

**TERMS OF REFERENCE
INDEPENDENT INVESTIGATION FOR COMPLAINT RSPO/2018/19/RB**

1. Background

On 15 October 2018, **Environmental Investigation Agency (EIA) and Greenpeace** (the “**Complainants**”) filed a complaint against RSPO Member, **Pacific Inter-Link Sdn. Bhd.; Pacific Oils & Fats Industries Sdn Bhd.; PT Pacific Indopalm Industries.; PT Pacific Medan Industri.; PT Pacific Palmindo Industri** (“**PIL**” or **Respondent**”). The allegations against the Respondent are as follows:

- (a) The Respondents are all members of RSPO;
- (b) There are four companies in Papua, Indonesia namely **PT Megakarya Jaya Raya (PT MJR), PT Kartika Cipta Pratama (PT KCP), PT Energi Samudera Kencana (PT ESK) and PT Graha Kencana Mulia (PT GKM)**. Their concessions in total cover nearly 160,000 hectares. Two of the companies (PT MJR and PT KCP) have already begun operating and clearing land. These companies are not members of RSPO;
- (c) Pacific Inter-Link Sdn. Bhd. (PIL) was involved in negotiating the purchase of these four Papuan companies. Directors in the Respondent also held Board positions in the Papuan companies;
- (d) PIL denies that it owns or operates any palm oil plantations in Papua, Indonesia. However, its involvement has continued to this day through the placement of a senior PIL executive as a Director in two of the plantations and ongoing operational development;
- (e) Evidence indicates that actors or individuals within the PIL Group/HSA Group and/or Hayel Saeed Anam family members (who own, govern, and manage these groups) have **controlling interests in the four oil palm plantation companies in Papua**, as well as a **40% stake in a joint venture timber industry complex being built within the plantations’ landscape, Tulen Jayamas Sdn. Bhd.**
- (f) The ultimate ownership of these Papuan companies is hidden, as 80% stakes in each are held by four different holding companies i.e. **Prestige Holdings Ltd, Malindo Investments Ltd, Crescent Investments Ltd and Green Resources Ltd** - situated in the United Arab Emirates (Dubai and the Ras al Khaimah free trade zone).
- (g) **Malindo Investments Ltd can be linked to PIL through records relating to Tulen Jayamas Sdn Bhd**, while the ownership of the others cannot be linked to the PIL Group/HSA Group using publicly available sources.
- (h) In summary, the weight of evidence showing PIL Group/HSA Group/Hayel Saeed Anam family members’ involvement in ownership/management of the plantation companies, as well as the link with Malindo Investments Ltd, and the development of two of the concessions makes it inconceivable to believe that they do not have a controlling stake in the holding companies that own these Papuan companies.

In light of the above allegations, 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 (hereinafter referred to as the “Consultant”) to conduct an independent investigation to determine if the above allegations are true or otherwise.

2. Scope of the Independent Investigation

The scope of the Independent Investigation is to determine the following:

- The relationship (if any) between the 4 Papua companies with the Respondent under the relevant and applicable laws and in accordance with the requirements of the RSPO Membership Rules; and
- The relationship (if any) between the HSA Group of companies and the Respondent under the relevant and applicable laws and in accordance with the requirements of the RSPO Membership Rules.

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 shall consider all relevant documents, including but 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 necessary and relevant by the Consultant.

4. Expected outcomes

The expected outcome of this independent investigation is a report from the Consultant addressing Item 2 above. The complete template of the report is to be developed in consultation with the Secretariat to ensure that all concerns are fully addressed. The draft report prepared by the Consultant will be shared with the Complaints Panel for their review, and for further clarification (if need be) to be provided by the Consultant to the Complaints Panel before the report is finalized.

A copy of the draft report will be provided to parties of this Complaint for factual verification purposes only.

5. Schedule

The timeline for this exercise is dependent on the availability of the independent investigator/expert. Parties to the Complaint will be updated on the agreed timeline of the independent investigation upon consultation between the Secretariat and the independent investigator/expert 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 interests with the related parties prior to beginning the independent investigation. In cases where potential conflicts of interest are identified, the Consultant will not proceed with the review and an alternative independent investigator/ expert will be assigned.

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