

Information on the procedure of the Complaints and Disputes Committee

1. General explanation

This document describes the procedure of the independent Complaints and Disputes Committee (hereinafter: CDC). The official Rules of Procedure of the CDC can be found in its Rules of Procedure.¹

The CDC deals with Complaints and Disputes arising from an RBC Agreement (hereinafter: Agreement) which provides that. At this moment only the TruStone Initiative (agreement for the natural stone sector). These agreements are based on the United Nations Guiding Principles on Business and Human Rights (hereinafter: UNGPs) and the OECD Guidelines for Multinational Enterprises. Aggrieved parties in the natural stone sector can approach the respective CDC with a Complaint or a Dispute.

A *Complaint* occurs when Stakeholders' rights are violated.

Workers at production sites can, for example, complain to the Complaints and Disputes Committee about a wage under living wage, child labour or environmental damage. Workers' representatives or other civil society organisations representing human, environmental or animal interests can also do so.

A *Dispute* is said to exist when there is disagreement between the parties in the concerned Agreement. In this case, the CDC focuses on solving the ensuing issue between Enterprises and the secretariat or between parties to the Agreement.

The parties to the concerned IRBC Agreement, established the binding grievance mechanisms.² Section 5.4 deals with follow-up steps to be taken if the parties fail to comply with the decision.

2. Adversarial procedure

In a procedure before the CDC, the complainant and the defendant are given the opportunity to appear and give their views on the case. First of all, the Committee ascertains whether it is competent to hear the case. It considers whether the concerned Agreement allows the Committee to deal with the Dispute/Complaint. The admissibility of the Complaint or Dispute is also ascertained. Admissibility is based on whether the person or body had the right to submit the Complaint/Dispute, whether it was submitted on time and whether it was submitted in the correct manner. If the Committee is not competent or the Complaint/Dispute is inadmissible, the case is closed and no assessment is made as to its substance. If, however, the Committee is competent and the Complaint/Dispute admissible, the Committee will assess it and issue a decision. The Committee's decision will then be binding on all parties to the procedure. If the parties do not comply, it can be enforced in the court of law. There is no possibility of appeal against the Committee's decision.

2.1 Competence

The Committee is competent to decide on Complaints and Disputes arising from the concerned Agreement.

¹ [Rules of Procedure of the Complaints and Disputes Mechanism for International RBC Agreements](#)

² Where advice is binding, the parties involved call in an independent third party, in this case the Committee, which issues a decision. The parties commit in advance to accepting the outcome. Falls within the scope of the settlement agreement, Section 7:900 et seq. of the Dutch Civil Code.

2.2 Admissibility

2.2.1 General

The admissibility of a Dispute, that is, whether it can be dealt with, is based on three elements: who submitted it, within what time and how. In addition to these criteria, when a Complaint is admissible it is also ascertained whether the parties have already tried to reach an amicable solution and whether the Complaint in question is sufficiently well-founded. A Complaint not made in good faith is not admissible.

Upon receipt of the Complaint or Dispute, the Committee will issue within one month a decision in principle on the admissibility of the Complaint or Dispute as well as on the admissibility of the requesting party or parties. Inadmissible Complaints will also be communicated via the website, including the nature of the Complaint and the reasons for its inadmissibility. Where a Complaint is inadmissible, the names of those involved are not mentioned.

The admissibility criteria for Disputes and Complaints are discussed below.

2.2.2 Dispute

The respective Agreement lays down a number of criteria for handling a Dispute. First, a Dispute can only be submitted by the Steering Group - or other entity as provided in each Agreement -, i.e. Enterprise, party or parties to the Agreement. If it is submitted by a person/entity other than those referred to above, it is not admissible.

The timing of its submission is also important for its admissibility. For example, a Dispute is admissible if it is submitted:

- by the Steering Group - or other entity as provided in each Agreement - within two months after the Steering Group - or other entity - has decided accordingly,
- by the Enterprise within two months after the AGT Secretariat's decision on the original plan of action, the amended plan of action, the progress report or the amended progress report of the Enterprise,
- by the party or parties to the Agreement 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.

If the Committee decides that the Dispute is manifestly unfounded, the Dispute may be declared inadmissible.

Finally, the method of submission is also important for admissibility. Any Dispute should be submitted to the Committee by e-mail, using the e-mail address on the Agreement *website*.

This e-mail should 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.

A Dispute submitted in any other written form may also be declared admissible by the Committee. If the information in the original report of the Dispute fails to meet the admissibility requirements the Committee may request additional information from the party submitting the Dispute. If the requested information is not provided within the time period set by the Committee, the Dispute will be deemed inadmissible.

2.2.3 Complaint

For a Complaint to be admissible, the parties must make a serious attempt to find an amicable solution together. If this is not successful, a Complaint can be submitted. For the submission of a Complaint to the Committee, unlike in the case of a Dispute, each Agreement may set a specific due date.

A Complaint can be submitted by Stakeholders. A Stakeholder is anyone who has suffered harm as a result of a breach of the Agreement. A Stakeholder is also involved if the breach was caused (or contributed to) by an Enterprise or another entity to which the Enterprise is directly linked. Finally, legal entities may be considered Stakeholders if the specific interests which they represent according to the factual actions and objects clause found in their articles of association have been prejudiced as a result of a breach of the Agreement.

A Complaint can also be submitted by an organisation that is not itself an interested party but represents interested parties. In that case, it is a condition of admissibility that either this organisation or the interested parties it represents meet the criteria for admissibility set out below.

A Complaint is admissible if:

- it was submitted within a reasonable time after the issue arose; and
- the issue in question is of sufficient importance to the individual Stakeholder or the group to which it belongs; and
- it can be substantiated, both in relation to the Enterprise concerned and on the basis of the contents of the Agreement, including the OECD Guidelines and the UNGPs; and
- The Complaint is substantiated in such a way that the Committee can understand its nature.

A Complaint may be declared inadmissible if, in the opinion of the Committee, it is manifestly unfounded.

For a Complaint to be admissible, the manner of its submission is also important. A Complaint must be submitted to the Committee by e-mail, using the e-mail address on the Agreement [website](#). This e-mail should 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 (extract from the Chamber of Commerce);
- d. If the Complaint is submitted by a Mandated Party, evidence of the mandate given 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.

A Complaint submitted in any other written form may also be declared admissible by the Committee. If the information in the original report of the Complaint fails to meet the admissibility requirements, the Committee may request additional information from the Stakeholder or his/her Mandated Party. The Mandated Party is a natural person or legal entity mandated by a Stakeholder to represent him/her throughout the procedure. Failure to provide the requested information within the timeframe set by the Committee will render the Complaint inadmissible.

2.3 Binding nature

If a Complaint or Dispute is upheld, the Committee's decision will be binding on all the parties involved in the procedure. This means that the decision must be complied with

and implemented. If the parties fail to comply with the decision, it is legally enforceable. See Section 5.

In addition to the matters raised, the Committee may also identify other matters not raised by the complainants. If the Committee sees fit, it may issue non-binding recommendations on these matters. The Committee may also recommend that the parties enter into dialogue as part of the procedure. This recommendation is not binding.

When submitting a Complaint to the CDC, parties must substantiate their Complaints/Disputes. The Committee can only issue binding rulings based on the arguments advanced by the parties during the procedure. If a Complaint or Dispute is declared unfounded, the Committee has the option of making non-binding recommendations. Parties are advised, but not obliged, to follow these recommendations.

Difference from the procedure of the National Contact Point for OECD Guidelines (NCP)
The NCP offers the possibility of mediation between parties in the event of a report or problem, subject to the agreement of the parties concerned. The NCP's consideration of an issue is not a judicial procedure, nor is compliance with the OECD Guidelines legally enforceable.

3. Obligation to furnish facts and burden of proof

In binding dispute resolution, the framework is determined by what is alleged and proven. The CDC cannot decide on Complaints or malpractices that are formulated too generally. It confines itself to assessing Complaints or malpractices which are sufficiently specific and concrete, and substantiated in respect of a specific production site or sites. The complainant should therefore substantiate the problem raised in its Complaint so as to enable the CDC to assess whether the Agreement has been complied with by the other party in respect of that specific problem and, where applicable, at a specific site. It is also in the interest of the other party that the Complaints are described in such a way that it can adequately defend itself against them.

Substantiation of Complaints

The extent to which a Complaint should be substantiated also depends on the claim made by the complainant. If the remedy requested is, for example, compensation, a greater burden of proof is applied. The complainant must allege facts from which it may be inferred that he or she has suffered harm as a result of that particular act by the other party. A Complaint about the improper conduct of due diligence on a specific production site requires a lesser burden of proof. It is sufficient to substantiate why due diligence was not carried out properly at that particular production site. The complainant should bear in mind that it is not sufficient to provide more general reports on the situation in a particular country. Nevertheless, general reports can be submitted in support of a Complaint. These general reports, however, do not prove beyond doubt that the specific production site is also subject to the problems found in the more general findings of that report. The latter is only different where the complainant makes a plausible case that the due diligence carried out by an Enterprise in respect of all its production sites does not meet the requirements of the concerned Agreement.

Where complainants believe that information from the defendant is still obtainable, they may request the CDC to request this information from the defendant. It is important that complainants are specific enough about the information they want to receive. They should clearly indicate the specific points on which they are requesting information. Requests formulated in too general a manner cannot be assessed by the Committee. If

the request is sufficiently specific, it is then up to the defendant to provide the information or to state why it does not have the said information.

What documents must be submitted by the complainant?

The complainant must substantiate the alleged problem with relevant documents. The Complaint can only be declared founded if it is sufficiently clear.

E-mail exchanges or relevant letters between the complainant and the defendant with concrete agreements are examples of documents that can be provided. (When sending e-mail exchanges, it is advisable to select the relevant documents from them).

What documents does the defendant have to submit?

The defendant must submit all documents relevant to the defence. Some examples are: investigation reports, extracts from audits and corrective action plans that specifically address the problems raised by complainants.

Please note: The basic principle when assessing a Complaint is the action taken by the other party: After all, it is a signatory to the concerned Agreement. The actions or omissions of the owner or operator of the production site or of the local authorities concerned cannot be attributed to the defendant. The issue is whether the other party has failed to fulfil its obligations under the concerned Agreement, including due diligence. The due diligence is assessed in conformity with the standards of reasonableness and fairness and the circumstances of the case.

4. Procedure

4.1 General

The CDC's procedure consists of the following steps:

- The complainants submit documents;
- The defendants submit their defence;
- An oral hearing is held during which the parties can present their views, Committee members can ask questions and the parties can respond to each other;
- The CDC conducts further consultations and comes to a decision;
- Its decision is made public;
- The decision is published on the CDC website.

4.2 Due dates

A decision tree showing due dates is available on the Agreement *website*. It contains the due dates for the admissibility check, the submission of documents (both at the start and in the course of the procedure), the summons for the hearing, the publication of the decision and the rectification of the decision.

4.3 Anonymity

In certain cases, anonymity may be desirable for the Stakeholder, witnesses or experts. The Committee may decide to grant anonymity at the claimant's request. The request must be substantiated and plausibly demonstrate that the Stakeholder's interests would be harmed without anonymisation. This section deals solely with Stakeholders' anonymity. The anonymity of witnesses and experts is discussed in Section 4.6.

When a request for anonymity is received, the CDC will first of all ascertain whether the defendant agrees to this confidentiality. If the defendant agrees, the names will be supplied to the CDC only. The CDC then assesses whether the person, persons and/or entity for which anonymity is requested are Stakeholders as defined in the Rules of Procedure. If so, the complainant is deemed admissible as a representative of the local organisation and/or local employees.

If the defendant does not consent to anonymity, the complainant must give reasons explaining why anonymity of the person, persons or entity concerned is necessary, proportionate and justified. The CDC may decide as follows:

- Anonymity is justified. The CDC shall verify, on the basis of information provided by the complainant which is not shared with the defendant, whether the anonymous person, persons or entity are Stakeholders as defined in the Rules of Procedure and - if so - whether the complainant is admissible as a representative of this person, persons and/or entity.
- Anonymity as such is not justified. The details of the person, persons or entity represented need only be disclosed to a limited group of persons within the defendant, for example its representatives in this procedure. These persons are required to keep the details of that person, persons or entity confidential.
- Anonymity is wholly or partially unjustified. The complainant will only be admissible as a representative of the person, persons and/or entity referred to in the Rules of Procedure if this information is supplied to the CDC and the defendant or, if this information is to be supplied only to a limited group of persons within the defendant, it is supplied to the CDC and these persons within the defendant. If the complainant persists with his or her request to keep the names of the local organisation and/or local employees confidential and represent them, he or she will be inadmissible. The complainant also has the option of withdrawing all or part of the Complaint if he or she does not wish to share the information.

4.4 Confidentiality, challenge and recusal

Committee hearings are held behind closed doors and are not open to the public. All those involved (members of the Committee, complainants and defendants) 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. The duty of confidentiality does not cease upon completion of the procedure or on cessation of the existence of the committee concerned, nor does it cease upon the conclusion of the operations of the Enterprise nor upon the termination of work of the person concerned in the Enterprise.

If either party doubts the impartiality or independence of Committee members, it may challenge the Committee members. This can be done throughout the procedure by contacting the alternate chair of the Committee. The challenge must be submitted in writing, giving reasons. The procedure will be paused until such time as the alternate chair decides whether the Committee member should be replaced. If the alternate chair decides that there is bias, the Committee member will be replaced. If the alternate chair does not believe there is any bias, the procedure will resume.

It is also possible for Committee members to recuse themselves from the procedure at their own discretion. The procedure will then be paused until the Committee member is replaced.

4.5 Hearing

When a Complaint is submitted, the parties are given the opportunity to present their views during an oral hearing. The parties may be summoned to attend additional hearings if this is warranted by the nature of the Complaint or Dispute. Parties have the possibility to request a transcript of all hearings. In the event of a Dispute, the Committee may, at its discretion, summon the parties to attend an oral hearing.

The hearing will be held, within one month after the date of submission of the defence, at a location, date and time determined by the Committee. If the Committee deems it necessary, it may extend the one-month period.

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 time by a party may be excluded from the procedure by the Committee. Please note: The deciding factor is date of receipt. When documentary evidence is sent digitally, the date of dispatch and receipt can be the same.

In specific situations, the Agreement may stipulate that no oral hearing will be held. For more information, please refer to the relevant Agreement.

How does a hearing proceed?

Prior to the hearing, Committee members will have read the documents and gone through them carefully. At a hearing, the parties are expected to present their views orally once more. The hearing proceeds as follows:

- First of all, the complainants are invited to present their views orally. Committee members are given the opportunity to ask specific questions. The complainants answer these questions.
- It is then the defendants' turn to present their views orally. In this case, too, Committee members can ask specific questions and these are answered by the defendants.
- Finally, both parties are given the opportunity to respond to each other.

If required, the Committee may hear witnesses and experts during the hearing. Experts can attend the procedure in its entirety. Witnesses are expected to testify at the beginning of the hearing and then leave the hearing.

4.6 Witnesses/experts

Parties may request the Committee to call witnesses and/or experts to be summoned to attend the oral hearing. Both parties may be present when experts are being questioned. Both parties may be present when witnesses are being questioned, unless the Committee decides for reasons of privacy or security to do so behind closed doors. Both the Committee and the two parties may question the witnesses and/or experts. If the witnesses are to be heard behind closed doors, the parties will be provided in advance with a list of questions that the Committee intends to put to the witness(es). The parties will have an opportunity to add questions to this list. After the witness 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 report can also be fully anonymised.

The Committee may require further investigation to clarify the Complaint or Dispute. After consulting both parties, the Committee may appoint an expert to conduct such an investigation. In this case, 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. On completion of the investigation, the Committee will send a copy of the expert's report to the parties, who will have two weeks within which to respond to it in writing. The Committee may extend or shorten this two-week time limit as required.

If deemed desirable, the Committee may decide to grant witnesses anonymity.

4.7 Transparency

There may be cases where the complainant requests information that the requested party has at its disposal, but would rather not share for confidentiality reasons. In such cases, the alternate chair of the Committee must peruse the information concerned and decide on its confidentiality. Subject to assessment by the alternate chair, greater weight will be given to transparency. Confidentiality is not automatically assumed unless there are exceptional cases necessitating confidentiality.

The alternate chair may decide on confidentiality in one of the following ways:

- 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 required 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.

4.8 Amicable settlement

The Committee may at any time pause the procedure to allow the parties to reach an amicable settlement. There are various ways in which an amicable settlement can be reached. The parties may reach a settlement by mutual agreement. Mediation can also be used. In mediation, parties are guided by an independent third party. The Secretariat of the relevant Agreement will maintain a list of mediators/facilitators who may be engaged by the parties. If the parties do not wish to use these mediators/facilitators, they will be free to engage other mediators/facilitators.

5. Decision

5.1 Justification

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 well-founded;
- b) the Complaint or Dispute is unfounded;
- c) the Complaint or Dispute is partly unfounded and partly well-founded.

The merits of a Complaint are an important factor in the Committee's decision.

Complaint or Dispute well-founded

Where the Complaint or Dispute is upheld by the Committee, it may include one or more of the following measures in the decision:

- a) binding recommendations for improvement;
- b) a duty to remediate in accordance with the UNGPs and the OECD Guidelines;
- c) non-binding recommendations.

The measures imposed will take into account existing standards, precedents and/or the Stakeholders' preferences.

If a Complaint is well-founded, the recommendations are binding. This means that the decision must be complied with and implemented. If the parties fail to comply with the decision, it is legally enforceable. In addition to the matters raised, the Committee may also identify other matters not raised by the complainants. If the Committee sees fit, it may issue non-binding recommendations on these matters. The Committee may also recommend that the parties enter into dialogue as part of the procedure. This recommendation is not binding.

Complaint or Dispute unfounded

Where the Complaint or Dispute is declared unfounded by the Committee, it can only include non-binding recommendations in the decision.

Complaint or Dispute partly well-founded and partly unfounded

Situations may arise where Complaints are declared partly well-founded and partly unfounded within one decision. In that case, a combination of the foregoing will apply.

Implementation

Each Agreement may specify the procedure and time limit for complying with the decision.

5.2 Costs

In principle, both parties will bear their own costs. In special cases, the Committee may depart from this in favour of the complainants. If it decides to do so, the Committee will take into account the extent to which the costs have been reasonably incurred and are reasonable in amount. The size of the defendant's Enterprise will also be taken into account.

5.3 Publication

The decision will be published on the CDC website. When justified by privacy considerations, the Committee may publish an anonymised version of the decision. Specific Agreements may depart from the foregoing.

5.4 Compliance with a decision

As indicated in Section 1, the Committee's decision is binding on the parties. There is no possibility of appeal against the Committee's decision.

In the event of non-compliance with a binding decision of the Committee, compliance can be enforced. The possibilities for Disputes and Complaints are set out below. Specific Agreements may depart from this.

Disputes

In the event of a Dispute:

- The Secretariat or Steering Group will monitor whether an Enterprise has failed to comply with a binding decision, or has failed to do so within the time limit set by the Committee.
- If a binding decision on a Dispute is not complied with, the Secretariat or the Steering Group can issue a written reminder to the Enterprise concerned.
- In the event of culpable non-compliance, the party/parties involved in the dispute are free to publish information about the dispute, the Committee's decision and the fact that the decision is not being complied with.
- Parties to the Agreement may nominate the Enterprise for expulsion.

Complaints

In the event of a Complaint:

- Where an Enterprise has failed to comply with a binding decision of the Committee on a Complaint, or has failed to do so within the period set by the Committee, the Secretariat will report this to the Steering Group.
- In the event that following the ruling of the Complaints and Disputes Committee involves influencing a factory or quarry, and this factory or quarry does not cooperate, as a result of which the ruling cannot be followed by the Affiliated Company in question, the Steering Committee can promote that the Affiliated

Companies affiliated to the Initiative do not purchase from this factory or quarry until the problems have been properly resolved.

- If compliance with the Committee's decision involves influencing a factory or quarry who cannot be induced to cooperate, as a result of which the ruling cannot be followed by the Affiliated Company in question, the Steering Group can promote that the Affiliated Companies affiliated to the Initiative do not purchase from this factory or quarry until the problems have been properly resolved.
- In the case of culpable non-compliance, the parties concerned are free to publish information about the Complaint, the Committee's decision and the fact that the decision is not being complied with.
- Parties to the Agreement may nominate the Enterprise for expulsion.

Court proceedings

The court may be asked to rule on whether the Enterprise has properly complied with the Committee's decision. If this is not the case, the court may, for example, impose a financial penalty to ensure compliance.

The substance of the Committee's decision is not reviewed in these proceedings. The court will only ascertain whether there has been a violation of fundamental principles of due process and whether it is acceptable, according to the standards of reasonableness and fairness, for the party concerned to be bound by the decision.