

TERMS OF REFERENCE

INDEPENDENT INVESTIGATION FOR COMPLAINT RSPO/2021/04/EN

1. Background

On 9 March 2021, ten Civil Society Organisations (CSOs) (the “**Complainants**”) filed a complaint against the RSPO Member, First Resources Ltd (“**FR**” or the “**Respondent**”).

The allegations against the Respondent are as follows:

1. The Respondent allegedly has ownership, control and influence over a company called Fangiono Agro Plantation (**FAP**) Agri, a non-RSPO member who was not declared in the Respondent’s RSPO Group Membership.
2. The Respondent also allegedly has ownership, control, and influence of an Indonesian company, Ciliandry Anky Abadi (**CAA**) who is a subsidiary of a British Virgin Islands registered company by the name of Sima Capital. This company too was not declared to be a part of the Respondent’s RSPO Group Membership.
3. The Respondent, via FAP or by FAP’s 11 subsidiaries have violated the RSPO Principles and Criteria by deforestation, peatland degradation, using lands for plantation without FPIC, river pollution, and unilateral layoffs of workers.
4. The Respondent, via CAA, have violated the RSPO Principles and Criteria by deforestation, peatland degradation, using lands for plantation without FPIC, and river pollution
5. The Respondent is violating its NDPE Commitments, the RSPO Principle and Criteria, the RSPO Code of Conduct, and RSPO membership rules

For the purposes of determining this Complaint, the Complaints Panel has directed the Secretariat pursuant to section 7.1.4 of the Complaints and Appeals Procedures to engage an independent investigator/expert (“**Consultant**”) to conduct an independent investigation for the purposes of determining if allegations (1) and (2) are true and can be upheld or otherwise.

This Terms of Reference is prepared in order to set out terms for the independent investigation for only allegations (1) and (2) above.

2. Scope of the Independent Investigation

The scope of the independent investigation is to determine the following:

- Whether the Respondent has ownership, control and influence over FAP and CAA under the relevant laws and RSPO Membership Rules, if any? and
- What is the status and/or forms of relationship between the FAP and CAA and the Respondent under the relevant laws and RSPO Membership Rules, if any?

3. Methodology

The Consultant shall conduct the investigation via desk review of publicly available documents and provide an independent analysis based on the data obtained. The desk review of all the relevant documents shall include but is not limited to: -

- a) Submission and responses from the Parties to the Complaint;
- b) Relevant legal documents (including but not limited to independent search and confirmation with relevant authorities); and
- c) Other relevant documents as deemed appropriate and necessary by the independent investigator/expert for the purposes of this exercise.

4. Expected outcomes

The expected outcome of this exercise is a report from the Consultant addressing the above. The complete template for the report is to be developed in consultation with the Secretariat to ensure that all concerns are fully addressed.

5. Schedule

The timeline for this exercise is dependent on the availability of the Consultant. Parties to the Complaint will be updated on the agreed timeline of the investigation exercise upon consultation between the Secretariat and the Consultant and upon approval of the timeline by the Complaints Panel.

6. Estimated Cost

The RSPO has allocated a budget for this exercise. It will meet the reasonable cost of the independent investigator/expert.

7. Conflict of Interest and Non-Disclosure

The Consultant must declare any potential conflicts of interest with the related parties prior to beginning the review process. In cases where potential conflicts of interest are identified, the independent expert will not proceed with the review and an alternative expert will be assigned to the case.

The Consultant shall agree that during the term hereof, and at all times thereafter, and except as specifically permitted herein or in a separate writing signed by RSPO, the Consultant shall not use, commercialise or disclose Confidential Information to any person or entity.

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