

**1 October 2019
(Publication Date)**

Dispute Resolution Procedure



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Document name : Dispute Resolution Procedure
Document title : MSPODRP03
Approved by : MPOCC Board of Trustees **Date** : 10 October 2019
Publication date : 4 April 2017, 5 January 2018
Application date : 4 April 2017
(Date of entry into force)
Revised Publication Date : 1 October 2019

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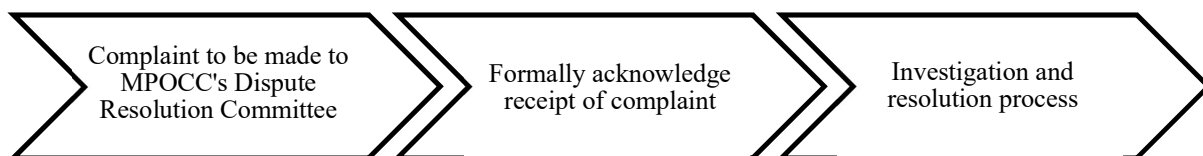
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1. Introduction

- 1.1 The Malaysian Palm Oil Certification Council (MPOCC) is the scheme owner of the Malaysian Sustainable Palm Oil (MSPO) Certification Scheme and has overall responsibility for ensuring the smooth operation of the MSPO Certification Scheme and maintaining its credibility.
- 1.2 This document describes the procedures for the reporting, investigation and resolution of disputes in the MSPO Certification Scheme, covering
- i. The scope in terms of the types of disputes that can be referred to the MPOCC in its role as the scheme owner;
 - ii. Procedure for submission of disputes;
 - iii. Membership and responsibility of the Dispute Resolution Committee (DRC) and its decision-making process;
 - iv. Costs incurred related to these Procedures.
 - v. Eligibility to make complaints

2. Scope

- 2.1 The types of disputes that can be submitted to the MPOCC include:
- i. Disputes involving MPOCC as a result of decisions and /or activities of the MPOCC as the Scheme Owner which has overall responsibility for the implementation of the MSPO Certification Scheme; and
 - ii. Disputes not involving MPOCC.
- 2.2 The disputes involving MPOCC shall be activities related to the notification of the accredited certification bodies (CBs) and the issuance of logo usage licences for the MSPO logo to the holders of certificates issued by these ACBs, and MPOCC's role in supporting and coordinating the standard-setting and review processes.
- 2.3 In addition, such disputes may involve other aspects of the MSPO Certification Scheme which do not come under the purview of the accredited ACBs or the accreditation body (AB), and thus may need to be referred to MPOCC for a resolution.
- 2.4 Disputes relating to the decisions and activities of a certified entity, an accredited CB or an AB shall be dealt with by the dispute resolution procedures of the relevant accredited CB, AB, or by the International Accreditation Forum (IAF), respectively.
- 2.5 The flow of procedures for complaints is as below:



Complaint made must:

- Clearly state the Principle and Criteria of the MSPO Standard on which the complaint is made against
- Disclose recorded evidence and proof
- Chronological order of action taken to resolve the issue before the formal complaint is made to MPOCC's Dispute Resolution Committee

3. Dispute Resolution Committee (DRC)

- 3.1 The DRC is the independent committee established by the Board of Trustees of the MPOCC to consider and resolve the types of disputes mentioned in this Procedure. The management of the MPOCC shall serve as the Secretariat for the DRC.
- 3.2 The DRC shall comprise of six members who are appointed by the Board of Trustees. The Board shall also decide on the Chair for the DRC. Each member of the DRC shall be appointed for a two-year term, which may be renewed. The Terms of Reference of Members of the DRC are shown in **Appendix I**.
- 3.3 The quorum for meetings of the DRC shall be three (3) members in order for the meeting to proceed.
- 3.4 The Chair shall preside at all meetings of the DRC, but if there is no Chair, or if at any meeting the Chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, or if the Chair is present but is unable to preside for whatsoever reason(s), the members at such a meeting shall choose from one of their members present to act as a Chair at such a meeting.
- 3.5 The DRC shall be entitled to call for evidence in such form, whether verbal, written or otherwise, recorded in its absolute discretion, reasonably deemed necessary for the proper conduct of its duties. All parties shall provide such evidence and the necessary information within their power to facilitate the DRC's proceedings.
- 3.6 All evidence and information provided to the DRC shall, unless otherwise agreed with the Chairman in advance, become and remain the property of the DRC.
- 3.7 The decision of the DRC shall be based on a simple majority, and shall be final. In the event of equality of votes, the chairman shall have a casting vote.
- 3.8 The names and affiliation of the members of the DRC during their term will be posted on the MPOCC website.
- 3.9 Any member of the DRC must be independent from the complainant's activity otherwise he/she will be disqualified to sit in the DRC for this dispute.

4. Disputes Involving MPOCC

4.1 Submission of Disputes

4.1.1 All disputes shall be submitted in writing to the Chair of the DRC, with a copy to the Secretariat. The complainant shall submit a short letter that, where applicable:

- Describes the basis of the dispute
- Summarises the chronology of the issue and results to date
- Explains how the timeliness requirements under Section 4.2 of this Procedure have been met
- Identifies potential parties to the dispute
- Explains how the complainant had previously participated in the proceedings giving rise to the dispute
- Suggests a solution
- Whether it is a repetitive dispute (if the dispute raised by the same complainant on the same issue)

4.1.2 The Chair of the DRC shall acknowledge receipt of all disputes in writing.

4.1.3 The Chair of the DRC shall reject any letter that fails to meet substantially the requirements in subsection 4.1.1. Such a rejection shall:

- Be in writing
- Specify the reason(s) for the rejection
- Indicate how the deficiencies may be rectified

4.2 Timeliness

4.2.1 Resolution of a dispute shall be sought within 20 working days of the decision or action in dispute.

4.2.2 The Chair of the DRC shall reject as untimely matters that are submitted beyond the period specified in subsection 4.2.1.

4.3 Notification to Dispute Resolution Committee

Where the letter has been accepted by the Chair of the DRC, the Secretariat shall be directed to forward copies of the dispute (and its supporting documents) to the DRC.

4.4 Responding Party

4.4.1 The Secretariat shall, at the same time, forward copies of the dispute (and its supporting documents) to any party, other than MPOCC, named in the complaint as a potential responding party while maintaining confidentiality of all the documents shared.

- 4.4.2 Whenever it appears to the Chair of the DRC that a person not currently named as a responding party should be invited to join the proceedings in that capacity, the Chair shall direct the Secretariat to send to that person a copy of the dispute (and its supporting documents) and invite such participation.
- 4.4.3 Organisations or persons named as responding parties shall have 20 working days, following the Secretariat's transmission to them of the dispute (and its supporting documents), to submit to the Secretariat their own response briefs.
- 4.4.4 The response briefs shall address the issues presented by the dispute, and shall:
- Be in writing
 - Be accompanied by supporting documentation not already presented by the complainant
 - Identify the type and location of any other non-documentary supporting evidence
 - Explain why any person not already part of the proceedings should be invited to participate
- 4.4.5 Respondents added to the proceedings other than by the complainant in the dispute shall be given a reasonable period of time, not exceeding 20 working days, to submit their own supporting documents to Secretariat.
- To the maximum extent practicable, time spent waiting for the initial briefs of later- added parties shall not otherwise delay any pending proceeding nor serve to extend the time periods for actions required, under these Procedures, of the DRC.
 - Briefs submitted beyond the time permitted by these Procedures shall be lodged by the Secretariat and forwarded to the Chair of the DRC, who shall indicate the extent (if any) to which the DRC will consider the material contained in the brief.
- 4.4.6 The Secretariat shall promptly forward copies of the respondent(s)'s briefs to the parties involved in the dispute and the DRC.
- 4.5 Consideration of Disputes by DRC
- 4.5.1 Within 15 working days of the receipt of the respondent(s)'s briefs, the DRC shall decide whether to proceed to hear the dispute.
- 4.5.2 Upon reaching its decision, the DRC shall issue a written statement that either declines or agrees to hear the dispute. The statement shall be issued to the complainant and posted on the MPOCC website.
- 4.5.3 If the DRC makes a decision to hear the dispute, the DRC shall convene to discuss and make its decision on the dispute. Under normal circumstances, the DRC shall decide on the dispute solely on the basis of the briefs submitted to the DRC.

- 4.5.4 In exceptional circumstances, the DRC may do any or all of the following:
- Request supplemental briefing on any pertinent matter from any of the parties to the dispute
 - Seek assistance from the Secretariat
 - Seek the assistance of consultants or outside experts
 - Hold site visits, oral hearings or other proceedings that might help resolve the dispute
- 4.5.5 The decision(s) of the DRC shall be based on a simple majority, and shall be final.
- 4.5.6 The DRC shall issue a statement of its decision within 20 working days of its decision to hear the dispute. The DRC shall inform the complainant, MPOCC and other responding parties about the outcome of the dispute resolution process, including recommendations or remedial actions, in writing.
- 4.5.7 The flow chart for the procedures of dealing with disputes in which MPOCC is involved as a responding party is shown in **Appendix II**.

5. Disputes Not Involving MPOCC

- 5.1 Submission of Disputes
- 5.1.1 All disputes shall be addressed in writing to the MPOCC. The complainant shall submit a short letter that, where applicable:
- Describes the basis of the dispute
 - Summarises the procedures and results to date
 - Explains how the timeliness requirements under Section 5.2 of this Procedure have been met
 - Identifies potential parties to the dispute
 - Explains how the complainant had previously participated in the proceedings giving rise to the dispute
 - Suggests a solution
- 5.1.2 MPOCC shall acknowledge receipt of all disputes in writing.
- 5.1.3 MPOCC shall reject any letter that fails to meet the requirements in subsection 5.1.1 substantially. Such a rejection shall:
- Be in writing
 - Specify the reason(s) for the rejection
 - Indicate how the deficiencies may be rectified
- 5.1.4 Where the letter has been rejected as inadequate by the Secretariat, the complainant can appeal to the MPOCC Chairman, whose decision on the adequacy of the letter shall be final.

- 5.2 Timeliness
- 5.2.1 Resolution of a dispute shall be sought within 20 working days of the decision or action in dispute.
- 5.2.2 MPOCC shall reject as untimely matters that are submitted beyond the period specified in subsection 5.2.1.
- 5.2.3 Where a letter has been rejected as untimely by the MPOCC, the complainant can appeal to the MPOCC Chairman, whose decision on the timeliness of the letter shall be final.
- 5.3 Notification to Dispute Resolution Committee
- Where the letter has been accepted by the MPOCC, the Secretariat shall forward copies of the dispute (and its supporting documents) to the DRC.
- 5.4 Responding Party
- 5.4.1 The Secretariat shall, at the same time, forward copies of the dispute (and its supporting documents) to any party named in the dispute as a potential responding party.
- 5.4.2 Whenever it appears to the Chair of the DRC, that a person not currently named as a responding party should be invited to join the proceedings in that capacity, the Chair shall direct the Secretariat to send to that person a copy of the dispute (and its supporting documents) and invite such participation.
- 5.4.3 Organisations or persons named as responding parties shall have 20 working days, following the Secretariat's transmission to them of the dispute (and its supporting documents), to submit to the Secretariat their own response briefs.
- 5.4.4 The response briefs shall address the issues presented by the complaint, and shall:
- Be in writing
 - Be accompanied by supporting documentation not already presented by the complainant
 - Identify the type and location of any other non-documentary supporting evidence
 - Explain why any persons not already part of the proceedings should be invited to participate
- 5.4.5 Respondents added to the proceedings other than by the complainants in the dispute shall be given a reasonable period of time, not exceeding 20 working days, to file their own supporting documents.
- To the maximum extent practicable, time spent waiting for the initial briefs of later- added parties shall not otherwise delay any pending proceeding nor serve to extend the time periods for actions required, under these Procedures, of the DRC.

- Briefs submitted beyond the time permitted by these Procedures shall be lodged by the Secretariat and forwarded to the Chair of the DRC, who shall indicate the extent (if any) to which the DRC will consider the material contained in the brief.
- 5.4.6 The Secretariat shall promptly forward copies of the respondent(s)'s briefs to the parties involved in the dispute and the DRC.
- 5.5 Consideration of Dispute by DRC
- 5.5.1 Within 15 working days of the receipt of the respondent(s)'s briefs, the DRC shall decide whether to proceed to hear the dispute.
- 5.5.2 Upon reaching its decision, the DRC shall issue a written statement that either declines or agrees to hear the dispute.
- 5.5.3 If the DRC makes a decision to hear the dispute, the DRC shall convene to discuss and make its decision on the dispute. Under normal circumstances, the DRC shall decide on the dispute solely on the basis of the briefs submitted to the DRC.
- 5.5.4 In exceptional circumstances, the DRC may do any or all of the following:
- Request supplemental briefing on any pertinent matter from any of the parties to the dispute;
 - Seek assistance from the Secretariat;
 - Seek the assistance of consultants or outside experts; and/or
 - Hold site visits, oral hearings or other proceedings that might help resolve the dispute.
- 5.5.5 The decision of the DRC shall be based on a simple majority, and shall be final.
- 5.5.6 The DRC shall issue a statement of its decision within 20 working days of its decision to hear the dispute. The DRC shall inform the complainant, MPOCC and other responding parties about the outcome of the dispute resolution process, including recommendations or remedial actions, in writing.
- 5.5.7 The flow chart for the procedures of dealing with disputes in which MPOCC is not involved as a responding party is shown in **Appendix III**.

6. Cost

Regardless of the outcome of any dispute, each party will bear their own costs of participating in all the proceedings conducted under this Procedure.

7. Conflict of Interest

7.1 Recusal

Under this Procedure, if a member of the DRC knows that his or her participation in the resolution of the dispute will result in a conflict of interest, that member shall immediately disclose that conflict to the DRC and suspend his or her further participation in the proceedings.

7.2 Recusal: Vacating a Decision

7.2.1 Participation in any stage of the proceedings by a member of the DRC who fails to recuse him or herself immediately upon his or her awareness of the actual or potential conflict will vacate:

- a) Final decision made (in the resolution of the dispute) by the DRC, if a final decision was reached. This decision shall be vacated even if the member with the undisclosed conflict did not participate in the deliberations that preceded the final decision; and
- b) Any interim decision made, at any stage of the proceedings, in which the member with the undisclosed conflict participated any way.

7.2.2 A motion to vacate a final decision for reasons of an undisclosed conflict shall be made immediately after the discovery of an undisclosed conflict, but in no event more than 20 working days after the transmission of the final decisions in the matter by the DRC.

7.2.3 A motion will be made to the DRC. The party making the motion must demonstrate the existence of a conflict.

7.2.4 A party's failure to move to vacate a final decision within the time limitation stated will be deemed to be a waiver of any objection to the participation of the member with the undisclosed conflict.

7.2.5 The decision of the DRC on a motion to vacate a final decision shall not be subject to further review under these Procedures.

8. Indemnity

8.1 The DRC shall not be held liable by any party against any obligations, losses, damages, suits and expenses which may be incurred by, or asserted by, the decision of the DRC.

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Appendix I**DISPUTE RESOLUTION COMMITTEE****1. Terms of Reference of Members of Dispute Resolution Committee (DRC)**

- a) To deal with disputes that have been submitted to the MPOCC, which can comprise:
 - i. disputes involving MPOCC as a result of decisions and/or activities of the MPOCC as the Scheme Owner which has overall responsibility for the MSPO Certification Scheme implementation [i.e. activities related to the notification of the accredited certification bodies (ACBs) and the issuance of logo usage licenses to the holders of certificates issued by these ACBs, and MPOCC's role in supporting and coordinating the standard-setting process]; and
 - ii. disputes not involving MPOCC [i.e. disputes involving other aspects of the MSPO Certification Scheme which do not come under the purview of the accredited CB or accreditation body (AB), and thus may need to be referred to the MPOCC for a resolution.]
- b) Based on the nature of the dispute and documents submitted by the complainant, and the response briefs submitted by the responding parties, to decide whether to agree or decline to hear the dispute;
- c) Where a decision has been made to hear a dispute, to convene and make a decision on the dispute.

2. Rules of Procedure

- a) The DRC shall comprise of six (6) members who are appointed by the Board of Trustees. The Board shall also decide on the Chair for the DRC.
- b) Each member of the DRC shall be appointed for a two-year term, which may be renewed.
- c) The quorum for meetings of the DRC shall be three members in order for the meeting to proceed.
- d) The decision of the DRC shall be based on a simple majority, and shall be final. In the event of equality of votes, the Chairman shall have a casting vote.
- e) The management of the MPOCC shall serve as the Secretariat for the DRC.

3. Criteria for Selection of Members

- a) Members shall comprise eminent individuals who have a wealth of experience in fields related to the environmental, social and economic aspects of oil palm management and the palm oil industry;
- b) Members shall be capable and can be depended upon to deal with any dispute submitted to the DRC in a fair and balanced manner.
- c) Members of the DRC shall not serve as peer reviewer, consultant or auditor during their tenure with the DRC, to avoid any conflict of interest.
 - Members shall make a self-declaration that he or she is free from of any complaint, investigation, misconduct or malpractice in connection with his or her affairs, or related to business affairs.

4. Conduct of Members

- a) Members shall use all reasonable endeavors to decide disputes promptly and fairly and shall conduct themselves honestly and diligently in carrying out their duties.
- b) Members shall observe these Terms of Reference when participating in proceedings for the resolution of any dispute before them and undertake at all times to act in the best interests of the MSPO Scheme as a whole.
- c) In the event of nearing the two-year term, the members shall remain appointed until such time as the Chairman of DRC deems that their role in the resolution of any dispute referred to it has properly concluded. The Chairman shall notify the members in writing that their appointment in respect of a particular case is concluded. After such time, the obligations of members in the committee, other than those relating to confidentiality shall cease.

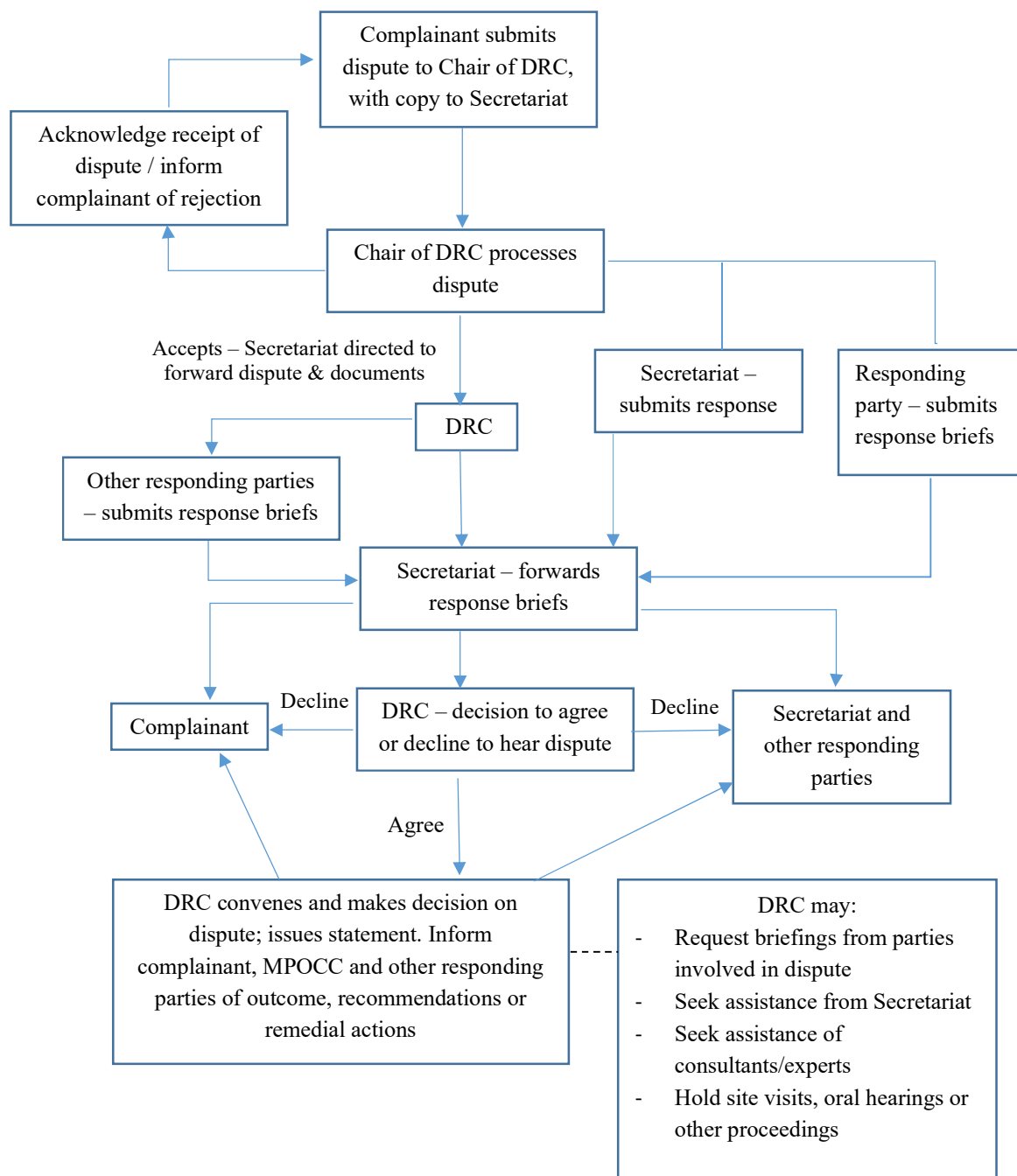
5. Removal of Member

- a) Removal of any member will be allowed under these circumstances:
 - may resign by notice in writing delivered to the Chairman
 - refuses or fails to honour any obligation of confidentiality
 - in the event, the member decides by reason of sickness or similar matters and no longer is able to perform his or her duties
 - is absent from three consecutive meetings
 - be the subject of any complaint, investigation, misconduct or malpractice in connection with his or her affairs, or related to business affairs

6. Benefits Accorded to Members

- a) Allowance for attending meetings: RM 300.00 per meeting
- b) Subsistence allowance (if outstation): RM 100.00 per day
- c) Category of Hotel Accommodation: Deluxe room
- d) Air travel (local): Economy Class
- e) Mileage/toll/parking claims (or taxi fare)

Appendix II

Flow Chart for Resolution Procedure for Disputes Involving MPOCC

Appendix III

Flow Chart for Resolution Procedures for Disputes Not Involving MPOCC

