

## TERMS OF REFERENCE (TOR)

### IMPLEMENTATION OF RESOLUTION GA15-6d: DISCOURAGING RSPO MEMBERS SUBJECT TO COMPLAINTS FROM AVOIDING THEIR OBLIGATIONS BY DIVESTING OR WITHDRAWING THEIR MEMBERSHIP

#### 1. Background

- 1.1 Resolution GA15-6d, titled *“Discouraging RSPO Members Subject to Complaints from Avoiding their Obligations by Divestment or withdrawing their Membership”* (“Resolution”), was adopted by the 15<sup>th</sup> RSPO General Assembly on 15 November 2018.
- 1.2 The proponents of the Resolution had raised concerns over the propensity of some companies, which are subject to an active Complaint, to avoid their obligations under the RSPO by self-suspending their membership or by divesting their operational assets, rather than be bound by the directives of the Complaints Panel and RSPO requirements. This behaviour is alleged to be very damaging to the credibility of RSPO and deprives impacted communities of accessing remedies via RSPO compliance mechanisms.
- 1.3 The Resolution proposes the following:
  - 1.3.1 To ask members not to divest from operations, nor to withdraw such operations from the RSPO, when these operations are subject to unresolved complaints at the Complaints Panel. Instead members are asked to redouble their efforts to bring these operations into compliance with the RSPO P&C in line with the requirements of the Complaints Panel;
  - 1.3.2 To mandate the Board of Governors to set up an inclusive sub-committee (and resource the Secretariat to support it), while being mindful of competition laws and other legal constraints, to urgently develop:
    - 1.3.2.1 Proposed incentives and procedures that would discourage divestment or self-suspension of operations subject to complaints;
    - 1.3.2.2 Proposal for graduated sanctions on any RSPO members, which act in violation of this requirement, both to be submitted for adoption by the Board of Governors;
  - 1.3.3 To propose amendments to the RSPO Members Code of Conduct accordingly for adoption at the next General Assembly of Members in 2019.
- 1.4 In this regard, this Terms of Reference (TOR) is developed to address the following initiatives by the Secretariat:

- 1.4.1 To initiate a legal assessment;
- 1.4.2 To establish a Task Force to oversee the development of the proposals under 1.3.2.

## **2. Scope of the Legal Assessment**

2.1 The RSPO is aware that the commitment of members to the RSPO obligations requires all members to act in 'good faith' in ensuring that the RSPO standards are met. This includes commitment of members subjected to a complaint under the RSPO Complaints and Appeals Procedures, at all times, to act in good faith in ensuring that said complaint is resolved in a constructive and timely manner.

2.2 To ensure continued integrity of the RSPO system and processes a legal review is initiated with the following scope:

### **2.2.1 Part 1 – Gap Analysis and Liability Considerations**

2.2.1.1 Conduct a gap analysis and rapid review of the RSPO Key Documents, including but not limited to the Complaints and Appeals Procedures (CAP), RSPO Code of Conduct, and RSPO Statutes, amongst others to identify existing mandate and powers to support the implementation of this Resolution;

2.2.1.2 Scope and limits of the RSPO and its members in developing and implementing this Resolution, including the identification of potential legal liabilities for the RSPO that may arise from developing and implementing this Resolution through the RSPO's framework and systems.

2.2.1.3 Subject to the analysis in 2.2.1.2 recommendations, if any, to limit these liabilities and what elements can be implemented to ensure effective, practical and timely implementation of the Resolution.

2.2.2 Part 2 – Subject to the analysis under 2.2.1 to develop specific recommendations to be considered by the Sub- committee:

2.2.2.1 Recommend possible incentives and procedures that would discourage divestment or self-suspension of operations subject to complaints;

2.2.2.2 Develop a proposal for graduated sanctions on any RSPO members, which act in violation of this requirement, both to be submitted for endorsement by the Board of Governors;

2.2.2.3 Propose amendments (if any) to RSPO Key Documents to facilitate the implementation of the above.

- 2.3 The legal assessment to consider competition laws and take into account national legal maxims and international instruments and guidelines to assist the Task Force and the Secretariat in the development of this implementation process.
- 2.4 Requirements in identification of legal expert:
  - 2.4.1 Demonstrates a thorough understanding and deep knowledge of RSPO framework and procedures;
  - 2.4.2 Proven knowledge and experience in national and international principles and standards on commercial good practices.

### 3. Scope of Work of the Task Force

- 3.1 The Task Force to:
  - 3.1.1 Review and consolidate the findings of the legal assessment;
  - 3.1.2 Pursuant to the legal assessment, to **assess and endorse** a set of guidelines on the following:
    - 3.1.2.1 Proposed incentives and procedures that would discourage divestment or self-suspension of operations subject to complaints;
    - 3.1.2.2 Proposal for graduated sanctions on any RSPO members, which act in violation of this requirement.
  - 3.1.3 Report to the Assurance Standard Committee on the above, for final endorsement by the Board of Governors.
- 3.2 Proposed Composition
  - 3.2.1 A team of no more than 7 persons are selected from the RSPO membership.
  - 3.2.2 Composition: 2 Representatives from Growers; 2 Representatives from NGOs; 1 Representative from the Complaints Panel; 1 Representative from Financial Institutions; and 1 Representative from P&T/CGM/Retailers.
  - 3.2.3 A member of the RSPO Board of Governors shall be appointed as one of the above to serve as a link to the Board.
- 3.3 The Task Force is to be supported by the Secretariat in the implementation of this Resolution. It shall be anchored within the Complaints Unit.

#### 4. Timeline for Implementation

