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# MALAYSIA'S PALM OIL INDUSTRY

**LIBERTY ASIA**  
TO PREVENT  
HUMAN TRAFFICKING

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# FOREWORD

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AS MALAYSIA'S PALM OIL INDUSTRY RECENTLY CELEBRATED its 100th anniversary in 2017, palm oil has grown to be the backbone of the Malaysian economy, with more than 73 percent of the agricultural land planted in the country producing palm oil that accounts for 39% of the world's palm oil production.<sup>1</sup> However, hidden in the backcountry is an industry that depends heavily on cheap foreign migrant labour and reports of exploitative conditions within palm oil plantations work are rife.<sup>2</sup>

Malaysia has the fourth-largest migrant worker population in the world.<sup>3</sup> High levels of unsafe migration of undocumented migrants and high demand for cheap labour has led to exploitation in the context of global supply chains.<sup>4</sup> As Malaysians have become more educated and seek higher-skilled jobs, and as the labor market tightens, migrant labor has filled gaps in lower-skilled jobs, which make up three quarters of all jobs in Malaysia.<sup>5</sup> About 80% of labour on palm oil plantations is non-Malaysian, foreign migrant labour.

In the waves of criticism on the country's environmental record and the recent EU resolution on palm oil and deforestation of rainforests, the Government has spent significant resources to work on sustainability, both productivity and environmentally, in order to remain one of the world's leading producers and retain its high market share. While the environmental debate has captured attention and led to increased protections, social issues affecting migrant workers such as labour protection, lack of education or health care services seem to be less prominent on the agenda.

This report presents an industry-focused analysis of the Malaysian palm oil. Given the recent wave of regulations prompting transparency and disclosure and the opportunities created by the recent moves of many Stock Exchanges (including Malaysia) for ESG and non-financial reporting, there is a window of opportunity to engage with the industry regulators to improve governance and social standards in this sector.

In fact, the report highlights the multiple opportunities that are available for the business community, civil society and other interest groups to leverage existing opportunities to improve social and governance standards on plantations.

So, what would the next 100 years of palm oil in Malaysia be like? There is a significant role for a range of stakeholders including civil society, the private sector, law enforcement and industry bodies to join efforts in ensuring that economic growth goes hand in hand with environmental, social and governance safeguards and improvements. The new body of law has shown a greater emphasis on corporate disclosure and transparency, e.g. UK's Modern Slavery Act, France's Devoir de Vigilance, the Netherlands' "Due Diligence on Child Labour" Law.

With increased information and data comes increased responsibility on the companies to conduct business responsibly and to be accountable for abuses of human rights within their operations.

The need for transparency, however, must come with accountability. UK's new Criminal Finances Act took a big step forward and signalled that legislation built on disclosure and transparency of voluntary efforts to address potential issues of slavery in supply chains in the absence of real accountability may not be enough. With its strict liability enforcement approach, there are no intent requirements and a company can be deemed to profit from the gross human rights abuses given that the core danger of "material assistance" may be violated through normal business dealing. This potentially has a wider reach globally than the current patchwork of diverse legislations given that the activity of "profiting from" target the flows of goods and funds tainted by human rights violations, as well as anyone who chooses to handle them.

Transparency and accountability of the industry must be at heart of progress and there will no doubt be more gained by businesses that are nurturing of people and the planet.

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<sup>1</sup> See Malaysian Palm Oil Council at [http://www.mpoc.org.my/Malaysian\\_Palm\\_Oil\\_Industry.aspx](http://www.mpoc.org.my/Malaysian_Palm_Oil_Industry.aspx).

<sup>2</sup> “Conflict Palm Oil”, [https://d3n8a8pro7vhm.cloudfront.net/rainforestactionnetwork/pages/2367/attachments/original/1405470759/conflict\\_palm\\_oil\\_lowres\\_\(1\).compressed.pdf?1405470759](https://d3n8a8pro7vhm.cloudfront.net/rainforestactionnetwork/pages/2367/attachments/original/1405470759/conflict_palm_oil_lowres_(1).compressed.pdf?1405470759).

<sup>3</sup> <http://www.worldbank.org/en/country/malaysia/publication/malaysia-economic-monitor-december-2015-immigrant-labour>.

<sup>4</sup> “The plight of low-skilled migrants in Malaysia”, <http://www.thedailystar.net/the-plight-of-low-skilled-migrants-in-malaysia-63070>

<sup>5</sup> See note 3.

*The report contains our finding based on a review of publicly available sources in English (unless otherwise indicated). Liberty Asia does not accept responsibility for the accuracy of foreign laws, or the accuracy of the translations. Users should at all times consult the full text of the relevant laws in the original language as well as seeking advice from local counsel qualified in the relevant domestic jurisdictions. This report does not constitute legal advice under any circumstance.*

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# PREFACE

This issue – the first of a series presenting an industry-focused analysis of Malaysian palm oil – provides an overview of the industry. The report takes an overall look at the current governance framework and the different certification standards available to support sustainable palm oil production in Malaysia.

The report also discusses several initiatives and guidance to incorporate environmental, social, and corporate governance (ESG) issues as well as adopt standardized criteria for ESG reporting to advocate for the improvement of social standards reporting and accountability. This report will set the foundation for a detailed analysis at a later date on labour laws, environmental and land issues that contribute to our understanding of the issues around human trafficking and forced labour in the palm oil industry.

# EXECUTIVE SUMMARY

The palm oil industry has experienced significant growth and expansion during the past decades, becoming a key part of the Malaysian economy and one of the most important sources of jobs. However, with this growth has come widespread reports of human rights abuses related to consistent exposure of workers to hazardous chemicals, violent clashes over land disputes, salary structures designed to subvert the already meagre minimum wage requirements, and systematic exploitation of migrant workers.<sup>6</sup>

A key support driving the growth has been financial institutions, primarily from major Malaysian and American banks, which underwrite bonds and issue shares for plantations and other large companies that dominate the sector. Although some of these banks have taken steps towards reducing risks of social and environmental abuses, in general there is little reporting to their clients or shareholders about these risks, particularly with respect to palm oil, deforestation, and land disputes, and even when there are known violations those companies often continue to receive significant funding. This may be rooted in a lack of standardized criteria for environmental, social, and corporate governance (ESG) reporting, which also echoes some of the reportedly loose standards for the various product certifications, which have also been criticized for accountability and transparency issues. As a result, there is a disclosure gap and a growing perception that the checks and balances intended to regulate this industry are focused more on angling for markets where profits, not sustainability, are the top priority. The formulation of industry focused ESG criteria and the socialising of this concept will

help to mainstream disclosure and reporting requirements hence promoting better transparency and accountability. Agreed upon social standards in particular would be very welcome in this industry where concerns over mistreatment of workers is common. Leading the list of concerns is worker health. Reports have consistently pointed to the lack of protective gear for employees and the use of hazardous chemicals, especially Paraquat, a herbicide that is banned in numerous countries around the world because of its dangerous side effects.<sup>7</sup> Housing on the plantations often lacks electricity and running water, and access to basic healthcare or education for children of the workers can be limited. The compensation that the employees receive for living and working in this harsh environment has come under repeated criticism for not being a viable wage, even when legally required minimum wage limits are met and, in other circumstances, salary structures focus on per piece rates that allow for payment significantly below those minimum requirements.

Labour conditions for migrant workers, who make up the majority of the workforce on the plantations, are even more troubling. Deceptive recruitment strategies follow patterns seen in other problematic industries of false promises of high wages, significant initial debt to the labour brokers, unexpected demands by the brokers for transportation costs, lack of contracts and documentation, and forced smuggling.<sup>8</sup> After arriving at the worksite, migrant workers often have passports and identification documents seized, and live in constant fear of arrest for immigration violations under a system with excessive penalties for even small or

minor technical violations of immigration rules. There is a significant role for industry regulators and certification bodies to play in addressing key issues such as recruitment fees and confiscation of documents. Where migration of unskilled workers is encouraged to ensure that acute demands for unskilled labour are met, it is essential for business operators to be mindful of safeguards that currently exist in Malaysian law to protect vulnerable workers. Furthermore, where there are carefully formulated social standards set out by the RSPO or MSPO, it is essential that enforcement and monitoring of compliance with these standards evolves beyond a periodic audit. There is a compelling need for a more investigative and engaged approach to identifying and resolving social and governance issues.

Part of the major efforts to bring change to this area has been the build-up of a system of laws and regulations as well as certification standards. Despite many documented social issues in this industry, the lack of litigation that have been brought and decided under the legal system is an indication of its effectiveness, and certification standards, while making real improvements in the recent efforts, still lack tight controls, effective leverage, and a comprehensive approach to the entire supply chain. Times are changing and regulations in Europe, Australia, the US and elsewhere are increasingly focused on highlighting the need for companies to undertake human rights due diligence and to disclose publicly their efforts to address instances of slavery, human trafficking and forced labour in their supply chains.

As legislation continues to pressure companies to take an introspective look at their business relationships and suppliers, one can expect that this will create some momentum for buyers and retailers to use their leverage to drive better social standards and governance for their palm oil suppliers.

It is essential to invest some time and effort in understanding how the labour laws interact with industry regulations and anti-trafficking laws. Industry regulations that are divorced from protection regimes are only likely to foster conditions that give rise to exploitation and abuse of those Malaysia depends on for its palm oil success story.

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<sup>6</sup> See “Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations”, <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>; “Exploitative Labor Practices in the Global Palm Oil Industry”, [http://humanityunited.org/pdfs/Modern\\_Slavery\\_in\\_the\\_Palm\\_Oil\\_Industry.pdf](http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf).

<sup>7</sup> “Poisoned and Silenced: A Study of Pesticide Poising in the Plantations”, <https://www.publiceye.ch/fileadmin/files/documents/Syngenta/Poisoned-and-Silenced.pdf>

<sup>8</sup> “Forced Labor in the Production of Electronic Goods in Malaysia”, <https://verite.org/wp-content/uploads/2016/11/VeriteForcedLaborMalaysianElectronics2014.pdf>.

# RECOMMENDATIONS

**1. ADOPT** an industry-wide Code of Practice in relation to social standards to improve social and governance standards on plantations. Standardized criteria for environmental, social, and corporate governance (ESG) reporting can tighten the loose standards of the various product certifications, which will help to mainstream disclosure and reporting requirements hence promoting better transparency and accountability.

**2. UNDERTAKE** adequate human rights due diligence on companies as well as their suppliers and disclose publicly their efforts to address instances of slavery, human trafficking and forced labour in their supply chains. The global reach of new regulations is only getting wider and merely profiting from goods can now in some jurisdictions trigger legal liability for companies.

**3. STRENGTHEN** the enforcement and monitoring of existing social standards formulated by the RSPO or MSPO beyond periodic audits. This includes a more investigative and engaged approach to identify and resolve social and governance issues.

**4. BRIDGE** the gaps between the prescribed legal requirements and the actual industry practices. Malaysian palm oil growers and the government must work together to agree on an industry working standard. They can begin with reforming common industry practices such as unethical recruitment, withholding of identity documents, and low wages that put migrant workers at risk of forced labour and other forms of exploitation.

**5. STREAMLINE** the overlapping rules and regulations to remove any unnecessary regulatory burdens in the industry. The palm oil industry generally touches upon many legal issues, such as those related to land rights, environmental issues, labour and employment, pesticide use, and wild life. It is worth investing some time and effort to understand how each piece of legislation – for example labour laws – interacts with industry regulations and anti-trafficking laws.

**6. ACT** globally. Partial promise by the international players to do better while continuing to ignore important domestic players in Southeast Asia will not improve the conditions on palm oil estates in the region. These policies will only really have an impact on the industry if applied at sector level and local financial institutions must join forces and be held to the same standards as their international counterparts.

**7. BUILD** on the RSPO by committing to an even stricter, independently verifiable standard like the Palm Oil Innovation Group (POIG), a framework that focuses on achieving sustainability objectives and also strengthens accountability of palm oil industries. It is no longer viable to accept that membership alone confers sustainability.

**8. LEGISLATE** sustainable practices in the palm oil industry to further strengthen the multiple existing palm oil standards in the industry and any similar guidelines that may materialize in the future. Without the legislative power to impose sanctions or penalties on noncompliant parties, particularly on social violations, the system lacks the teeth needed for any certification system to maintain credibility.

**9. SUPPORT** public-private partnerships aimed at a common goal of socially and environmentally sustainable palm oil. Inclusivity is key to the success of the partnership, bringing together government agencies, regulators, private sector producers, traders and buyers, the financial sector as well as local and international NGOs and community and indigenous groups.

**10. LEVERAGE** purchasing power to influence the palm oil supply chain to uphold strong standards for sustainable production. Rather than relying solely on the flawed RSPO to set and implement standards for sustainable production, investors are urging companies to work directly with their suppliers to ensure that the sourced palm oil is not driving deforestation, climate change, and human rights abuses. The influence of global brands over their suppliers' practices can drive far-reaching change throughout the supply chain.



# CONTENTS

	Foreword	2-3
	Preface	5
	Executive Summary	6-7
	Recommendations	8
<b>SECTION A</b> — <b>INDUSTRY FRAMEWORK</b>	<b>01.</b> What relevant laws and regulations apply to the Malaysian palm oil industry?	12-13
	<b>02.</b> What certification standards support sustainable palm oil production in Malaysia?	14-17
	<b>03.</b> What are the relevant regulations for investment into the palm oil industry?	18-21
<b>SECTION B</b> — <b>LABOUR STANDARDS</b>	<b>01.</b> What legislation regulates labour practices on Malaysian palm oil plantations?	24-25
<b>SECTION C</b> — <b>ENFORCEMENT MECHANISMS</b>	<b>01.</b> What dispute resolution mechanisms are available to address complaints and manage disputes of individuals and communities who are affected by the operations?	28-29
	<b>02.</b> Are there any conflicts of laws where industry regulations contradict relevant legislations (e.g. employment, child protection, anti-trafficking)?	30
	<b>03.</b> What regulatory bodies govern the palm oil industry in Malaysia?	31-33
	<b>04.</b> What are the notable industry best practices?	34-35
<b>SECTION D</b> — <b>CASE LAW</b>		37
<b>ANNEX</b>		



**SECTION A**

**—**

**INDUSTRY  
FRAMEWORK**

## QUESTION 1.

### WHAT RELEVANT LAWS AND REGULATIONS APPLY TO THE MALAYSIAN PALM OIL INDUSTRY?

The palm oil industry is a key part of the Malaysian economy and falls under general legal requirements as well as legislation specifically targeting this unique area. The Malaysian Palm Oil Board Act 1998 is a foundational law that establishes basic requirements and principles for the industry, and several other laws and regulations that have followed this landmark act provide a comprehensive regulatory framework.

In addition to these specific requirements, the palm oil industry also generally touches upon legal issues relevant to any other agricultural industry, such as those related to land use rights, environmental issues, labour and employment, pesticide use, and wild life. The table below lists related laws and regulations as provided in the National Interpretation of RSPO Principles and Criteria for Sustainable Palm Oil Production by the Malaysian National Interpretation Task Force.<sup>9</sup> This list is not exhaustive and does not include relevant laws and regulations in the states of Sabah and Sarawak.

SUBJECT MATTERS	LAWS AND REGULATIONS
Palm Oil Industry	Malaysian Palm Oil Board Act 1998 <sup>10</sup> Malaysian Palm Oil Board (Amendment) Act, 2004 <sup>11</sup> Malaysian Palm Oil Board (Quality) Regulations, 2005 <sup>12</sup> Malaysian Palm Oil Board (Registration of Contracts) Regulations, 2005 <sup>13</sup> Malaysian Palm Oil Board (Licensing) Regulations, 2005 <sup>14</sup> Malaysian Palm Oil Board (Compounding of Offences) Regulations, 2005 <sup>15</sup> Malaysian Palm Oil Board (Cess) (Oil Palm Fruit) Order, 2007 <sup>16</sup>
Land Matters	Land Development Act 1956 <sup>17</sup> Land Acquisition Act 1960 <sup>18</sup> Land Conservation Act 1960 <sup>19</sup> National Land Code 1965 <sup>20</sup> Land Acquisition Rules 1998 <sup>21</sup>
Environmental Matters	Water Act 1920 <sup>22</sup> Poison Act 1952 & Regulations <sup>23</sup> Irrigation Areas Act 1953 <sup>24</sup> Wildlife Protection Act 1972 <sup>25</sup> Environmental Quality Act 1974 <sup>26</sup> Pesticides Act 1974 and Regulations <sup>27</sup> Environmental Quality (Prescribed Premises) (Crude Palm Oil) Order 1977 <sup>28</sup> Environmental Quality (Clean Air) Regulation 1978 <sup>29</sup> Environmental Quality (Compounding of Offences) Rules 1978 <sup>30</sup> National Parks Act 1980 <sup>31</sup> Pesticides (Labelling) Regulations 1984 <sup>32</sup> Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 <sup>33</sup> Environmental Quality (Control of Emission from Diesel Engines) Regulation 1996 <sup>34</sup> Environmental Quality (Control of Emission from Petrol Engines) Regulation 1996 <sup>35</sup> Environmental Quality (Control of Emission from Motorcycles Engines) Regulation 2003 <sup>36</sup> Use & Standards Exposure of Chemicals Hazardous to Health Regulations 2000 <sup>37</sup> Environmental Quality (Scheduled Wastes) Regulations 2005 <sup>38</sup> Pesticides (Licensing for Sale & Storage) Rules 2007 <sup>39</sup> Wildlife Conservation Act 2010 <sup>40</sup>

<sup>9</sup>The Malaysia National Interpretation (MYNI) 2014 of the RSPO principles and criteria, <https://rspo.org/key-documents/certification/rspo-national-interpretations>.

SUBJECT MATTERS	LAWS AND REGULATIONS
Labour/Employee Matters	Wages Council Act 1947 <sup>41</sup> Employees Provident Fund Act 1951 <sup>42</sup> Worker's Compensation Act 1952 <sup>43</sup> Employment Information Act 1953 <sup>44</sup> Employment Act 1955 <sup>45</sup> Trade Unions Act 1959 <sup>46</sup> Immigration Act 1959/1963 <sup>47</sup> Estate Workers Minimum Standards Housing Act 1966 <sup>48</sup> Children and Young Persons (Employment) Act 1966 <sup>49</sup> Industrial Relations Act 1967 <sup>50</sup> Employment (Restriction) Act 1968 <sup>51</sup> Employees Social Security Act 1969 <sup>52</sup> Employment (Termination and Lay-Off Benefits) Regulations 1980 <sup>53</sup> Employment (Limitation of Overtime Work) Regulations 1980 <sup>54</sup> Private Employment Agency Act 1981 <sup>55</sup> Worker's Minimum Standards of Housing and Amenities Regulation 1990 <sup>56</sup> Occupational Safety and Health Act 1994 and Regulations and Orders <sup>57</sup> Anti-Trafficking in Persons and Smuggling of Migrants Act 2007 <sup>58</sup> Employment (Part-Time Employees) Regulations 2010 <sup>59</sup> Minimum Wages Order 2016 <sup>60</sup>
Miscellaneous	Electricity Act 1949 <sup>61</sup> Aboriginal People Act 195 <sup>62</sup> Estate Hospital Assistants (Registration) Act 1965 <sup>63</sup> Factories and Machinery Act 1967 & Regulations and Rules <sup>64</sup> Street, Drainage & Building Act 1974 <sup>65</sup> Food Act 1983 <sup>66</sup> Food Regulations 1985 <sup>67</sup> Road Transport Act 1987 <sup>68</sup> Factories & Machinery (Noise Exposure) Regulations 1989 <sup>69</sup>

<sup>10</sup> Malaysian Palm Oil Board Act 1998 (Act 582), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20582.pdf>.

<sup>11</sup> Malaysian Palm Oil Board (Amendment) Act 2004 (Act No. A1222), <http://faolex.fao.org/docs/texts/mal70744.doc>.

<sup>12</sup> Malaysian Palm Oil Board (Quality) Regulations 2005 (P.U.(A)518/2005), <http://led.mpob.gov.my/wp-content/uploads/2016/12/MALAYSIAN-PALM-OIL-BOARD-QUALITY-REGULATIONS-2005.pdf>.

<sup>13</sup> Malaysian Palm Oil Board (Registration of Contracts) Regulations 2005 (P.U.(A)517/2006), <http://led.mpob.gov.my/wp-content/uploads/2016/12/MALAYSIAN-PALM-OIL-BOARD-REGISTRATION-OF-CONTRACT-REGULATIONS-2005.pdf>.

<sup>14</sup> Malaysian Palm Oil Board (Licensing) Regulations 2005, <http://www.mpob.gov.my/home/660--malaysian-palm-oil-board-licensing-regulations-2005>.

Malaysian Palm Oil Board (Compounding of Offences) Regulations 2005 (P.U.(A)519/2005), <http://led.mpob.gov.my/wp-content/uploads/2016/12/MALAYSIAN-PALM-OIL-BOARD-COMPOUNDING-OF-OFFENCES-REGULATIONS-2005.pdf>.

<sup>16</sup> Malaysian Palm Oil Board (Cess) (Oil Palm Fruit) Order 2007 (P.U.(A) 200/2007), <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC091784/>.

<sup>17</sup> Land Development Act 1956 (Act 474), <http://extwprlegs1.fao.org/docs/pdf/mal33393.pdf>.

<sup>18</sup> Land Acquisition Act 1960 (Act 486), <http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf>.

<sup>19</sup> Land Conservation Act 1960 (Act 385), <http://extwprlegs1.fao.org/docs/pdf/mal91384.pdf>.

<sup>20</sup> National Land Code 1965 (Act 56), <http://extwprlegs1.fao.org/docs/pdf/mal5145.pdf>.

<sup>21</sup> Land Acquisition Rules 1998, <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC033581/>.

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- <sup>22</sup> Water Act 1920 (Act 418), <http://extwprlegs1.fao.org/docs/pdf/mal2505.pdf>.
- <sup>23</sup> Poison Act 1952 (Act 366) & Regulations, <https://www.pharmacy.gov.my/v2/sites/default/files/document-upload/poisons-act-1952-act-366.pdf>.
- <sup>24</sup> Irrigation Areas Act 1953, [http://www.commonlii.org/my/legis/consol\\_act/iaa19531989245/](http://www.commonlii.org/my/legis/consol_act/iaa19531989245/).
- <sup>25</sup> Protection of Wildlife Act 1972 (Act 76), <http://extwprlegs1.fao.org/docs/pdf/mal11322.pdf>.
- <sup>26</sup> Environmental Quality Act 1974 (Act 127), [https://www.env.go.jp/en/recycle/asian\\_net/Country\\_Information/Law\\_N\\_Regulation/Malaysia/Malaysia\\_mal13278.pdf](https://www.env.go.jp/en/recycle/asian_net/Country_Information/Law_N_Regulation/Malaysia/Malaysia_mal13278.pdf).
- <sup>27</sup> Pesticides Act 1974 (Act 179), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20149%20-%20Pesticides%20Act%201974.pdf>.
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- <sup>29</sup> Environmental Quality (Clean Air) Regulations 1978, <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC070176/>.
- <sup>30</sup> Environmental Quality (Compounding of Offences) Rules 1978, <http://extwprlegs1.fao.org/docs/pdf/mal13284.pdf>.
- <sup>31</sup> National Parks Act 1980 (Act 226), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20226%20-%20National%20Parks%20Act%201980.pdf>.
- <sup>32</sup> Pesticides (Labelling) Regulations 1984 (P.U.(A) 251/1984), see <http://www.portal.doa.gov.my/aseanpest/index.php/malaysia-pesticides-registration-rules-a-regulations.html>.
- <sup>33</sup> Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, <http://extwprlegs1.fao.org/docs/pdf/mal13290.pdf>.
- <sup>34</sup> Environmental Quality (Control of Emission from Diesel Engines) Regulations 1996 (P.U.(A) 429), <http://extwprlegs1.fao.org/docs/texts/mal38069.doc>.
- <sup>35</sup> Environmental Quality (Control of Emission from Petroil Engines) Regulations 1996 (P.U.(A) 543/1996), <http://faolex.fao.org/docs/texts/mal45141.doc>.
- <sup>36</sup> Environmental Quality (Control of Emission from Motorcycles Engines) Regulations 2003, <http://cp.doe.gov.my/cpvc/wp-content/uploads/2011/04/Regulations/EnvironmentalQuality%28ControlofEmissionFromMotorcycles%29.pdf>.
- <sup>37</sup> Use and Standards Exposure of Chemicals Hazardous to Health Regulations 2000 (P.U.(A) 131/2000), <http://www.dosh.gov.my/index.php/en/legislation/regulations-1/osha-1994-act-154/522-pua-131-2000-1/file>.
- <sup>38</sup> Environmental Quality (Scheduled Wastes) Regulations 2005 (P.U.(A) 294/2005), [http://www.env.go.jp/en/recycle/asian\\_net/Country\\_Information/Law\\_N\\_Regulation/Malaysia/mal54629.pdf](http://www.env.go.jp/en/recycle/asian_net/Country_Information/Law_N_Regulation/Malaysia/mal54629.pdf).
- <sup>39</sup> Pesticides (Licensing for Sale and Storage for Sale) Rules, 2007 (P.U.(A) 399/2007), <http://faolex.fao.org/docs/texts/mal91851.doc>.
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- <sup>42</sup> Employee Provident Fund Act 1951 (Act 272), [www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20272.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20272.pdf).
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- <sup>44</sup> Employment Information Act 1953 (Act 159), [http://www.commonlii.org/my/legis/consol\\_act/eia19531975347/](http://www.commonlii.org/my/legis/consol_act/eia19531975347/).
- <sup>45</sup> Employment Act 1955 (Act 265), <http://www.ilo.org/dyn/travail/docs/1496/Employment%20Act%201955.pdf>.
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- <sup>49</sup> Children and Young Persons (Employment) Act 1966 (Act 350), <http://www.ilo.org/dyn/travail/docs/1529/Children%20and%20Young%20Persons%20Employment%20Act%201966.pdf>.
- <sup>50</sup> Industrial Relations Act 1967 (Act 177), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>.
- <sup>51</sup> Employment (Restriction) Act 1968 (Act 353), [http://myhos.mohr.gov.my/eAkta/akta\\_perburuhan/Akta%20Sekatan%20Kerja%201968%20\(Akta%20353\).pdf](http://myhos.mohr.gov.my/eAkta/akta_perburuhan/Akta%20Sekatan%20Kerja%201968%20(Akta%20353).pdf).
- <sup>52</sup> Employees Social Security Act 1969 (Act 4), <http://www.ilo.org/dyn/travail/docs/1626/Employees%27%20Social%20Security%20Act%201969%20-%20www.agc.gov.my.pdf>.
- <sup>53</sup> Employment (Termination and Lay-off Benefits) Regulations 1980, [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=10030](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=10030).
- <sup>54</sup> Employment (Limitation of Overtime Work) Regulations 1980, [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=11789](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=11789).
- <sup>55</sup> Private Employment Agencies Act 1981 (Act 246), [http://www.commonlii.org/my/legis/consol\\_act/peaa1981288/](http://www.commonlii.org/my/legis/consol_act/peaa1981288/).
- <sup>56</sup> Worker's Minimum Standards of Housing and Amenities Regulation 1990 (Act 446), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87154/118009/F797374692/MYS87154.pdf>.
- <sup>57</sup> Occupational Safety and Health Act 1994 (Act 514), <http://www.ilo.org/dyn/travail/docs/1628/Occupational%20Safety%20and%20Health%20Act%201994%20-%20www.agc.gov.my.pdf>.
- <sup>58</sup> Anti-Trafficking in Persons and Smuggling of Migrants Act 2007 (Act 670), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670.pdf>.
- <sup>59</sup> Employment (Part-Time Employees) Regulations 2010, <http://www.ilo.org/dyn/travail/docs/1527/Employment%20-%20Part-time%20Employees%20-%20Regulations%202010%20-%20www.pesaraonline.net.pdf>.
- <sup>60</sup> Minimum Wages Order 2016 (P.U.(A) 116/2016), [http://sta.org.my/images/staweb/New\\_Archived/2016/PerintahGajiMinimum2016.pdf](http://sta.org.my/images/staweb/New_Archived/2016/PerintahGajiMinimum2016.pdf).
- <sup>61</sup> Electricity Act 1949 (Act 116), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20116.pdf>.
- <sup>62</sup> Aboriginal Peoples Act 1954 (Act 134), <http://extwprlegs1.fao.org/docs/texts/mal33568.doc>.
- <sup>63</sup> Estate Hospital Assistants (Registration) Act 1965 (Act 435), [http://www.commonlii.org/my/legis/consol\\_act/ehaa19651990526/](http://www.commonlii.org/my/legis/consol_act/ehaa19651990526/).
- <sup>64</sup> Factories & Machinery Act 1967 (Act 139), <http://www.dosh.gov.my/index.php/en/list-of-documents/acts/26-03-factories-and-machinery-act-1967-revised-1974-acts-139/file>.
- <sup>65</sup> Street, Drainage & Building Act 1974 (Act 133), [http://www.pht.org.my/legislation/Street%20Drainage%20Building%20Act\\_1974%20%281-50%29.pdf](http://www.pht.org.my/legislation/Street%20Drainage%20Building%20Act_1974%20%281-50%29.pdf).
- <sup>66</sup> Food Regulations 1985, [https://extranet.who.int/nutrition/gina/sites/default/files/MYS%201985%20Food%20Regulations\\_0.pdf](https://extranet.who.int/nutrition/gina/sites/default/files/MYS%201985%20Food%20Regulations_0.pdf).
- <sup>67</sup> Food Act 1983 (Act 281), <http://www.hdcglobal.com/upload-web/cms-editor-files/HDC-26/file/Act%20281%20-%20Food%20Act%201983.pdf>.
- <sup>68</sup> Road Transport Act 1987 (Act 333), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20333%20-%20Road%20Transport%20Act%201987.pdf>.
- <sup>69</sup> Factories and Machinery (Noise Exposure) Regulations 1989 P.U.(A) 1/1989, <http://www.dosh.gov.my/index.php/en/legislation/regulations-1/regulations-under-factories-and-machinery-act-1967-act-139/507-03-factories-and-machinery-noise-exposure-regulations-1989/file>.

## QUESTION 2.

### WHAT CERTIFICATION STANDARDS SUPPORT SUSTAINABLE PALM OIL PRODUCTION IN MALAYSIA?

The palm oil industry in Malaysia has been the focus of a variety of local and international efforts to create specific standards to support sustainability. Emerging from those efforts are a number of standards that vary in scope, methodology, and a variety of other factors to create a complex set of choices, including a standard set forth by the government itself, which will become the first mandatory standard in 2019.

#### a. THE ROUNDTABLE ON SUSTAINABLE PALM OIL (RSPO)

The Roundtable on Sustainable Palm Oil (RSPO) was one of the first key standards introduced at a broader level with significant widespread support. As of 11 January 2018, the RSPO has certified approximately 19% of the world's palm oil as sustainable.<sup>70</sup>

Formed in 2004, the non-profit group offers four different types of membership: Ordinary Member, Ordinary Member (small grower), Affiliate Member, and Supply Chain Associate. According to its general plan and approach, the RSPO unites seven sectors of the palm oil industry in regular dialogue, including investors, growers, retailers, and NGOs, and uses a consensus voting system to develop its system and its key focus, the RSPO Principles & Criteria (the "RSPO P&C").<sup>71</sup>

First drawn up in 2007 and revised in 2013, the RSPO P&C comprise eight basic principles.<sup>72</sup> The RSPO P&C stipulate that all palm oil producers commit to transparency, comply with all laws and regulations of the countries they are working in, commit to long term economic viability, use appropriate best practices, behave in an environmentally responsible way and conserve natural resources and biodiversity, consider employees and local communities, and adhere to responsible development. To ensure that standards remain relevant, the RSPO P&C 2013 is being revised again after an extensive public comment period held throughout 2017 and is expected to be submitted for adoption by November 2018.

The RSPO P&C set out the standards that growers and millers should meet, most of which focus on environmental or broader social impacts on adjoining communities. Several provisions focus on labour conditions e.g. Principle 6: Responsible Consideration of Employees and of Individuals and Communities Affected by Growers and Millers. Specifically, Criteria 6.12 and 6.13 provide that no forms of forced or trafficked labour be used and that growers and millers respect human rights. Criteria 6.7 further added that children are not to be employed or exploited. Furthermore, regarding employment, wages, and labour conditions, Criteria 6.5, 6.6, 6.7, 6.8, and 6.9 provide more specific requirements. For example, Criterion 6.5 states that pay and conditions for employees and for employees of contractors always meet at least legal or industry minimum standards and are sufficient to provide decent living wages. Labour laws, union agreements or direct contracts of employment detailing payments and conditions of employment (e.g. working hours, deductions, overtime, sickness, holiday entitlement, maternity leave, reasons for dismissal, period of notice, etc.) are available in the languages understood by the workers or explained carefully to them by a management official.<sup>73</sup> Additionally, the RSPO P&C call on growers and millers to respect human rights, specifically referring to the UNGPs,<sup>74</sup> and set out a number of indicators on the use of appropriate best practices by growers and millers.<sup>75</sup>

The RSPO P&C is a generic standard that provides global definition for the production of sustainable palm oil. As the laws and regulations in each country differ as a result of cultural and other features, the RSPO P&C will be adapted for use by each country through National Interpretations.<sup>76</sup> Malaysia is among the countries that have set up a National Interpretation Taskforce (Malaysia National Interpretation 2014 of the RSPO) with its Principles and Criteria endorsed on 6 March 2015.<sup>77</sup>

<sup>70</sup> RSPO, 'Impacts', <http://www.rspo.org/about/impacts>, updated on 11 January 2018, (last accessed 31 January 2018).

<sup>71</sup> "RSPO Principles & Criteria documents", <http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> See Criteria 6.13.

<sup>75</sup> See Principle 4.

<sup>76</sup> More information about the RSPO National Interpretation documents, <http://www.rspo.org/key-documents/certification/rspo-national-interpretations>.

<sup>77</sup> "RSPO National Interpretations documents", <http://www.rspo.org/key-documents/certification/rspo-national-interpretations>.

In order to claim compliance with the RSPO P&C and achieve RSPO certification, growers must be assessed by a third-party RSPO-accredited certification body every five years, with an annual audit for continued compliance. To become certified, individual oil mills and their supply bases are audited for their compliance with the RSPO P&C, which provides a checklist prepared to aid auditors in assessing compliance of each requirement.

As an example, Criterion 6.12 on forced or trafficked labour suggests the following checklist:<sup>78</sup>

- a. What is the company's policy on forced or trafficked labour?
- b. How does the company define forced or trafficked labour?
- c. What is the process of recruiting foreign/ migrant workers directly and/or through licenced outsourcing agencies/ labour suppliers?
- d. Who is the person responsible for selecting/ screening labour suppliers/ outsourcing agents?
- e. Do the foreign workers have to pay a fee to the employment recruitment agency or labour suppliers in the workers' countries of origin? If yes, does it jeopardise decent living wage?
- f. Are there restrictions on workers from leaving the mill or estate or their housing facilities outside working hours?
- g. What is the process if a worker wants to terminate their employment before their contract expires? In this case, who pays for the return transportation?
- h. What are the penalties imposed if the workers were terminated or fired before their contract expires?
- i. Who keeps the workers passports or identity documents?

- j. If workers do not keep their passports or identity documents, is this legally allowed?
- k. What is the process for workers to hand over their passports or identity documents to the company?
- l. Do workers have unrestricted access to their passports or identity documents? Describe how workers are able to access their documents.

The aforementioned RSPO P&C checklist, although not a comprehensive set of indicators of forced labour, can flag situations that should be further investigated. However, this serves only as a series of questions to be asked by the auditor while auditing compliance on the specific indicator and they are by no means mandatory for the auditor to follow or rely on. In addition, audits every five years are not always likely to highlight exploitative working conditions and should not be the sole method of verifying compliance under this principle.

The RSPO has set up four supply chain certification systems (SCCS) with different levels of traceability and costs. The palm oil products may go through many production and logistical stages between the grower and the product. Any individual batch of palm oil can be traded through one of the four supply chain models that are approved by RSPO: Identity Preserved (IP), Segregated (SG), Mass Balance (MB) and Book and Claim (B&C). For the first three models, Identity Preserved, Segregated, and Mass Balance, supply chain controls from the plantation through to the end product are required, with IP as the highest level of traceability and most expensive because sustainable palm oil from a single identifiable certified source is kept separately from ordinary palm oil throughout supply chain. Book and Claim method is the lowest level of traceability and incur the least expense as the chain is not monitored for the presence of sustainable palm oil and manufacturers and retailers can buy a GreenPalm certificate from a RSPO-certified grower.<sup>79</sup>

The RSPO is widely recognized as a leading standard, but has also drawn criticism. Some NGOs have pointed to the weaknesses in the RSPO's criteria and certification systems, such as that "certified sustainable palm oil" may not be completely produced via sustainable means.<sup>80</sup> Another criticism occasionally raised is the RSPO's consistency in enforcing its own standards. NGOs have voiced their concern that RSPO's complaint system needs improvement, its auditing system is flawed and creates corporate conflicts of interest, enforcement of noncompliant grower members

<sup>78</sup>RSPO P&C 2013: Audit Checklist for assessing compliance, available at <https://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>.

<sup>79</sup>"RSPO Supply Chain Certification Systems", [http://www.rspo.org/files/resource\\_centre/RSPO-SCCS-5Nov2009.pdf](http://www.rspo.org/files/resource_centre/RSPO-SCCS-5Nov2009.pdf).

<sup>80</sup>"Certified' palm oil not a solution", <http://www.foei.org/press/archive-by-subject/food-sovereignty-press/certified-palm-oil-not-a-solution>.



is lax, and that the RSPO has not provided the necessary support for communities or workers to engage equitably in its complaint process or protect them from company intervention and reprisal.<sup>81</sup> An Amnesty International report has shown how RSPO certification, and the mandatory third-party audits this includes, has had little to no effect on working conditions in palm oil plantations that were RSPO-certified.<sup>82</sup> Instances of structural labour rights violation were uncovered by the Centre for Research on Multinational Corporations on RSPO-certified palm oil plantations in Malaysia and to an even larger extent in Indonesia.<sup>83</sup>

On 23 January 2018, TuK Indonesia, a rights group, filed a complaint against the RSPO to the Swedish National Contact Point for failing to address complaints by residents of two West Kalimantan villages, thus failing to meet its obligations under the OECD Guidelines on Multinational Enterprises.<sup>84</sup> The complaint was filed after the community sent a request urging the RSPO to convince Malaysia palm oil giant Sime Darby, a member of the RSPO, to return the tribal lands to the indigenous Dayak community. TuK Indonesia has discussed the issue with RSPO since 2012 without resolution.<sup>85</sup> This marks the first ever OECD Guidelines complaint against a multi-stakeholder initiative.

#### **b. MALAYSIAN SUSTAINABLE PALM OIL CERTIFICATION SCHEME (MSPO)**

The Malaysian Sustainable Palm Oil (MSPO) Certification Scheme is a government-sponsored standard that came into effect in January of 2015. This standard, which was initially voluntary, will become a mandatory government standard in 2019 and is primarily operated by the Malaysian Palm Oil Certification Council, an independent organisation incorporated as a company in December 2014, which is tasked with the development and implementation of the MSPO Certification Scheme across Malaysia. Generally, the MSPO Standards contain seven principles that cover: management commitment and responsibility; transparency, compliance to legal requirements; social responsibility, health, safety and employment conditions; environment, natural resources, biodiversity and ecosystem services; best practices; and development of new plantings.<sup>86</sup>

The MSPO Scheme allows for palm oil management certification<sup>87</sup> and supply chain certification and provides for: development of certification standards; accreditation requirements and notification of certification bodies; application by potential clients for certification audits; supply chain traceability requirements; guidelines for auditing; peer reviewing of audit reports; issuance of logo usage licenses; procedures for handling of complaints.<sup>88</sup>

In general, the MSPO does not vary wildly from the RSPO, but has some key differences including costs to producers and procedures around inspections and use of peat land. For example, the MSPO takes less consideration of growing market demands internationally for issues like deforestation-free palm oil. Another common criticism of the MSPO scheme by NGOs such as Greenpeace is that the Malaysian industry is setting a weaker standard and angling for markets where price, not sustainability, is the top priority.<sup>89</sup> There is a danger that the advent of the MSPO and the fact that it is more cost-effective will have the effect of undermining the efforts of the RSPO.

The European Parliament resolution of 4 April 2017 on palm oil and deforestation of rainforests<sup>90</sup> will likely hurt small independent planters, who make up 16.3 per cent of Malaysian total planted area but have no certified sustainable palm oil (CSPO). The resolution called for importation of only environmentally sustainable palm oil into the European Union after 2020. In addition, it also called for a single Certified Sustainable Palm Oil (CSPO) scheme for Europe-bound palm and other vegetable oil exports to ensure they are produced in environmentally sustainable methods and prevent deforestation.<sup>91</sup> In essence, the resolution did not recognise nationally mandated certification schemes of palm oil producing countries such as the MSPO that the Malaysian government implemented to assist the population of small planters. For independent smallholders with oil palm land size of 40 hectares and below, it is prohibitively expensive to pay the certification fee of RM 10,000 to have the RSPO agents audit the land. Unlike the organised smallholders under the Felda settlers scheme whose cost for RSPO certification is mostly supported by Felda, independent smallholders in the country typically lack the finances to complete the RSPO auditing.<sup>92</sup>

<sup>81</sup> “NGOs call for systemic reforms to rsपो certification scheme beyond standards review”, <http://www.laborrights.org/releases/ngos-call-systemic-reforms-rsपो-certification-scheme-beyond-standards-review>.

<sup>82</sup> “Indonesia: the great palm oil scandal: labour abuses behind big brand names: executive summary”, <https://www.amnesty.org/en/documents/asa21/5243/2016/en/>.

<sup>83</sup> “Palming off responsibility Labour rights violations in the Indonesian palm oil sector”, <https://www.somo.nl/palming-off-responsibility/>.

<sup>84</sup> TuK Indonesia vs. Roundtable on Sustainable Palm Oil (RSPO), [https://www.oecdwatch.org/cases/Case\\_491](https://www.oecdwatch.org/cases/Case_491).

<sup>85</sup> Press release: Indigenous community files against the RSPO at the OECD, <http://www.tuk.or.id/press-release-indigenous-community-files-complaint-rsपो-oecd/?lang=en>.

<sup>86</sup> “Standards for palm oil production”, <https://www.mpocc.org.my/msपो-certification-standards-docume>.

<sup>87</sup> More information about MSPO, <http://msपो.mpob.gov.my/>.

<sup>88</sup> Id.

<sup>89</sup> “Cost, cynicism and frustration: Malaysian governments launches own palm oil standard”, <http://www.foodnavigator.com/Policy/Malaysian-government-launches-own-palm-oil-standard>.

<sup>90</sup> European Parliament, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0098+0+DOC+XML+V0//EN&language=EN>.

<sup>91</sup> “Malaysia worried EU resolution could dent palm oil exports”, <http://www.reuters.com/article/us-malaysia-eu-palmoil-idUSKBN1770SU>.

<sup>92</sup> “Big boost for small palm oil planters in Malaysia”, <http://www.thejakartapost.com/news/2015/07/06/big-boost-small-palm-oil-planters-malaysia.html>.

The international focus on environmental sustainability has in a sense really set the pace for developments and progress on a national and regional level. Conversations about environmental sustainability must not eclipse social standards and their importance and relevance to institutions like the EU. There is a real need for leadership from institutions such as the EU to lead on improvement of social standards and to use their leverage to influence change at the national and regional levels.

#### **c. INTERNATIONAL SUSTAINABILITY AND CARBON CERTIFICATION (ISCC)**

The International Sustainability and Carbon Certification (ISCC) scheme is a system for certifying the biomass and bioenergy industries, oriented towards the reduction of greenhouse gas emissions, sustainable land use, protection of the natural biosphere, and social sustainability. This standard applies across the supply chain and is designed to verify traceability from a plantation through to the consumer.<sup>93</sup>

The system currently certifies over 2,500 operations worldwide, of which at least 300 are palm related, including plantations, mills, refineries, biogas plants, warehouses, and trading and waste management systems. All certificates are available online via a searchable database, along with lists of expired, withdrawn, and fake certificates.<sup>94</sup> The scheme received the world's first official state recognition through the German government's biomass sustainability ordinance (BioNachV) in 2010, and has since been recognised by the European Commission as one of the first certification standards to demonstrate compliance with the EU Renewable Energy Directive's (RED) requirements.<sup>95</sup> According to the ISCC membership list, as of 11 January 2018, only four enterprise members are from Malaysia - Gamalux Oils Sdn, Bhd, Mohamed Shahrir Mohamed Zahari, FatHopes Energy Sdn Bhd and Sime Darby Plantations Sdn Bhd, indicating slow initial adoption in the country.<sup>96</sup>

Sustainability requirements of the ISCC towards production of biomass include six broad principles.<sup>97</sup> These certification schemes contain broad, general principles that require only a management system to be in place rather than demand for specific sustainability performance.<sup>98</sup> The ISCC social criteria are similar to the RSPO's; however, there are slight differences in their content. For example, the ISCC does not require that an employer actively promote freedom of association.

#### **d. ISO STANDARDS 14000**

The industry is actively pursuing the ISO 14000 standard to control environmental degradations. This ISO 14000 standard is part of environmental policies focusing on climate change, life cycle analysis, ecolabeling and design for the environment, environmental communications, and environmental management system.

#### **e. CHARTER OF THE PALM OIL INNOVATION GROUP (POIG)**

The Palm Oil Innovation Group (POIG) is a multi-stakeholder initiative that strives to achieve the adoption of responsible palm oil production practices by key players in the supply chain through developing and sharing a credible and verifiable benchmark that builds upon the RSPO.<sup>99</sup> The POIG Charter builds on the RSPO standards and creates the space for market recognition for front-runners within the RSPO. POIG is supported by both current RSPO members as well as NGOs who are currently not satisfied with the RSPO approach. POIG requirements align to numerous company commitments (e.g. Unilever, Ferrero, Mars, and Wilmar) which go beyond current RSPO requirements.

The POIG Charter indicators<sup>100</sup> used to verify compliance with the POIG Charter outline leading standards for protecting forests, peatlands, biodiversity, and carbon, while upholding the rights of local communities and workers and improving livelihoods for local communities. Specifically, Requirement 2.5 provides that "palm oil producers shall respect worker's rights including the ILO requirements for 'decent work' and core conventions on child labour, forced or compulsory labour, freedom of association, and elimination of discrimination." It further spells out indicators in relation to the terms and contracts of employment, remuneration, work hours, leave, and clear policies on child labour. Sime Darby Plantations, the world's largest producer of certified sustainable palm oil, submitted their membership application to POIG, which is under review in 2017. If accepted to POIG, Sime Darby would be the first Malaysian palm oil giant to commit to the POIG Charter, including its innovations on tackling pressing labour issues that have led to growing concerns amongst consumers of palm oil.<sup>101</sup>

The POIG's success will be determined largely by how they will ensure compliance of their standards by their accredited members and how they can ensure that monitoring of compliance is elevated beyond a heavy reliance on audits.

<sup>93</sup> ISCC, <https://www.iscc-system.org/>.

<sup>94</sup> "Standards for palm oil production", <https://www.sustainablepalmoil.org/standards/>.

<sup>95</sup> Id.

<sup>96</sup> "Membership list", <https://www.iscc-system.org/stakeholders/iscc-association/membership-list/>.

<sup>97</sup> "Sustainability Requirements for the Production of Biomass", [https://www.iscc-system.org/wp-content/uploads/2017/02/ISCC\\_PLUS\\_202\\_Sustainability-Requirements.pdf](https://www.iscc-system.org/wp-content/uploads/2017/02/ISCC_PLUS_202_Sustainability-Requirements.pdf).

<sup>98</sup> "Review of Existing Sustainability Assessment Methods for Malaysian Palm Oil Production", [http://www.researchgate.net/profile/Yudi\\_Samyudia/publication/274263759\\_Review\\_of\\_Existing\\_Sustainability\\_Assessment\\_Methods\\_for\\_Malaysian\\_Palm\\_Oil\\_Production/links/55404df40cf2320416ed0361.pdf](http://www.researchgate.net/profile/Yudi_Samyudia/publication/274263759_Review_of_Existing_Sustainability_Assessment_Methods_for_Malaysian_Palm_Oil_Production/links/55404df40cf2320416ed0361.pdf).

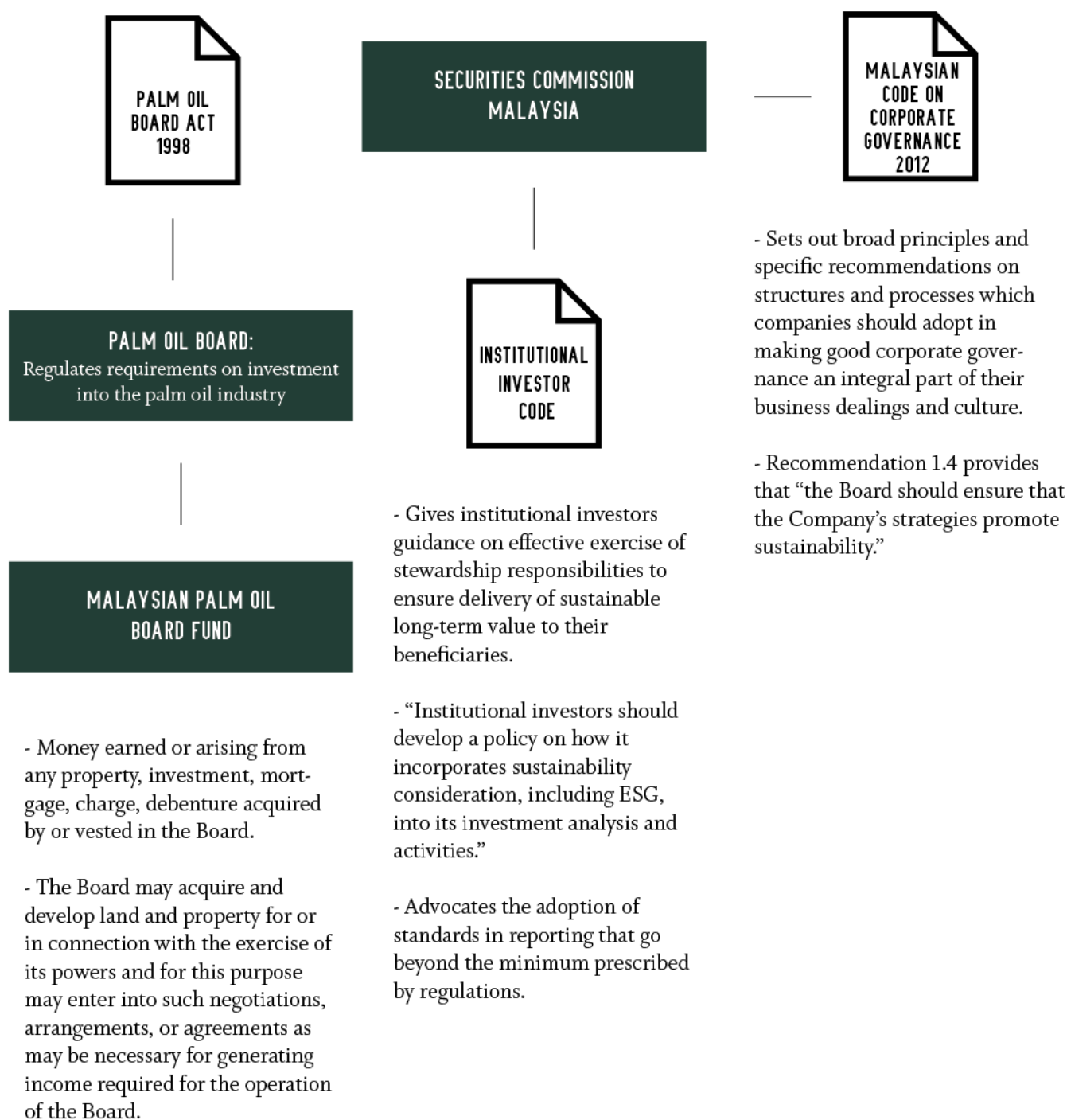
<sup>99</sup> More information about POIG, <http://poig.org/>.

<sup>100</sup> "Palm Oil Innovation Group Verification Indicators", [http://poig.org/wp-content/uploads/2016/09/POIG-Indicators\\_FINAL.pdf](http://poig.org/wp-content/uploads/2016/09/POIG-Indicators_FINAL.pdf).

<sup>101</sup> "Announcing New POIG Members and Ongoing Applications", <http://poig.org/announcing-new-poig-members-and-ongoing-applications/>.

### QUESTION 3.

## WHAT ARE THE RELEVANT REGULATIONS FOR THE INVESTMENT INTO THE PALM OIL INDUSTRY?



A key part of the requirements on investment into the palm oil industry is regulated under the Palm Oil Board Act 1998. According to the Act, the Malaysian Palm Oil Board Fund is a fund administered and controlled by the Palm Oil Board. The Fund includes money earned or arising from any property, investment, mortgage, charge, debenture acquired by or vested in the Board and any property, investment, mortgage, charge, or debenture acquired by or vested in the Board.

The specific regulating requirement is stated in Section 39 of the Act that specifies the powers of the Board in relation to investments of the industry. Section 39(2) of the Act sets out that the Board may, with the approval of the Minister, acquire and develop land and property for or in connection with the exercise of its powers and for this purpose may enter into such negotiations, arrangements, or agreements as may be necessary for generating income required for the operation of the Board.

Although not legally binding, the Securities Commission Malaysia published a Malaysian Code for Institutional Investors (“Institutional Investor Code”) which is primarily intended to give institutional investors guidance on effective exercise of stewardship responsibilities to ensure delivery of sustainable long-term value to their ultimate beneficiaries or clients.

The Institutional Investor Code clearly states that aside from the factual economic considerations, it advocates for institutional investors to ensure that they invest in a responsible manner by having regard to corporate governance and sustainability of the company.<sup>102</sup> The guidance to this principle goes on to elaborate that “Institutional investors should develop a policy on how it incorporates sustainability consideration, including ESG, into its investment analysis and activities” and provides a list of matters, which ought to be dealt with in the policy.

ESG factors that institutional investors evaluate may include:

- corporate governance and business ethics;
- employee benefits and corporate culture;
- products, customers and supply chains; and
- environmental and social impact.

Although there is no direct reference to forced labour or human trafficking in the Institutional Investor Code, it does endeavour to incorporate ESG issues. Unfortunately, the scope of “social” within ESG issues has not been defined within the Institutional Investor Code. Furthermore, the Institutional Investor Code advocates the adoption of standards in reporting that go beyond the minimum prescribed by regulations and the signatories should report the extent of their observance to the Institutional Investor Code starting from the year 2016.

Similarly, United Nations Principles for Responsible Investment (UNPRI) works to support its international network of investor signatories to understand the investment implications of environmental, social and governance (ESG) factors and incorporate these factors into their investment decisions. The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles:<sup>103</sup>

- **Principle 1:** We will incorporate ESG issues into investment analysis and decision-making processes.
- **Principle 2:** We will be active owners and incorporate ESG issues into our ownership policies and practices.
- **Principle 3:** We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- **Principle 4:** We will promote acceptance and implementation of the Principles within the investment industry.
- **Principle 5:** We will work together to enhance our effectiveness in implementing the Principles.
- **Principle 6:** We will each report on our activities and progress towards implementing the Principles.

Sustainable palm oil is one of UNPRI’s 15 priority engagement topics and in 2010 a dedicated UNPRI Sustainable Palm Oil Investor Working Group was formed to try and improve company practices throughout the palm oil value chain.<sup>104</sup> The UNPRI recently launched the Investor Initiative for Sustainable Forests, an engagement on deforestation, which supports investors on their engagement with companies to eliminate deforestation and also address other ESG issues related to soft commodity production, such as poor working conditions, land rights, and impact on indigenous people. The objectives of this engagement are to leverage investor influence to:

<sup>102</sup> One of the key principles of the Institution Investor Code provides that “Institutions investors should incorporate corporate governance and sustainability considerations into the investment decision-making process”. See Malaysian Code for Institutional Investors, available at [http://www.sc.com.my/wp-content/uploads/eng/html/cg/mcii\\_140627.pdf](http://www.sc.com.my/wp-content/uploads/eng/html/cg/mcii_140627.pdf).

<sup>103</sup> <https://www.unpri.org/about>.

<sup>104</sup> <http://forest500.org/rankings/other-powerbrokers/un-principles-responsible-investment>.

- Increase transparency and quality of disclosure related to the source and materiality of focus commodities, and how they move through the supply chain, leveraging emerging and state of the art tools and data sources.
- Achieve full commitment by companies to no deforestation and no human rights violations throughout entire supply chains.
- Increase company uptake of existing and emerging traceability and supplier verification approaches for the focus commodities throughout the supply chain.
- Encourage company participation in collaborative forums to develop standards, policies, certifications, and/or tools to facilitate deforestation-free supply chains for the focus commodities.<sup>105</sup>

There is a real opportunity to use the ESG mandate to advocate for the improvement of social standards and accountability in respect thereof. In particular in the absence of criteria outlining social standards it may be worthwhile thinking through developing with stakeholders criteria that are reflective of the challenges faced by workers on plantations.

Banks also play an important role in financing the expansion of the palm oil sector, however, U.S. investors are under no legal obligation to consider the potential environmental harm of overseas palm oil activity, even though many have voluntary policies on issues such as climate change. Apart from attracting bank loans, companies can also extract financing by issuing new bonds and shares. Underwriting of bond and share issuances is dominated by Malaysian investment banks (CIMB, Malayan Banking, and RHB) and American investment banks (Citi, JPMorgan Chase, Morgan Stanley, and the American subsidiaries of Credit Suisse and Deutsche).<sup>106</sup>

Banks have traditionally lagged behind companies when it comes to supporting ethical palm oil practices. HSBC, the world's sixth-largest bank, has helped marshal \$16.3 billion in financing for six companies since 2012 that have illegally cleared forests, planted palm oil on once-carbon-rich peatland, and failed to secure the support of local communities for their operations – all of which run counter to HSBC's own environmental commitments.<sup>107</sup>

Other banks that are RSPO members are also actively financing Sime Darby, Golden Agri Resources, Indofood Agri Resources, and Goodhope despite their outstanding labour, land conflicts, and human rights abuses.<sup>108</sup>

Over the years as abusive practices on palm oil plantations have been uncovered and documented by various parties, banks have felt under pressure to take a stance on banking palm oil accounts. It is suggested by industry insiders that pressure on banks to act has led to some banks derisking by exiting the palm oil business. The reality is that this is hardly likely to address the problem. In fact an international or large regional bank exiting a business often makes space for institutions with a profit driven modus operation that does not factor in any ESG standards or human rights risk evaluation and management. Financial institutions banking accounts of industries tainted by slavery are very well placed to use their leverage to influence change.

After years of turning a blind eye, the financial sector is slowly starting to take a tougher line on palm oil companies. Banks are taking its palm oil policy more seriously. As an example, HSBC announced a stricter lending policy based on a “no deforestation, no peat, no exploitation” commitment and revised its “Agricultural Commodities Policy: Palm Oil.”<sup>109</sup> Following HSBC's move, BNP Paribas recently announced a new set of guidelines around palm oil investment that sets responsible palm oil production as a pre-condition for financing.<sup>110</sup>

Despite these major developments, in general the banking sector has shown little progress on the sustainability front. There are still reports of major banks and pension funds in Europe—including the Norwegian government's own pension fund—investing more than US \$2 billion in six Southeast Asian banks that finance more than 50 percent of Indonesia's rainforest-ravaging oil palm operations.<sup>111</sup> The only achievement in this regard seems to be that more responsible banks are more inclined to evolve and engage in business with more responsible companies. Leading U.S. palm oil financiers still provide relatively little reporting to their clients and shareholders about their ESG policies, particularly with respect to palm oil, deforestation, and land grabbing.<sup>112</sup>

<sup>105</sup> <https://www.unpri.org/page/pri-and-ceres-open-collaborative-engagement-on-deforestation-to-global-investors>.

<sup>106</sup> “Banks finance more palm oil than investors: investors face indirect exposure”, <https://seekingalpha.com/article/4046726-banks-finance-palm-oil-investors-investors-face-indirect-exposure>.

<sup>107</sup> “Dirty bankers: how HSBC is financing forest destruction for palm oil”, [http://www.greenpeace.org/international/Global/international/publications/forests/2017/Greenpeace\\_DirtyBankers\\_final.pdf](http://www.greenpeace.org/international/Global/international/publications/forests/2017/Greenpeace_DirtyBankers_final.pdf).

<sup>108</sup> “NGOs call for systemic reforms to rspo certification scheme beyond standards review”, <http://www.laborrights.org/releases/ngos-call-systemic-reforms-rspo-certification-scheme-beyond-standards-review>.

<sup>109</sup> “HSBC Statement on Revised Agricultural Commodities Policy: Palm Oil”, <http://www.hsbc.com/news-and-insight/media-resources/media-releases/2017/hsbc-statement-on-revised-agricultural-commodities-policy>.

<sup>110</sup> “BNP Paribas' Sector Policy – Palm Oil”, [https://group.bnpparibas/uploads/file/csr\\_sector\\_policy\\_palm\\_oil\\_2017.pdf](https://group.bnpparibas/uploads/file/csr_sector_policy_palm_oil_2017.pdf).

<sup>111</sup> “Nordic Investments in banks financial Indonesian palm oil”, <http://d5i6is0eze552.cloudfront.net/documents/Publikasjoner/Andre-rapporter/Nordic-investments-in-banks-financing-Indonesian-palm-oil-ID-39688.pdf?mtime=20170529161746>.

<sup>112</sup> “Are You Invested in Exploitation? Why US investment firms should quit financing conflict palm oil and commit to human rights”, [http://webiva-downton.s3.amazonaws.com/877172/718646/Invested\\_in\\_Exploitation.Digital.compressed.pdf](http://webiva-downton.s3.amazonaws.com/877172/718646/Invested_in_Exploitation.Digital.compressed.pdf).

Mainstreaming ESG considerations through investment can contribute hugely to improving the transparency and accountability of the palm oil industry on many levels. As shareholder activism and engagement also starts to take a very clear position on sustainability driven investment, this also provides the possibility of engagement on social issues.

Supply chain leverage, however, can and do change banks' practices. Financial institutions are beginning to respond to the reality that investing in deforestation is risky and companies that are caught in deforestation or labour rights abuses can be shut out of international markets and in some cases, their stock prices plummet. For example, in 2016 the world's largest palm oil buyers, including Unilever, Kellogg, Mars, Hershey's, Colgate-Palmolive, Johnson & Johnson, Procter & Gamble, SC Johnson, Yum Brands and Nestlé, suspended purchases from the Malaysian palm oil company IOI after the company breached its No Deforestation policy and was suspended by the RSPO.<sup>113</sup> Its share price dropped almost 15% in the month following the suspension, representing a \$4 billion decline in value.<sup>114</sup>

As a result of mass boycott of IOI, the company raised the bar on a number of critical labour standards in Malaysian palm oil industry, including commitment to pay a statutory monthly minimum wage topped with productivity linked incentives, and to calculate a living wage using a credible methods to bridge the gap between prevailing wages and a living wage, not to charge recruitment related fees, and to provide trade unions with free access to its estate.<sup>115</sup>

With the realization that irresponsible investment can hurt business, the investment and business community has recently focused more attention on ESG issues, particularly the social and governance elements, which were once overshadowed by the environmental concerns. As a result, investors are factoring ESG considerations into their strategies and recognizing the need to protect portfolios from increasingly real "ESG risks", which can be damaging to the business. This new trend is also prompted by a growing recognition that "ESG credentials" can be used to drive long-term value creation and asset protection.<sup>116</sup>

Stock exchanges also play a key role in promoting good governance and disclosure. Some exchanges have started to play a role in promoting better ESG disclosure through listing requirements. These institutions are in a strong position to promote improved ESG practices and reporting among the companies on their exchanges, either by introducing sustainable investment indices or listing requirements mandating sustainability reporting.<sup>117</sup> Bursa Malaysia launched its own Corporate Social Responsibility framework and has incorporated full ESG disclosure requirements into their ongoing listing rules.<sup>118</sup> Listed issuers are now required to disclose a narrative statement of the management of material economic, environmental and social ("EES") risks and opportunities in their annual reports.<sup>119</sup> Bursa Malaysia's Listing Rule 9.25 also requires a statement in the annual report relating to corporate governance. In addition, the Malaysian Code on Corporate Governance 2012 (MCCG 2012) sets out broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture.<sup>120</sup> Recommendation 1.4 specifically provides that "the Board should ensure that the Company's strategies promote sustainability."

However, the lack of standardized criteria for ESG disclosure means it is up to institutional investors to articulate and disclose their social and environmental policies and practices as a matter of public accountability. As a result, there is a disclosure gap where companies' ESG disclosures are focused on company owned plantations and do not address social issues and standards as well as extend to other suppliers in the supply chain.

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<sup>113</sup> "Unilever palm oil supplier must suspend all plantation expansion to save reputation", <https://www.theguardian.com/sustainable-business/2016/apr/09/ioi-malaysian-palm-oil-company-unilever-mars-kellogg-rspo-deforestation>.

<sup>114</sup> "Finally, Real Action from Big Banks on Deforestation", <http://www.mightyearth.org/finally-real-action-from-big-banks-on-deforestation/>.

<sup>115</sup> Corporate Responsibility and Sustainability Policies, [http://www.ioigroup.com/content/S/S\\_policy](http://www.ioigroup.com/content/S/S_policy).

<sup>116</sup> "Palm oil investor review: investor guidance on palm oil the role of investors in supporting the development of a sustainable palm oil industry", <http://www.rspo.org/file/Palm%20Oil%20Investor%20Review%20Web%20Version.pdf>.

<sup>117</sup> "Report: palm oil investor review 2012", <http://wwf.panda.org/?204547/Palm-Oil-Investor-Review-2012>.

<sup>118</sup> "Sustainable stock exchanges: improving ESG standards among listed companies", <http://www.eiris.org/files/research%20publications/SustainableStockExchanges2010.pdf>.

<sup>119</sup> Amendments relating to Sustainability Statements in Annual Reports, [http://www.bursamalaysia.com/misc/system/assets/15713/Appendix%201\\_MainLR\\_Sustainability\\_final%20\(7Oct2015\).pdf](http://www.bursamalaysia.com/misc/system/assets/15713/Appendix%201_MainLR_Sustainability_final%20(7Oct2015).pdf)

<sup>120</sup> "Malaysian Code on Corporate Governance 2012", <https://www.sc.com.my/wp-content/uploads/eng/html/cg/cg2012.pdf>.



**SECTION B**

**—**

**LABOUR  
STANDARDS**



## QUESTION 1.

### WHAT LEGISLATION REGULATES LABOUR PRACTICES ON MALAYSIAN PALM OIL PLANTATIONS?

Malaysia's significant economic growth over the past decades has been sustained by a constant inflow of migrant workers, and foreign labour contributes approximately 10% to Malaysia's national economy. It is estimated that there are approximately 2.9 million legal foreign workers, a vast majority of whom are in low-skilled or unskilled jobs. Another two million or more are undocumented, according to United Nations Special Rapporteur on trafficking in persons,<sup>121</sup> which translates to roughly one illegal immigrant for every documented migrant worker in the country.

The vulnerable migrant workers, especially foreign workers, are often exploited for labour trafficking by unscrupulous recruitment agents and employers through excessive recruitment fees, deception about the nature of the work, poor working conditions and salaries, passport confiscation, debt bondage, non-payment of salaries, lack of rest days, contractual breaches, excessive working hours, and physical or sexual abuse. A recent U.S. Department of Labour report has also highlighted the use of child labour in Malaysia to produce palm oil.<sup>122</sup>

There are a number of labour laws in Malaysia, most of which would apply to workers in the palm oil industry.

#### a. EMPLOYMENT ACT 1955 (AS AMENDED)

As a fundamental piece of legislation governing labour practices for workers in Malaysia, the Employment Act 1955, which only applies in West Malaysia, sets out minimum statutory standards of terms and conditions under which workers are to be employed. The act covers the rights of both employees and employers, together with obligations required to be fulfilled under the act. Applying to both domestic and foreign workers who can be identified as "employees", the act covers workers who earn RM 2,000 and below or, irrespective of the amount of wages earned in a month, are engaged in certain circumstances, such as in manual labour, or partly manual labour and partly in some other capacity.<sup>123</sup>

The act makes no distinctions between permanent or temporary workers. The requirements under this act generally include legal requirements on contract of service, payment of wages, employment of women, maternity protection, complaints, termination and lay-off benefits, and other benefits including working hours, rest days, public holidays, annual leave, and sick leave. Amendments to this act came into force on 1 April 2012, with an important revision that the wage range of the employees under this act increased from RM 1,500 to RM 2,000, with an important carve out exception that allows the act to cover all maternity situations regardless of the wage level.<sup>124</sup>

#### b. INDUSTRIAL RELATIONS ACT 1967

The Industrial Relations Act aims at promoting and maintaining industrial harmony and providing for the regulation of the relations between employers and workers and their trade unions. Unlike the Employment Act 1955, the Industrial Relations Act is not a mandatory oversight ordinance and is more of a persuasive nature in that industrial problems are solved as far as possible through negotiation and conciliation. The act employs counselling to mediate disputes between employers and employees. Without proper information and education, a worker may not engage in alternative methods of dispute resolution.

The Industrial Court established under this act has the power to examine submitted issues including dismissal, problems between employers and employees, problems between employers and trade unions, and other similar issues.<sup>125</sup>

#### c. MINIMUM WAGES ORDER 2016

The Minimum Wages Order 2016 came into effect on 1 July 2016, replacing the Minimum Wages Order 2012. This order applies to all employers, regardless of the number of employees, as well as all employees in the private sector, with the notable exception of domestic servants. Minimum wages for Peninsular Malaysia are RM 1,000 per month, or RM 4.81 per hour. For Sabah, Sarawak, and Labuan, the minimum wage is RM 920 per month, or RM 4.42 per hour.<sup>126</sup>

<sup>121</sup> "Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro Visit to Malaysia" (23 -28 February 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15631>.

<sup>122</sup> US Department of Labor, List of Foods Produced by Child Labour or Forced Labour 2014, p.5, [http://www.dol.gov/ilab/reports/pdf/TVPRA\\_Report2014.pdf](http://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf).

<sup>123</sup> Section 2(1) of the Employment Act 1955.

<sup>124</sup> Employment (Amendment) Act 2012.

<sup>125</sup> PART VII of the Industrial Relations Act 1967.

<sup>126</sup> Article 3 and Article 4 of the Minimum Wages Order 2016.

**d. WORKER'S MINIMUM STANDARDS OF HOUSING AND AMENITIES REGULATION 1990**

This regulation applies to employees who work on plantation lands and employees under the First Schedule of the Employment Act 1955. It also applies to smallholders as well where a contract of service, whether oral or in writing and whether express or implied, exists. This regulation requires employers to comply with minimum standards of housing and nurseries for workers and their dependents, to allot land for cultivation, and to provide health, hospital, medical, and social amenities as well as housing amenities that include building, supply of water and electricity, and rent.

**e. OCCUPATIONAL SAFETY AND HEALTH ACT 1994**

This act applies to selected sectors including the palm oil industry.<sup>127</sup> Under requirements of this act, employers need to fulfill duties in order to ensure safety, health, and welfare of persons at work, protect persons in the work place, and promote an environment suitable for persons at work. Employers also have an obligation to identify workplace hazards, to assess the associated risks and to minimise those risks.

The Department of Occupational Safety and Health Malaysia (DOSH) has published guidelines on Occupational Safety and Health in Agriculture to provide practical information about working safely and the legal duties of persons who manage the farms.<sup>128</sup>

**f. ANTI-TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS ACT 2007 (AS AMENDED)**

This act criminalizes human trafficking for the purposes of labour exploitation and provides compensation for trafficked persons. The primary goal of this act is to eliminate forced labour in Malaysia by stating requirements on prevention and supervision, prosecution and enforcement, and care and protection to address the crime of trafficking. This act was amended by the Anti-Trafficking in Persons (Amendment) Act 2010, which added a new section defining the "smuggling of migrants" as well as a new section stating the function and power of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.

**g. CHILDREN AND YOUNG PERSONS (EMPLOYMENT) ACT 1966 (AS AMENDED)**

Pursuant to Section 2 of this act, no child or young person is permitted to engage in any hazardous work, or any employment other than work involving light work suitable to his/her capacity in any undertaking carried out by the child's family or without his/her family in the case of young person, employment requiring the child or young person to perform work approved or sponsored by the Government and carried out in any school, training institution or training vessel or training as an apprentice under a written apprenticeship contract. Young persons can further engage in employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association or in an industrial undertaking suitable to his/her capacity and on any vessel under the personal charge of his/her parent or guardian. For the purpose of this section, "hazardous work" is defined as "any work that has been classified as hazardous work based on a risk assessment conducted by a competent authority on health and safety determined by the Minister". The definition does not specify any specific industries as requiring hazardous work. Since agriculture hazards are not incorporated into this act, this legal loophole may be exploited and the employment of a young person/child on a palm oil plantation can potentially be deemed safe and legal.

In addition to the above laws and regulations, migrant worker issues are covered under:

- Employment (Restriction) Act 1968
- Passports Act 1966
- Immigration Act 1959/63
- Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005
- Industrial Relations Act 1967
- Trade Union Act 1959
- Wages Council Act 1947

The palm oil industry in Malaysia is labour intensive and employs many migrant workers from Indonesia, Thailand, Bangladesh and recently from Myanmar. Despite various laws providing basic protection for workers in the palm oil industry, difficult situations still exist in some areas for workers in this industry, particularly for undocumented migrant workers who are often victims of human trafficking and migrant smuggling. Generally, undocumented migrant workers are not protected under these laws and often criminalised for violations of the Immigration Act 1959/63.

<sup>127</sup> First Schedule of the Occupational Safety and Health Act 1994.

<sup>128</sup> Guidelines on Occupational Safety and Health in Agriculture, <http://www.dosh.gov.my/index.php/en/legislation/guidelines/agriculture-forestry-fishing/609-03-guidelines-on-occupational-safety-and-health-in-agriculture-2002/file>.



**SECTION C**

**—**

**ENFORCEMENT  
MECHANISMS**

## QUESTION 1.

### WHAT DISPUTE RESOLUTION MECHANISMS ARE AVAILABLE TO ADDRESS COMPLAINTS AND MANAGE DISPUTES OF INDIVIDUALS AND COMMUNITIES WHO ARE AFFECTED BY THE OPERATIONS?

Workers may bring a lawsuit against their employers in the event of the breach of their labour rights, or they may also go through the administrative processes to bring a claim against their employers before the Labour Department or through the Industrial Relations Department.<sup>129</sup> Despite the access to redress ensured under law, disputes of individuals and communities arising during the operations may also be settled by other means of resolutions. Mediation is used under the RSPO's Dispute Settlement Facility (DSF) to help resolve disputes among RSPO members (notably growers), local communities, and other stakeholders.

However, there appears to be no dispute in Malaysia that has been resolved by mediation of the RSPO. The mediation process between Tanjung Bahagia Sdn Bhd (a subsidiary of Genting Plantations Berhad) and the Tongod community is one example of an unsuccessful dispute resolution through DSF that ended up with a court led Settlement Agreement after 15 years.<sup>130</sup> Another case is IOI-Pelita vs LTK Community in Sarawak which is still pending after 7 years from the date the case has been filed.<sup>131</sup> In addition, complaint mechanisms, such as grievance processes, are frequently used to resolve disputes due to uneven law enforcement and other similar situations.

#### a. LITIGATION

With certain legislative instruments regulating employment practices and working conditions for employees, work-related complaints from employees against their employers may be settled in litigation before the Industrial Courts or the Civil Courts.

Usually, depending on the nature of the claim, the mode at which the complaint is brought, and the stage when it is settled, this process can take between three months and three years for a complaint to be decided.<sup>132</sup> In addition, litigation in courts is often expensive and time-consuming in practice, and workers are unlikely to use this means to resolve disputes.<sup>133</sup>

#### b. ADMINISTRATIVE PROCESSES

There are two administrative processes for resolving employment-related disputes: workers can lodge a complaint with the Labour Department or with the Industrial Relations Department. The Labour Department is mandated to accept all complaints relating to violations of the Employment Act, the Minimum Wage Order, the Workers' Minimum Standard of Housing and Amenities Act, the Workmen's Compensation Act, and the Anti-Trafficking of Persons and Smuggling of Migrants Act. The Industrial Relations Department is responsible for resolving cases of unfair dismissal, filed under Section 20 of the Industrial Relations Act.<sup>134</sup>

Under these processes, negotiations would first be initiated for both parties. In the event that the matter is not resolved during the negotiation phase, the Labour department may refer the case to the Labour Court, and the Industrial Relations Department to the Industrial Court.<sup>135</sup>

#### c. OTHER RESOLUTIONS

Apart from the redress under the laws of Malaysia, there are other dispute resolutions available, among which mediations, the grievance process, and direct negotiations are frequently used.

<sup>129</sup> Amnesty International, Malaysia: Trapped: The exploitation of migrant workers in Malaysia, pp.66-67, available at <https://www.amnesty.org/download/Documents/36000/asa280022010en.pdf>.

<sup>130</sup> <http://www.theborneopost.com/2016/03/23/longest-ncr-case-settled/>; <http://www.rspo.org/members/complaints/status-of-complaints/view/38>.

<sup>131</sup> <http://www.rspo.org/members/complaints/status-of-complaints/view/4>.

<sup>132</sup> See more information about Court Practice and Procedure of Employment and Labour Law in Malaysia, <https://iclg.com/practice-areas/employment-and-labour-law/employment-and-labour-law-2017/malaysia#chaptercontent9>.

<sup>133</sup> See note 129.

<sup>134</sup> ILO Regional Office for Asia and the Pacific: Access to justice for migrant workers in South-East Asia, p.14, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_565877.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_565877.pdf).

<sup>135</sup> See note 129.

### i. Disputes submitted to the RSPO

The RSPO has its in-house facilitation, the Dispute Settlement Facility (“DSF”), which provides services to support the members of the RSPO, local communities, and other stakeholders to use mediation as a means to help resolve disputes. This body assists the parties with the mediation process in order to resolve palm oil production-related disputes in cases where at least one party is an RSPO member. The DSF has its own list of mediators, and it carries out the engagement of mediators in accordance with a specified set of criteria.<sup>136</sup>

The mediating parties, whether a member of RSPO or not, may seek financial assistance from the DSF Trust Fund to cover the payment of mediator or technical experts’ fees and related costs. In addition to mediation, the RSPO also provides a grievance procedure fulfilling the following need:

- Providing a focal point for official complaints against RSPO members;
- Providing a clear, transparent, and impartial process to duly meet and address grievances against RSPO members; and
- Giving a chance for actions or initiatives that may enhance future dealings between parties.<sup>137</sup>

The mechanisms that the RSPO sets for disputes resolutions have been widely used, and indigenous people and local communities have increasingly begun to use the RSPO to confront companies for their land rights based abuses. A preliminary review of the cases submitted to the Dispute Settlement Facility revealed that four cases have been filed in Malaysia since the mechanism was put into place in 2009.<sup>138</sup>

MEMBER	COMPLAINT	STATUS
Control Union (Malaysia) Sdn Bhd	Breach of Article 3.2 of the Code of Conduct - Members to whom the P&C do not apply directly will implement parallel standards relevant to their own organisation, which cannot be lower than those set out in the P&C.	The case was settled amicably.
Tanjung Bahagia Sdn Bhd	Breach of Criteria 1.1, 1.2, 2.2, 2.3, 5.2, 5.6, 6.2, 6.3, 6.4 and 7.3 - The failure to address the community’s concerns on land acquisition, pollution, conservation of HCV areas, open & transparent communication and consultation, and not having a dispute resolution mechanism to resolve the issues complained.	The case was resolved by court-led mediation.
Genting Plantations Berhad	Breach of Principle 7 - Responsible development of new planting and the New Planting Procedures.	The issues were resolved in a manner acceptable to the complainant.
Lembaga Kemajuan Tanah Persekutuan (FELDA) / Orang Dusun Desa Begahak	Breach of Principle 2.2 - The communities user rights to the land	Case is pending.

### ii. Disputes under the Malaysian Palm Oil Certification Council

The Malaysian Palm Oil Certification Council (MPOCC) is an independent non-profit organization established in 2014 to develop and operate the Malaysian Sustainable Palm Oil (MSPO) Certification Scheme.<sup>139</sup>

It has an internal dispute resolution committee to handle complaints. No information in relation to the disputes resolved by the MPOCC is available.

<sup>136</sup> <http://www.rspo.org/members/dispute-settlement-facility>.

<sup>137</sup> More information about RSPO Grievance Process, [http://www.rspo.org/files/resource\\_centre/RSPO%20Grievance%20Procedure.pdf](http://www.rspo.org/files/resource_centre/RSPO%20Grievance%20Procedure.pdf).

<sup>138</sup> <https://www.rspo.org/members/status-of-complaints?keywords=Malaysia>.

<sup>139</sup> More information about MPOCC, <https://www.mpoc.org.my/>.

## QUESTION 2.

### ARE THERE ANY CONFLICTS OF LAWS WHERE INDUSTRY REGULATIONS CONTRADICT RELEVANT LEGISLATIONS (E.G. EMPLOYMENT, CHILD PROTECTION, ANTI-TRAFFICKING)?

A wide range of different flexible working conditions are imposed upon workers, ranging from payment by piece rates and quotas for workers with permanent contracts. Conflicts often arise where workers paid at piece rates do not meet the statutory minimum wage required by law. The RSPO social criteria includes a requirement that workers be paid a wage that is sufficient to cover the cost of living. According to RSPO Criterion 6.5, “pay and conditions for employees and for employees of contractors always meet at least legal or industry minimum standards and are sufficient to provide decent living wages.” Where there is no National Interpretation, the local minimum wage will be used. The minimum monthly wage in West Malaysia is RM 1,000 for an eight-hour working day, but the piece rate is set in a way that allows an ordinary worker, working at a normal pace, to earn RM 38.46 per day.<sup>140</sup>

The immigration issue also draws attention in Malaysia because illegal immigration may result in criminal liabilities under Malaysian law. Workers may face severe and excessive criminal penalties for technical immigration offences for violating Malaysian immigration law.<sup>141</sup> Those violations include working on an expired permit, even when the violation is due to the employer’s failure to file on time. In some cases, documented by Amnesty International, workers who complained about mistreatment have been themselves arrested for technical violations of the immigration laws.<sup>142</sup>

Other issues that affect the sustainability of the palm oil industry are more social in nature. Those issues include workers’ rights and land disputes, among which worker health is a critical concern. In Malaysia and Indonesia, workers are exposed to hazardous chemicals that are banned in most parts of the world but continue to be used in these two countries. For example, the herbicide paraquat, which can severely harm workers’ health, is used on palm oil plantations to control weeds.

The lack of enforcement of health and safety laws to protect workers from the effects of harmful substances highlights a tension between the need to generate healthy crops and the need to safeguard workers health. These are not however mutually exclusive as a healthy workforce is more likely to contribute to a higher level of productivity on plantations. Land disputes often coincide with plantation expansion, particularly in Borneo, which covers the Indonesian state of Kalimantan and the Malaysian states of Sarawak and Sabah.

Numerous local indigenous groups are involved in lengthy land disputes and court cases over native customary land rights.<sup>143</sup> There is an inherent tension in the laws aimed at protecting rights to land and the regulation of the expansion of plantations. The latter is often at the expense of the former.

Estate managers have confirmed that there are problems in the recruitment processes as well. According to a Finnwatch report, the managers interviewed stated that they receive feedback from workers saying that the work at the estates does not correspond with what the workers had been promised at the time of recruitment.<sup>144</sup>

This applies mainly to Bangladeshi workers who have been recruited through the G2G initiative between Malaysia and Bangladesh, which involves the registration of millions of migrant workers by the Bangladeshi government, of whom some 20,000 workers are allocated to plantation companies in Malaysia. According to IOI, these workers are selected by a system, which does not take into account the workers’ preferences.<sup>145</sup> This is a clear example of government practices and immigration laws not working in harmony with anti-trafficking laws.

<sup>140</sup> The Law of the Jungle Corporate Responsibility of Finnish Palm Oil Purchase, p. 41, available at <https://www.finnwatch.org/images/palmoil.pdf>.

<sup>141</sup> Section 6 of the Immigration Act 1959/63 provides that “(a)ny person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.”

<sup>142</sup> “The great palm oil scandal”, <https://www.amnesty.org/download/Documents/ASA2151842016ENGLISH.PDF>.

<sup>143</sup> “Palm oil in Asia”, [http://www.sustainalytics.com/sites/default/files/palm\\_oil\\_in\\_asia\\_\\_\\_executive\\_summary.pdf](http://www.sustainalytics.com/sites/default/files/palm_oil_in_asia___executive_summary.pdf).

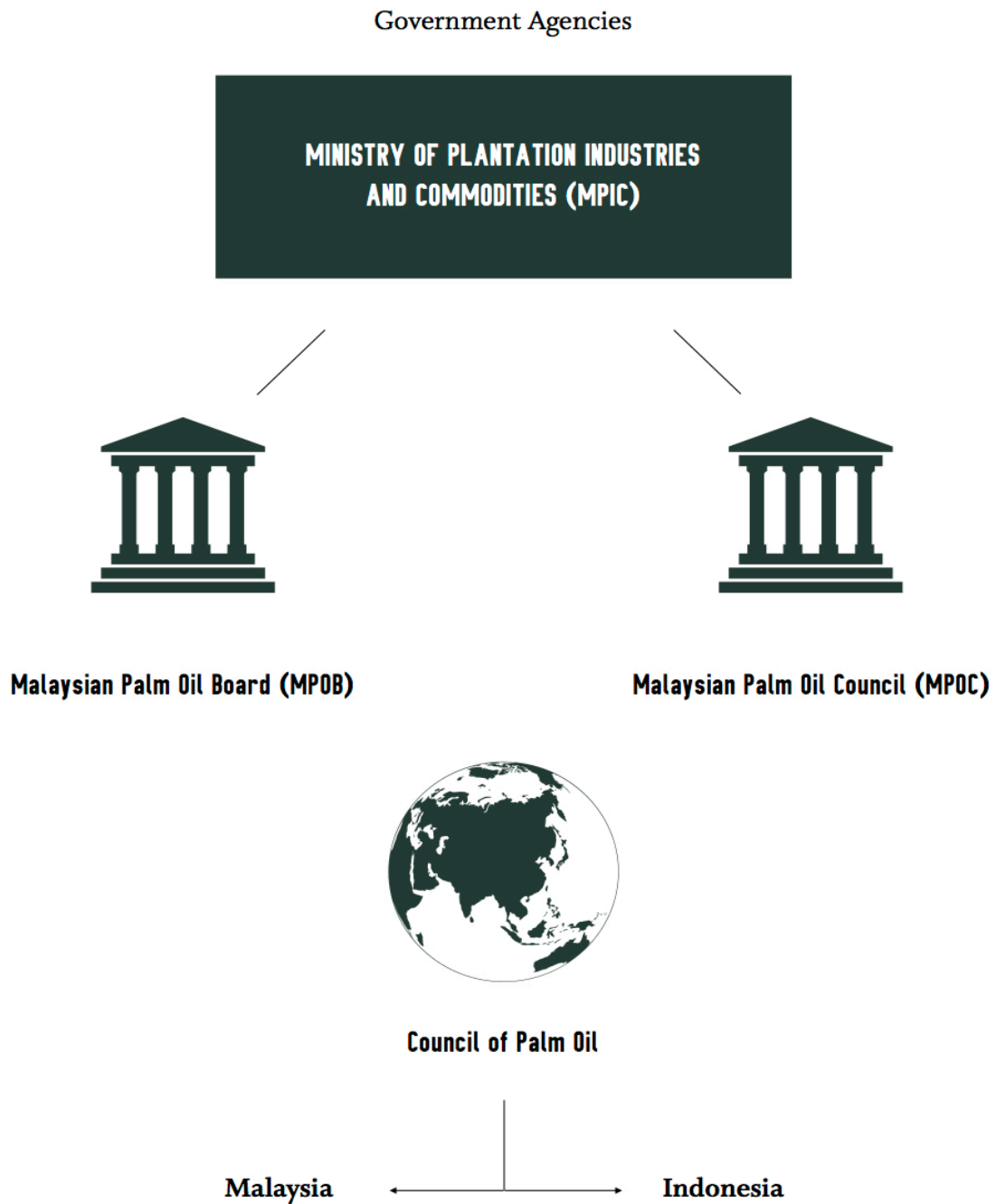
<sup>144</sup> See note 140.

<sup>145</sup> See note 140.

**QUESTION 3.**

**WHAT REGULATORY BODIES GOVERN THE PALM OIL INDUSTRY IN MALAYSIA?**

As one of the key areas in a critical sector of the economy, the palm oil industry is specifically regulated by a government agency designed to target issues unique to this field.





#### a. **MINISTRY OF PLANTATION INDUSTRIES AND COMMODITIES (MPIC)**

As the ministry responsible for plantations and commodities, the Ministry of Plantation Industries and Commodities (MPIC) primarily focuses on formulating policies and strategies for the overall development of this key sector as well as to supervise departments and agencies under the Ministry regarding financial management and the implementation of plantation and commodities development programs.

#### b. **MALAYSIAN PALM OIL BOARD (MPOB)**

The Malaysian Palm Oil Board (MPOB) is the premier government agency entrusted to serve the country's palm oil industry. As one of the federal agencies under the MPIC, the MPOB was established in 1998 after the passage of the Malaysian Palm Oil Board Act 1998. According to the Act, the MPOB's functions include:

- to implement policies and developmental programmes to ensure the viability of the oil palm industry of Malaysia;
- to conduct and promote research and development activities relating to the planting, production, harvesting, extraction, processing, storage, transportation, use, consumption, and marketing of oil palm and oil palm products;
- to plan, coordinate, implement, and monitor all research and development activities on oil palm and oil palm products;
- to regulate, register, coordinate, and promote all activities relating to the planting, supply, sale, purchase, distribution, movement, storage, surveying, testing, inspecting, brokering, export, and import of oil palm products, and the milling of oil palm fruit;
- to develop and commercialize research findings for the benefit of the oil palm industry and to promote the use of the research findings commercially;
- to provide technical, advisory, and consultancy services to the oil palm industry;
- to promote the efficient marketing and handling of oil palm products;
- to develop and maintain markets for oil palm products;
- to promote, control, and monitor measures towards attaining a high quality for oil palm products;

- to plan and implement training programmes and human resource development in line with the needs of the oil palm industry;
- to liaise and coordinate with other bodies within or outside Malaysia to further enhance the oil palm industry of Malaysia;
- to conduct research and development on oil seeds and other oils and fats other than palm oil where such research and development are for the enhancement of the oil palm industry;
- to gather information and maintain records of all relevant matters relating to the oil palm industry;
- to be the resource and information centre of the oil palm industry;
- to publish or sponsor the publication of journals, periodicals, booklets, and other publications and to collect, collate, and disseminate information relating to oil palm, oil palm products, and other vegetable and animal oils and fats;
- to conduct research and development in any other area where the results of the research and development are intended to benefit the oil palm industry; and
- to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

In addition, the powers enumerated in the Act for the MPOB include:

- to undertake and coordinate activities relating to research and development into the planting, production, harvesting, extraction, processing, storage, transportation, use, consumption, and marketing of oil palm and oil palm products including oil palm and oil palm product wastes, and services related thereto;
- to impose fees or any other charges it deems fit for the use of any facility relating to research, investigation, testing, advisory services, or any other service provided by the Board;
- to enter into such negotiations and agreements or arrangements as it deems fit for the discharge of its functions;
- to acquire, hold, dispose of, or grant rights in connection with the results of any research conducted by or for the Board or in connection with the results of any research undertaken by any person or organization;

- to commission any person or body to carry out research or development, or both;
- to award certificates of proficiency in respect of training and accredited programmes;
- to undertake and coordinate such activities as it deems necessary for the purpose of protecting and furthering the interests of the oil palm industry of Malaysia;
- to regulate the oil palm industry, including by the implementation of registration and licensing schemes;
- to prescribe the standards or grades of oil palm and oil palm products; and
- to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

## QUESTION 4.

### WHAT ARE THE NOTABLE INDUSTRY BEST PRACTICES?

#### A. GOOD AGRICULTURAL PRACTICES (GAP) IN MALAYSIA

Good agricultural practices (GAP) are specific methods that are safe and beneficial for producing and processing food for consumers. Currently, there is no uniform definition of GAP in the palm oil industry, however, there are several broadly accepted schemes that producers can adhere to, generally including the following areas:

- Good agricultural practices – estate and smallholders
- Integrated pest management
- Satellite monitoring of diseases
- Reducing greenhouse gases by converting EFB and POME into compost
- Recycling of oil palm biomass and optimization of fertilizer inputs
- Zero burning and re-planting policies
- Land management and planting of leguminous cover crops

The Department of Standards Malaysia has revised a standard - MS 1784 - GAP on Crop Commodities, which will be referred by the Ministry of Agriculture and Agro-based Industry (MoA) for implementation and issuance of Malaysian Good Agricultural Practices (MyGAP) certification. This standard will benefit farmers, growers, exporters, importers, industries, associations as well as regulators and agencies under the MoA. The utilisation of standards in MyGAP has accelerated the products in gaining better recognition and acceptance in the local and international market. This standard provides a generic code of GAP to achieve legal compliance as well as economic, social, and environmental sustainability.<sup>146</sup>

#### b. MPOB CODES OF GOOD AGRICULTURAL PRACTICE FOR OIL PALM ESTATES AND SMALLHOLDINGS

To ensure that production of sustainable palm oil meets requirements of food safety, quality of palm oil, environmental protection, biodiversity enhancement, and reduction of greenhouse gas emissions, MPOB Codes of Good Agricultural Practice for Oil Palm Estates and Smallholdings were created.<sup>147</sup>

Sustainability is all about the long-term security of the supply chain if the palm oil business is to continue with brand values and consumer trust. The Technical Barriers to Trade (WTO 1994) demands that the development of sustainability standards must agree with the Codes of Good Practice for preparation, adoption, and application of standards.<sup>148</sup> However, there are no best practices that are particularly aimed at social standards.

Several aspects are included: good water management, maintaining riparian reserves, avoiding soil compaction, maintaining soil fertility, integrated pest management, decreased reliance on harmful chemical pesticides, and increasing the use of biological controls.

#### c. IFC'S PERFORMANCE STANDARDS FOR ENVIRONMENTAL AND SOCIAL SUSTAINABILITY

The performance standards define the responsibilities of IFC's clients for managing their environmental and social risks. The latest version has been fully aligned with the UN Guiding Principles on Business and Human Rights, providing guidance on how to identify and help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way.

<sup>146</sup> "A Revised Standard for Malaysia Good Agricultural Practice (MyGAP)", [http://www.jsm.gov.my/documents/10180/1878429/Press+Release+-GAP\\_5+December\\_351pm\\_6+-jan+2017+%281%29.pdf/ace70da1-ef03-477d-9697-89267913d298](http://www.jsm.gov.my/documents/10180/1878429/Press+Release+-GAP_5+December_351pm_6+-jan+2017+%281%29.pdf/ace70da1-ef03-477d-9697-89267913d298).

<sup>147</sup> "Malaysia Palm Oil Berhad - Codes of Practice", ISO Specialist, [http://www.advisory.com.my/central\\_advisory\\_mpob.asp#1](http://www.advisory.com.my/central_advisory_mpob.asp#1).

<sup>148</sup> "MPOB Codes of Good Agricultural Practice for Oil Palm Estates and Smallholdings", MPOB, [http://www.mpob.gov.my/images/stories/pdf/CodesPractice\\_Estate.pdf](http://www.mpob.gov.my/images/stories/pdf/CodesPractice_Estate.pdf).

The Performance Standards include:<sup>149</sup>

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Performance Standard 1:	Assessment and Management of Environmental and Social Risks and Impacts
Performance Standard 2:	Labor and working conditions
Performance Standard 3:	Resource Efficiency and Pollution Prevention
Performance Standard 4:	Community Health, Safety, and Security
Performance Standard 5:	Land Acquisition and Involuntary Resettlement
Performance Standard 6:	Biodiversity Conservation and Sustainable Management of Living Natural Resources
Performance Standard 7:	Indigenous Peoples
Performance Standard 8:	Cultural heritage

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**d. IFC'S ENVIRONMENTAL, HEALTH, AND SAFETY GUIDELINES ('EHS GUIDELINES')**

The IFC's Environmental, Health, and Safety Guidelines ('EHS Guidelines') are technical reference documents with general and specific examples of good international industry practice, as defined in IFC's Performance Standard 3: Resource Efficiency and Pollution Prevention. When one or more members of the World Bank Group are involved in a project, these guidelines are applied as required by their respective policies and standards. The general EHS Guidelines are designed to be used together with the relevant industry sector EHS Guidelines. More specifically, the IFC's Environmental, Health, and Safety Guidelines for Perennial Crop Production include 'information relevant to large-scale plantation crops including palm oil'.<sup>150</sup>

**e. ISO 26000**

ISO 26000 provides guidance on how businesses and organizations can operate in a socially responsible way. ISO 26000 addresses seven core subjects of social responsibility: organizational governance, human rights, labour practices, the environment, fair operating practices, consumer issues and community involvement and development.<sup>151</sup> They have also been brought in line with the UN Guiding Principles on Business and Human Rights. Unlike ISO 14000 and other ISO standards, it is not intended for certification purposes but as guidance for its users.<sup>152</sup>

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<sup>149</sup> "2012 Performance Standards", [http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES).

<sup>150</sup> IFC's Environmental, Health, and Safety Guidelines for Perennial Crop Production, [http://www.ifc.org/wps/wcm/connect/ef0d4b804c3c5ad99bcb9bed8bd2c3114/English\\_2016\\_Perennial+Crop+Production\\_EHS.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/ef0d4b804c3c5ad99bcb9bed8bd2c3114/English_2016_Perennial+Crop+Production_EHS.pdf?MOD=AJPERES).

<sup>151</sup> "Discovering ISO 26000", [https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/discovering\\_iso\\_26000.pdf](https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/discovering_iso_26000.pdf).

<sup>152</sup> See ISO 26000, <https://www.iso.org/iso-26000-social-responsibility.html>.



# SECTION D



# CASE LAW

Although this industry and the related regulatory system has been well established for decades as a key part of the Malaysian economy, there are no relevant cases on record regarding breaches of palm oil related regulations or violations of labour standards on palm oil plantations. In an industry where there exist many documented cases of labour violations, this would indicate gaps in implementation and enforcement the laws.

# ANNEX



The following Annex sets out reported cases of various exploitative labour practices, including forced and child labour on Malaysian palm oil plantations in the past ten years.

CASE NO.	PRODUCT	INDUSTRY	ALLEGED LIABILITY	CORPORATES LIABLE	CORPORATES EXPOSED	SUMMARY OF REPORT	SOURCE	Incident Locations Involved	Victim Origins	Market Destinations
1	Palm Oil; Soap; Ice-cream	Palm Oil	Bonded labor; Excessive indebtedness; Child labor; Health and safety hazards; Forced labor; Extreme living conditions, with limited legal recourse; Abuse or the threat of abuse	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	Report on Exploitative Labor Practices in the Global Palm Oil Industry - "The upstream analysis focuses primarily on Indonesia and Malaysia. In addition to those countries' significance to global production, the palm oil industry in both countries has been cited by the U.S. Department of Labor and other sources for various forms of labor exploitation, including forced and child labor. Due to limitations in publicly available data about consumption in developing economies, namely China and India, the downstream analysis focuses primarily on large companies based in Europe and North America."	Exploitative Labor Practices in the Global Palm Oil Industry. Accenture, Humanity United. 2013. <a href="http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf">http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf</a>	Malaysia	Bangladesh; Cambodia; India; Indonesia; Nepal; Pakistan; Philippines; Thailand; Vietnam	Europe; China; Pakistan; India; Egypt; United States; Bangladesh
2	Palm Oil; Household products	Palm Oil	Forced labor; Child labor; Land confiscation; Underpayment of wages; Non-payment of wages; Financial punishments of workers; Health and safety risks; Hazardous working conditions causing heat exhaustion, cuts and bruises	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	Slavery in in the palm oil industry in Indonesia and Malaysia - "The 2016 Trafficking in Persons (TIP) report ranked Malaysia and Indonesia as Tier 2 countries, indicating that they failed to meet the minimum standards established by the Trafficking Victims Protection Act (TVPA) and showed no significant efforts to correct this behavior. A Department of Labor report released in September identified palm oil to be among the commodities most likely produced using child labor."	Slavery in the Palm Oil Industry. Human Rights First. Blog, March 01, 2017. <a href="http://www.humanrightsfirst.org/blog/slavery-palm-oil-industry">http://www.humanrightsfirst.org/blog/slavery-palm-oil-industry</a>	Malaysia	Indonesia; Malaysia	United States
3	Palm Oil	Palm Oil	Child labor	Unidentified Malaysia Palm Oil Company	Not known	Report on Stateless Child Laborers in Palm Oil Industry (Reported on April 9th, 2013) There are "estimated 50,000 stateless Indonesian children living in Sabah province, the country's palm oil producing heartland. Thousands more have come from the Philippines, born to workers that have arrived in waves since the 1970's to fulfill a demand for cheap labor in what is now the world's second-largest palm oil industry. Without papers that prove nationality, their children are likewise denied healthcare and education, while the rest of the region continues to enjoy the fruits of their labor."	Palm Oil for the West, Sabah, Malaysia Exploitation for Young Workers in Malaysia. The Atlantic, Jason Motlagh. April 09, 2013 <a href="http://pulitzercenter.org/reporting/palm-oil-west-exploitation-young-workers-malaysia">http://pulitzercenter.org/reporting/palm-oil-west-exploitation-young-workers-malaysia</a>	Sabah, Malaysia	Indonesia; Philippines	European Union; China; India; United States
4	Palm Oil; Chocolate Chip Cookies; Cosmetics	Palm Oil	Slavery-like conditions; Destruction of biodiversity; Lack of access to health care and education for children of undocumented migrant workers	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	Project about Stateless Children in Palm Oil Industry in Borneo (Project launched on November 26, 2012) "On both sides of the border, the industry thrives on cheap labor. In Malaysia's Sabah province, thousands of stateless children, born to undocumented Indonesian and Filipino migrant workers, live without access to health care or education. In Indonesia, workers continue to clear-cut swathes of rain forest the size of small countries, emitting massive amounts of greenhouse gases. Rare biodiversity is being destroyed, including the habitat of the orangutan, humankind's closest relative. Meanwhile, many workers are de facto slaves on the plantations."	Lost in the Forest: Stateless Children in Borneo's Palm Oil Industry. Pulitzer Center, Project, Jason Motlagh, Stephen Sapienza. November 26, 2012. <a href="http://pulitzercenter.org/projects/malaysia-lost-forest-stateless-children-filipino-migrant-workers-palm-oil-industry-social-environmental-cost">http://pulitzercenter.org/projects/malaysia-lost-forest-stateless-children-filipino-migrant-workers-palm-oil-industry-social-environmental-cost</a>	Sabah, Malaysia	Indonesia; Philippines	Europe; United States



CASE NO.	PRODUCT	INDUSTRY	ALLEGED LIABILITY	CORPORATES LIABLE	CORPORATES EXPOSED	SUMMARY OF REPORT	SOURCE	Incident Locations Involved	Victim Origins	Market Destinations
5	Crude Palm Oil	Palm Oil	Migrant workers complain of earning less than minimum wage; Poor treatment of workers	Felda Global Ventures	Cargill Inc.; Nestlé SA and Procter & Gamble Co	Report on Abuses in Palm Oil Industry in Malaysia (Report posted on October 2015) - "Malaysian palm oil industry, which produces 40 per cent of the world's palm oil supply, is growing but, according to labourers and activists interviewed by a Wall Street Journal report, also surrounded with abuses. Migrant workers, especially from Bangladesh and Myanmar, are being brought in terrible conditions by human traffickers as labourers in certain palm oil plantations in Malaysia. Felda Global Ventures, which sells crude palm oil to multinationals such as Cargill Inc., Nestlé SA and Procter & Gamble Co, says that 85 per cent of workers in its plantations are foreigners. Even those with legal work permits complain that they earn less than Malaysian minimal wage and are treated poorly. The Arakan Project, a non-profit organization that studies migration through the Bay of Bengal, estimates that nearly 50,000 people have boarded boats for the perilous journey to Malaysia in the past two years, many dying on the way."	Malaysia: Human trafficking and workers' abuse in palm oil plantations. WRM, October 2015. <a href="http://wrm.org.uy/other-relevant-information/malaysia-human-trafficking-and-workers-abuse-in-palm-oil-plantations/">http://wrm.org.uy/other-relevant-information/malaysia-human-trafficking-and-workers-abuse-in-palm-oil-plantations/</a>	Malaysia	Bangladesh; Myanmar	Not known
6	Palm Oil; Food products; Consumer products; Cosmetics; Biofuel	Palm Oil	Land confiscation; Deforestation	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	Report on campaign against palm oil (Beginnings of palm oil industry are reported from 1848. Plantations in Malaysia grew in 1930s. Major expansion on palm oil plantations in Indonesia reported between 1967 and 2000. United Nations Environment Programme report forecasted destruction of most of Indonesia's forest due to illegal logging and palm oil production. Campaign against palm oil reported by the Economist in 2010) - "What happens from now on will depend on whether pressure is kept up on all parts of the industry. Clearly, the industry would not have moved so far, so fast, without pressure from green activists. Several companies have learned that they are vulnerable, politically and therefore commercially, when they do not control the distant ends of their supply chains."	The Other Oil Spill. The campaign against palm oil. The Economist, June 24, 2010. <a href="http://www.economist.com/node/16423833">http://www.economist.com/node/16423833</a>	Malaysia	Malaysia; Indonesia	Not known

CASE NO.	PRODUCT	INDUSTRY	ALLEGED LIABILITY	CORPORATES LIABLE	CORPORATES EXPOSED	SUMMARY OF REPORT	SOURCE	Incident Locations Involved	Victim Origins	Market Destinations
7	Palm Oil; Food products; Cosmetics; Detergents; Bio-fuel	Palm Oil	Labor rights violations; Coercion; Abuse; Malpractice; Human trafficking; Forced labor; Hazardous working conditions, including long working hours, physically demanding and arduous jobs, workplace injuries, limited coverage of social protections; Primitive living conditions; Low wages; Informal or unwritten contracts of employment; Restriction on the freedom of movement; Passport confiscation; Delayed or non-payment of wages; Excessive recruitment fees; Debt bondage; Child labor; Informal and irregular hiring process	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	White Paper promoting new measures to combat risks of forced labor and human trafficking in palm oil supply chains (September, October 2012 - Verite conducted research in Malaysia and Indonesia on the labor and employment conditions of migrant workers on palm plantations; May 2013 - Verite published its findings of human rights abuses in palm oil sector) - "In recent years, media and civil society reports have focused the world's attention on the unsustainable environmental practices that often characterize palm oil production in countries such as Malaysia and Indonesia, where up to 85% of the world's palm oil is produced. Building on this, Verité's research has examined the social dimension of the industry, looking at labor and employment conditions through the lens of global supply chains. Over the last year, Verité's research has revealed troubling circumstances for many palm oil workers, particularly those that are migrating for employment onto plantations. These workers can face significant vulnerability, patterns of abuse and malpractice, and coercion at various stages of the recruitment, migration and employment process. This includes policies and regulations in home and host countries that can exacerbate their vulnerability. For businesses linked to such circumstances through business relationships, this amounts to nothing less than clear risks of forced and trafficked labor in the supply chains."	Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains. Verite, White Paper, May 2013. <a href="http://www.verite.org/wp-content/uploads/2016/11/Palm_White_Paper_May_2013_Final_Draft_0.pdf">http://www.verite.org/wp-content/uploads/2016/11/Palm_White_Paper_May_2013_Final_Draft_0.pdf</a>	Kota Kinabalu, Malaysia; Sandakan, Malaysia; Tawau, Malaysia	Indonesia; Philippines; Nepal; Vietnam; Myanmar	Not known
8	Palm Oil; Consumer goods	Palm Oil	Child labor; Limited access to health care and education; Poor health and nutrition outcomes for children of palm oil workers; Poverty; Social exclusion; Loss of cultural identity; Low wages; Inadequate maternity benefits; Lack of paid time off for pre- and post-natal care; Poor maternal nutrition; Exposure to chemicals; Exposure to haze; Lack of access to clean water; Inadequate housing	Unidentified Indonesia/Malaysia Palm Oil Company	Not known	Report on the Palm Oil Sector's Impact on Children's Rights (2016 - UNICEF reported on situation of children of palm oil workers) - "The research estimates that as many as 5 million children could be affected by the palm oil sector in Indonesia as dependents of workers. This is in addition to children working in the industry and living in rural communities near oil palm plantations who are also impacted by the sector....Children of Indonesian migrant workers on Malaysian plantations face particular challenges accessing education, as non-nationals are prevented from accessing public education. While alternative learning centres funded by plantations and run by NGOs have been established, the quality of the education offered is variable and the opportunities to study beyond the primary level remain limited."	Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights. UNICEF, October 2016. <a href="https://www.unicef.org/indonesia/Palm_Oil_and_Children_in_Indonesia.pdf">https://www.unicef.org/indonesia/Palm_Oil_and_Children_in_Indonesia.pdf</a>	Malaysia	Indonesia	Not known

\* The incidents findings may at times be summarised across different locations. For the purpose of this Report, the incident locations list only Malaysia.

