

[RSPO logo]	<b>Terms of Reference (TORs) for the RSPO Appeals Panel</b>	Code	
		Approved by	
		Date of Approval	
		Version	1.2

## 1. PURPOSE AND SCOPE

- 1.1. This document outlines the terms of reference (TOR) for the RSPO Appeals Panel (AP), the independent body that reviews appeals submitted by those appellants wishing to challenge a decision reached by the RSPO Complaint Panel (CP).
- 1.2. These TORs define the membership and responsibilities of the AP members.
- 1.3. The AP is accountable to the RSPO Secretariat and has delegated responsibility to consider Appeals in accordance with the Appeals Mechanism Procedure and to take decisions accordingly, in line as well with this TOR and with the Code of Conduct in Annex 1.

## 2. VERSION HISTORY

Version number	Date of approval (Effective date)	Description of changes
1.0	First draft	First draft publication, circulated to RSPO stakeholder workshop held on 8 September 2015.
1.1	Second draft	Includes mark-ups from stakeholder workshop of 8 September 2015
1.2	Third draft	Includes mark-ups from the stakeholder consultation conducted during October and November 2015

## 3. DEFINITIONS

- 3.1. All definitions provided in the RSPO Appeals Mechanism Procedure are valid.

## 4. ASSOCIATED DOCUMENTATION

- RSPO Appeals Mechanism Procedure
- RSPO Complaints System Procedure
- Code of Conduct for Supply Chain Associates of the Roundtable on Sustainable Palm Oil
- RSPO Dispute Settlement Facility (DSF) - Framework, Terms of Reference, and Protocol
- Complaints System Components & Terms of Reference

## 5. DUTIES AND RESPONSABILITIES

- 5.1. The AP's role is to ensure that the decision making process and/or the application of the Complaint System Procedure has been applied fairly and appropriately, taking into account the particular circumstances of the case.
- 5.2. The AP will be responsible for:
  - 5.2.1. Conducting an independent review and evaluation of the appeal evidence; and
  - 5.2.2. Making one of the following final binding decision on the appeal:
    - 5.2.2.1. Reject the appeal and thereby confirm the Complaint Panel's decision.
    - 5.2.2.2. Accept the appeal and overturn the CP's decision.

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- 5.3. The AP shall report the results of its investigation to the RSPO Secretariat.
- 5.4. The AP is further encouraged to inform RSPO's Secretariat if potential improvements in the appeals process and procedure are identified and/or needed.

## 6. AP CONSTITUTION

### 6.1. Membership

- 6.1.1. The AP is not a permanent body of the RSPO and shall be convened for each case by the Secretariat taking into account the nature of the appeal.
- 6.1.2. The AP members shall be selected based on their knowledge, required expertise to review the appeal, their integrity, ability to act independently and the fact that they do not represent any particular organization.
- 6.1.3. The contract terms under which AP members are appointed shall not interfere with the ability of the members to act impartially, and these contract terms shall be disclosed to the Appellant and the Respondent.
- 6.1.4. The AP shall be composed of one up to three members, who must not have been a party to the decision to which the appeal relates and who are independent from RSPO, impartial and free of any conflict of interest.
- 6.1.4.1. The AP may consist of only one person if appropriate knowledge, independence and impartiality can be demonstrated.
- 6.1.4.2. Complicated cases as determined by the Secretariat shall be evaluated by a Panel of three members.
- 6.1.4.3. A different AP may be formed for each appeal received.
- 6.1.5. AP members are not entitled to appoint representatives to carry out their functions unless otherwise agreed by the RSPO Secretariat.
- 6.1.6. If there is more than one member in the AP, the Secretariat shall nominate one to be the chair.
- 6.1.7. AP members must be familiar with all relevant policies, standards and procedures to evaluate the case. Members shall also confirm understanding of the code of conduct.
- 6.1.8. All AP members shall sign a confidentiality agreement and are required to declare existing or potential conflict of interest before serving on an RSPO Appeals Panel.
- 6.1.9. AP members shall not participate in an appeals review related to a matter where they have a personal interest or had significant involvement in any capacity.
- 6.1.10. The Secretariat shall determine whether a declared interest represents a conflict, and shall determine what action must be taken to resolve such conflict. An action can be to nominate another candidate.

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## 6.2. Chair

6.2.1. The Chair must be appointed by the RSPO Secretariat based on expertise for the case and shall be identified in advance of the first AP meeting.

6.2.2. The Chair shall lead all meetings and decide on the methodology to be used to review and evaluate the appeal.

## 6.3. Secretary

6.3.1. The RSPO Secretariat will act as the AP Secretary.

## 6.4. Meetings

6.4.1. The minutes of the meetings held among the AP shall be recorded by the Panel Chair including summary of all views, advices, recommendations and opinions.

6.4.2. The original minutes will be provided to the Secretariat for their retention and records. The detailed minutes are confidential and therefore will not be placed in the public domain.

6.4.3. Meetings can be held at the discretion of the panel with the parties in order to offer them with the opportunity to present their case.

## 6.5. Quorum

6.5.1. All members of the AP shall be entitled to vote on decisions and the outcome of the appeal shall be decided on the basis of consensus. Consensus shall be understood as the absence of sustained opposition.

6.5.2. If the AP is not able to reach a decision by consensus, the members shall vote with the decision being taken on the basis of a majority vote.

## 7. CONFIDENTIALITY

7.1. RSPO maintains confidentiality at all level of its organization and ensures that measures are taken to protect confidential information obtained in the course of its activities.

7.2. Therefore, all AP members are required to sign a confidentiality agreement prior to allowing them access to any information.

7.3. The deliberations of the Appeals Panel shall be treated as confidential. Appeals admitted by the Secretariat and the AP's decisions on those appeals shall be published on the Internet site of the RSPO and in the RSPO Appeals Annual Report.

## 8. CONFLICT OF INTEREST (COI)

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- 8.1. RSPO recognizes the importance of maintaining high standards of probity such as impartiality, objectivity and integrity. An effective management of conflicts of interest (COI) is an essential element in order to achieve these standards and to maintain the confidence in RSPO's work.
- 8.2. Thus, all AP members shall declare any interests that may represent, or may be perceived by third parties to represent, a conflict of interest by signing a declaration prior to their appointment for each appeal case they review. This declaration shall refer to all potential COI. In addition, AP members shall specifically confirm that they have:
- 8.2.1. No current or prior involvement with the complaint;
  - 8.2.2. No current involvement in the RSPO Complaints System (other than involvement in other appeals);
  - 8.2.3. Not been a member of the Complaints Panel within the previous two years; and
  - 8.2.4. No commercial or other relationship with the Appellant or Respondent within the previous two years.
- 8.3. Depending on the nature of the interest, the Secretariat shall evaluate and determine if the declared interest causes an actual conflict and prevents a member to undertake the work.
- 8.4. One or more exceptions to the COI requirements in 8.2 can be waived for a specified AP candidate, provided that both the Appellant and the Respondent agree to this.
- 8.5. The RSPO Appeal Mechanism expressly prohibits a person who was involved in the decision that is the subject of the application from being a member of the AP.

## 9. RECORDS

- 9.1. The Secretariat shall be responsible for keeping the records of the AP's activities and communicating its decisions to the parties (appellant and CP), in line with the Appeals Mechanism Procedure.

## 10. REVIEW

- 10.1. The Secretariat shall review these Terms of Reference on regular basis or in light of changes in the relevant procedures, standards, policies or other requirements.

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## ANNEX 1

### Code of Conduct for the Appeals Panel (AP)

#### 1. Purpose

- 1.1. The Code of Conduct provides guidance to the Appeal Panel (AP) members related to the professional and ethical responsibilities that need to be reflected in the AP's work in order to comply with the highest ethical standards, to maintain and improve the confidence of the appeal parties and the general public and to uphold the integrity, credibility and reputation of the RSPO.

#### 2. Scope

- 2.1. This Code applies to all AP members and all AP activities.
- 2.2. This Code addresses the minimum appropriate levels of behavior, practice and conduct required from the AP. If certain situations are not expressly covered by this Code, AP members are expected to consider its essence in determining the most appropriate course of action.

#### 3. AP Responsibilities

- 3.1. The AP determines the outcome of appeals related to the RSPO Complaints Process. Therefore, the Panel must be and be perceived as a fair and impartial decision-making body.
- 3.2. AP members are expected to conduct themselves in accordance with this Code of Conduct assuming responsibility for their decision, actions and behavior.
- 3.3. When performing AP functions, the members shall serve in their individual, personal capacity and shall be subject to the provisions of this Code and relevant conflict of interest rules and confidentiality provisions.
  - 3.3.1. AP members will participate in the analysis and assessment of the appeals case based on their own opinions on the merits and the evidence presented to them.
- 3.4. All AP members have the duty to act fairly, in good faith and in an unbiased manner according to the rules of the appeals mechanism procedure and procedural fairness.
- 3.5. AP members shall treat all parties in a courteous, respectful, and fair manner.
- 3.6. All AP members must act in all proceedings with equity, integrity and impartiality, independent of other interests, including those of the Secretariat and RSPO.
- 3.7. While acting as an Independent AP reviewer, members shall not be subject to direction by, nor should act on instructions from, any person, body or authority other than legal requirements.
- 3.8. If an AP member has previously expressed a position on the matter subject of an Appeal in such a way that his or her views are, or would appear to be, fixed and not amenable for open consideration, then the AP shall inform the Secretariat and if deemed necessary state his or her intention to step down from the Panel.

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- 3.9. AP members shall ensure that all evidence and associated materials used in the deliberation of the appeals review remain strictly confidential.
- 3.9.1. The access to, and use and disclosure of, any information gathered by the AP during any appeals process shall be subject to a confidentiality agreement to keep sensitive information confidential.
- 3.9.2. No RSPO staff and AP member may release a document, or information, which has been provided on a confidential basis without the express written consent of the party who has provided such document.
- 3.10. AP members should consider carefully if they have an interest in the matters under review that might unduly influence their judgment and objectivity.
- 3.10.1. AP members shall immediately disclose to the Secretariat all known or potential COI or other circumstances that could interfere with or improperly influence their impartiality and independence on a particular matter under consideration.
- 3.10.2. The AP shall not participate in any appeals review related to a matter in which they have or had a personal interest or significant involvement in any capacity.
- 3.11. AP members shall not interfere in the political and administrative affairs of the RSPO nor shall they be influenced in their deliberations or decisions by the political character of the parties involved or the RSPO.
- 3.12. All inquiries, assessments and reviews shall be carried out as expeditiously as possible according to the established timeframes without compromising the integrity or comprehensiveness of the appeals process.
- 3.13. AP members shall not be members of the Complaints Panel (CP) and shall be independent to the Complaints decision-making process.

#### 4. Violations of the code

- 4.1. Panel members who are found to have violated the Code of Conduct may be subject to censure and the AP member's appointment may be immediately terminated in order to protect the integrity of RSPO's work.

#### 5. Declaration

- 5.1. Upon appointment, each AP member shall confirm his/her understanding of, and commitment to this Code in performing their duties and carrying out activities on behalf of the RSPO.
- 5.2. The declaration shall state as following:

*I \_\_\_\_\_ (print name) acknowledge that I have received a copy of the Code of Conduct for the Appeals Panel, which I have read and understood in full. I agree to be bound by the principles set out in the Code when acting as an Appeal Panel member.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_