



IMPLEMENTATION OF GA RESOLUTION 6D

DISCOURAGING RSPO MEMBERS SUBJECT TO COMPLAINTS
FROM AVOIDING THEIR OBLIGATIONS BY DIVESTMENT OR
WITHDRAWING THEIR MEMBERSHIP

PROPOSALS FOR PUBLIC CONSULTATION
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Background

The Resolution 6D, titled “Discouraging RSPO Members Subject to Complaints from Avoiding Their Obligations by Divestment or Withdrawing Their Membership” (hereinafter referred to as “Resolution 6D”) was a result of growing concern about members who are subjected to complaints divesting and withdrawing their membership during the course of an active Complaint.

To the date of publication, 3 RSPO members have withdrawn their membership and another 3 members have divested their units during a complaint before the said complaint against them could be fully investigated or resolved. Whilst RSPO recognises the importance of its member’s business decisions, the aim of Resolution 6D is to seek sustainable solutions to ongoing issues and encourage RSPO members to uphold their commitments when faced with complaints.

In achieving the intended goal of Resolution 6D, the Resolution 6D Task Force was formed in June 2019, comprising representatives of each RSPO Membership Sector - 2 representatives from the palm oil growers’ sector, 2 representatives from the NGOs sector, 1 representative from the Complaints Panel and 1 representative from the Financial Institutions.

To date, the Resolution 6d has appointed and concluded a legal review of the RSPO Key Documents to identify the key areas that can be worked on. The Resolution 6D Task Force has also convened for 4 online meetings and 1 physical meeting to conceptualise the recommendations in this paper.

In line with ISEAL’s Code of Good Practice¹, this paper is now being put up for its first round of public consultation. Comments from the public consultation will be collated and reviewed for improvements and further consideration.

The key ideas in this paper are as follows –

Key Ideas in Implementation of Resolution 6D

- Introduction of divestment clauses via amendments to the RSPO Complaints and Appeals Procedure 2017
- Introduction for a time bar period via amendments to RSPO Membership Rules.
- Publication of divested units and withdrawn members on the RSPO Complaint’s Portal.
- The amendment to RSPO Complaints and Appeals Procedure to extend the powers of the Complaints Panel to Issue Out Urgent Action and Interim Measures in Complaints involving Divestments.

Note:

The Public Consultation 30-day period commences on 1 June 2020 and will expire on 30 June 2020. The following events will also take place during the public consultation:

- Webinar on Resolution 6D – “Divestments and Withdrawals during RSPO Complaints – A Session with Malaysian Growers” – 9 June 2020;
- Webinar on Resolution 6D – “Divestasi dan Penarikan Selama Terdapat Pengaduan di RSPO – Sesi Dengan Perusahaan Perkebunan Indonesia” on 16 June 2020
- Webinar on Resolution 6D – “Divestments and Withdrawals during RSPO Complaints – A Session with Latin American and African Growers” – 22 June 2020.

¹ https://www.ftc.gov/sites/default/files/documents/public_events/enforceable-codes-conduct-protecting-consumers-across-borders/iseal-code-good-practice.pdf

1. Introduction of Divestment and Withdrawal Clauses in RSPO Complaints and Appeals Procedure

As of 29th February 2020, the RSPO's Complaints System has received and managed over 140 complaints against RSPO members. In July 2017, the Board of Governors endorsed the RSPO Complaints and Appeals Procedure 2017 (hereinafter referred to as "CAP"), allowing a more streamlined and improved structure on how cases are managed and governed.

Presently, the CAP is silent on the management of complaints where members subject to complaints withdraw or divest the unit in question. In the past, due to the rare occurrences of such withdrawals or divestments during active complaints, the Complaints Panel has opted to resolve the case under its general powers.

With the aim to provide clarity to the procedures and to equip the RSPO Complaints Panel with the adequate powers and jurisdiction to issue necessary directions, the Resolution 6D Task Force is putting forth the following proposed amendments and inclusions into the RSPO Complaints and Appeals Procedure 2017 –



Introduction of the definition of Divestment and Withdrawal in the Key Definitions



Duty of the Parties in a Complaint to disclose divestments to the Complaints Panel via the Secretariat upon signing the Sale and Purchase Agreement of the unit or asset complained against.



To extend the powers of the Complaints and Appeals Panel to make necessary directions in cases where divestments or withdrawals are involved.

i. The Introduction of the Definitions of Divestment and Withdrawal in the Key Definitions

Proposed Amendment -

Section 2 – Definition of Key Terms

- 2.13 Divestment – Member Companies selling part of their current operations, divisions, or subsidiaries.
- 2.19 Withdrawal of RSPO Membership – Member Companies withdrawing their RSPO membership

The definition of divestment above is in line with the general concept and definition of divestment in international trade. The same is also in line with the definition of divestment by the Organisation for Economic Corporation and Development (OECD)².

ii. The imposition of duty to disclose proposed or planned divestment by Parties upon signing of the Sale and Purchase Agreement.

Dealing with Parties who plan to or have divested in the course of a complaint is often complicated. Numerous considerations must be observed, such as when the parent company will lose control over the

² Section 66 of the Glossary of Industrial Organisation Economics and Competition Law – Organisation for Economic Co-operation and Development.

divested unit, whether the new owners are RSPO members, and how the corrective actions (if any) are going to be put in place.

For the foregoing reason, the Resolution 6D Task Force puts forth a recommendation that Parties in a complaint must declare to the Complaints Panel via the Secretariat should the unit complained against is being divested.

However, due regard is given to the Members autonomy in its business dealings and the practicalities of declaring a divestment before its finality. Accordingly, the Resolution 6D Task Force puts forth that the declaration is to be made upon signing of the Sale and Purchase Agreement. The proposed amendment is as follows -

Proposed Amendment -

- 9.4** In instances where a Divestment of the unit complained against takes place during an active course of a Complaint, Parties to the Complaint shall inform the Complaints Panel via the Secretariat of the divestment within 10 days of the signing of the Sale and Purchase Agreement.

iii. To grant the necessary jurisdiction to the Complaints Panel to issue directives to Parties in events of divestments during an active Complaint.

Mergers and acquisitions are rarely straightforward and dealing with complaints involving divestment requires directions that are often deliberated on a case – to – case basis. It is therefore vital to have the Complaints Panel empowered to issue out the necessary directives. Such directives may include the issuance of commitment letters, calling for commitment to the new RSPO owners and the issuance of joint corrective actions.

The Resolution 6D Task Force accordingly proposes for the following to be included via amendment to the Complaints and Appeals Procedure –

Proposed Amendments -

Section 7 – Powers of the Complaints Panel

7.1 The Complaints Panel shall have the following powers:

7.1.16 *in instances of planned or proposed divestment of the Respondent, to issue necessary directives to the Respondent, its current parent company and/or its intended new RSPO parent company directives as stated in 7.1.15 above.*

7.1.17 to proceed with its investigations and deliver its decision notwithstanding the resignation or withdrawal of the Respondent as an RSPO member, *or divestment of the unit by the Respondent to a non-RSPO member*, and where appropriate recommend that the Board of Governors issue a public censure.

**emphasis to show proposed changes*

The intended outcome of the above recommendations is to ensure that the breaches and subject matter of the complaint is fully addressed and resolved, and that Members uphold their obligations under the RSPO Key Documents, even when a divestment within the company takes place.

2. Amendments to RSPO Membership Rules



The RSPO Membership Rules provides the framework of how RSPO applications are processed and managed. Presently there are no provisions guiding the reapplication of ex-RSPO members who withdrew their membership in the course of an active complaint.

In line with the Resolution's aim to discourage withdrawals during an active course of complaints, the Resolution 6D Task Force puts forth a recommendation for the introduction of a time bar where a (former) member who withdrew their membership in an active course of a complaint is barred from re-application to become an RSPO member for a period of 48 months from the date of the official termination of membership.

The introduction of this principle is to ensure that RSPO Members stay committed to their obligations in sustainability practices, and to discourage members from withdrawing from the organisation for the purposes of avoiding liabilities under a complaint.

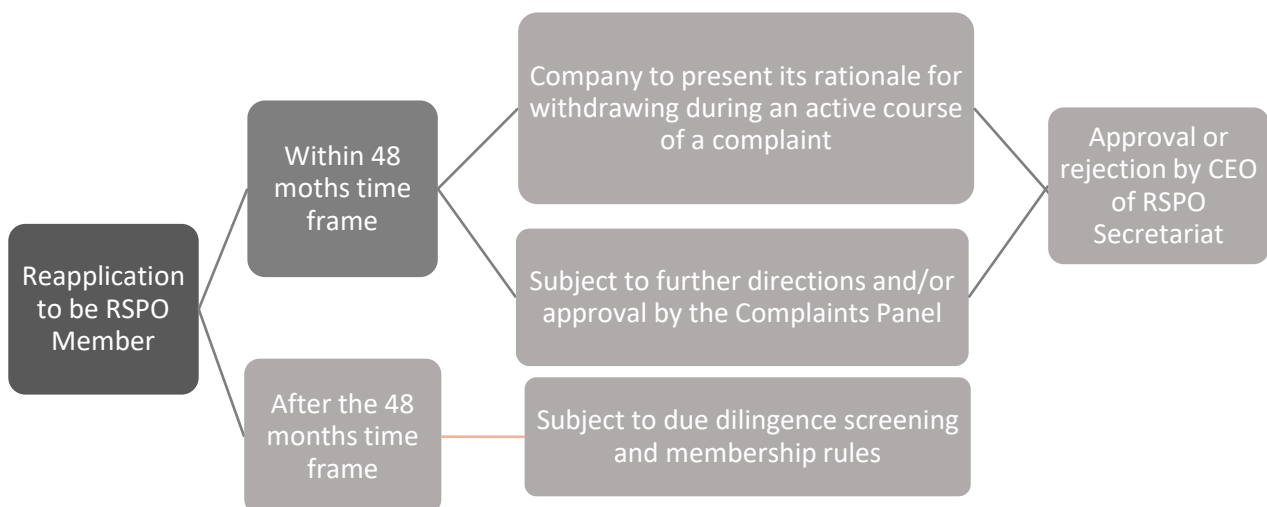
However, recognising that RSPO is a voluntary based organisation, and in giving regard that some withdrawals may be *bona fide* business decisions based on economic and internal reasons, the Resolution 6D Task Force also puts forth an exception to the above time bar period. Should a former member with an active complaint puts in an application for membership during the 48-month period, the Resolution 6D Task Force recommends having procedures in place to ensure the complaint and breaches are still being addressed.

The proposed amendments along with an illustration of the procedures are as follows -

Proposed Amendments -

3.7 Membership Withdrawals During Active Cases

- 3.7.1 In instances where a member withdraws its RSPO membership in the course of active an active Complaint, the same member shall not be allowed to re-apply for RSPO membership for a period of 48 months from the date of official termination of membership.
- 3.7.2 Should a former member in 3.7.1 above puts in an application within the stipulated 48 months, the application is subject to approval of the CEO of the RSPO Secretariat and further directions by the RSPO Complaints Panel. The former member is required to provide justifications and reasons of withdrawal of the Membership and may be subject to further inquiry and directives, if deemed necessary.



Info:

1. For re-applications made after the expiry of 48 months, the complaint against the former member will be captured in the existing Membership Unit's SOP. The same will be subject to the Complaints Panel directions.

3. Publication of Divested Units and Withdrawn Members on RSPO Complaints Portal

The RSPO Complaints Portal is one of the main sources available online, both for RSPO Members and the public interested to obtain more information on complaints against RSPO Members. In support of RSPO's commitment to transparency, the Resolution 6D Task Force puts forth their recommendation to publish a list of divested units and withdrawn members on the RSPO Website. The publication is intended to take place upon adoption by the RSPO Board of Governors and will cover all divestments and withdrawals from the date of passing of Resolution 6D.

The list will be published at the RSPO Complaints Portal and the mock-up can be seen below -

The screenshot displays the RSPO Complaints Portal interface. At the top, there is a navigation menu with categories like ABOUT, MEMBERSHIP, CERTIFICATION, SMALLHOLDERS, P&C 2018, and IMPACT. The main content area features an 'Overview' section with two large red circles highlighting the 'TOTAL DIVESTMENTS' and 'TOTAL WITHDRAWALS' statistics, both showing a count of 3. To the right of these statistics is a pie chart titled 'Nature of Complaint' showing categories like Land, Environment, and others. Below the overview is a section titled 'FULL LIST OF DIVESTMENT & WITHDRAWAL In the Course of an Active Complaint'. This section includes a search filter box and a table with columns for Date of Divestment, Name of Management Unit / Estate / Facilities, Parent Company, Country, Membership Category, Type, and Link to Case Tracker. A red circle highlights the 'Link to Case Tracker' column, which contains green arrows pointing right. A red line also points to the search filter box.

Total number of divestments and withdrawals in the course of an active Complaint to date

Categories of Complaints in the complaints involving divested units and withdrawn members

Search function

Link to RSPO Complaints Case Tracker

Date of Divestment	Name of Management Unit / Estate / Facilities	Parent Company	Country	Membership Category	Type	Link to Case Tracker
Jan-2019	PT Perusahaan Perkebunan London Sumatra Indonesia Tbk	PT Salim Ivomas Pratama Tbk	Indonesia	Oil Palm Grower	Withdrawal	➔
Oct-2016	Plantaciones de Pucallpa SAC	Plantaciones de Pucallpa SAC	Peru	Oil Palm Grower	Withdrawal	➔
Aug-2012	Herakles Farm Cameroon	Herakles Farms Cooperatief	United States of America	Oil Palm Grower	Withdrawal	➔
Jul-2019	PT Mistra Austral Sejahtera	Sime Darby Plantations	Indonesia	Oil Palm Grower	Divestment	➔
Apr-2015	PT Hati Prima Agro	Bumitama	Indonesia	Oil Palm Grower	Divestment	➔
Apr-2013	PT Asiatic Persada	Wilmar International	Indonesia	Oil Palm Grower	Divestment	➔

4. Equipping the RSPO Complaints Panel with the Jurisdiction to Issue Out Urgent Action and Interim Measures in Complaints Involving Divestments

RSPO Complaints and Appeals Procedure 2017 states that the Complaints Panel may issue necessary directives for instances which require urgent action and interim measures.

In ensuring that the Complaints Panel can issue out necessary directives to disincentivise withdrawals and divestments, the Resolution 6D Task Force recommends the inclusion of the following provisions, which allows the Complaints Panel to issue necessary directives, including directives to temporarily suspend the P&C Certification for divested units.

Proposed Amendment -

10. URGENT ACTION AND INTERIM MEASURES

10.1 If, after considering the assertions made by the Complainant in the Complaint, the assertions of the Respondent in its response, the evidence submitted by the Parties and any independent expert in its responses, the evidence submitted by the Parties and any independent expert reports the Complaints Panel forms the view that the circumstances stated in Section 10.2 are present and the balance lies in favor of it, the Complaints Panel may direct that the Secretariat shall take urgent action.

10.2 Subject to the evaluation as stated in Section 10.1, the Complaints Panel shall direct urgent action be taken by the Secretariat in the following circumstance:

10.2.3 *cases where the unit in question is being divested before the completion of investigations*

10.3.4 *for instances of divestments made in the course of the Complaint, a temporary suspension of the P&C Certification.*

**proposed amendments*

Conclusion

RSPO recognises the efforts undertaken by its members to ensure that sustainability is a key component in its production and trade. The proposals above are put forth not to undermine or micromanage RSPO's members' internal decisions, but rather to enhance the overall RSPO system. The proposals set forth will ensure that efforts undertaken by compliant RSPO members are not in vain due to other RSPO member's choice to divest or withdraw its membership.

Should you have any queries or comments, kindly download the feedback form on the RSPO website and provide your feedback at resolution6d@rspo.org.

The RSPO is an international non-profit organisation formed in 2004 with the objective to promote the growth and use of sustainable oil palm products through credible global standards and engagement of stakeholders.

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