

ToR Public Domain Subgroup

1. Background

This Terms of Reference (ToR) is written for the Public Domain Subgroup under the Assurance Standing Committee (ASC). The RSPO's Subgroups are designed to encourage members to address complex and difficult challenges and work towards developing solutions. As a multi-stakeholder, participatory roundtable that works on the basis of consensus, it is essential that all members feed into the decision-making process. In principle, the Subgroups are made up of a representative from each of the stakeholder groups and are (periodically) created to deal with a specific issue.

2. Objectives

The objectives of the Public Domain Subgroup are to govern the process in capturing elements of grievances and issues in the public domain as well as discuss possible measures to prevent future occurrences via this Terms of Reference (ToR) and work programmes of the ASC.

3. Mandates

The mandates of the Public Domain Subgroup are as follows:

- To develop a system to capture elements of risks and grievances from public domain
- To discuss issues from the public domain and propose solutions to strengthen the Assurance Systems for ASC's consideration

The Public Domain Subgroup can undertake specific assignments within its areas of responsibility or may take responsibility assigned to them for Subgroups created by a Board of Governors (BoG) decision or a General Assembly decision or resolution.

Unless otherwise specified, the mandate of all Working Groups (WGs) shall be up to two (2) years, at which time it shall be reviewed by the ASC.

The ASC can recommend the appointment of the Chair or Co-Chairs of the Public Domain Subgroup, and instruct the Public Domain Subgroup on its reporting requirements (including frequency and content).

4. Composition

Appointments to the Working Group are for terms of two (2) years but members may seek re-nomination for subsequent terms without limit.

The Public Domain Subgroup starts with a call for members on the RSPO website or targeted individuals based on this ToR. Thereafter, the members of the Public Domain Subgroup shall appoint a Chair or Co-Chairs with the consensus of its members. The Public Domain Subgroup defines the work plan in detail and includes the reporting frequency to the ASC.

The individual representative from an ASC member institution can appoint an Alternate from the same institution to attend a Committee meeting. Alternates can only attend meetings if the Substantive is not present.

The Public Domain Subgroup members shall try to attend all meetings in person and work with their alternate member as soon as they know they cannot attend a meeting, to ensure that their seat is represented. In either case, the Public Domain Subgroup members should send their apologies to the WG Co-Chairs and advise if their alternate member will attend.

This information shall also be provided to the Secretariat Lead.

The Public Domain Subgroup may invite experts to participate in discussions requiring expertise in relevant areas/issues. Other invited experts may be appointed at the discretion of the Subgroup.

The Public Domain Subgroup is a Subgroup of the Assurance Standing Committee (ASC). The ASC, at its sole discretion, may propose changes to the composition of the Public Domain Subgroup to serve RSPO and its objectives.

To ensure effective discussions and decision-making, the structure of the Public Domain Subgroup is as follows:

Table 1 - Composition of the Public Domain Subgroup

Sector	Division	Total
Grower	Malaysia	2
	Indonesia	2

	ROW	2
	Smallholders	2
NGO	Environmental	2
	Social	2
Supply Chain	Processors & Traders	2
	Consumer Goods Manufacturer	2
	Retailer	2
	Financial Institution	2
Others	Certification Bodies	2
	Assessors	2
	Academics	2
	TOTAL	26

The formation of the Public Domain Subgroup **will strive** for a balanced representation of all membership categories to participate in this Subgroup but may propose changes to the composition of the Subgroup for it to better serve the objectives of this ToR. The Public Domain Subgroup may consist of both RSPO and non-RSPO members.

The Public Domain Subgroup members may be members of organisations with experience and empowered by the membership sectors to act on their behalf and are expected to regularly inform their constituents.

The Public Domain Subgroup members must commit to attending physical meetings and conference calls. The calls may be held outside regular office hours to accommodate the different time zones present in the Subgroup.

The Public Domain Subgroup members will be responsible for coordinating and updating directly with their alternates.

5. Meeting

In order to meet the objectives of the Public Domain Subgroup, it is necessary to establish an annual work development programme, which includes objectives, activities, timelines, budgets, and deliverables.

The Public Domain Subgroup will in principle have quarterly (physical or virtual) meetings every year.

The Public Domain Subgroup will provide regular updates to the ASC and will use the RSPO website to communicate on progress.

Meeting Documentation

No.	Document Description	Recommended Timeline
1	Draft minutes of meetings to be shared internally	Not more than one month after meeting
2	Minutes of the meeting to be shared publicly	Not more than two months after meeting
3	The Public Domain Subgroup Meeting Pack	One week before the meeting

Members of the Public Domain Subgroup shall also respect the “Chatham House Rule” in their reporting of the Subgroup discussions. This means that while remarks made during meetings may be repeated, they should not be attributed to an individual Public Domain Subgroup member, except where an attributed comment has been included in the approved minutes of that meeting.

The RSPO refers to RSPO Antitrust Guidelines for the conduct of its meetings and conference calls. There should not be any discussion of specific selling or buying of materials, pricing or any joint venture, future or collusive actions, such as excluding or choosing a supplier or geographies. All commentary is limited to current or historical activity. Any decision reached from meetings’ materials or discussed in meetings is an individual decision based on the participants’ own investigation and judgement.

6. Roles of the Secretariat

The RSPO Secretariat will provide the financial, human, and logistical support that the Public Domain Subgroup requires to meet, conduct business, and

achieve its objectives where necessary, based on an approved budget by the finance committee. The Assurance Division of the RSPO Secretariat will be the primary source of assistance and support to the Public Domain Subgroup.

The RSPO Secretariat will coordinate and facilitate the operations of the Public Domain Subgroup as well as take the lead in implementing the desired activities and deliverables of the ASC, which may include identifying appropriate facilitators, project management, research, and identifying resources, as well as appointing consultants to undertake mandated tasks.

The governance of the Public Domain Subgroup is the responsibility of the Assurance Standing Committee (ASC). Any changes to these Terms of Reference shall be approved by the ASC.

7. Retirement Criteria/Reselection of Inactive Members

The Public Domain Subgroup can exercise the right to retire the Subgroup membership of a member. However, the decision must be made by consensus of the Public Domain Subgroup (excluding the affected party). Affected parties should be given the right to be heard prior to a decision being made.

The reasons for the Public Domain Subgroup to consider the retirement of a member are:

- If the member is not adhering to the provisions of the RSPO Code of Conduct and Antitrust Guidelines for RSPO Members as well as to the terms of this TOR
- Voluntary retirement
- Absence from three (3) consecutive meetings without justified reason (including Alternate members)

Retirement of membership will be informed in writing to the Public Domain Subgroup Co-Chairs, copied to the RSPO Secretariat Lead.

The Public Domain Subgroup Co-Chairs will invite the constituents of the affected sectoral and/or geographical stakeholder group to nominate a new representative to the Public Domain Subgroup.

8. Management

All members of the Public Domain Subgroup are bound by the Antitrust Guidelines for RSPO Members.

Each member must declare any pre-existing, perceived, and/or potential conflict of interest on any matters on the agenda and/or matters arising at the beginning or during the course of the meeting. Should there be a conflict of interest, the member concerned must recuse himself/herself from all decision-making processes or sensitive discussions pertaining to the subject matter of which there is such conflict of interest.

Members and invited experts who have been privy to the discussions shall not use their position on the Public Domain Subgroup and/or information obtained from the Subgroup discussions to obtain monetary gain or bid for any projects commissioned by the Public Domain Subgroup directly or indirectly through the organisation with whom they are associated. Members and/or invited experts who observe and/or part of the discussions on developing project ToRs will not be allowed to tender and/or participate in the tender evaluation/selection processes, even after they have left the Public Domain Subgroup.

Members shall ensure the accuracy of the information and that the interpretation of all outcomes and decisions of the Subgroup are consistent with the consensus reached within the Public Domain Subgroup.

Members shall strive to reach a consensus in decision making. However, in the event a consensus is not possible for any specific issue, at least 75% of the Committee members are required to vote in favour for the adoption of a decision, and shall include at least one supporting vote from each membership category.

If a decision cannot be reached through the above means, the Chair (or Co-Chairs) of the Public Domain Subgroup may refer to the Co-Chairs of the Assurance Standing Committee (ASC) for a final decision.

Transparency is very important to RSPO. All discussions and documents are only classified as confidential in exceptional circumstances. However, where information has been designated as confidential because of its sensitivity (for example, concerning violations or alleged violations of the RSPO Principles & Criteria) the Subgroup members should respect the confidentiality issues and shall prevent the same from becoming public.

Breaches of the above may lead to exclusion from the Subgroup. Prior to taking public action in cases of unresolved allegations of breaches of the above, members shall report such alleged breaches to the Co-Chairs of the Subgroup and the Member Category Representative on the RSPO Board of Governance, which will deal with the alleged breaches in accordance with the RSPO Statutes and Code of Conduct.