

[RSPO logo]	<b>Appeals Mechanism Procedure for the RSPO Complaints System</b>	Code	
		Approved by	
		Date of Approval	
		Version	1.2

## PURPOSE AND SCOPE

- 1.1. This procedure forms part of the RSPO Complaints System and sets out the mechanism for receiving, evaluating and resolving appeals. This procedure applies exclusively to appeals filed against the outcome of a complaint handled by the RSPO Complaints Panel (CP).
- 1.2. This procedure does not replace existing procedures to deal with appeals under the RSPO's accreditation and certification systems, namely:
  - a) Appeals against accreditation decisions made by RSPO's accreditation body, Accreditation Services International GmbH (ASI). RSPO accredited or applicant Certification Bodies shall direct these appeals to ASI.
  - b) Appeals by certificate holders and applicants regarding certification decisions taken by a particular Certification Body (CAB) shall be referred to the Certification Body's appeals resolution procedure.
- 1.3 This procedure applies to appeals relating to complaints first received by the RSPO on or after 1 January 2016. Appeals relating to complaints received by the RSPO prior to this date shall be dealt with under the RSPO appeals procedures that were previously in effect.

## 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. TERMS AND DEFINITIONS

- 3.1. **Appeal:** formal request by a party subject to a decision (without extending the scope of investigation) for reconsideration of a Complaints Decision; with regard to the RSPO Complaint System (adapted from ISO 17011:2004). The request may be done by a complainant under the RSPO Complaints System, or the RSPO member involved in the complaint,
- 3.2. **Appellant:** person, organization, or their representative (complainant or RSPO member) filing an Appeal.
- 3.3. **Appeals Panel:** independent panel appointed by the RSPO Secretariat to evaluate an Appeal.
- 3.4. **Complainant:** person, organization, or their representative filing a complaint.

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- 3.5. **Complaint:** expression of dissatisfaction (other than appeal) by any person or organization to RSPO, relating to the activities of RSPO or of its members, where a response is expected (adapted from ISO 17011:2004).
- 3.6. **Complaints Panel:** high-level body that handles complaints against RSPO members and RSPO as an organization and fall outside other complaint resolution mechanism established in the RSPO Complaint System.
- 3.7. **Complaint escalation:** complaint escalated from a prior decision-making body to a subsequent one, including the actions of the prior body within the scope of investigation (extended scope).
- 3.8. **Conflict of interest (COI):** Situation in which, because of other activities or relationships, impartiality in performing an activity or investigation is or could be compromised (adapted from ISO 14050:2009).
- 3.9. **Consensus:** lack of sustained opposition.
- 3.10. **Complaints Decision:** a final decision made by the RSPO Complaints Panel in relation to a complaint received under the RSPO Complaints system or, if recourse to the RSPO Complaints Panel was previously not allowed, a final decision made by the RSPO Secretariat regarding the handling of a complaint;
- 3.11. **Impartiality:** actual and perceived presence of objectivity (ISO 17021:2006). Element made up of several components such as objectivity, independence and identification and management of Conflict of Interest (adapted from ISO 17001:2005)
- 3.12. **Independence:** a component of impartiality referring to the independence of the party reviewing the appeal from either RSPO or any other person having an interest in the result of the process (adapted from ISO-PAS17001:2005). Basis for the impartiality of the appeals process and objectivity of the conclusions (adapted from ISO 17011:2011)
- Note: Appeal Panel members should be independent of the activity being challenged and act free from bias and Conflict of Interest (COI).*
- 3.13. **Procedural Impropriety:** existence of substantial and/or serious procedural errors in the way in which a process was conducted or a failure to act with procedural fairness.
- 3.14. **Respondent:** the RSPO member involved in the complaint (if the Appellant is the complainant), or the complainant (if the Appellant is the RSPO member involved in the complaint).
- 3.15. **Recourse:** the right from a complainant to escalate their case to the Complaints Panel (CP) when the complainant remains dissatisfied with the outcome of their complaint in one of the other complaint processes of RSPO.

#### 4. ASSOCIATED DOCUMENTATION

- RSPO Complaints System Procedure
- RSPO Submission of Complaint Form
- 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

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- Complaints System Components & Terms of Reference

## 5. INSTITUTIONAL FRAMEWORK

- 5.1. Consistent with other components of the RSPO Complaints System, this RSPO appeals mechanism procedure is not a legal enforcement instrument and is not intended to be a replacement for any legal requirements and mechanisms in force by any regional, national, or international governmental body.
- 5.2. RSPO requirements mandate adherence to official governmental requirements and ensures that its activities respect national and international law, policies, standards and recognized human rights.
- 5.3. The appeals mechanism offers a transparent and efficient opportunity for addressing concerns related to the RSPO Complaints System.

## 6. GUIDING PRINCIPLES

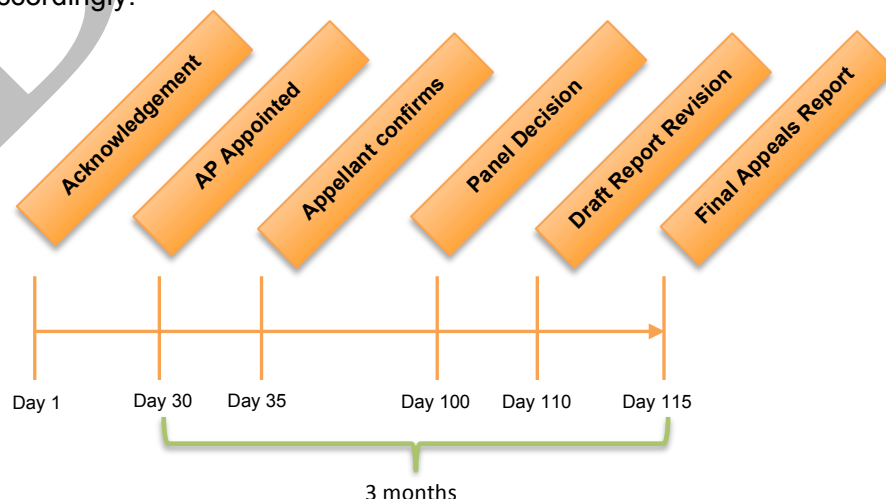
- 6.1. The RSPO Appeals Mechanism shall be based on adherence to the guiding principles of Clarity; Accessibility; Efficiency; Impartiality; Appropriate disclosure; Accountability; Flexibility, Quality outcomes and Rights-compatible.
- 6.2. The guiding principles ensure that the appeals mechanism is:
  - 6.2.1. Clear and accessible,
  - 6.2.2. Efficient in responding in a timely manner,
  - 6.2.3. Impartial, in that the parties making the final decision are independent from any RSPO complaints handling activities that are being challenged by the appellant (if applicable),
  - 6.2.4. Transparent and accountable in its operations and outcomes but respecting of confidentiality when required
  - 6.2.5. Objective and fair,
  - 6.2.6. Evaluated periodically to identify trends and lessons learned from the outcomes of the process, and
  - 6.2.7. Rights-compatible: in accordance with the law and with internationally recognized human rights.

## 7. GENERAL OVERVIEW

- 7.1. If a complainant or RSPO member is not satisfied with the outcome of a decision taken under the RSPO Complaints System, they may have a right to appeal the decision according to this procedure.
  - 7.1.1. The party making the appeal is hereafter referred to as the “Appellant”. The other party is the “Respondent”.
  - 7.1.2. The Appellant and the Respondent will constitute the parties of the Appeal. The Secretariat shall invite the Respondent to participate in the Appeal process

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- 7.2. The RSPO Secretariat (hereinafter “the Secretariat”) is responsible for coordination, administration and communications of the appeals process.
- 7.3. The Secretariat shall appoint a third-party, impartial and independent Appeals Panel (AP) to review the Complaints Decision, make a final decision and prepare a report summarizing the results of the investigation and the basis for the decision.
- 7.3.1. The Appeals Panel membership criteria and responsibilities are defined in the document Terms of Reference for the Appeals Panel (Code).
- 7.4. All parties will be given equal opportunity to present their case and evidence to the Appeals Panel. If expert evidence is sought by the Appeals Panel, the Appellant and the Respondent shall have access to this evidence (provided that they enter into a non-disclosure agreement, where this is required by the expert).
- 7.4.1. In the event that the AP decides to consult with an external expert and if the expert will be given access to confidential information, the expert shall enter into a non-disclosure agreement.
- 7.5. The Appeals process shall not suspend the validity of the Complaints Decision, unless the outcome of the Appeal states otherwise.
- 7.6. Appeals shall be submitted in English. However, on application the Secretariat may choose another working language appropriate to the case and to support the Appellant or the Respondent. The working language shall be established before appointing the Appeals Panel.
- 7.6.1. All information presented to the panel by the Secretariat shall be submitted in English and/or the working language.
- 7.6.2. All official responses and final Appeals Panel decisions shall be made in English with if applicable a translation in the previously agreed working language.
- 7.7. It is expected that any formally accepted appeal should normally be resolved within 3 months of the appointment date of the Appeals Panel (see Figure 1).
- 7.7.1. The Secretariat strives to conduct all appeals phases within predefined timeframes. Nevertheless, the response time can be extended depending on the complexity and/or the workload of each case. In those circumstances, the Secretariat will inform the Parties accordingly.



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**Figure 1: Appeals Process Timeline**

## **8. GROUNDS FOR APPEAL**

8.1. The grounds for appeal are objective evidence that:

- 8.1.1. There was a procedural impropriety in reaching the Complaints Decision;
- 8.1.2. The reasoning for the Complaints Decision was not disclosed;
- 8.1.3. There was a substantial and manifest error in the reasoning disclosed for the Complaints Decision;
- 8.1.4. One or more of the parties involved in making the Complaints Decision had a conflict of interest; or
- 8.1.5. The Complaints Decision did not take into consideration substantial evidence that was submitted by the Appellant prior to the Complaints Decision that could have supported an alternative decision being made.

## **9. ACCEPTANCE OF APPEALS**

9.1. All Appeals shall be submitted in writing to the Secretariat within 30 days of the parties being informed about the Complaints Decision.

9.2. To be accepted and classified as an Appeal, the Appellant shall:

- 9.2.1. Submit the appeal using the appeals submission form available on the RSPO website.
- 9.2.2. Complete submission form in English or other agreed working language.
- 9.2.3. Provide a description/objective of the appeal.
- 9.2.4. Specify the grounds of the appeal as per section 8.
- 9.2.5. Provide information and details of evidence substantiating the grounds of the appeal.
- 9.2.6. Agree to pay the cost of the process, as specified by the RSPO in its current Schedule of Appeal Fees, if the appeal is rejected by the Appeal Panel.
- 9.2.7. Adhere to all terms and provisions of this procedure.

9.3. The Secretariat shall within 10 working days of receiving the appeal submission form:

9.3.1. Conduct a preliminary review of the appeal submission form to determine whether new evidence has been received.

9.3.1.1. If new evidence has been received, the Secretariat shall refer the case back to the Complaints Panel for reconsideration as part of the original complaint.

9.3.1.2. If no new evidence has been received, the case can move to the next step (9.3.2).

9.3.2. Acknowledge to the Appellant in writing the receipt of the appeal submission form and confirm the acceptance or rejection of this based on compliance with the conditions set out in sections 9.2 and 9.3.1.

9.3.2.1. If the conditions are met and the submission form is complete, the appeal submission shall be formally accepted as an Appeal.

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9.3.2.2. If the conditions are not met, the appeal submission cannot be processed and the Secretariat may formally reject it.

9.3.3. Inform the original decision making authority (the Complaints Panel) that the Complaint Decision is subject to an appeal.

9.3.4. Inform the Respondent that the Complaint Decision is subject to an appeal and invite them to participate in the process.

9.3.5. Provide basic information to both the Appellant and Respondent about the appeals procedure, proposed course of action and process to be followed to ensure that these are clearly understood.

9.4. The Appellant may withdraw the appeal at his/her sole discretion before RSPO appoints a panel to review the case. In this case, the appeal will be considered as closed and recorded as such.

## 10. PROCESSING AN APPEAL

10.1. The Secretariat shall convene an Appeals Panel in accordance with the Terms of Reference (document code) and this procedure within 30 days of formally accepting the appeal.

10.2. The Appellant and Respondent shall be informed of the proposed number of Appeal Panel members and the names and summary of experience and background of each Appeal Panel member. The Appellant and the Respondent shall be requested to confirm in writing his/her agreement with the individuals proposed within 5 working days. If the Appellant and Respondent do not reply within this time frame, it shall be deemed that the composition of the Panel has been accepted.

10.3. The Appellant and the Respondent have the right to object to Appeals Panel members based on existing or potential conflict of interest, or based on evidence that the expertise of any member for the particular case is not relevant or sufficient.

10.4. The Secretariat shall evaluate any objections including the evidence provided and, if deemed appropriate, shall nominate alternative members within 5 working days of receiving the objection.

10.5. The Secretariat shall keep the Appellant and Respondent informed of the progress of the Appeals process and about the timeframes expected. If an appeals review is delayed, the parties shall be informed about this delay and the reasons for it. Nonetheless, the parties may contact the Secretariat at any time during the process to inquire about the progress of the evaluation.

10.6. If the Appellant is not co-operative during the appeals process (e.g., does not attend meetings when required, does not provide responses by stipulated deadlines) without reasonable justification, the appeal may be withdrawn and the Complaints Panel decision will be upheld.

## 11. REVIEW OF APPEALS BY THE APPEALS PANEL



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- 11.1. The Secretariat shall act as the secretary to the Appeals Panel, abstaining from interfering in any decision-making and limiting its task to providing the Panel in an impartial manner all the evidence and facts of the case.
- 11.2. The Secretariat shall ensure that the Appeals Panel has access to sufficient and adequate information in order to conduct the review and evaluation of the appeal. The information may include, but is not limited to:
- 11.2.1. Appeals submission form
  - 11.2.2. Complaints Panel final report including evidence reviewed to reach decision.
  - 11.2.3. Relevant standards, normative, complaint system procedures and documents.
- 11.3. The Appeals Panel chair shall determine the most suitable methodology to review the appeal (e.g., desk review, meeting, conference call, field visits, requesting written statement, engage additional expertise).
- 11.3.1. All discussions, phone/video calls and interviews should result in file notes. These notes should be legible, include relevant dates/times, clearly identify the author and contain a file reference.
- 11.4. The Appeals Panel shall conduct within 60 days of the formation of the Panel a comprehensive investigation of the appeal and submit after this period a draft report to the Secretariat to be distributed to the parties.
- 11.4.1. The parties shall have 10 working days to review the draft for comments on factual matters only and not for review of findings. Nevertheless, the final text is the Appeal Panel's sole decision. If the parties do not reply within this timeframe, it shall be considered that there are no comments to the draft.
- 11.5. Within 5 working days of receipt of the comments, the Appeals Panel shall finalize an appeals report to the Secretariat that includes the following:
- 11.5.1. General background and precedents of the case.
  - 11.5.2. Methodology used for the evaluation.
  - 11.5.3. Description and analysis of the evidence presented by the parties.
  - 11.5.4. Any relevant comments from the parties.
  - 11.5.5. Analysis of the correctness of the Procedure followed by the Complaints Panel and/or Secretariat.
  - 11.5.6. Rationale for reaching the decision.
  - 11.5.7. Final decision whether to accept or reject the appeal as per section 11.7.
  - 11.5.8. Distribution of costs as per section 12.
- 11.6. The Panel shall return all confidential materials (all materials provided to or created by the Appeals Panel pertaining to the appeals process) to the Secretariat after evaluating and deciding on an appeal. These materials, together with other records of the Panel's proceedings, shall be kept by the Secretariat for at least [7] years.
- 11.7. Outcome and Final Resolution**
- 11.7.1. The decision of the Appeals Panel shall be ratified by the RSPO Secretariat, unless this decision goes beyond the mandate given to the Appeal Panel or conflicts with the authority given to the Secretariat by the RSPO members. The decision shall be final

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and binding to all parties and not subject to further appeal. Appeals decisions shall be one of the following:

11.7.1.1. Reject the appeal and thereby confirm the Complaints Panel's decision.

11.7.1.2. Accept the appeal and overturn the CP's decision. For this, the Appeals Panel shall propose a new recommendation or amendment.

11.7.2. If the Panel finds that important facts were not taken into account, they may refer the case back to the Complaints Panel for re-consideration.

## 11.8. Communication of Decision

11.8.1. Appeals Panel decisions shall be communicated in writing to the Appellant and Respondent by the Secretariat within 5 working days of receiving the final report from the Appeals Panel. The decision of the Appeals Panel shall be recorded, together with the reasons.

11.8.2. Where the Appeals Panel accepts the appeal, a statement shall be made back to the Complaints Panel outlining why the original decision was not accepted including a recommendation for improvement that addresses any identified procedural breach, if deemed necessary.

## 12. Cost Distribution and Schedule of Appeal Fees

12.1. The RSPO may charge Appeal Fees to appellants, and these may include an administration fee and/or a fee for the cost of unsuccessful appeals. Appeal fees are solely to defray a portion of the actual costs incurred by RSPO (e.g., panel members' fees, experts fees, travel and accommodation and other disbursements), and these fees will not represent a net source of revenue for the RSPO.

12.2. The RSPO shall publish and maintain an up to date Schedule of Appeal Fees on its website. The RSPO has discretion to charge different appeal fees for different categories of appellant (e.g., supply chain member, grower member, social/environmental NGO, affected communities) and for different categories of complaint. Appeal Fees may be varied from time to time at the sole discretion of the RSPO, taking into account actual experience of the volume, nature, outcome and costs of appeals.

12.3. On receiving an application from an appellant, the RSPO has discretion to waive appeal fees in instances where appellants have limited financial resources and the appeal has significant social or HCV impact. The RSPO may seek the advice of the Complaints Panel in determining whether fees can be waived for a particular appeal or type of appeal.

12.4. When communicating its final decision, the Appeals Panel determines the distribution of costs between the RSPO and the Appellant (up to the maximum specified in the Schedule of Appeal Fees).

12.5. The RSPO shall report to its members, on an annual basis, the number and outcome of appeals, the total costs incurred in the handling of appeals, and the total fees charged to appellants.



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### 13. SYSTEM IMPROVEMENT

- 13.1. The Secretariat shall keep records of all appeals, final decisions, follow-up actions, effectiveness of these actions and recommendations.
- 13.2. The Secretariat shall publish a register of appeals including parties to each case, statuses and outcomes on the RSPO's website.
- 13.3. The Secretariat reserves the right to publish a summary or statements about a particular case on the RSPO's website with due regard for privacy and confidentiality. The content should include key issues raised in the appeal, the procedure undertaken, rationale for decisions and lessons learned.
- 13.4. After each appeals review, the Secretariat shall request feedback from both the Appellant and the Respondent regarding the process and about the treatment received.
- 13.5. RSPO is committed to providing high-quality services. Therefore, the Secretariat shall prepare an Annual Report describing the activities of the appeals mechanism during the preceding year.
- 13.5.1. The report shall include a review of appeals received, information and feedback collected during the process in order to identify systemic problems, trends and challenges in implementing the appeals procedure.
- 13.5.2. Opportunities to continually improve both the appeals process and RSPO services and thus increase the effectiveness and efficiency of the mechanism should be identified.
- 13.5.3. The report will be published on RSPO's website.
- 13.6. This procedure shall be revised immediately when needed and at least be evaluated once every three years to march current practices, include stakeholder feedback and replace any previous versions. Nonetheless a public version of the current approved procedure will always be available on the RSPO website.
- 13.6.1. For each revision, RSPO shall conduct a public consultation of the document with relevant stakeholders to promote an open and productive dialogue and to take the public's input and views into account.

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## ANNEX 1

### Flowchart of the RSPO Appeals Mechanism

