

RSPO DISPUTE SETTLEMENT FACILITY (DSF)

FRAMEWORK, PRINCIPLES and TERMS of REFERENCE

Draft v1: 1 October 2018

This DSF Framework, Principles and Terms of Reference, approved by the RSPO Board of Governors on xxxxxxxxxx 2019, constitute the foundation of the DSF and framework for its Operational Guidelines which complement the Complaints and Appeals Procedures (CAP) endorsed by the Board of Governors on 14 June 2017.

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GLOSSARY

CAP	Complaints and Appeals Procedure (2017) of the RSPO
CP	Complaints Panel
DSF	Dispute Settlement Facility
ESIA	Environment and Social Impact Assessment
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

PART 1: DSF FRAMEWORK within the RSPO COMPLAINTS MECHANISM

1 The Roundtable on Sustainable Palm Oil (RSPO) is founded on a set of environment and social criteria with which companies must comply in order to achieve RSPO Certification¹. The goal is to minimise the negative impacts of palm oil cultivation on the environment and communities residing in the cultivation region.

2 In formulating a complaints mechanism, the RSPO acknowledges that the concerns and complaints of people affected by the activities of RSPO members should be addressed in a manner that is fair, objective and constructive.

3 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) or any other of the RSPO Key Documents², and where efforts to find a solution have not succeeded³. Complaints turn on allegations of negative social or environmental impacts, including those relating to human rights⁴. The RSPO seeks to comply with UN Guiding Principles on Business and Human Rights, 2011⁵, placing particular emphasis on Principles 30 and 31, the latter relating to non-judicial grievance mechanisms.

4 The Complaints System comprises two distinct yet complementary arms:

- The **Complaints Panel (CP)** investigates whether an RSPO member is in breach of the RSPO Principles & Criteria (P&C) 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 process seeking long-term and mutually agreeable solutions among the complainants, the RSPO member and any other key stakeholders⁶ identified by the parties⁷. The outcome may relieve the RSPO member of the burden of Complaints Panel sanctions by remedying the alleged breach.

¹ RSPO Principles and Criteria 2013 under review in 2018

² RSPO Complaints and Appeals Procedures 2017: Clause 4.2 List of RSPO Key Documents

³ RSPO Principles and Criteria 2013 Criterion 6.3 requires growers and millers to have in place an internal grievance mechanism for communities, employees and other individuals

⁴ 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>].

⁵ UN Guiding Principles on Business and Human Rights Principles 30 and 31(e):
https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ 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

⁷ 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

A Transparency and Disclosure

1 Transparency and Disclosure are fundamental to DSFs independence and impartiality. In line with international good practice and principles⁸, 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 Process.

2 In maintaining its commitment to transparency, drafts of all DSF public reports 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.

3 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.

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.

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 process, such information will not be shared with other RSPO entities 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 Process without compromising their position in any later investigation.

6 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 Process, and will enjoin the parties to the same, unless agreed otherwise by the parties. DSF will indicate in its public reports or statements when restricted disclosure limits the information being imparted, in response to a request from one or both of the parties.

7 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 process will be required to sign a Statement of Confidentiality which is binding for all time.

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

B Respect for Human Rights and Diversity

1 The DSF commits to and upholds the principle of non-discrimination as enshrined in international standards and principles as well as in RSPO key documents⁹. Diversity and inclusion are embedded in the DSF Mediation process which seeks to ensure representation of diverse sectors 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 discuss with the parties the opportunities available to assist the broader community participate actively in the Process. Principles of equal opportunity are upheld in securing representation of women and families in DSF Mediation processes and/or public meetings.

2 The principle of Free Prior and Informed Consent is a central requirement of the RSPO Principles and Criteria¹⁰ and thus underpins the work of the DSF when assisting parties work to resolve their differences.

C Self-determination of the parties

1 DSF will ensure that parties understand:

- the voluntary nature of their participation in a DSF Mediation Process
- that any Settlement will be signed of their informed and free will
- that the Mediator will not impose a judgement on the parties, or coerce them into a decision
- the voice of their constituency is assured through a clear mandate granted to the chosen representatives participating in the DSF Mediation.

D Independence and Impartiality

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

2 DSF maintains its independence and impartiality by:

- not making any determination or judgement as to the merits or substance of any complaint
- ensuring the self-determination of the parties
- adhering strictly to its policy on confidentiality
- recruiting its own staff and consultants independent from RSPO core Secretariat and officers
- by ensuring that any DSF staff or consultants who has a conflict of interest with a particular case withdraws from that case
- DSF staff and consultants exercise caution and discretion in their involvement with RSPO internal processes which might compromise the neutrality of the DSF

⁹ UN Guiding Principles on Business and Human Rights 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, Whistleblowers, Complainants and Community Spokespersons (2018)

¹⁰ 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>

- In line with its principle of Confidentiality, DSF will not impart any case-specific information to other units within RSPO without the request or consent of the parties. DSF may, however, report on noticeable trends in the palm oil sector that have come to light through the various complaints facilitated by DSF
- being supported by a group of independent advisers, no members of which are employees, RSPO members or officers of the RSPO.

E Upholding protection of those at risk of Retaliation and Reprisal¹¹

1 The DSF takes the safety of complainants and others that engage in a DSF process seriously. RSPOs HR Defenders Policy (2018)¹² lays out in detail 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. The DSF acknowledges that complainants, witnesses and other parties involved may face risks of retaliation associated with a matter in dispute resolution.

2 The DSF will not tolerate retaliation or reprisals against a complainant or any other person involved in a mediation process facilitated by the DSF. The DSF will work within its means to minimise such risks by protecting any individuals affected, but must be clear about the limitations of its capacity to respond¹³. Violence and threats have no place in a DSF Mediation process, 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.

3 DSFs will discuss its approach with the parties at the outset of a DSF Mediation. DSF will respect confidentiality for as long as a party chooses. Any perceived risk will be reassessed during the course of the DSF Mediation process. 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 .

¹¹ 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>

¹² RSPO Policy on Protection of Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons (2018)

¹³ UN Principles on Business and Human Rights (2011) enshrined in the RSPO Principles and Criteria, currently in draft (2018)

PART 3: DSF TERMS OF REFERENCE

A DSF VISION

These Terms of Reference are guided by DSFs vision to:

- enhance the effectiveness of the RSPO Complaints system
- establish an accessible dispute resolution mechanism for complaints against RSPO members
- be responsive to the concerns of people affected by the activities of RSPO members
- help with solutions for RSPO members in addressing complaints from affected communities
- treat all parties and stakeholders in an equitable manner
- ensure impartiality in working with the parties and stakeholders
- ensure independence and transparency, and respect confidentiality
- guide parties towards transformative opportunities in their settlement of disputes
- respect UN Guiding Principles relating to business and human rights¹⁴ in its practice
- be cost-effective, efficient and complementary to other elements of the RSPO.

B MANDATE

These Terms of Reference mandate the DSF to discharge the following functions to:

- address complaints brought by any individual, group of people or community, or by their nominated representatives, by facilitating a mediation process. A DSF Mediation process may include a range of informal, consensus-based techniques¹⁵
- manage complaints brought on any social or environmental issue which the parties, and the DSF, believe may be remedied by DSF Mediation; this may include, but is not limited to complaints arising in connection with resettlement¹⁶, environmental impacts and labour
- appoint independent facilitator/mediators with experience of multi-stakeholder disputes to manage the dispute resolution process on behalf of the DSF
- respect the self-determination of the parties in deciding if they wish to avail themselves of DSF services and, if so, in determining the outcome of the process
- meet with the parties and key stakeholders to discuss their concerns individually on a confidential basis
- convene joint meetings between the parties, and include other stakeholders only with the consent of the parties
- document agreements and liaise with the Investigation and Monitoring Unit (IMU) who will monitor implementation through to formal closure of the complaint
- establish and maintain a case management system
- 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
- maintain international good practice in discharging its functions particularly with respect to confidentiality and disclosure
- 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
- develop lessons learned and identifiable trends with a view primarily to strengthening RSPO P&C and members' operations

¹⁴ UN Principles on Business and Human Rights (2011)

¹⁵ DSF Mediation may include but is not limited to the following techniques: mediation, consensus-building, capacity building, dialogue facilitation and joint fact-finding

¹⁶ '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

- meet with the DSF independent body of advisors at least once annually in person and periodically online.

C STRUCTURE

- 1 The DSF is supported by designated staff and consultants.
- 2 The DSF is further supported by an independent advisory body (see E below).
- 3 The DSF may also, from time to time, appoint *ad hoc* Focus Groups to consider specific issues or trends on which the DSF may feel they would benefit from guidance from those in fields directly related to RSPO. The Focus Groups may include RSPO members and officers. Nevertheless, no information on specific complaints will be shared with the Focus Groups as this will remain confidential.

D FUNDING

- 1 RSPO will make available, to the best of its efforts, adequate financial resources to support the work of DSF.
- 2 If parties decide to proceed with a DSF Mediation process, DSF will establish and agree with the parties how the costs of the process will be apportioned. In some circumstances, complainants may apply to the DSF Trust Fund¹⁷ for assistance in covering their share of the costs.
- 3 Costs of monitoring implementation of settlements will be absorbed by RSPO.

E Independent advisory body

- 1 The DSF is supported by a group of independent advisors of international standing drawn from institutions within civil society, private sector, academia, finance, multi-stakeholder dispute resolution, social development, justice and environment.
- 2 In line with DSFs policy of independence and transparency, the advisors are independent of the RSPO institutions and will have declared and established no conflict of interest as regards the Principles reflected in these ToRs.
- 3 The composition of the body of advisors reflects the interests of RSPOs growing membership and ensures diversity and global reach. Advisors will be selected and invited by DSF.
- 4 The role of the independent advisory body is to support DSF with strategic advice including policy formation and practice in line with international good practices. Their support may extend to assisting in developing international networks of Mediators and practitioners, training programmes and attendance at conferences and meetings.
- 5 Advisors serve on a voluntary basis for up to three years and commit to regular participation at one annual meeting in person supplemented by periodic virtual meetings, or they are asked to step down.

¹⁷ 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 B: calculation of parties' share of costs.

PART 4: DSF PROCEDURE

A LODGING a COMPLAINT with the RSPO

(Acknowledgement within 5 working days – one week)

- 1 All complaints against RSPO members are lodged at the RSPO Complaints Desk.
- 2 The Complaints Desk will acknowledge receipt of a Complaint within 5 working days of it being lodged.

Language

- 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.

B INITIAL DIAGNOSIS of a COMPLAINT by the COMPLAINTS DESK¹⁸

Acceptance or Rejection within 30 working days (six weeks)

- 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 Key Documents.
- 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.
- 3 If Acceptance is confirmed, the Complaints Desk will:
 - i) request the RSPO member to respond to the allegations contained in the complaint within 14 (fourteen) working days (3 weeks)
 - ii) 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 In line with the RSPO current Complaints and Appeals Procedures (2017), 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)¹⁹.

¹⁸ Complaints and Appeals Procedure (CAP) 5.2

¹⁹ 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 being 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 within this fixed time frame, they may request dispute resolution, facilitated by the DSF.

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 adjourn²⁰ to allow the parties the opportunity of resolving the complaint collaboratively,

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.

7 The Complaints Desk will respect a request for confidentiality and agree with the complainant and the RSPO member the manner in which the complaint can be posted on the Case Tracker before proceeding further with the complaint.

8 Within 2 (two) calendar months of the date of Acknowledgement, the Complaints Desk will publish a Report 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 are going to proceed to address the complaint. The complainant's wishes as regards confidentiality will be respected.

9 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.

C: DSF MEDIATION PROCESS

1 DSF Mediation

1.1 Engaging in a DSF process 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 complaint, local or national context. 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.

1.2 The goal is a written Settlement Agreement which addresses the issues raised in the complaint to the mutual satisfaction of the parties.

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

1.4 At the end of the Mediation process, the 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 an agreement, but DSF will remain available should any further issues arise which may impede the successful implementation of the Settlement.

²⁰ CAP 5.8

2 DSF Mediation team

2.1 In appointing a Mediator to manage the DSF Mediation process, DSF will draw on its global network of pre-qualified²¹ 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.

2.2 Where possible, DSF Manager will appoint 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, the DSF Manager will appoint whomever is believed to be the most suitable while taking into consideration the location and context.

2.3 The Mediator will set about building a team appropriate to the context. All team members will be required to abide by the DSF Confidentiality Agreement.

2.4 The 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.

3 DSF Intake: DSF engages with the parties

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.

3.2 Recognising that social and environmental complaints often 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.

3.3 Depending on the nature and complexity of the complaint, DSF may undertake a 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 stakeholders²². In all cases, meetings will be pre-arranged so as to ensure adequate notice of the purpose of the visit.

4 DSF Process Agreement

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

4.2 The Process Agreement essentially confirms the parties' commitment to the process and will set out agreements over confidentiality, participation, timetable, apportionment of costs, acceptance of the DSF Mediator Code of Professional Conduct and any other matters considered

²¹ DSF Professional Mediator: Qualifications and Responsibilities

²² 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 process

relevant and agreed. Signature of a Process Agreement is an indication of the parties' good faith intentions to work towards agreement.

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.

5 Reaching and documenting a Settlement Agreement

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, or series of Agreements, and signed by the parties. Until that time, nothing will be binding unless the parties so agree.

5.2 The Settlement Agreement will be specific as to actions and times and will be monitored by the RSPO 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.

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.

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

6 Termination of a DSF Mediation process

6.1 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. The DSF will then record on its webpage within the RSPO website that the case is 'Settled'.

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

- 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
- Where the DSF determines that progress is not sufficient to warrant further draw on resources
- If DSF becomes aware of any legality that would impinge on the continuation of the process.

7 Time limits

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. Typically, the Process Agreement will set out a workable timetable which has been agreed with the parties. The Mediator will then engage with the parties to adhere to it robustly throughout the Process. 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.

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

8 Monitoring with IMU

8.1 Any settlement reached through DSF Dispute Resolution will be monitored by the RSPO Investigation and Monitoring Unit (IMU) to ensure it is implemented to the parties' satisfaction. Monitoring arrangements, including timelines, will be discussed and agreed with the parties and will be included in the Settlement Agreement which will be shared with the IMU subject to any request for confidentiality.

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.

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.

8.4 Throughout the IMU Monitoring process, DSF will remain available to the parties, at their request, to assist them further in order to secure the successful implementation of their Settlement Agreement.

8.5 On conclusion of the monitoring period, the IMU will report to the DSF who will formally close the complaint on their register.

9 Costs to the parties of a DSF process

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

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

9.3 Parties who are unable to commit to their full share of costs, may make a formal application to the DSF Trust Fund²³ for support. In the interests of transparency, the request and the outcome will be shared between the parties as part of the DSF Mediation process.

²³ 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.

D REPORTING and ACCOUNTABILITY

1 DSF public reports:

1.1 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 Process. DSF will indicate when it has restricted disclosure in response to a request from one or both of the parties. .

1.2 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.

DSF Progress Report

1.3 Depending on the circumstances of the DSF Mediation process, 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.

DSF Settlement Report

1.4 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.

DSF Termination Report

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

Language

1.6 Mindful that 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 complainant.

Tracking cases in the public domain

1.7 DSF will provide the above information to the Complaints Desk who will update the RSPO Case Tracker in accordance with the Desk's own requirements.

1.8 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.

2 DSF internal Reports within RSPO

2.1 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 established timeline in order to inform the CPs decision as to whether to maintain any adjournment or proceed to investigation.

2.2 If requested, DSF will provide briefings and summaries to the Board of Governors on general themes and trends in cases. Confidentiality will be maintained with regard to any detail of a case

unless there is a specific request from the Board 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, and that all parties confirm their consent to specific points of disclosure in writing to the DSF.

3 Insights and Lessons Learned

3.1 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.

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E COMMUNICATION and COLLABORATION

1 Outreach

1.1 The DSF will work closely with the RSPO Outreach and Engagement Unit (O&E) in supporting their interventions which raise awareness and enhance the provision of information about the DSF function to RSPO members, potentially affected communities, civil society organisations and relevant stakeholders. The goal is to ensure that RSPO members and stakeholders will understand how a DSF process may be triggered within the RSPO Complaints System, and the opportunities available to them through a DSF Mediation process. This may require DSF input to print and visual media as well as participation in meetings and workshops from time to time.

2 Collaboration with other Independent Accountability Mechanisms (IAMs)

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.

2.2 In the event that the DSF is engaged with a complaint that overlaps with 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. In most circumstances, DSF would seek to enjoin a Memorandum of Understanding or Letter of Agreement.

Annex A: DSF Workflow

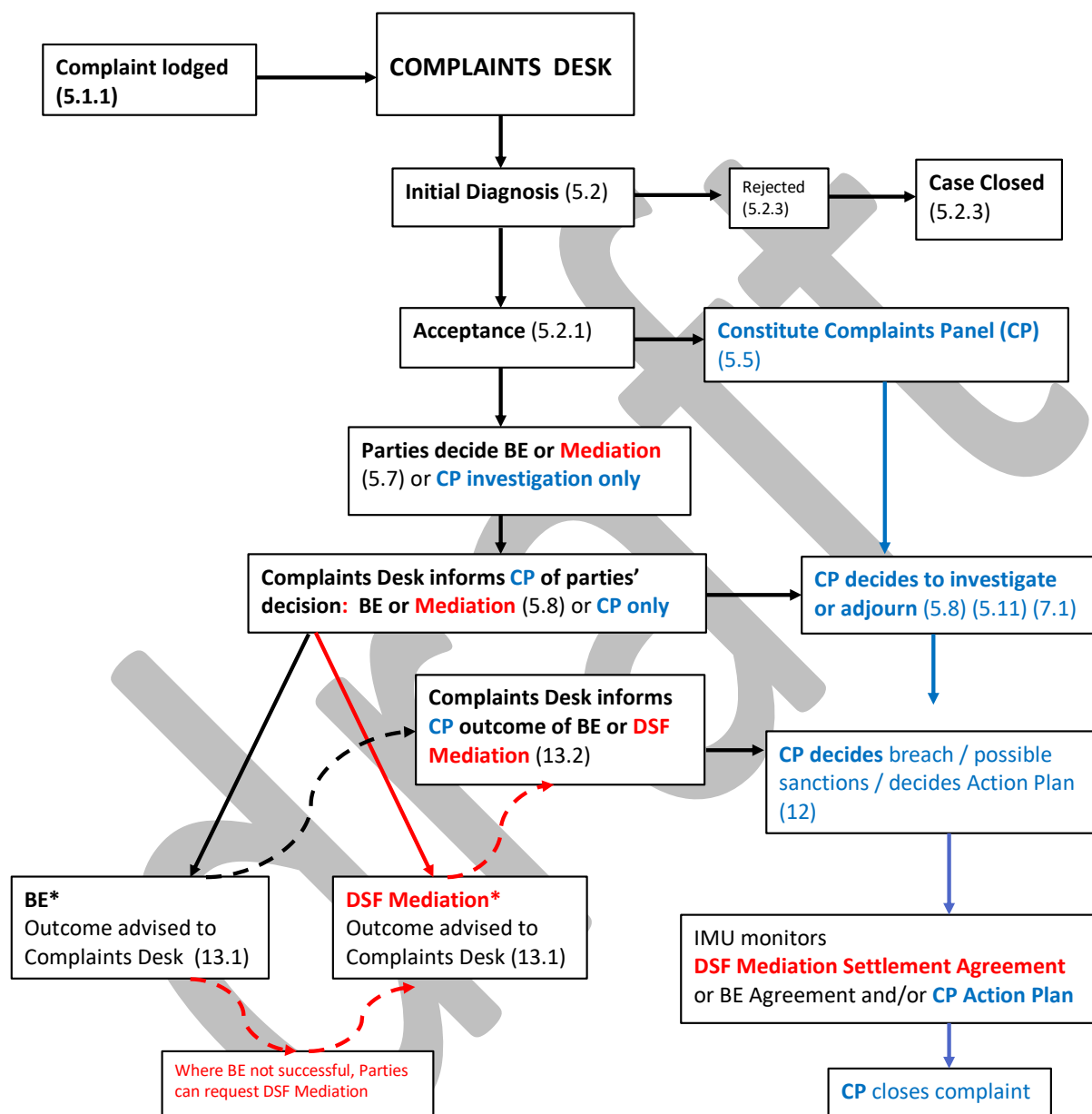
Annex B: Costs of a DSF process: apportionment between parties

DSF Review

A Review of the DSF will be commissioned every **three** years and will include a review of these ToRs as well as the Operational Guidelines.

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

Relevant clauses from RSPO Complaints and Appeals Procedure (CAP) are referenced in brackets



***DSF Mediation:** Parties work to a negotiated settlement with assistance of third party DSF Mediator according to a DSF Mediation Process Agreement and Code of Professional Conduct

***BE:** Parties try to negotiate agreement without DSF third party facilitation or Observer using the resources of the company's own grievance mechanism. Outcome will be reported to the Complaints Desk within one calendar month of parties deciding to try BE.

Annex B: DSF Mediation process costs

Formula applied in calculating the share of parties' 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 (*eg: 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 apply to the DSF Trust Fund for assistance²⁴.

²⁴ 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.