. From among them an independent chair will be unanimously appointed by all Parties to the Agreement. In addition, for each agreement, one member with entrepreneurial expertise in the sector will be appointed by the industry organisations (or companies) of the relevant agreement, and one member with expertise in the sector for each agreement will be appointed by all the trade unions and civil-society organisations involved in the Agreement. The agreements may, if necessary, specifically describe how these members will be appointed (apart from the joint chair).
3. The alternate chair will also be unanimously appointed by all Parties to the Agreement.
4. In principle, the Committee handling the matter consists of the chair and the members appointed for the agreement in which the Complaint or the Dispute has arisen. Any members appointed for another agreement may, if necessary, act as alternates.
5. The agreements may specifically provide that an alternate is appointed for the members of the Committee. The alternates are tasked with substituting for the members of the Committee as necessary.
6. The Committee members and their alternates will be appointed for a term of three years and may then be reappointed twice.
7. The members of the Committee and their alternates can be discharged during their term of office by unanimous decision of the Steering Group or at their own request.

Article 3

The Committee will resolve Complaints and Disputes arising from the Agreement.

Article 4

The Committee will be assisted by a secretary when performing its tasks.

Jurisdiction

Article 5

The Committee has jurisdiction to decide on Complaints and Disputes arising from the Agreement.

Article 6

No longer applicable

Admissibility

Disputes

Article 7

1. A Dispute submitted by the Steering Group - or other entity as provided in each agreement - is admissible if it is submitted within two months after the Steering Group - or other entity - has decided accordingly.
2. A Dispute submitted by an Enterprise is admissible if it is submitted within two months after the Secretariat has decided on the Enterprise's original action plan, its amended action plan, its progress report or its amended progress report. However, an agreement may establish a specific procedure that deviates from the foregoing.
3. A Dispute concerning the Agreement submitted by a Party or Parties to the Agreement is admissible if it is submitted within two months after failure to resolve the Dispute between the Parties to the Agreement by unanimous decision of the Steering Group. However, an agreement may establish a specific procedure that deviates from the foregoing.
4. A Dispute is inadmissible if it is manifestly unfounded.

Article 8

1. A Dispute must be submitted to the Committee by e-mail to the e-mail address on the website of the relevant Agreement. This e-mail must contain at least the following information:
 - a. Date of submission;
 - b. Name of the claimant;
 - c. Name of the defendant (Enterprise, Steering Group, Party or Parties to the Agreement) and, where the defendant is an Enterprise, its office address;
 - d. Description and substantiation of the Dispute.
2. Alternatively, a Dispute submitted by other written means may also be declared admissible by the Committee. If the information in the initial submission of the Dispute does not meet the admissibility requirements, the Committee may request additional information from the party submitting the Dispute. Failure to provide the requested information within the time limit set by the Committee will render the Dispute inadmissible.

Complaints

Article 9

1. Before submitting a Complaint, the parties involved must attempt to resolve the issue amicably.
2. A Complaint is admissible if it is submitted within a reasonable time following the occurrence of the issue and where the issue concerned is of material importance to the individual Stakeholder or to the group to which it belongs, and where it can be substantiated, both with regard to the Enterprise concerned and on the basis of the contents of the Agreement, including the OECD Guidelines and the UNGPs. The Complaint must be substantiated in such a manner that it enables the Committee to understand its nature. Any agreement may set a specific time limit for submitting a complaint to the Committee.
3. A Complaint is admissible when it meets the criterion set out in subsection 2 of this Article and the criteria set out in Article 10.
4. A Complaint is inadmissible when it is manifestly unfounded.

Article 10

1. A Complaint must be submitted to the Committee by e-mail to the e-mail address on the website of the Agreement. This e-mail must contain at least the following information:
 - a. Date of submission;
 - b. Name of the accused Enterprise;
 - c. Name of the Stakeholder and, if the Stakeholder is a legal entity, a copy of its articles of association;
 - d. If the Complaint is submitted by a Mandated Party, proof of the mandate granted by the Stakeholder and, if possible, the contact details of the Stakeholder;
 - e. Country and place of residence of the Stakeholder;
 - f. Description and substantiation of the Complaint;
 - g. Name of the site of the alleged breach.
2. Alternatively, a Complaint submitted by other written means may also be declared admissible by the Committee. If the information in the initial submission of the Complaint does not meet the admissibility requirements, the Committee may request additional information from the Stakeholder or the latter's Mandated Party. Failure to provide the requested information within the timeframe set by the Committee will render the Complaint inadmissible.
3. If the Stakeholder is unable to communicate in Dutch or English, the Committee will suggest that the Stakeholder use a Mandated Party.
4. Regarding the Stakeholder's anonymity⁵:

At the claimant's request, the Committee may decide to grant anonymity to a Stakeholder. The request must be substantiated and plausibly demonstrate that the Stakeholder's interests are harmed without anonymity. If the Committee rejects the request for anonymity, the requesting party will be given the

⁵ The information and explanation document describes the procedure applied by the Committee when assessing the Stakeholder's request for anonymity.

opportunity to withdraw the complaint with regard to that Stakeholder or in its entirety.

Article 11

A complaint by an organisation that is not a Stakeholder itself is admissible if the organisation(s) representing the Stakeholders or the Stakeholders represented themselves meet the criteria in Articles 9 and 10.

General

Article 12

Upon receipt of the Complaint or the Dispute, the Committee will rule within one month in principle on the admissibility of the Complaint or the Dispute as well as on the admissibility of the requesting party or parties.

Article 13

When a Dispute or Complaint, as well as the requesting party or parties is, in principle, admissible on the basis of the provisions of this Chapter, the Committee will deal with the Dispute or Complaint and rule on it.

Complaints and disputes procedure

Article 14

1. When the Committee has declared a Dispute or Complaint admissible in principle, it will subsequently notify the opposing party of the Dispute or Complaint in writing, and send that party a copy of the Dispute or Complaint. The Committee will at the same time inform the opposing party that it has one month in which to submit a memorandum of defence with documentary evidence relating to the Complaint or Dispute. This period may be shortened or extended by the Committee or at the request of any of the parties.
2. A copy of the memorandum of defence submitted to the Committee with documentary evidence will be sent to the party who has submitted the Complaint.

Article 15

The Committee may decide - whether or not following a request to that effect - to join cases when several Complaints are similar and concern the same:

- a. Enterprise;
- b. Breach;
- c. Site of the breach.

If the Committee decides to join cases, it will notify all parties concerned in writing, giving reasons for its decision. If the Committee decides not to honour the request to join cases, it will give reasons for its decision.

Article 16

The parties concerned have the right to be represented by third parties throughout the procedure.

Article 17

1. In the event of a Complaint, the Committee will summon the parties to attend an oral hearing.
2. In the event of a Dispute, the Committee may, at its discretion, summon the parties to attend an oral hearing. The Committee may only refrain from holding an oral hearing if the parties so agree.
3. This hearing will take place within one month after the date set for submission of the memorandum of defence as referred to in Article 14 (1). The Committee will determine the location, date and time and notify the parties accordingly. The Committee may at its discretion extend the one-month period.
4. Minutes of all hearings can be made available at the request of the parties concerned.

Article 18

At least 10 days before the hearing, the parties concerned will send each other and the Committee copies of any documentary evidence they wish to submit to the hearing. The parties and the Committee must also receive these documents at least 10 days prior to the hearing. The Committee may grant additional time for the submission of rebuttal evidence or documentary evidence relating to unforeseen matters. Documentary evidence not submitted in a timely manner by a party may be excluded from the procedure by the Committee.

Article 19

The parties concerned may be summoned to attend additional hearings at the Committee's discretion if this is warranted by the nature of the Complaint or Dispute.

Article 20

During the complaints procedure, the Committee may at any time advise the parties concerned, at its discretion, to engage in mediation or negotiations facilitated by a neutral party.

Article 21

The Committee may, at its own discretion or at the request of any of the parties concerned, allow additional written documents to be submitted.

Article 22

The Committee will offer all parties an equal and adequate opportunity to present their cases. The Committee decides on the manner in which the hearing is conducted in order to settle the Complaint or the Dispute in as fair and speedy a manner as possible.

Article 23

1. If one or more Stakeholders reside in another country and cannot attend the hearing physically, the Committee can utilise different means to establish a connection with them, including (but not limited to) telephone calls and video conferencing. The Committee may also choose to establish a connection when the Stakeholder is represented during the hearing (see Article 16) but is unable to attend in person.
2. If the Committee decides that it is not feasible to establish a connection with the Stakeholder during the hearing, the Committee may establish this connection at a different time when it deems it necessary to hear one or more Stakeholders. The Enterprise will be notified of the alternative hearing. The Committee will determine whether the Enterprise may be present at this hearing or will subsequently receive an official record thereof.
3. At the request of any of the parties involved, the Committee may decide to hear third parties (other than the Stakeholder) who reside in another country and are unable to physically attend the hearing. The Committee may decide to safeguard the anonymity of the third party. The Committee therefore has the discretion to hear this third party, either during the hearing or at another time. The Stakeholder or Mandated Party will be notified of this alternative hearing. The Committee determines whether the Stakeholder or the Mandated Party may be present at this hearing or will subsequently receive an official record thereof.

Article 24

1. Under exceptional circumstances, the Committee may appoint an independent facilitator in the following situations to hear Stakeholders and/or witnesses:
 - (a) If the Stakeholder(s) reside(s) in another country and is (are) unable to attend the hearing physically or otherwise or to provide the necessary information through a Mandated Party;
 - (b) When during the investigation the Committee considers it necessary to speak to one or more local witnesses to obtain more information.
2. The Committee will appoint the facilitator after consulting both parties on the person to be appointed and on the issues and questions to be submitted by the facilitator to the Stakeholder(s) and/or witness(es).
3. The Committee will draw up a written assignment for the facilitator. A copy of this assignment will be sent to both parties.
4. The Committee may decide to safeguard the anonymity of the persons referred to in subsections 1 (a) and (b).
5. At the request of either party, the Committee may hear the facilitator alone or - if deemed necessary - together with the Stakeholder or Mandated Party and/or other witnesses. This examination may take place before or during the oral hearing. If the facilitator is heard at the oral hearing, both the Committee and the two parties may question the facilitator. If the facilitator is heard before the oral hearing, a list of questions will be sent to the parties prior to the facilitator's hearing. The parties will be granted the opportunity to add questions to this list.
6. The parties will receive an official record of the hearing. In exceptional cases, such as where significant security risks exist, the Committee may decide not to provide the parties with a full record of the facilitator's hearing.

Article 25

1. If additional information from the production site where the breach is alleged to have occurred is deemed necessary to assess the Complaint, the Committee can order the Enterprise to supply such evidence as is specified by the Committee.
2. If the requested party deems the requested information confidential, the alternate chair of the Committee will examine the relevant information and rule on its confidentiality. The alternate chair can issue one of the following rulings:
 - a) where the alternate chair deems the information confidential and irrelevant to the decision on the Dispute or Complaint, the requested party will no longer be obliged to provide the requested information;
 - b) where the alternate chair deems the information confidential but essential to the decision on the Dispute or Complaint, the Committee may only examine the information with the consent of the requested party. If such consent is refused, the Committee may draw its own conclusions from this refusal;
 - c) where the alternate chair deems the information non-confidential, this information will be disclosed to the Committee and to the parties, unless the disclosing party objects. If consent is refused, the Committee may draw its own conclusions.

Article 26

1. At the request of one of the parties, the Committee may summon witnesses and/or experts to attend the oral hearing. Both the Committee and the two parties can then question the witnesses and/or experts. The names and addresses of the witnesses and/or experts must be submitted to the Committee at least one week before the hearing.
2. The parties are allowed to attend the expert hearings.
3. The parties are allowed to attend the witness hearings, unless the Committee decides to hold them behind closed doors for reasons of privacy or security. If witnesses are to be heard behind closed doors, the parties will be sent in advance a list of questions which the Committee intends to put to the witness(es). The parties will be granted the opportunity to add questions to this list. After the hearing behind closed doors, the Committee will send the parties an official record thereof. If necessary, sensitive information may be omitted from the official record for reasons of privacy. The official record can also be fully anonymised.

Article 27

1. An expert may be appointed at the Committee's reasonable discretion to conduct an investigation if deemed necessary to decide on the Complaint or the Dispute.
2. The Committee will appoint the expert after consulting both parties.
3. The Committee will draw up a written assignment for the expert containing the aspects to be investigated. A copy of this assignment will be sent to both parties.
4. The Committee will send a copy of the expert's report to the parties concerned, who will have two weeks within which to respond to it in writing. The Committee may extend or shorten this two-week time limit.

Article 28

The Committee can engage an independent interpreter/translator if a Stakeholder and/or facilitator and/or witness and/or expert is unable to communicate in English or Dutch.

Article 29

1. The parties may offer evidence in any form, provided that it is relevant and material to the Complaint or Dispute. Evidence that the Committee does not deem relevant and material to the Complaint or Dispute will not be admitted to the procedure and will therefore not form part of the Committee's decision-making.
2. The Committee may order the parties to produce additional information deemed necessary to decide on the Complaint or the Dispute. If the requested party deems the requested information confidential, the procedure as laid down in Article 25 (2) will be followed to determine whether the requested information is confidential.

Article 30

The Committee may pause the procedure to determine whether the issue can be resolved amicably.

Decision

Article 31

The Committee will assess the Complaint or Dispute based on the Agreement, the UNGPs, the OECD Guidelines and the standards of reasonableness and fairness.

Article 32

1. The Committee will render a decision on Complaints and Disputes within two months after the (last hearing date of the) oral hearing. The Committee may extend this time limit depending on the complexity of the procedure.
2. If no hearing is held in a Dispute pursuant to Article 17 (2), the Committee will render its decision within two months after the date of submission of the memorandum of defence as referred to in Article 14 (1) or in the absence thereof within two months of receipt of the Dispute. The Committee may extend the time limit for rendering the decision depending on the complexity of the procedure.

Article 33

1. The Committee will reach its decision by a majority of votes. Depending on the relevant agreement, unanimity may, if possible, be chosen in preference to a majority of votes.
2. The Committee's decision will be binding on all parties involved in the procedure.
3. The decision will be signed by the Chair of the Committee and the Secretary and sent to the parties in writing.

Article 34

1. The Committee will decide on its jurisdiction, the admissibility of the parties and the admissibility of the Complaint or Dispute.
2. The Committee will decide on the merits of the Complaint or Dispute by rendering one of the following decisions:
 - a) the Complaint or Dispute is unfounded;
 - b) the Complaint or Dispute is partly unfounded and partly well-founded;
 - c) the Complaint or Dispute is well-founded.
3. If the Committee rules that the Complaint or Dispute is unfounded, it can include non-binding recommendations in the decision.
4. If the Committee rules that the Complaint or Dispute is well-founded, it may include one or more of the following measures in the decision in accordance with existing standards, precedents and/or preferences of the Stakeholders:
 - a) binding recommendations for improvement;
 - b) a duty to remediate in accordance with the UNGPs and the OECD Guidelines;
 - c) non-binding recommendations.

Each agreement may determine details of the procedure and time limit for implementing the decision.

5. The Committee may only order financial compensation as a duty to remediate as referred to in subsection 4 (b), when the Enterprise has been found to cause or contribute to an adverse impact on human rights and the Stakeholder or Mandated Party has demonstrated a causal link between the breach of the Agreement by the Enterprise and the harm.

Article 35

1. Both parties will bear their own costs.
2. Where the Committee considers the Complaint to be well-founded in whole or in part, it may - in derogation of subsection 1 - order the Enterprise to compensate all or part of the costs of the procedure incurred by the Stakeholder or the Mandated Party who submitted the Complaint, in so far as the costs were reasonably incurred in the Committee's opinion and are reasonable in terms of their extent and taking into account the size of the Enterprise.

Article 36

The decision, including a decision on whether or not to declare a Complaint or Dispute admissible after a Complaint or Dispute has been submitted, will be published on the Committee's website page. The Committee may publish an anonymised version of the decision if warranted by privacy considerations. Specific agreements may depart from the foregoing.

Article 37

1. The Chair of the Committee may, at his or her own discretion or at the request of a party, rectify a manifest error in the decision within two weeks after dispatch of the binding decision.
2. A copy of the request as referred to in subsection 1 will be sent to the other party in the procedure, suspending the possible execution of the decision until the Committee has decided on the request.
3. The other party in the procedure will be given a time limit of two weeks to respond to the request referred to in subsection 1.
4. Rectification will take the form of written notification to both parties.
5. The rectified decision will be published on the Committee's website page.

Article 38

The Committee is authorised to decide on procedural issues not expressly addressed in these rules of procedure.

Confidentiality, challenge and recusal

Article 39

Committee hearings are held behind closed doors and are not open to the public.

Article 40

Members of the Committee are bound by confidentiality in respect of all information presented to them in the course of the procedure and which has not been made public during the procedure.

Article 41

Parties to a Dispute or Complaint are bound by confidentiality in respect of all information presented to them in the course of the procedure and which has not been made public during the procedure.

Article 42

1. Any one of the members of the Committee responsible for conducting the procedure may be challenged by one or both parties where there is reason to doubt his or her impartiality or independence. The Committee members may be challenged throughout the procedure.
2. A request to challenge one of the Committee members must be submitted in writing and with reasons to the alternate chair of the Committee. The alternate chair of the Committee will decide on the request. The procedure will be paused

until the alternate chair has decided on the request and, if necessary, the Committee member has been replaced.

3. Committee members can recuse themselves from the procedure at their own discretion. The procedure will then be paused until the recusing Committee member has been replaced.

Annex 1:

- the IRBC TruStone Initiative dated 13 May 2020