

## **RSPO Complaints and Appeals Procedures 2017**

RSPO Secretariat Communique

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Contact : [rspo@rspo.org](mailto:rspo@rspo.org) / [complaints@rspo.org](mailto:complaints@rspo.org)

## Introduction

We the RSPO Secretariat refer to the RSPO Complaints and Appeals Procedure of 2017 that has been finalised and endorsed by the Board of Governors. We take this opportunity to thank all stakeholders that have provided their feedback on the draft procedure that was published for public comment on 1<sup>st</sup> November 2016.

We have given careful consideration to the feedback and suggestions of various stakeholders. Post the public feedback solicitation exercise, we have conducted meetings within the Secretariat, with the Complaints Revamp Advisory Group, the Complaints Panel members and numerous sessions with our Solicitors appointed to develop the procedure to consider and discuss the feedback received. Consequently, we have where appropriate, made some changes to the procedure. Regrettably, we are not able to accommodate all feedback or suggestions.

This communique serves to explain our reasons for adopting some of the feedback (either with adaptation or without) and not adopting other feedback made in relation to selected provisions of the procedure. This communique will also highlight new key provisions adopted in the final procedure which have arisen after the above said public consultation.

## Section 5.7 and 12: Bilateral Engagement and Mediation through the DSF

Some commentators have expressed the view that there must be transparency in the application of Bilateral Engagement and DSF. The basis for this comment is that in some instances settlements were being forced upon the Complainant through external pressure and threats. We feel that transparency in the sense of the Complaints Panel having oversight over Bilateral Engagement and DSF is not feasible. This is because the effectiveness of these processes (BE and DSF) depends upon the parties being free to engage without the fear of what is disclosed at the negotiating/mediation table being used against them in the proceedings before the Complaints Panel. If negotiations are subject to Complaints Panel scrutiny, parties will be reluctant to speak freely. This would in turn render Bilateral Engagement and DSF redundant.

Two new sections have, however, been introduced to address the mischief of external pressure being applied on the Complainant. The first is section 9.2 that imposes a duty on the Respondent not engage in any form of retaliation, reprisal, violence, threats or adverse discrimination against or apply undue pressure upon the Complainant, his spokesperson, communities or whistle-blowers. The second is section 7.1.9 which gives the power to the Complaints Panel to sanction a Respondent that acts contrary to this duty. The Secretariat will also be looking into formulating basic rules of bilateral engagement to emphasize the need for good faith engagement and in particular to emphasize that no external pressure should be applied on the Complainant.

Do note that section 5.7 has been revised to give the Secretariat the discretion, in consultation with the Complaints Panel no less, to advise the parties that they may seek a resolution of the Complaint through Bilateral Engagement or DSF. This provision recognizes that Bilateral Engagement or DSF may not be suitable in all cases.

### **Section 11.2 (now section 12.2.): Decision of the Complaints Panel**

An observation was made by one commentator that the prevalence of the majority decision in the event consensus cannot be achieved goes against the long history of decisions being made on the basis of consensus alone. We fear that insisting on a decision by consensus alone have the negative potential of causing delay and protraction towards delivering a decision. In the event that consensus cannot be achieved it would be unfair to the parties to hold the delivery of the decision in abeyance indefinitely. Thus the provision for the majority decision to prevail in instances where a consensus cannot be reached is necessary and unavoidable.

We note however the request for the minority decision to be recorded and have accordingly made provision for it to be recorded.

### **Section 6.8 (now section 6.2): Anonymity of Complaints Panel Member assigned to particular cases**

Although some stakeholders have questioned the wisdom of keeping the identity of Complaints Panel members confidential we have decided that confidentiality ought to be maintained. We have made this decision after consultation with representatives of the Complaints Panel who have expressed the view that as a general rule confidentiality is needed. This is necessary to avoid approaches on individual members being made by the parties for information on the proceedings before the Panel. Please do take note that whilst the list of Panel Members are public it is the members assigned to a particular complaint that remains anonymous ; subject to a power accorded to the Complaints Panel in a particular complaint to remove anonymity unanimously amongst the panel members.

We have taken note of concerns of a stakeholder that the manner in which 6.1 to 6.4 is drafted gives the impression that there may be an imbalance in the way the Complaints Panel member is assigned to each complaint; in that there may be an overrepresentation by a particular member category. We reiterate that the Complaints Panel members are INDEED made up of RSPO members from various member categories but that the emphasis within this new Procedure is on expertise, knowledge and experience. That said, to allay any fear of overrepresentation leading to a perception of bias, Section 6.5 has been amended to include that the Secretariat will take all practicable steps to ensure that Complaints Panel members that are eventually assigned to a particular complaint are representative of the multi stakeholders of RSPO who have the relevant expertise and experience in the issues arising in the Complaint.

### **Section 4: Grounds for Complaints (Complaints against the Secretariat)**

Suggestions have been made for complaints against the Secretariat to be dealt with by the Complaints Panel under the Complaints procedure. This issue has been extensively dealt with by our Solicitors in the 'Rationale and Justification Revamped Complaints and Appeals Procedure' document. Among the reasons given by the Solicitor for omitting complaints against the Secretariat are:-

- a complaint against the Secretariat is essentially a human resource issue. The governance structure provided in the RSPO Statutes provides for such complaints to be dealt with by the Chief Executive Officer or the Board of Governors and not by the Complaints Panel;
- there is already procedure in place for any the provisions of Key Documents to be periodically reviewed and amended;
- the Secretariat has an important administrative role in the complaints system and if the Secretariat is subject to that system it would be placed in a position of conflict.

As such, no provision is made with regard to complaints against employees of the RSPO Secretariat.

### Various New Sections

i) A new section 7.1.18 has been introduced to provide a power to the Complaints Panel to proceed with its investigations notwithstanding the withdrawal of the complaint by the complainant. This amendment was made to meet situations where evidence reveals a serious infringement of the provisions of the Key Documents and the Respondent ought to, in the circumstances, be sanctioned even if the Complainant does not wish to proceed with the complaint.

ii) Another suggestion made by commentators in relation to this section is for possible breaches of Key Documents by RSPO members that comes to the attention of the Secretariat outside of any formal complaint be also referred to the Complaints Panel for investigation. There is merit in this suggestion and accordingly a new section 7.1.20 has been introduced. This new section provides that notwithstanding the absence of any formal complaint lodged under this procedure the Complaints Panel may, upon referral by the Chief Executive Officer, investigate any alleged breach of the provisions of the RSPO Key Documents and impose sanctions as it is empowered to do under any formal Complaint.

iii) A power is now also given to the Complaints Panel members under 7.1.19 to proceed with the investigation of a complaint and ultimately deliver a decision on it notwithstanding the resignation of an RSPO member during the tenure of an ongoing complaint. This power has previously been implied but is now expressly provided for to ensure that parties are cognisant of the unfettered right of the Complaints Panel to investigate an active complaint and deliver a decision despite non membership of RSPO of a party to the Complaint.

Please take note that all other changes reflected in the finalised procedure that are not herein expressly highlighted in comparison with the November 2016 draft are made in consultation with persons/groups aforesaid mentioned and also in the exercise of the Secretariat's judgement in certain instances.

Thank you.

End of Communique by the RSPO Secretariat.



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**Unit A- 37-1, Level 37, Tower A, Menara UOA Bangsar  
No. 5, Jln Bangsar Utama 1, 59000 Kuala Lumpur, Malaysia  
T : +603 2302 1500 F : +603 2302 1542 E : [rspo@rspo.org](mailto:rspo@rspo.org)**

**Other RSPO Offices**

**Jakarta, Indonesia**

**London, United Kingdom**

**Beijing, China**