

TERMS OF REFERENCE

Independent Legal Review of the Complaint against Golden Agri Resources Ltd

I. BACKGROUND

Golden Agri Resources (hereinafter referred to as “the Respondent”) is a company registered in Mauritius and is publicly listed in Singapore. It holds a large number of subsidiaries across Indonesia through its Indonesian operational arm, Sinarmas Agro Resources and Technology (“PT SMART TBK”). The Respondent is an RSPO member and is bound to comply with all its Key Documents. A complaint was lodged against the Respondent in 2020 involving several allegations, one of them pertaining to the Respondent’s involvement in the arrest and conviction of 3 of its (former) employees.

In October 2018, several of the Respondent's employees via its subsidiaries, PT SMART TBK and PT Binasawit Abadi Pratama were arrested on allegations of paying bribes to provincial leaders. The employees were later found guilty and were convicted in 2019 (hereinafter referred to as “the Bribery Case”).

As an RSPO member, the Respondent must comply with the RSPO Key Documents, one of them being the [RSPO Principles & Criteria \(2018\)](#) (hereinafter referred to as the “RSPO P&C”). Principle 1.2 states the following -

Criteria	Indicator
1.2 The unit of certification commits to ethical conduct in all business operations and transactions	1.2.1 A policy for ethical conduct in place in all business operations and transactions, including recruitment and contracts. 1.2.2 A system in place to monitor compliance and the implementation of the policy and overall ethical business practice.

The [RSPO Principle & Criteria Indonesian National Interpretation 2018](#) (hereinafter referred to as the “INANI 2018”), a supplementary guidance document to RSPO P&C for Indonesian growers states the following guidance for the above criteria-

“This ethical policy applies to all parties involved in all operational levels of the unit of certification, including at least:

- *A respect for all fair conduct of business, business that in accordance with the prevailing legislations.*
- *A prohibition of all forms of corruption, bribery, embezzlement of money and resources*
- *A proper disclosure of information in accordance with applicable regulations and commonly applicable business practice.*

This policy was designed in accordance with the framework of the UN Convention Against Corruption (UN Convention Against Corruption), in particular Article 12. This policy covers elements such as bribery; facilitating payments; guidelines and procedures for gifts and gratuities; disclosure of political contributions; guidelines for charitable donations and sponsors; respect for fair conduct of business, proper disclosure of information in accordance with applicable regulations, and compliance with applicable anti-corruption regulations.”

Annex 2 of the 2018 INANI provides the technical terms and definitions for the interpretation of the RSPO P&C. Here, the term “facilitation payment” is defined as “*bribes paid to facilitate routine government action*” and the following illustration is provided -

“A common example is where a government official is given money or goods to perform (or speed up the performance of) an existing duty”.

The 2018 INANI listed the 2000 [United Nations Convention against Corruption](#) as one of the key international standards that are applicable. In addition to that, the 2018 INANI of the same listed the following applicable Indonesian Legislation: -

<u>No.</u>	<u>Approving Authority</u>	<u>No/Year</u>	<u>Concerning</u>
1.	House of Representative/ President	7/2006	Ratification of UN Convention Against Corruption
2.	House of Representative/ President	8/2010	Prevention and eradication of Money-Laundering
3.	House of Representative/ President	20/2001	Amendment Act No. 31 of 1999 Concerning Criminal Act of Corruption
4.	President	1/2013	Prevention and Eradication of Corruption Act

An RSPO member’s duty is not only to show that it has complied with the above regulations but also to ensure that its organisation has adequate resources in making that commitment happen. This is stressed upon in the [RSPO Member Code of Conduct](#) (see below):

3.3 Members are responsible for ensuring that their commitment to the objectives of the RSPO is underpinned by adequate resources within its organisation.

In light of the above arrests and convictions, the Complaints Panel, under Section 7.1.4 of the [RSPO Complaints and Appeals Procedures](#) is looking to appoint an **Independent Legal Consultant** to carry out a review of the Respondent’s compliance to the above. The review will be based on the Respondent’s supporting documents (list below) and an analysis of the Respondent’s obligations and compliance to the above-mentioned provisions.

II. OBJECTIVES

The objectives of the independent review are to:

1. Conduct a review of the relevant RSPO key documents and the Respondent’s supporting documents; and

2. Provide analysis as to whether the Respondent's internal anti-bribery and anti-corruption policies adhere to the standards imposed by the above-mentioned provisions and are implemented in accordance with the requirements of the RSPO Key Documents.

III. EXPECTED OUTCOMES

In line with the objectives in (II) above, the expected outcome of the independent review is a report comprising of the following -

1. A review, assessment and conclusion stipulated in a written document, setting out whether the Respondent's internal policies regarding ethical conduct, anti-bribery and anti-corruption are up to the standards imposed by the RSPO Key Documents and are implemented in accordance with the requirements of the RSPO Key Documents.

IV. TERMS OF ENGAGEMENT

The terms of engagement are as follows:

1. The legal review team shall at all times adhere to the highest level of professionalism during the investigation process. This includes:
 - a. Timeliness and adherence to the schedule and deadlines;
 - b. Carrying out an independent review in an impartial manner, including being neutral and objective during the process, as well as having no conflict of interest;
 - c. Ensuring all findings and analysis are supported with evidence gathered, including through existing materials and interviews; and
 - d. The legal review team shall report to the Grievance Unit within the RSPO Secretariat and the Complaints Panel.
2. RSPO Secretariat will:
 - a. Share all relevant documents to the legal review team (including RSPO Key Documents, the Respondent's internal policies regarding ethical conduct, anti-bribery, anti-corruption, supporting documents, etc.); and
 - b. Facilitate additional meetings to clarify instructions and direction of the review where and when required;

V. CONSULTANT

RSPO proposes that the independent legal review is carried out by individuals/teams of strong legal background with the following minimum criteria:

1. Fluent in English and Bahasa Indonesia - both written and spoken;
2. Does not have a conflict of interest with the Respondent – Golden Agri Resources or any subsidiaries or agents of GAR, or the related subsidiaries – PT SMART or PT BAP;
3. Does not have a conflict of interest with the Complainant, Forest Peoples' Programme or Elk Hills;
4. Does not have a conflict of interest with any of the RSPO Secretariat staff;

5. No conflict of interest with the former employees identified in the investigations;
6. Has sufficient knowledge of interpreting the RSPO Key Documents; and
7. Familiar with the applicable legislation above.

VI. SCHEDULE

Proposed schedule:

1.	Discussion and finalisation of the TOR	:	3	Working Days
2.	RSPO Secretariat Procurement Process	:	30	Working Days
3.	Kick off meeting with the RSPO Secretariat	:	0.5	Working Day
4.	1 st draft from legal reviewer/s	:	30	Working Days
5.	Legal Reviewer Meeting with RSPO Secretariat	:	0.5	Working Day
6.	Factual Verification with Complainant and Respondent	:	10	Working Days
7.	Revised report after factual verification	:	5	Working Days
8.	Report reviews by the Complaints Panel	:	10	Working Days
9.	Legal Reviewer Meeting with the Complaints Panel	:	0,5	Working Day
10.	Final Report	:	5	Working Days

VII. ESTIMATED COST

The RSPO Secretariat will bear the cost of this independent investigation, payable upon the completion of the independent investigation and submission of the final report by the reviewer. For parties interested to undertake the above investigation, kindly submit your fee proposal along with the Curriculum Vitae to: complaints@rspo.org.

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