Governance Group decision 03/2014

The dispute resolution options foreseen in contracts

The Governance Group has received two questions via its member organisations on the interpretation of the Framework regarding the dispute resolution options.

Question 1

Is it sufficient from the Framework perspective to allow only for the internal dispute resolution system (and not for mediation, and arbitration as stipulated in the Framework)?

Response:

According to Pillar 3 of the Framework (addressing disputes and finding solutions), Paragraph 1 (Individual disputes), "[r]egistered companies must review and, if necessary, modify their contracts to make sure they are compatible with the current framework". This means that registered companies should make available **all** the following options to solve disputes on alleged breach of the Principles of Good Practice to other registered companies, or otherwise entitled companies, who seek to resolve a dispute over an alleged breach of the Principles:

a. Commercial track;
b. Contract options;
c. Internal dispute resolution;
d. Mediation or arbitration;
e. Jurisdictional methods (as the complainant may choose to resort to the ordinary jurisdictional methods according to national rules and regulations).

Before registration, companies are required to make sure that they are prepared to engage in all of the dispute resolution options provided for in the framework. A company cannot formally register to The Supply Chain Initiative when this process commitment is not fulfilled.

The obligation on registered companies to ensure that their contracts are compatible with the dispute resolution mechanisms under the Framework does not require registered companies to modify existing contracts to introduce specific dispute resolution methods, but simply to ensure that their contracts do not expressly preclude the parties from engaging in any of the dispute resolution methods available under the Framework.

In normal commercial dealings, contracts will not prevent parties from trying to resolve disputes amicably before resorting to litigation. The Framework encourages this by requiring registered companies to make these options available to complainants who allege a potential breach of the Principles, and leaves it up to the parties to decide which option(s) to use for the dispute at hand.

The Framework does not allow a contractual provision that requires complainants to use only one of the options for dispute resolution to the exclusion of other options unless parties agree to use arbitration as explained below (e.g., the jurisdictional method or arbitration).

Question 2

Can a contractually mandatory arbitration clause prevail over the other dispute resolution options?

Response:

The Principles are not intended to interfere with national policies to promote arbitration as a means of resolving civil disputes. Parties may agree, if allowed by national law, to resolve legal disputes between them through arbitration, to the exclusion of litigation before the courts.

Such agreements only preclude the possibility of going to court (jurisdictional method) to resolve legal disputes that involve an alleged breach of the Principles. The registered company who receives a complaint under the Framework must still make available the other dispute resolution alternatives.

This rule also applies to contracts containing arbitration clauses which existed prior to registering to the Initiative, which have the effect of excluding the right to go to court in case of breach of law, if permitted by the applicable law.

Brussels, 3 February 2014

The above decision reflects the Governance Group's internal discussions on a particular question. It has been made available solely for the purpose of clarifying a specific point of the Framework. It has no legal value.