

DSF FRAMEWORK, PRINCIPLES and TERMS of REFERENCE (FPToR)

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RSPO DISPUTE SETTLEMENT FACILITY (DSF)

DSF FRAMEWORK, PRINCIPLES and TERMS of REFERENCE (FPToR)

This DSF Framework, Principles and Terms of Reference, endorsed by the RSPO Board of Governors on 7th March 2019, constitute the foundation of the DSF which complements the RSPO Complaints and Appeals Procedures (CAP) and other RSPO Key Documents.

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GLOSSARY

BE	Bilateral Engagement
CAP	Complaints and Appeals Procedure of the RSPO
CP	Complaints Panel
DSF	Dispute Settlement Facility
IAM	Independent Accountability Mechanism
IMU	Investigation and Monitoring Unit
O&E	Outreach and Engagement Unit
RSPO	Roundtable on Sustainable Palm Oil
ToR	Terms of Reference

INTRODUCTION

1 The Roundtable on Sustainable Palm Oil (RSPO) is a not-for-profit, international membership organisation that works to advance the production and use of sustainable palm oil. RSPO's vision is to transform markets to make sustainable palm oil the norm. Through a multi-stakeholder process, RSPO has brought key stakeholders together to develop and implement global social and environmental standards to seek solutions to the challenges of the palm oil sector, creating a platform to transform how palm oil is produced, traded, and sold.

2 The RSPO Theory of Change 2017 underscores RSPO's commitment that complaints brought by people affected by the activities of RSPO members should be addressed in a manner which is fair, objective and constructive¹, thereby securing effective grievance mechanisms for the fair resolution of their disputes aligned to the UN Guiding Principles on Business and Human Rights 2011² which are, in turn, embraced in the RSPO Principles and Criteria³.

3 The RSPO Dispute Settlement Facility (DSF) offers parties to disputes over social or environmental issues the opportunity to address their concerns in a collaborative manner with a view to seeking resolution on mutually agreed terms through DSF Mediation.

What is DSF Mediation?

4 The objective of DSF Mediation is to help RSPO members and those with whom they are in dispute to work together towards reaching a mutually satisfactory solution to the issues between them in a non-judicial, non-adversarial and neutral forum.

5 DSF recognises that local communities typically live with the impacts and benefits of palm oil development and are likely to have long-term relationships with RSPO members. Therefore, DSF works directly with the affected community and the RSPO member, while engaging with key stakeholders as considered appropriate in the local, national or Complaint context.

6 The goal of DSF Mediation is to address the issues raised in the Complaint lodged with RSPO, and any other significant issues relevant to the Complaint which may be identified in the course of the DSF Mediation itself, in a way that is acceptable to the parties.

¹ RSPO Theory of Change, 2017: Credible Certification, Verification and Grievance p19

² UN GPHR 2011 Principles 30 and 31

³ RSPO Complaints and Appeals Procedures 2017

7 DSF Mediation is accessible equally to all parties, protecting companies as well as affected communities in accordance with its Principles. However, DSF does not handle disputes or complaints against the RSPO system.

8 DSF Mediation is founded on three pillars:

i) Participation is **voluntary**

DSF respects the self-determination of the parties. Engaging in a DSF process requires the full agreement of the parties. Either party may withdraw at any time if they feel that they are not making progress. Parties will decide the outcome of the process and will make an informed decision before signing any agreement.

ii) The Process is **confidential**

Confidentiality lies at the heart of DSF Mediation. DSF will respect either party's request for confidentiality. DSF will not disclose information shared in confidence in the Mediation or in any other forum, including DSFs mandatory public reports, without the consent of the parties. DSF will keep confidential any information or discussions held with individual parties unless that party gives express permission to disclose.

iii) DSF Mediation is **independent and impartial**

DSFs interest is to provide complainants and RSPO members with an opportunity to find mutually satisfactory outcomes to their disagreement. DSF does not impose any judgement or decision on either party. The decision-making authority rests entirely with the parties. DSF takes an equitable approach to everyone participating in the Mediation.

9 A successful outcome will be documented in a DSF Settlement Agreement, or series of Agreements, and signed by the parties. Until that time, nothing will be binding unless the parties so agree.

10 DSF Mediation practice is founded on these Framework, Principles and Terms of Reference which are aligned with the RSPO Principles and Criteria, Code of Conduct and all other Key Documents⁴. Critically, these include the RSPO Complaints and Appeals Procedures 2017, which describe the relationship between DSF and the broader RSPO Complaints system.

⁴ RSPO Complaints and Appeals Procedures 2017: Clause 4.2 List of RSPO Key Documents

PART 1: DSF FRAMEWORK within the RSPO COMPLAINTS MECHANISM

1.1 The RSPO **Complaints System** is a recourse and accountability mechanism which provides a framework to address complaints against any RSPO member whose activities are alleged to contravene the RSPO Principles and Criteria (P&C), Code of Conduct and all other Key Documents⁵ and where efforts to find a solution have not succeeded⁶. Complaints turn on allegations of negative social or environmental impacts, including those relating to human rights⁷. The RSPO seeks to comply with UN Guiding Principles on Business and Human Rights 2011⁸, placing particular emphasis on Principles 30 and 31, the latter relating to non-judicial grievance mechanisms.

1.2 Complaints turn on allegations of negative social or environmental impacts, including those relating to human rights⁹.

1.3 The Complaints system comprises three distinct yet complementary arms:

- The **Complaints Panel (CP)** investigates whether an RSPO member is in breach of the RSPO Principles & Criteria (P&C) or any other RSPO Key Document, and determines if any action is to be taken to remedy the breach to bring the member back into compliance. The Panel operates under the Complaints and Appeals Procedures (CAP) endorsed by the RSPO Board of Governors in June 2017
- The **Dispute Settlement Facility (DSF)**. With the parties' mutual agreement, the DSF will facilitate a collaborative mediation process seeking long-term and mutually agreeable solutions among the complainants, the RSPO member and any other key stakeholders¹⁰ identified by the parties¹¹ relating to social and/or environmental issues. The outcome may relieve the RSPO member of the burden of Complaints Panel sanctions by remedying the alleged breach.
- **Bilateral Engagement** entails parties working to resolve their issues through the RSPO member company grievance mechanism without any third-party involvement whatsoever.

⁵ RSPO Complaints and Appeals Procedures 2017: Clause 4.2 List of RSPO Key Documents

⁶ RSPO Principles and Criteria Criterion 6.3 requires growers and millers to have in place an internal grievance mechanism for communities, employees and other individuals

⁷ Id Criterion 2.1 The RSPO and its members recognize, support and commit to follow the United Nations Universal Declaration of Human Rights [<http://www.un.org/en/documents/udhr>] and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work [<http://www.ilo.org/declaration/lang-en/index.htm>].

⁸ UN Guiding Principles on Business and Human Rights Principles 30 and 31(e): https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁹ Id Criterion 2.1 The RSPO and its members recognize, support and commit to follow the United Nations Universal Declaration of Human Rights [<http://www.un.org/en/documents/udhr>] and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work [<http://www.ilo.org/declaration/lang-en/index.htm>].

¹⁰ In the DSF context, 'key stakeholders' refers to individuals or organisations who have an interest in the Complaint, or who have influence over the project, or who may be affected by the outcome of the DSF Mediation process

¹¹ In a DSF process 'the parties' refers to the complainant(s) and the RSPO member against which the Complaint has been lodged

PART 2: DSF PRINCIPLES

2.1 Self-determination of the parties

2.1.1 It is fundamental to DSF Mediation and established good practice that the parties understand fully the tenets of mediation as a voluntary and collaborative process. At the onset of DSF Mediation, DSF will check with each of the parties that they understand that no party can be forced to participate in DSF Mediation, be they complainant or RSPO member; and that mediation presents an opportunity for parties to potentially address the alleged breach in the initial Complaint to their mutual satisfaction and in a confidential manner. In this regard, the RSPO CAP clause 5.8 grants the Complaints Panel the discretion to adjourn their investigation until such time as the outcome of the DSF Mediation is decided by the parties.

2.1.2 DSF will ensure that parties understand that:

- a) the Mediator will not impose any judgement on the parties or coerce them into a decision;
- b) any Settlement that the parties may reach will be signed of their informed and free will and may be joined, at their request only, by freely chosen representative institutions;
- c) representatives of each party, or any other entity participating in the DSF Mediation, must have the requisite authority or mandate to participate in the DSF Mediation and to make decisions on behalf of their principals;
- d) they have the right to whatever means are appropriate to ensure their full comprehension of and participation in the DSF Mediation which may include use of interpreters / translators familiar with DSF Principles;
- e) the voice of their constituency is assured through a clear mandate granted to the chosen representatives participating in the DSF Mediation, which will be verified by DSF.

2.2 Transparency and Disclosure

2.2.1 Transparency and Disclosure are critical elements of DSFs independence and impartiality. In line with international good practice and principles¹², DSF is committed to making every effort to ensure transparency and maximum disclosure of its reports and outcomes while respecting the parties' right to confidentiality, as agreed with them during the course of a DSF Mediation.

2.2.2 The nature of dispute resolution through DSF Mediation is such that it demands an appropriate degree of confidentiality. For example, general descriptions of the process and settlement can be made public but substantive details about discussions will be kept confidential. The DSF will not disclose information shared by one party at any time with the other without the express permission of the party making disclosure.

¹² UN Guiding Principles on Business and Human Rights Principle 31(e):
https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2.2.3 In maintaining its commitment to transparency, drafts of all DSF reports intended for publication will be made available to parties for a factual check prior to publication and posting on the RSPO website. Parties will be given a reasonable timetable in which to respond with comments.

2.2.4 The DSF recognises and respects a complainant's right to confidentiality, including confidentiality of identities and disclosure of information provided to the Complaints Desk and/or DSF. If it is considered necessary to disclose the name and identity of a complainant, for instance in order to provide redress agreed in the settlement, the DSF will only do so with the express consent of the individuals concerned.

2.2.5 DSF is required to treat information with discretion and not disclose it improperly. In a situation where the DSF has received confidential information during a DSF Mediation, such information will not be shared with other RSPO units and/or any other third party without the express consent of the provider of that information, unless the information is otherwise in the public domain or available through other non-confidential means. The purpose of this is to allow parties to participate freely and frankly during the independent DSF Mediation without compromising their position in any other process.

2.2.6 Nevertheless, exceptions may prevail to this Principle where DSF is aware that there any measure of risk of harm to any of the participants in the DSF Mediation or to the DSF Mediator, or where one of the parties is acting, or threatening to act, in an illegal manner. In this case, if safe to do so, DSF will advise the parties of DSFs obligation to disclose certain information and to whom.

2.2.7 DSF recognises the importance of meeting public interest in the progress of a DSF Process. However, the DSF will make no press releases or media statements about an active complaint during the DSF Mediation, and will enjoin the parties to the same, unless agreed otherwise by the parties. In response to a request from one or both of the parties, DSF will indicate in its public reports or statements when restricted disclosure limits the information being imparted.

2.2.8 At the outset of the Mediation, parties and DSF will agree to terms of a DSF Mediation Process Agreement which will set out the agreed level of confidentiality and any other conditions by which the parties may agree to abide for the duration of the Mediation.

2.2.9 DSF Mediators are required to sign and abide by the DSF Mediator Code of Professional Conduct which binds them to strict confidentiality provisions. All other DSF team members engaged in the DSF Mediation will be required to sign a Statement of Confidentiality which is binding for all time.

2.3 Respect for Human Rights and Diversity

2.3.1 The DSF respects and upholds human rights principles as enshrined in international covenants, standards and principles¹³ as well as those embedded in RSPO Key Documents, in particular those relating to workers as well as to impacted communities¹⁴.

Free Prior and Informed Consent

2.3.2 The principle of Free Prior and Informed Consent is a central requirement of the RSPO Principles and Criteria¹⁵ and underpins the work of the DSF when assisting parties work to resolve their differences.

2.3.3 Diversity and inclusion are embedded in DSF Mediation which works to ensure representation of diverse sectors among all parties to the Mediation with regard to ethnic and/or national origin, caste, religion, persons with different ability, gender, gender identity, political affiliation, age, interests and other factors which may be revealed in the local or Complaint context. Through awareness and capacity building, DSF will look with the parties at opportunities to assist the broader community participate actively in the Mediation. With regard to the local communities in particular, principles of equal opportunity are upheld in securing representation of women and families in a DSF Mediation and/or public meetings.

Upholding protection of those at risk of Retaliation and Reprisal¹⁶

2.3.4 The DSF takes seriously the safety of all parties and others that engage in a DSF Mediation. RSPOs Human Rights Defenders Policy¹⁷ sets out how RSPO regards and responds to any allegations of retaliation or reprisal. People who bring a complaint to RSPO are often vulnerable and may fear that submitting a complaint puts them at risk of reprisal. Equally, RSPO members participating in a DSF Mediation may also feel threatened by agencies involved in or affected by the outcome of the

¹³ UN Protect, Respect, Remedy 2008 which gave rise to the UN Guiding Principles on Business and Human Rights NB: Principle 31(e) at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Principles and Manual for Project Practitioners at: UN FAO Free Prior and Informed Consent:

<http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

RSPO Policy on Protection of Human Rights Defenders, Whistle blowers, Complainants and Community Spokespersons 2018

¹⁴ RSPO Principles and Criteria: Principle 6 Responsible Consideration of Employees and of Individuals and Communities affected by Growers and Millers

¹⁵ FPIC Guide for RSPO Members 2015 at:

<https://rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>

¹⁶ Acknowledgement: Content borrowed largely from: CAO Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations <http://www.cao-ombudsman.org/documents/CAO-Reprisals-web.pdf>

¹⁷ RSPO Policy on Protection of Human Rights Defenders, Whistle blowers, Complainants and Community Spokespersons 2018

Mediation. The DSF acknowledges that complainants, witnesses and other parties involved may face risks of retaliation associated with a matter in dispute resolution.

2.3.5 The DSF upholds the principle of non-discrimination. DSF will not tolerate retaliation or reprisals against a complainant or any other party or person involved in a DSF Mediation. DSF will work within its means to minimise such risks by protecting any individuals, groups or organisations affected, but must be clear about the limitations of its capacity to respond¹⁸. Violence and threats have no place in a DSF Mediation, but DSF is unable to safeguard people from possible consequences of their participation. DSF cannot replace national or international judicial bodies, protective services and law enforcement agencies whose functions include protecting the public.

Assessment of risk and possible termination of the Mediation

2.3.6 Any perceived risk to any group or individual will be reassessed during the course of the DSF Mediation. DSF will always seek the informed consent of the concerned person(s) before taking any action on their behalf in relation to threats or incidents. As a preventative measure, DSF may terminate the process and any subsequent measures may be guided by the Human Rights Principles.

Confidentiality

2.3.7 DSFs will engage parties from the outset of a DSF Mediation in establishing levels of confidentiality with which they feel comfortable. Terms will be set out in a DSF Mediation Process Agreement and signed by the parties with DSF. DSF will respect confidentiality for as long as the parties may so choose.

2.4 Independence and Impartiality

2.4.1 DSFs independence and impartiality encourages the trust and confidence of parties engaged in a DSF Mediation as well as the key stakeholders. Trust and confidence are prerequisites for DSF to be able to operate according to its mandate.

2.4.2 DSF maintains its independence and impartiality by:

- a) ensuring the self-determination of the parties;
- b) not making any determination or judgement as to the merits or substance of any complaint;
- c) adhering strictly to its policy on confidentiality;
- d) ensuring that its own staff and consultants maintain strict confidentiality on specific cases with regard to the RSPO core Secretariat and/or officers unless otherwise agreed by the parties or which is in the public domain;

¹⁸ UN Principles on Business and Human Rights (2011) enshrined in the RSPO Principles and Criteria, currently in draft

- e) ensuring that any DSF member of staff or consultant who may have a conflict of interest with a particular case withdraws from that case;
- f) sharing with the parties draft copies of all public reports prior to publication for purposes of fact-checking and protecting agreements and requests by the parties with regard to confidentiality.

PART 3: DSF TERMS OF REFERENCE

3.1 DSF Vision

The overarching vision of DSF is to seek timely and effective resolution of disputes in line with the following objectives:

- a) enhance the effectiveness of the RSPO Complaints system;
- b) establish an accessible dispute resolution mechanism for complaints against RSPO members;
- c) be responsive to the concerns of people affected by the activities of RSPO members;
- d) help with solutions for RSPO members in addressing complaints from affected communities;
- e) treat all parties and stakeholders in an equitable manner;
- f) ensure impartiality in working with the parties and stakeholders;
- g) ensure independence and transparency and respect confidentiality;
- h) guide parties towards transformative opportunities in their settlement of disputes;
- i) respect UN Guiding Principles relating to business and human rights¹⁹ in its practice;
- j) be cost-effective, efficient and complementary to other elements of the RSPO.

3.2 DSF Mandate

These Terms of Reference mandate the DSF to respond to requests from parties to a Complaint lodged with the RSPO who wish to engage in DSF Mediation. In so doing, DSF will discharge the following functions:

- a) address complaints brought to the RSPO Complaints Desk by any individual, group of people or community, or by their nominated representatives relating to social and/or environmental issues and who have elected jointly to try and resolve their dispute with an RSPO member in a collaborative manner;
- b) manage complaints brought on any social or environmental issue which the parties and DSF believe may be remedied by DSF Mediation; this may include, but is not limited to complaints arising in connection with resettlement²⁰, environmental impacts and labour;
- c) help resolve disputes, where the parties so agree, through DSF Mediation such that the outcome is agreed by the parties concerned;
- d) in assisting disputing parties, DSF may employ a range of informal, consensus-based techniques²¹;
- e) appoint independent facilitator/mediators with experience of multi-stakeholder disputes to manage the dispute resolution process on behalf of the DSF;
- f) respect the self-determination of the parties in deciding if they wish to avail themselves of DSF services and, if so, in the parties determining the outcome of the process;
- g) meet with the parties and key stakeholders to discuss their concerns individually on a confidential basis;
- h) convene joint meetings between the parties and include other stakeholders only with the consent of the parties;

¹⁹ UN Principles on Business and Human Rights 2011

²⁰ 'resettlement' refers to any issues arising as a result of a population required to relocate homes or livelihoods as a result of a project, as would be considered in the course of an ESIA or fulfilment of FPIC principles

²¹ DSF Mediation may include but is not limited to the following techniques: mediation, consensus-building, capacity building, dialogue facilitation and joint fact-finding

- i) document agreements and liaise with the Investigation and Monitoring Unit (IMU) who will monitor implementation through to formal closure of the Complaint;
- j) establish and maintain a case management system;
- k) register all complaints referred to DSF on a searchable, user-friendly and publicly accessible website which is integrated with the Case Tracker and accessible via the RSPO website;
- l) maintain international good practice in discharging its functions particularly with respect to confidentiality and disclosure;
- m) DSF will remain available to assist the parties further throughout IMU Monitoring, should the parties so request, in order to secure the successful implementation of a Settlement Agreement;
- n) develop lessons learned and identifiable trends with a view primarily to strengthening RSPO Principles & Criteria and members' operations;
- o) meet with the DSF independent body of Advisers at least once annually in person and periodically online.

3.3 DSF Structure

DSF is an integral part of the RSPO Complaints system²².

Administration

3.3.1 The DSF is independent of all other units of the RSPO in terms of case management and case content. DSF will not impart any case-specific information without the express and written consent of all parties to a DSF Mediation.

3.3.2 Nevertheless, the RSPO Board of Governors has ultimate responsibility for oversight of the Secretariat, which oversees the administration of DSF.

Staff

3.3.3 The DSF comprises its designated staff and consultants.

3.3.4 Consultants include DSF Mediators and the DSF Mediation Team²³.

DSF Advisers²⁴

3.3.5 DSF is supported by a group of Advisers whose practice and experience within local communities, civil society, the palm oil industry and dispute resolution fora will contribute to open

²² RSPO Complaints system described in Part 1: DSF Framework

²³ Mediation team composition and appointment is described in Section C.2 below

²⁴ For full details of the DSF Advisers' role, composition and appointment criteria refer: DSF Advisers Terms of Reference 2019

discussions and enquiry on DSFs continuous process of evaluating insights and lessons learned on trends emerging in the context of disputes within the palm oil industry. The composition of the group of up to 11 Advisers reflects the interests and diversity of RSPOs global membership and interests in terms of users of the RSPO Complaints System.

3.3.6 DSF will share their successes and challenges with the Advisers which are not limited by the principle of confidentiality, thereby striving to ensure DSF is aligned with international good practices in dispute resolution and problem-solving.

3.3.7 While acknowledging the Advisers' valued support and guidance to the DSF, responsibility and authority in terms of oversight or administration of a DSF case rests with the DSF office, which extends to the appointment of DSF Mediators. Specifically, and in line with DSF Principles relating to Confidentiality, DSF Advisers will not engage with any party or stakeholder during the course of a DSF Mediation, nor are they party to any information relating to individual cases handled by the DSF which is not otherwise in the public domain.

Focus Groups

3.3.8 From time to time, DSF may, convene *ad hoc* Focus Groups to consider specific topics. The Focus Groups may comprise RSPO members and officers or external individuals.

3.4 DSF Funding

3.4.1 RSPO will make available, to the best of its efforts, adequate financial resources to support DSF.

3.4.2 If parties decide to proceed with Mediation, DSF will establish and agree with the parties how the costs of the process will be apportioned. In some circumstances, a party may apply to the DSF Trust Fund²⁵ for assistance in covering their share of the costs.

²⁵ DSF Trust Fund was established by the Board of Governors in June 2015. A party wishing to benefit from the Fund can make formal application through the DSF. Refer also Paragraph C.9 below and Annex B: calculation of parties' shares of costs.

PART 4: DSF PROCEDURE

The Procedure aligns with the RSPO Complaints and Appeals Procedure 2017 (ref Annex A)

4.1 Lodging a Complaint with RSPO

(Acknowledgement within 5 working days – one week)

4.1.1 All complaints against RSPO members are lodged at the RSPO Complaints Desk.

4.1.2 The Complaints Desk will acknowledge receipt of a Complaint within 5 working days of it being lodged.

Language

4.1.3 The principal working language of the RSPO is English, complemented by Indonesian, French and Spanish. The RSPO will endeavour to respond in the language of submission where practicable but will, in any event, respond in the most appropriate working language.

4.2 Initial Diagnosis by the Complaints Desk²⁶

Acceptance or Rejection within 30 working days (six weeks)

4.2.1 Within 30 (thirty) working days (six weeks) of the date of Acknowledgement, the Complaints Desk will determine whether the Complaint, if the allegations are found to be valid, would constitute a breach by the RSPO member of any of the RSPO Principles & Criteria, Code of Conduct or other RSPO Key Documents.

4.2.2 The complainant and RSPO member will be notified of RSPOs Acceptance of the Complaint or otherwise. This determination is procedural only and is not a judgement on the merits or substance of the Complaint.

4.2.3 If Acceptance is confirmed, the Complaints Desk will:

- a) request the RSPO member to respond to the allegations contained in the Complaint within 14 (fourteen) working days (3 weeks)

²⁶Complaints and Appeals Procedure (CAP) 2017 Clause 5.2

- b) post the Complaint on the website Case Tracker along with the Complaint letter, redacted appropriately when a complainant has requested confidentiality.

The parties decide how to proceed with the Complaint

4.2.4 In line with the RSPO current Complaints and Appeals Procedures, the Complaints Desk will engage directly with the parties in order to describe the options available within the RSPO Complaints System to address the Complaint. The purpose is to inform the parties' decision as to whether they wish to seek a practical solution through a collaborative dispute resolution process, available through DSF Mediation, or have the issues investigated by the Complaints Panel alone. Parties may opt to try resolving the issues themselves through Bilateral Engagement (BE)²⁷.

4.2.5 The parties' preference as to which process they would like to pursue will inform the Complaints Panel decision whether it will proceed with investigating the Complaint or adjourn²⁸ to allow the parties the opportunity of resolving the Complaint collaboratively,

4.2.6 The parties' participation in DSF Mediation or BE does not preclude a Complaints Panel investigation. However, the parties have the opportunity to try and remedy the alleged breach in a collaborative way which, depending on the outcome, may satisfy the Complaints Panel such that they decide not to proceed with an investigation.

4.2.7 Within 2 (two) calendar months of the date of Acknowledgement, the Complaints Desk will publish an update on the website which will describe, at minimum, the nature and context of the Complaint, the complainants and a summary of the RSPO member's business activity, along with the parties' decision as to how they have decided to proceed with addressing the Complaint.

4.2.8 **If parties decide mutually to try and resolve the issues in the Complaint through DSF Mediation, the Complaints Desk will transfer the case to the DSF.**

²⁷ Bilateral Engagement entails parties trying to negotiate agreement directly, without any third-party facilitation or RSPO Observer, using the resources of the company's own grievance mechanism. The outcome will be reported to the Complaints Desk within one calendar month of their decision to try BE, as posted on the Case Register. Any settlement will be shared immediately with the Complaints Panel who will determine whether the alleged breach has been remedied. If the parties are unable to resolve the Complaint through BE within this fixed time frame, they may request mediation facilitated by the DSF.

²⁸ Complaints and Appeals Procedure 2017 Clause 5.8

4.3: DSF Mediation Process

4.3.1 DSF Mediation

4.3.1.1 Engaging in DSF Mediation is voluntary and requires, at a minimum, the agreement of the parties. DSF recognises that local communities typically live with the impacts and benefits of a palm oil project and are likely to have a long-term relationship with the RSPO member. As such, DSF will seek to work directly with the affected community and the RSPO member, while engaging with key stakeholders as considered appropriate in the context of the Complaint, as well as local or national interests and sensitivities. The objective is to provide the parties with an opportunity to reach a mutually satisfactory solution to the issues between them in a non-judicial, non-adversarial and neutral forum.

4.3.1.2 The goal is a written DSF Mediation Settlement Agreement which addresses the issues raised in the Complaint to the mutual satisfaction of the parties.

4.3.1.3 Either party may withdraw from the Mediation at any time in which case the matter will be concluded by the Complaints Panel.

4.3.1.4 At the end of the Mediation, DSF will publish a report that includes a summary of the Complaint, measures taken to resolve the issues and any agreements reached by the parties. The RSPO IMU will monitor the implementation of a DSF Mediation Settlement Agreement and DSF will remain available should any further issues arise which may impede the successful implementation of the Settlement Agreement.

4.3.2 Appointment of DSF Mediation team

4.3.2.1 In appointing a Mediator to manage the DSF Mediation, DSF will draw on its global network of pre-qualified²⁹ mediators, experienced in managing multi-stakeholder disputes. DSF Mediators work in accordance with the DSF Mediator Code of Professional Conduct and report to a DSF Case Manager who coordinates finances, contracting and reporting; and provides technical as well as logistical support to the Mediator.

4.3.2.2 Where possible, DSF will select a Mediator with the requisite professional and language skills from the country or region where the case is located. If such a Mediator is not available, DSF will select whomever is believed to be the most suitable while taking into consideration the location and context of the particular case.

²⁹ DSF Professional Mediator: Qualifications and Responsibilities; and DSF Mediator Code of Professional Conduct 2019

4.3.2.3 The DSF Mediator will work with DSF in building a team appropriate to the context of the Complaint. All team members will be required to abide by the DSF Confidentiality Agreement.

4.3.2.4 The DSF Mediator is a *de facto* process manager who will utilise and match a range of techniques when working with divergent groups and parties to a dispute which may include facilitation, information sharing, joint fact-finding, consensus building, capacity building and mediation.

4.3.3 DSF Intake: DSF engages with the parties and stakeholders

4.3.3.1 Prior to engaging with parties and stakeholders, DSF will review background documentation relevant to the Complaint obtained from the complainant, the RSPO member, the RSPO Secretariat and in the public domain.

4.3.3.2 Recognising that social and environmental complaints may comprise multiple complex issues, DSF will engage directly and separately with the complainant and the RSPO member to understand better the issues and the context of the Complaint. DSF will also meet with any key stakeholders as may be found necessary or constructive to the process.

4.3.3.3 Depending on the nature and complexity of the Complaint, DSF may undertake an initial site visit in order to meet with the local community to understand more clearly the issues behind the Complaint as well as their representation. DSF will also meet with the RSPO member and, as appropriate, will also meet with key stakeholders³⁰. In all cases, meetings will be pre-arranged so as to ensure adequate notice of the purpose of the visit.

4.3.4 DSF Process

4.3.4.1 Once the Complainant and the RSPO Member have agreed to participate in a DSF Mediation, they will be asked to sign a DSF Mediation Process Agreement, the contents of which will be discussed and agreed.

4.3.4.2 The DSF Mediation Process Agreement essentially confirms the parties' commitment to a DSF-facilitated mediation process and will set out the parties' agreements with regard to confidentiality, participation, timetable, apportionment of costs, acceptance of the DSF Mediator Code of Professional Conduct, conditions for termination and any other matters considered by the parties to be relevant and thereby agreed. Signature of a Process Agreement is an indication of the parties' good faith intentions to work towards agreement.

³⁰ In DSF context, 'key stakeholders' refers to individuals or organisations who have an interest in the Complaint, or who have influence over the project or may be affected by the outcome of the DSF Mediation

4.3.4.3 The Process Agreement will be signed by the parties and any others who may participate in the joint discussions in order to bind them, in particular to the confidentiality provisions.

4.3.5 Reaching and documenting a Settlement Agreement

4.3.5.1 The goal of DSF Mediation is to address the issues raised in the Complaint, and any other significant issues relevant to the Complaint which were identified during the initial meetings or in the course of the process itself, in a way that is acceptable to the parties. A successful outcome will be documented in a Settlement Agreement, supported by any interim Agreements, and signed by the parties. Until they sign any interim or Settlement Agreements, nothing will be binding on the parties.

4.3.5.2 The Settlement Agreement will be specific as to actions and times and will be monitored by the RSPO Investigation and Monitoring Unit (IMU) to ensure implementation to the satisfaction of the parties. Within five working days (one week) of the Settlement Agreement being signed, it will be shared by the Complaints Desk with the Complaints Panel, subject to confidentiality provisions agreed by the parties. The process will be noted as 'Settled' on the DSF webpage of the RSPO website.

4.3.5.3 DSF will not support agreements that may seek to coerce any of the parties, or infringe any domestic laws or international obligations of the host country.

4.3.5.4 On receipt of the Mediation Settlement Agreement, the Complaints Panel will determine whether they consider the alleged breach to have been remedied or whether they should continue or instigate their own investigation.

4.3.6 Termination of a DSF Mediation process

4.3.6.1 The following may be grounds for the DSF to terminate a DSF Mediation unilaterally by giving written notice to the parties:

- a) if the DSF is prevented, obstructed or hindered in gathering information from any party which is thought by DSF to be essential to the resolution of the matter;
- b) where the DSF determines that progress is not sufficient to warrant further draw on resources;
- c) if DSF becomes aware of any legality that would impinge on the continuation of the process;
- d) where the agreed timetable, as set out in the DSF Mediation Process Agreement, is not respected by any one of the parties.

4.3.6.2 If the parties are unable to reach agreement, the Process will be terminated and DSF will advise the Complaints Desk who will, in turn, notify the Complaints Panel which will take whatever action it deems appropriate within its remit. The DSF will then record on its webpage within the RSPO website that the case is 'Terminated'.

4.3.7 Time limits

4.3.7.1 There is no fixed timeline for DSF Mediation as the duration varies according to the scale and complexity of the issues, as well as factors such as a need for capacity building or joint fact-finding. The DSF Mediation Process Agreement will set out a workable timetable which will have been agreed with the parties. The Mediator will then engage with the parties to adhere to it robustly throughout the Mediation. Nevertheless, there may be good reason for the timetable to be adjusted or extended by agreement with the parties and the DSF; in this case, the DSF will notify the Complaints Desk who will, in turn, inform the Complaints Panel.

4.3.7.2 The DSF will post Progress Reports at least once every three months on its webpages.

4.3.8 Monitoring with the RSPO Investigation and Monitoring Unit (IMU)

4.3.8.1 Any settlement reached through DSF Mediation will be monitored by the IMU to ensure it is implemented to the parties' satisfaction. Monitoring arrangements, including timelines, will be discussed and agreed with the parties during the DSF Mediation. Details relating to the Monitoring process, including timelines, will be included in the Settlement Agreement which part will be shared with the IMU.

4.3.8.2 DSF will give particular attention to ensure confidentiality is respected. If there is a request by the parties to retain a measure of confidentiality, the conditions will be contained within the Settlement Agreement itself and the Agreement redacted accordingly before being shared with the IMU.

4.3.8.3 Monitoring the implementation of a DSF Settlement Agreement will entail IMU consulting initially with the DSF, conducting a document review and then communicating with the affected communities and the RSPO member to ascertain that the outcome of the process has been satisfactory. If necessary, the IMU will also consult with the key stakeholders.

4.3.8.4 Throughout IMU Monitoring, DSF will remain available to the parties, if they so request, to work with them in order to secure the successful implementation of their DSF Mediation Settlement Agreement.

4.3.8.5 On conclusion of the monitoring process, the IMU will record the fact on their register and inform DSF accordingly.

4.3.9 Costs of a DSF Mediation

4.3.9.1 The cost of DSF Mediation is covered by the parties to the Complaint. Annex B sets out the formula currently applied in calculating the share of costs which each party may bear proportionate to their capacity.

4.3.9.2 The principles agreed by the parties regarding costs will be included in the DSF Mediation Process Agreement which will be signed by all the parties at the outset of the DSF Mediation.

4.3.9.3 Parties who are unable to commit to their full share of costs may be guided by DSF to the DSF Trust Fund³¹ for support. DSF, through the Mediator, oversees disbursement of funds the manner of which is agreed with the party in receipt of the funds. In the interest of transparency, the fact of the financial support is shared with all parties to the Mediation.

4.4 Reporting and Accountability

4.4.1 DSF public reporting

Within the parameters of the constraints of confidentiality agreements and obligations, DSF is committed to making every effort to ensure maximum disclosure of reports and results of the DSF Mediation. DSF will indicate when it has restricted disclosure in response to a request from one or both of the parties.

In maintaining its commitment to transparency, drafts of DSF public reports will be made available to parties for a factual check. Parties will be given a reasonable timetable in which to respond with comments, prior to distribution and publication on the website.

4.4.1.1. DSF Progress Report

Depending on the circumstances of the DSF Mediation, Progress Reports may be posted from time to time on the DSF webpage within the RSPO website and, in any case, at least every quarter should the process be protracted.

4.4.1.2 DSF Settlement Report

DSF will prepare a DSF Settlement Report. A copy of the full Settlement Agreement and attendant documents may also be posted on the RSPO website, subject to the agreement of the parties.

³¹The DSF Trust Fund was established by the Board of Governors in June 2015. A party wishing to benefit from the Fund can make formal application through the DSF. Ref Annex A for current formula in calculating apportionment of costs of a DSF process.

4.4.1.3 DSF Termination Report

In the event of Termination pre-Settlement, DSF will note 'Case Terminated' on the website and draft a Termination Report.

4.4.1.4 DSF Annual Report

On an annual basis, and following approval from the Board of Governors, DSF will report publicly, through its website, on:

- a) a summary of cases and their status in accordance with information shared throughout the year in the public domain;
- b) monitoring processes and reviews and their associated outcomes;
- c) themes and trends emerging from the nature of cases handled by the DSF;

while always ensuring the confidentiality, provisions are adhered to strictly.

4.4.1.5 Language

Mindful that the RSPO working language is English, all public reports, including Acceptance determinations, and any other key documentation, such as agreed media statements, will be translated into the local language where appropriate and of benefit to the parties.

4.4.1.6 Tracking cases in the public domain

DSF will provide case status information to the Complaints Desk to inform their regular updates to the RSPO Case Tracker in accordance with the Desk's own requirements. DSF will update on Progress, Settlement and /or Termination within its own webpages with links to the public reports, always taking into consideration confidentiality provisions and requests of the parties.

4.4.2 DSF internal Reporting within RSPO

4.4.2.1 Complaints Desk

DSF will make periodic reports to the Complaints Desk as regards the progress of a DSF Mediation. The Complaints Desk will notify the Complaints Panel of any delay beyond the timeline established by the parties and stated in the DSF Mediation Process Agreement; this will inform the Complaint Panel decision as to whether to maintain any adjournment or proceed to investigation.

4.4.2.2 RSPO Board of Governors

- a) The Secretariat shall include an update on DSF to the Board of Governors on an annual basis in relation to its activity, case trends, challenges and successes, expenditure and budget forecast for the following year.
- b) If requested, DSF will provide interim briefings and summaries to the Board of Governors on general themes and trends in cases.
- c) In all circumstances, DSF will maintain confidentiality with regard to detail of any case unless there is a specific request from the Board of Governors to DSF in writing giving reason, and that DSF then seeks the permission of the parties in writing as to the specifics of and the reasons behind the request. All parties will be asked to confirm their consent to specific points of disclosure in writing to the DSF before any such disclosure is made by DSF to the Board of Governors.
- d) Revisions to DSF procedures and practices may be made at such time as the Board of Governors deems prudent. The Board of Governors may assign part of the evaluation work to the Secretariat or to a contract service provider which may make recommendations to the Board of Governors. Nevertheless, any decision as to action based on those recommendations shall be the remit of the Board of Governors in consultation with DSF.

4.4.2.3 Insights and Lessons Learned

- a) DSF will continuously consult internally within DSF, and regularly with the RSPO Complaints Desk as well as with the Complaints Panel in order to share lessons learned and insights gained in the course of its work, while rigorously maintaining strict adherence to confidentiality obligations. In this way, all units within the RSPO Complaints system will demonstrate its commitment to maximise collaboration and work consistently to ensure effective delivery of the grievance mechanism to its stakeholders.
- b) The DSF may recommend to the Board of Governors the reconsideration of DSF policies, procedures and guidelines based on lessons learned during the course of DSF Mediation, and what is considered to be good international practice.

4.5 Communication and Collaboration

4.5.1 Outreach

4.5.1.1 The DSF will work closely with the RSPO Outreach and Engagement Unit (O&E) in supporting their interventions to raise awareness and enhance the provision of information about the DSF function.

4.5.1.2 The goal is to ensure that RSPO members and stakeholders understand how a DSF process may be triggered within the RSPO Complaints System and the opportunities available to them through DSF Mediation.

4.5.1.3 Information will include how to lodge a complaint and commence a DSF Mediation. O&E will emphasise the key differences between the various options available through the RSPO Complaints System: DSF Mediation; the Complaints Panel and Bilateral Engagement.

4.5.1.4 Information will be disseminated through publications³² as well as meetings and workshops with stakeholders including RSPO members, local NGOs, communities and workers potentially or actually impacted by the palm oil industry and civil society organisations.

4.5.1.5 DSF will provide input to print and visual media as well as participation in meetings and workshops from time to time where such participation will not impede DSF impartiality.

4.5.2 Collaboration with other Independent Accountability Mechanisms (IAMs)

4.5.2.1 DSF will seek opportunities to engage with regional and international networks of IAMs in order to strengthen its capacity through sharing best practices and learning from others' experiences.

4.5.2.2 In the event that the DSF is engaged with a Complaint that overlaps one being handled by any of the other accountability mechanisms, the DSF will seek to collaborate with the other IAM in a manner consistent with these ToRs to ensure that the Complaint is handled in a fair and efficient manner and in accordance with DSF Principles. In most circumstances, DSF would seek to enjoin a Memorandum of Understanding or Letter of Agreement.

DSF Review

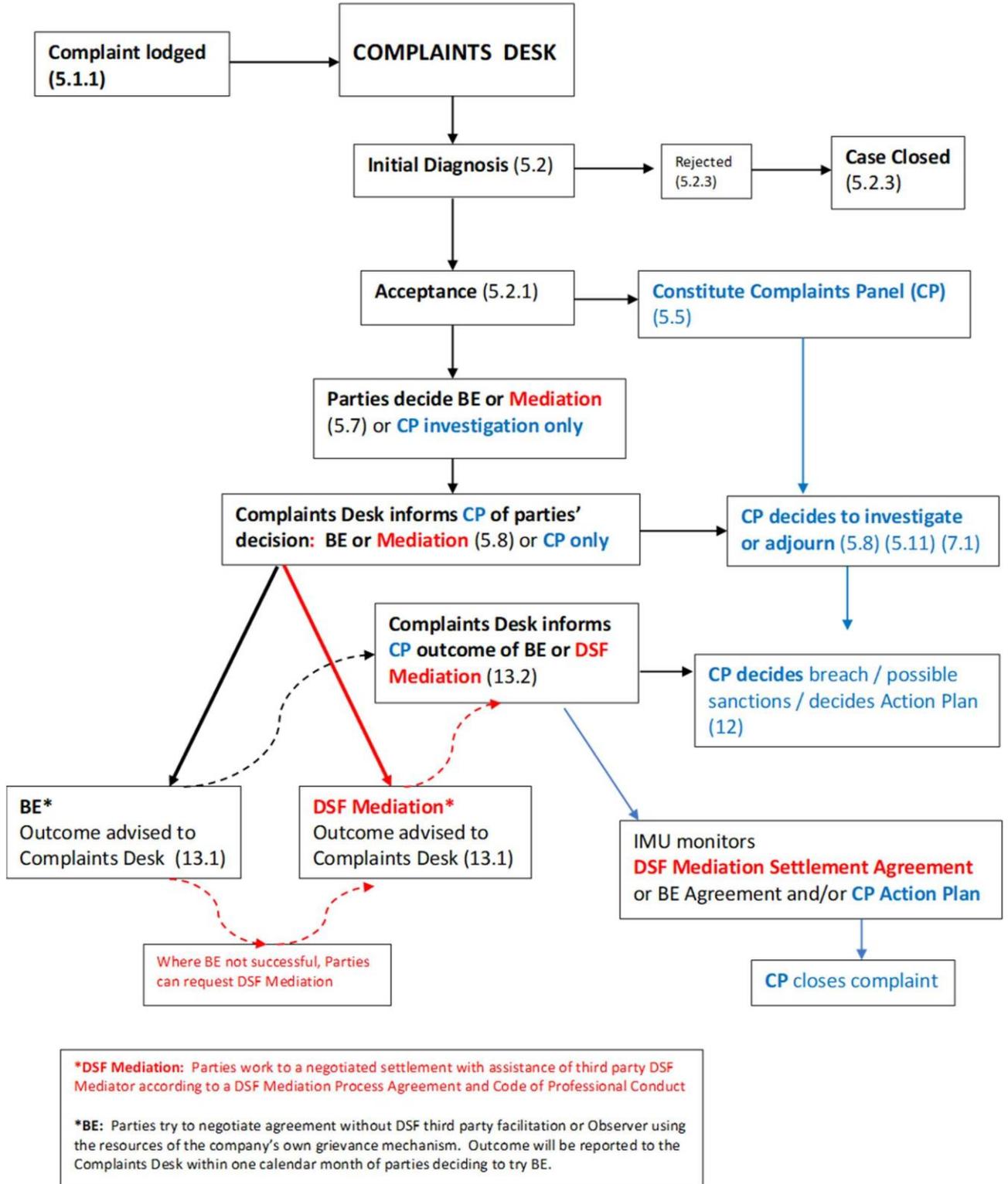
A Review of the DSF will be commissioned at least no later than every five years and will include a review of these ToRs as well as the Operational Guidelines.

Any review of the RSPO Complaints and Appeals Procedures will be conducted in close collaboration with DSF and take into consideration its current practices and lessons learned as well as any recommendations presented by the Board of Governors and /or appointed reviewers of DSF.

³² DSF information pamphlets, brochures and any leaflets developed by O&E in conjunction with the DSF

Annex A: RSPO Complaints mechanism indicating DSF workflow in relation to the RSPO Complaints and Appeals Procedures (CAP) 2017

Relevant clauses from the CAP are referenced in brackets



Annex B: DSF Mediation costs
Formula applied in calculating the parties' share of DSF Mediation costs

The principle of how costs will be apportioned will be agreed between the parties and described in the DSF Process Agreement at the outset of a DSF Mediation process.

In calculating the share that each party will pay, the following costs will be considered:

- 1 A base administrative fee for maintenance and processing data by DSF
- 2 Parties' expenses including travel and accommodation to attend meetings
- 3 Meeting costs including hire of rooms, documentation and refreshments
- 4 DSF Mediator fees and expenses including travel, accommodation and DSA (Daily Subsistence Allowance)
- 5 Interpreter fees and expenses including travel, accommodation and meals
- 6 DSF field team (*e.g.: driver, local resource person*) costs including travel, accommodation and meals
- 7 Any other anticipated costs determined by context and location.

In deciding the share that each party will contribute, the following factors will be taken into consideration:

- 1 The individual party's capacity to contribute to the costs
- 2 The revenue and financial resources devoted to the operation(s) in dispute
- 3 The number of individuals (or families) who may receive compensation as a result of the DSF Dispute Resolution process on the basis that larger numbers of people could bear more costs collectively
- 4 The gross revenues and/or volumes gained by the RSPO member against whom the complaint has been brought on the basis that the greater the amount, the more the member would contribute.

A party with inadequate capacity to contribute its share of costs may be guided by DSF to the DSF Trust Fund for assistance³³.

DSF, through the Mediator, oversees disbursement of funds the manner of which is agreed with the party in receipt of the funds. In the interest of transparency, the fact of the financial support is shared with all parties to the Process.

³³ The DSF Trust Fund was established by the Board of Governors in June 2015. A party wishing to benefit from the Fund can make formal application through the DSF.



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