

Working Group on the International Code of Conduct Association Meeting of 7 September 2016

Chair's Summary

1. Introduction

A fifth exchange on the Working Group on the International Code of Conduct Association (ICoCA Working Group) was held under the Chairmanship of Sweden at the Palais des Nations in Geneva on 7 September 2016. The first part of the discussion was limited to Montreux Document participants. The Permanent Mission of Peru was invited to attend the second half of the meeting, during which DCAF presented a project on promoting the implementation of ICoCA and Montreux Document Good Practices in Latin America and the Caribbean, covering also Peru.

This summary provides a brief account of key issues discussed during the meeting. Its content is the sole responsibility of the Chair and does not purport to reflect the consensual view of participants of the ICoCA Working Group or of the Montreux Document Forum (MDF).

2. Opening remarks by the Chair of the ICoCA Working Group

In his opening remarks, Mr. Jonas Westerlund, the Chair, recalled the previous meeting of 17 June 2016 whereby the Working Group met for the fourth time. During this meeting, it was considered that in accordance with paragraph 12 of the Working Practices of the MDF, the ICoCA Working Group could provide feedback and advice on the Draft Procedures on Articles 12 and 13 of the ICoCA Articles of Association in the event that the procedures interacted with national law or policy. The Draft Procedures were shared with Montreux Document participants in advance of the present meeting (See Annex I and II).

3. Presentation by Mr. Orsmond on current activities in the ICoCA

The Executive Director of ICoCA, Mr. Andrew Orsmond, began by briefing Montreux Participants on the upcoming ICoCA third annual General Assembly of 29 September 2016. The ICoCA General Assembly will, inter alia, discuss the proposed Article 12 Reporting Monitoring and Assessment Procedure and the proposed Article 13 Complaints Procedure. An afternoon session will be available to ICoCA Members and Observers. Meetings will also take place separately within the Industry, Civil Society Organizations, Governments, and official Observers.

The Executive Director went on to give a presentation on each relevant article:

- a. Updates related to Article 11:

According to Article 11 (Certification) of the ICoCA Articles of Association, as originally drafted, all member companies were required to become certified to Board-recognized standards within 12 months of the adoption of Certification procedures (which took place in June 2015). Considering delays in devising and

implementing the certification function, however, and the need to ensure that a sufficient number of standards are recognized and the accessible to ICoCA members and potential Members, the Secretariat has recommended in a statement (see Annex III) that the General Assembly approves a 2-year extension of the original 12 month deadline to obtain ICoCA certification as well as other amendments to the certification procedure. The Board anticipates moving the certification deadline to September 2018 following a final vote at the General Assembly of 29 September 2016 in Geneva. The Statement regarding ICoCA Certification can also be found on the webpage (www.icoca.ch).

b. Updates related to Article 12:

The Executive Director then presented updates with regards to the Draft Procedures on Article 12 (Reporting, Monitoring, and Assessing Performance and Compliance). The Secretariat is laying the foundation for a strong internal monitoring capacity to carry out these essential functions, with common terminology and a common reference point for dialogue between all actors. The Procedures of this Article include Monitoring, Company Self-Assessment Reporting, and Field-Based Review as well as a process for the Secretariat to advise the Board on compliance concerns or possible violations of the ICoC and for the Board to review and determination of appropriate action. The Board may deliver recommendations for corrective action directly to the Member Company.

In the ensuing discussion, a number of Montreux Document participants requested the following clarifications:

- What was the rationale for broadening the title of the Procedures as compared to Article 12?
The Executive Director responded that it was important to include “compliance” in the title of the Procedure as the essential goal of the Procedure is to assess compliance with the ICoC.
- Have the performance and compliance indicators referred to in paragraph I (B-C) been developed?
The Executive Director responded that the ICoCA has drafted five sets of indicators which will be released on the ICoCA website shortly once they are finalized by the Board.
- Will there be deadlines for the Self-Assessment Reports in order to encourage increased responses from companies?
The Executive Director remarked that it would indeed be useful to have timeframes for Self-Assessment Reporting in order to allow for better planning and coordination. This can be discussed during the General Assembly of the ICoCA.
- To whom is the report of the Executive Director on the Field-Based Review presented to?
The Executive Director noted that the report is for the Board and the company in question.
- Do the procedures for Field Based Review (paragraph VI (B-C), envision rapid follow-through to executing the plan for Field-Based Review?
The Executive Director clarified the differences between paragraphs VI (B) and VI (C) and explained that, in the normal course, implementing the plan for Field-Based Review will follow upon consultations with the Monitoring Committee.
- Does the Monitoring Committee (paragraph VI (B)) have a broader mandate than just Field-Based Review? Are self-assessments also included in their mandate?

The Executive Director clarified that the Monitoring Committee is immediately tasked to review and advise on planned Field-Based Reviews but may acquire additional expertise to advise on other monitoring functions.

- What is the difference in terminology in paragraph IV (E) on the potential referral of alleged violations of the Code? i.e. “patterns which may rise to the level of a Code violation” vs. individual alleged violations of the Code (in line with Article 12.2.5 Articles of Association).
As explained by the Executive Director, paragraph IV (E) is intended to recognize that there may be instances of a series of more benign violations of the ICoC which, collectively, must be addressed in addition to more important violations of the Code.
- Why does the compilation and analysis of information by the Secretariat to identify compliance complaints in paragraph V (A) not include within its scope Field-Based Reviews?
The Executive Director clarified that the procedure would normally include Field-Based Reviews but the sequence was developed in this way as monitoring would generally lead to the need for a Field-Based Review. However, information obtained during Field-Based Reviews would be taken into account in considering the referral of a compliance concern to a company.
- Can the language in paragraph II (B) be adapted as follows: From “The Secretariat will establish relationships with civil society actors, clients, and other stakeholders...” to: “The Secretariat will engage with civil society actors, clients and other stakeholders...”
The Executive Director noted that proposed language change would require discussion by the Board and General Assembly.
- Has the ICoCA considered ensuring adequate gender representation within the Monitoring Committee as well as gender sensitivity when engaging in Field-Based Review?
The Executive Director responded that the Committee members are chosen from the Board, and thus reflects Board Membership. However, the ICoCA will seek to achieve gender balance and assure sensitivity both within the Secretariat team as well as for the Committee and in Field-Based Reviews.

c. Updates related to Article 13:

Pertaining to Article 13 (Receiving and Processing Complaints), the Secretariat will receive and review complaints submitted to the Association where a possible violation of the ICoC has occurred. The Board may designate a Complaints Committee to lead in overseeing the complaints mechanism. While respecting confidentiality and applicable law, the Association and Secretariat will work to indicate how complaints can be properly addressed through existing channels, such as a member company’s grievance mechanism if assessed adequate. The Secretariat may facilitate the Complainant’s access to other adequate grievance mechanisms and procedures. On this basis, the Secretariat receives and reviews complaints and facilitates access to grievance mechanisms while remaining a neutral third-party and offering pathways for resolving complaints.

In the ensuing discussion, a number of Montreux Document participants requested the following clarifications:

- Is there a process to ensure that before complaints are passed onto competent authorities, it is considered whether these guarantee fair procedures? Would the ICoCA maintain its oversight role in

the case where the competent national authority is unable or unwilling to act? What is the duration of the entire complaints process?

The Executive Director responded that the ICoCA informs Complainant of potential fora where their complaint may be addressed and that referral of complaints to criminal prosecution would be done only where appropriate and taking into account the rights of the Complainant. The ICoC will not consider a complaint while it decides whether to refer it. As the priority is to remedy the issues brought forward by the Complainant, the ICoCA may continue to process a complaint notwithstanding the fact that a referral has been made. Paragraph 67 of the ICoC states that Complainants will receive guidance regarding avenues for remedy within 60 days of receipt of the complaint. This can be extended if needed.

- Regarding paragraphs IV-VIII, if another mechanism gets involved in the complaint, what is the procedure of disclosure of information to relevant groups?

The Executive Director described that when receiving complaints, the Secretariat will not refer information outside of the ICoCA process without the complainant's explicit permission. If there is criminal activity, then this information may be referred while still maintaining confidentiality to the extent possible.

In his concluding remarks, the Chair thanked all representatives for a constructive and fruitful discussion on this agenda point and underlined that the main points of the discussion will be reflected in the Chair's summary from the meeting and sent to the Association ahead of the General Assembly on 29 September 2016. As an Advisory Forum to the Association, in accordance with Article 10 of the ICoCA Articles of the Association, the ICoCA WG had given an opportunity to all Montreux Participants to provide advice to the Association on key draft procedures.

4. Any other issues

Regarding the Montreux Document Forum, the next Plenary Meeting will take place in the first quarter of 2017, with an emphasis on involving more national level actors to foster dialogue over concrete implementation issues. The meeting will address certain procedural issues, such as the election or re-election of the members of the Group of Friends of the co-Chairs and the Chairs of the Working Groups.

The next meeting of the ICoCA Working Group will take place in the first semester of 2017 and will be determined in a communication to Montreux Document participants.

5. Presentation by Nelleke van Amstel – DCAF; *On Supporting National Implementation of the ICoC and the Montreux Document Good Practices in Latin America and the Caribbean*

The Permanent Mission of Peru joined this part of the meeting. DCAF presented a project which supports the national implementation of ICoC and Montreux Document Good Practices in several Latin American and Caribbean states. As one example, the presentation discussed cooperation between the Private Security Regulatory Authority of Peru (SUCAMEC) and DCAF on the implementation of the private security regulation. See Annex IV for the presentation. SUCAMEC is also invited to participate in the 29 September General Assembly.

The Chair concluded the discussion by praising DCAF's support to the Government of Peru, and the aforementioned Government's success in implementing relevant national regulations. It is the Chair's intention to continue to invite more external guests in future ICoCA Working Group meetings to share best practices on national private security regulations.
