



IMPLEMENTATION OF GA RESOLUTION 6D

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

PROPOSALS FOR 2nd PUBLIC CONSULTATION
26 AUGUST – 26 SEPTEMBER 2020

Document Title : Implementation of RSPO General
Assembly Resolution 6D

Document Code : N/A

Document Type : Proposal for 2nd Public
Consultation

Contact : resolution6d@rspo.org
lzzati.rahman@rspo.org

Background

Following rising concerns among RSPO members on other members withdrawing their RSPO membership when facing active complaints or divesting their units complained against, Resolution 6D was passed on 15 November 2018 to address the issue.

The Resolution 6D, titled “Discouraging RSPO Members Subject to Complaints from Avoiding Their Obligations by Divestment or Withdrawing Their Membership” resulted in the formation of the Resolution 6D Task Force comprising of representatives of various RSPO Membership Sector – 2 representatives from the palm oil growers’ sector, 2 representatives from the NGOs sector, 1 representative of the Complaints Panel and 1 representative from the Financial Institutions.

The Resolution 6D Task Force convenes on a regular basis to ensure that the concerns raised are looked into and practicable, pragmatic and constructive measures can be implemented to the existing RSPO structure to ensure that members are discouraged from divesting their unit complained against, and maintain their RSPO membership throughout the complaint.

The RSPO recognises the importance of respecting its members’ prerogative in making business decisions. The RSPO also respects its members’ autonomy in determining the direction of the company and its relationship with RSPO. However, such measures proposed in this public consultation are to discourage such decisions from being made and avoid *mala fide* withdrawals and divestments which goes against the core values of the organisation.

It is also important to note that the following proposals will only affect RSPO Members who have active complaints lodged against them which have not been fully resolved under the RSPO Complaints and Appeals System.

In June 2020, the Resolution 6D has put forth 4 key proposals to achieve the above aim, and the same was put up for public consultation. The Task Force has since received numerous feedbacks from the stakeholders and has continued to refine the proposals after taking into consideration the comments received.

In line with ISEAL’s Code of Good Practice¹, the proposals are now being put up for its second 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.

Aside from the key proposals above, the Resolution 6d Task Force is also working closely with the Secretariat and has issued multiple recommendations to ensure that the goals of the resolution are met. Amongst

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

others, the Resolution 6d Task Force has recommended the following to be looked into by the RSPO Secretariat: -

1. For the RSPO Secretariat to produce a guideline for RSPO members on investment to guide members in identifying key problems in their potential investments, and how to address those key problems before they escalate into a complaint;
2. For the proposals herein are complemented with continuous improvements of other units within the RSPO; and
3. For the proposals herein be accompanied with a more structured and robust SOP to manage the rising concern of divestments and withdrawals.

Note:

The Public Consultation 30-day period commences on 26 August 2020 and will expire on 26 September 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 and Indonesian Growers” on 11 September 2020
- Webinar on Resolution 6D – “Divestments and Withdrawals during RSPO Complaints – A Session with Latin American and African Growers” – 14 September 2020.

Applicability

As stated in the title of the resolution, the proposals herein are aimed to only address divestments and RSPO membership withdrawals when the said members are facing active complaints.

For the purposes of this resolution, a complaint is defined in Section 2.7 of the RSPO Complaints and Appeals Procedure (hereinafter referred to as “the CAP”) as “*formal allegation (other than in an appeal) of a breach of one or more of the RSPO Key Documents as defined in Section 4.2*” where it has been accepted in accordance to Section 5 of the CAP until the matter is closed under the existing Complaints system.

Save for proposal 3, the proposals will be enforceable for all active complaints at the point of endorsement by the Board of Governors. For proposal 3, the publication of divested units and withdrawn members (if made in the course of an active complaint) will only take place upon endorsement by the Board of Governors, but the content will cover all divestments and withdrawals that have taken place from the date of passing of Resolution 6D.

1. Introduction of Divestment Clauses via Amendments to the RSPO Complaints and Appeals Procedure 2017

As of the publication of this document, the RSPO’s Complaints System has received and managed 149 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.

The proposal to amend the Complaints and Appeals Procedure will include the following -



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 – Parent companies selling or relinquishing their rights of their Subsidiaries via sale or transfer of ownership to another entity. For definitions of Parent or Subsidiaries, please refer to the RSPO Membership Rules.
- 2.19 Withdrawal of RSPO Membership – Member Companies withdrawing their RSPO membership.

The definition of divestment above is in line with RSPO Membership Rules and the requirement of group membership.

Generally, Group Membership has been made a compulsory requirement via endorsement of the Board of Governors on 11 November 2016. All RSPO Members must comply with this requirement from 6 March 2017.

Illustration & Applicability

2.13 Divestment

A is a parent company registered in Kuala Lumpur, Malaysia. A has 10 subsidiaries across Malaysia and Indonesia. All the 10 subsidiaries are registered in accordance with the Group Membership requirements. A complaint was lodged against B, one of A’s 10 subsidiaries. Divestment, in the context of this resolution is said to take place when A sells off or relinquishes its right of B before the complaint against B is resolved.

2.19 Withdrawal of RSPO Membership

A complaint was lodged against X. Before the complaint against X could be resolved, X withdraws its RSPO membership.

ii. **The imposition of duty to disclose proposed or planned divestment by Parties upon divestment of the unit complained against.**

Dealing with Parties who plan to or have divested during a complaint is often complicated. Numerous considerations must be observed, such as when the parent company will lose control over the divested unit, whether the new owners are RSPO members, the status of investigation against the unit 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. This disclosure would provide sufficient notice to the Complaints Panel to deliberate on the next steps of the complaint.

The RSPO recognises that its members have autonomy in its business dealings and recognises the complexities of disclosing a divestment before its finality. For that reason, the Resolution 6D Task Force puts forth their recommendation that such declaration is made with 10 working days after official divestment, be it via the signing of the Sale and Purchase Agreement, or other related legal instruments.

Recognising the importance of transparency in the Complaints System, the Resolution 6d Task Force also puts forth the recommendation that the Secretariat must immediately inform the Complainant of such divestment.

Proposed Amendment -

- 9.4** In instances where a Divestment of the unit complained against takes place during the active course of a Complaint, Parties to the Complaint shall inform the Complaints Panel via the Secretariat of the divestment within 10 working days from the official divestment, such as the date of signing of the Sale and Purchase Agreement, or any other related legal instrument. The Secretariat, upon receiving such information must also inform the Complainant on the divestment.

Illustration & Applicability

Illustration 1

A is the parent company of B, and they are registered under A's Group Membership. A complaint has been lodged against B. Before the complaint against B could be resolved, A signed a Sale and Purchase agreement with C, another RSPO member on 1 January 2021. A must, within 10 working days after the signing of the legal instrument, inform the Complaints Panel via the Secretariat that such divestment has taken place. The Secretariat, upon receiving the information and verifying the same, must inform the Complainant within a reasonable period. The Complaints Panel, having learn this new development, will be able to deliberate on the next action plan on this complaint.

Illustration 2

X is the parent company of Y, and they are registered under X's Group Membership. A complaint has been lodged against Y. Before the complaint against Y could be resolved, X entered into a share sale agreement with D, a non-RSPO member on 1 January 2021. X must, within 10 working days after the signing of the legal instrument, inform the Complaints Panel via the Secretariat that such divestment has taken place. The Secretariat, upon receiving the information and verifying the same, must inform the Complainant within a reasonable period. The Complaints Panel, having learn this new development, will be able to deliberate on the next action plan on this complaint.

Note:

Following the Resolution 6d first Public Consultation in June 2020, some members raised their concerns on the issue of confidentiality when it comes to disclosing their divestments to Non-RSPO members. Please see the clarification points below.

- 1. The proposals herein will only affect divestments when they are made before a complaint against the said unit is resolved. It will not affect the everyday business operations of RSPO members which may include mergers, acquisitions, and divestments.*
- 2. Should an RSPO member chooses to divest the unit complained against before the resolution of such complaint, the RSPO member must declare the divestment itself, and not the confidential information related to such divestment (share price, sale price, payment method, purchaser's shareholder details, etc).*
- 3. In any event, confidentiality is treated with utmost caution under the RSPO Complaints and Appeals System, and Section 3.3.3 of the Complaints and Appeals Procedure focuses on the need to be respectful about the need to maintain certain information as confidential. At any point of the complaint, members may seek assistance from the Secretariat to ensure that any documents submitted are treated with utmost confidentiality.*

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

Following the declaration of the divestment by Respondent, the Resolution 6d Task Force recommends that the Complaints and Appeals Procedure is amended to expand the powers of the Complaints Panel to issue out the necessary directives in cases involving divestments.

In the past, the Complaints Panel has opted to resolve complaints related to divestments under its general powers. The incorporation of the following amendment would provide clarity on the Complaints Panel's power when it comes to divestment.

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 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*

Illustration & Applicability

7.1.16 – the Power of the Complaints Panel to issue out necessary direction.

Illustration 1 (where the new owner is RSPO member)

A is the parent company of B, and they are registered under A's Group Membership. A complaint has been lodged against B. Here, the Complaints Panel has directed for them to go through the Remediation and Compensation Process. However, before the Remediation and Compensation Process could be concluded, A informed the Complaints Panel via the Secretariat that A has signed a Sale and Purchase Agreement with C, another RSPO member. The amendment would empower the Complaints Panel to issue out necessary directives to A, B and C to resolve the complaint. For example, the Complaints Panel may issue out recommendations or directions for Remediation Plan be maintained by the new owners, or request for commitment letters be issued on A's payment for compensation under the RaCP process.

Illustration 2 (where the new owner is not an RSPO member)

The RSPO Complaints and Appeals System is only applicable to RSPO members. Accordingly, the RSPO Complaints System will not subject the new (non-RSPO member) owner to the Complaints System. In the example above, should the divestment be made to a non-RSPO member, the Complaints Panel may still request for commitment letter be issued on A's payment for compensation under the RaCP process, and direct A to share and recommend the remediation plan to the non-RSPO member to guide the non-RSPO member on sustainable practice.

7.1.17 – Power to continue investigation and issue our recommendations to the RSPO Board of Governors for Public Censure.

From its endorsement in 2017, the Complaints and Appeals Procedure has equipped the Complaints Panel to continue investigations despite the Respondent’s withdrawal from RSPO, and where appropriate, issue out recommendations to the Board of Governors to issue a public censure against the said company. The Resolution 6d Task Force recommends that this power is to also include instances where there are divestments made to a non-RSPO member. It is important to note here, that such recommendation is not mandatory under the Complaints and Appeals Procedure and will depend on the circumstances surrounding the Complaint. An example of this can be seen [here](#) where the Complaints Panel continued its investigation despite the withdrawal and issued out a decision with the main aim of bringing closure and clarity to the allegations presented.

This provision is only applicable when the divestment occurs to a non-RSPO member.

Illustration 1

A is the parent company of B, and they are registered under A’s Group Membership. A complaint has been lodged against B. Before the complaint against B could be resolved, A signed a Sale and Purchase agreement with D, a non-RSPO. This amendment will allow the Complaints Panel to continue its investigation and issue out a decision on the allegations against B. At the same time, should the circumstances deem appropriate, the Complaints Panel may also issue out a recommendation to the Board of Governors to issue a public censure.

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 36 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, the RSPO recognises that some of the withdrawals made were under extraordinary circumstances based on economic and the member's internal state of affairs. Accordingly, the Resolution 6D Task Force puts forth an exception to the above time bar period. The exception can only be applied with the approval of the CEO of the RSPO Secretariat. Should a former member with an active complaint puts in an application for membership during the 36-month period, the Resolution 6D Task Force also recommends having procedures in place to ensure that the complaint and allegations are 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 36 months from the date of official termination of membership.
- 3.7.2 Should a former member in 3.7.1 withdraw its membership under exceptional circumstances and intends to put in an application within the stipulated 36 months, the former member is required to provide its justifications and rationale for withdrawal. The application is subject to the review of the RSPO Secretariat and may be subject to further directions by the RSPO Complaints Panel.

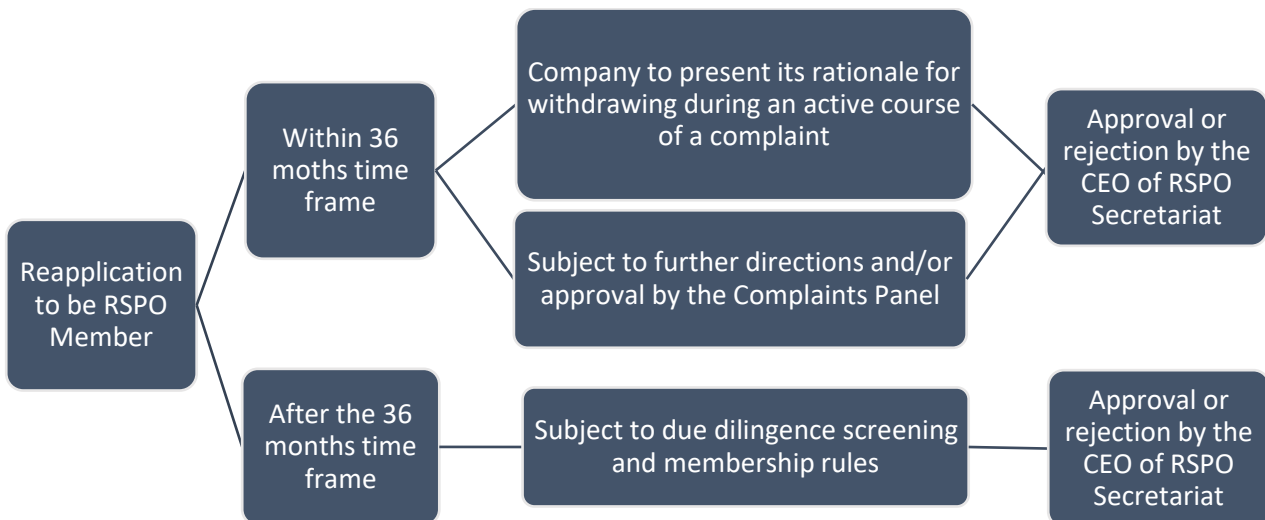
Illustration & Applicability

- 3.7.1 Withdrawal before the full resolution of a complaint.
- X is an RSPO member. A complainant was lodged a complaint against X. Before investigation and deliberation by the CP could be concluded, X withdrew its RSPO membership on 31 January 2021. X will be barred from re-applying from reapplying to become RSPO member for 36 months.
- 3.7.2 Exceptional circumstances of withdrawal
- X is an RSPO member. A complaint was lodged against X. Before investigation and deliberation by the CP could be concluded, X withdrew its RSPO membership on 31 January 2021. X will be barred from re-applying to become RSPO member for 36 months. However, before the 36 months expires, X re-applied to become RSPO member. X is barred from re-entry unless X can provide justifications that the withdrawal was made under exceptional circumstances. X's

application will be reviewed by the RSPO Secretariat and is not a guarantee of an automatic re-entry. X's application will be subject to extensive review and further directions by the Complaints Panel. RSPO may request for further documentation on the status of allegations presented and may request for additional documents or commitment letters before the application may be allowed by the RSPO CEO.

Q: What happens to re-applications after the 36 months' time bar period?

The re-application of the former member will undergo the mandatory due diligence by the RSPO Secretariat. During this mandatory due diligence, the Secretariat will identify if there are any outstanding matters from its withdrawal (ACOP, Complaints, etc). Members who exited before the resolution of a complaint will be subject to further directions by the Complaints Panel, and the application is still be subject to the CEO's approval.



Info:

1. For re-applications made after the expiry of 36 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 (when made in the active course of a Complaint) 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.

To ensure that stakeholders can get the overall perspective on the complaint, the Resolution 6d Task Force proposes that the Complainants and Respondents are able to produce a statement regarding the withdrawal or divestment. Statements are not mandatory and will be uploaded on the webpage should they choose to produce one.

Illustration & Applicability

Illustration 1

X is an RSPO member. Sometime in January 2021, a complaint was lodged against them. Before the subject matter of the complaint could be resolved, X withdrew their RSPO membership. X's name will be published on the RSPO webpage, along with the link to the RSPO Case Tracker. The Secretariat would contact X and the complainant seeking confirmation if they would want to issue out one statement regarding the withdrawal. Should both parties share statements on the matter, the same will be uploaded on the webpage.

Illustration 2

A is the parent company of B, and they are registered under A's Group Membership. A complaint has been lodged against B. Before the complaint against B could be resolved, A signed a Sale and Purchase agreement with D, a non-RSPO. A's divestment of B will be published on the website. D's details and the related information to the transaction will not be published. The Secretariat would contact A and the complainant seeking confirmation if they would want to issue out a statement regarding their withdrawal. Should both parties share statements on the matter, the same will be uploaded on the webpage.

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



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

FULL LIST OF DIVESTMENT

In the Course of an Active Complaint

Filter:

Date of Divestment	Name of Management Unit / Estate / Facilities	Parent Company	Country	Membership Sector	Link to Public Statements	Link to Case Tracker
Jul-2019	PT <u>Mistra</u> Austral Sejahtera	Sime Darby Plantations	Indonesia	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔
Apr-2015	PT Hati Prima Agro	Bumitama	Indonesia	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔
Apr-2013	PT Asiatic Persada	Wilmar International	Indonesia	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔

Search function

Link to RSPO Complaints Case Tracker

Link to statements by Parties

FULL LIST OF WITHDRAWAL

In the Course of an Active Complaint

Filter:

Date of Divestment	Name of Management Unit / Estate / Facilities	Parent Company	Country	Membership Sector	Link to Public Statement	Link to Case Tracker
Jan-2019	PT Perusahaan Perkebunan London Sumatra Indonesia Tbk	PT Salim Ivomas Pratama Tbk	Indonesia	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔
Oct-2016	Plantaciones de Pucallpa S.A.C	Plantaciones de Pucallpa S.A.C	Peru	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔
Aug-2012	Herakles Farm Cameroon	Herakles Farms Cooperatief	United States of America	Oil Palm Grower	Respondent's Statement (link) Respondent's Statement (link)	➔

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*

Illustration & Applicability

Illustration 1

A is the parent company of B, and they are registered under A's Group Membership. A complaint has been lodged against B. Before the complaint against B could be resolved, A signed a Sale and Purchase agreement with D, a non-RSPO. Upon declaration of the divestment to the Complaints Panel, the Complaints Panel deliberated on the circumstances of the case and took into consideration the need of any urgent action or interim measures required that are required to take place. Should there be a need for one, the Complaints Panel may issue the urgent action and interim measures to A as stated in 10.3 of the Complaints and Appeals Procedure.

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.

www.rspo.org