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Dispute Resolution Procedure



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1. INTRODUCTION

- 1.1 The Malaysian Timber Certification Council (MTCC) is the National Governing Body (NGB) of the Malaysian Timber Certification Scheme (MTCS) and has overall responsibility for ensuring the smooth operation of the MTCS and maintaining its credibility.
- 1.2 This document describes the procedure for the investigation and resolution of disputes in the MTCS, covering (i) the scope in terms of the types of disputes that can be referred to the MTCC in its role as the NGB; (ii) procedure for submission of disputes; (iii) function and membership of the Dispute Resolution Committee and its decision-making process; and (iv) costs incurred related to these Procedures.

2. SCOPE

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

3. DISPUTE RESOLUTION COMMITTEE (DRC)

- 3.1 The DRC is the independent committee established by the Board of Trustees of the MTCC to consider and resolve the types of disputes mentioned in these Procedures. The management of the MTCC shall serve as the Secretariat for the DRC.

- 3.2 The DRC shall comprise of five members who are appointed by the Board of Trustees. The Board shall also decide on the Chair for the DRC. Each member of the DRC shall be appointed for a two-year term, which may be renewed.
- 3.3 The quorum for meetings of the DRC shall be three members in order for the meeting to proceed.
- 3.4 The Chair shall preside at all meetings of the DRC, but if there is no Chair, or if at any meeting the Chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, or if the Chair is present but is unwilling to preside for whatsoever reason(s), the members at such a meeting shall choose from one of their members present to act as a Chair at such a meeting.
- 3.5 The decision of the DRC shall be based on a simple majority, and shall be final. In the event of equality of votes, the chairman shall have a casting vote.

4. DISPUTE RESOLUTION COMMITTEE (DRC)

4.1 Submission of Disputes

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

- 4.1.1.1 describes the basis of the dispute;
- 4.1.1.2 summarises the procedures and results to date;
- 4.1.1.3 explains how the timeliness requirements under Section 4.2 of these Procedures have been met;
- 4.1.1.4 identifies potential parties to the dispute;
- 4.1.1.5 explains how the complainant had previously participated in the proceedings giving rise to the dispute; and
- 4.1.1.6 suggests a solution.

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

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

- 4.1.3.1 be in writing;
- 4.1.3.2 specify the reason(s) for the rejection; and
- 4.1.3.3 indicate how the deficiencies may be rectified.

4.2 Timeliness

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

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

4.3 Notification to Dispute Resolution Committee

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

4.4 Responding Party

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

4.4.2 Whenever it appears to the Chair of the DRC that a person not currently named as a responding party should be invited to join the proceedings in that capacity, the Chair shall direct the Secretariat to send to that person a copy of the dispute (and its supporting documents) and invite such participation.

4.4.3 Organisations or persons named as responding parties shall have 20 working days, following the Secretariat's transmission to them of the dispute (and its supporting documents), to submit to the Secretariat their own response briefs.

4.4.4 The response briefs shall address the issues presented by the dispute, and shall:

4.4.4.1 be in writing;

4.4.4.2 be accompanied by supporting documentation not already presented by the complainant;

4.4.4.3 identify the type and location of any other non-documentary supporting evidence; and

4.4.4.4 explain why any persons not already part of the proceedings should be invited to participate.

4.4.5 Respondents added to the proceedings other than by the complainant in the dispute shall be given a reasonable period of time, not exceeding 20 working days, to submit their own supporting documents.

4.4.5.1 To the maximum extent practicable, time spent waiting for the initial briefs of later-added parties shall not otherwise delay any pending proceeding nor serve to extend the time periods for actions required, under these Procedures, of the DRC.

4.4.5.2 Briefs submitted beyond the time permitted by these Procedures shall be lodged by the Secretariat and forwarded to the Chair of the DRC, who shall indicate the extent (if any) to which the DRC will consider the material contained in the brief.

4.4.6 The Secretariat shall promptly forward copies of the respondent(s)'s briefs to the parties involved in the dispute and the DRC.

4.5 Consideration of Dispute by DRC

- 4.5.1 Within 15 working days of the receipt of the respondent(s)'s briefs, the DRC shall decide whether to proceed to hear the dispute.
- 4.5.2 Upon reaching its decision, the DRC shall issue a written statement that either declines or agrees to hear the dispute.
- 4.5.3 If the DRC makes a decision to hear the dispute, the DRC shall convene to discuss and make its decision on the dispute. Under normal circumstances, the DRC shall decide on the dispute solely on the basis of the briefs submitted to the DRC.
- 4.5.4 In exceptional circumstances, the DRC may do any or all of the following:
 - 4.5.4.1 request supplemental briefing on any pertinent matter from any of the parties to the dispute;
 - 4.5.4.2 seek assistance from the Secretariat;
 - 4.5.4.3 seek the assistance of consultants or outside experts; and/or
 - 4.5.4.4 hold site visits, oral hearings or other proceedings that might help resolve the dispute.
- 4.5.5 The decision of the DRC shall be based on a simple majority, and shall be final.
- 4.5.6 The DRC shall issue a statement of its decision within 20 days of its decision to hear the dispute. The DRC shall inform the complainant, MTCC and other responding parties about the outcome of the dispute resolution process, including recommendations or remedial actions, in writing.
- 4.5.7 The flow chart for the procedures of dealing with disputes in which the MTCC is involved as a responding party is given in **Appendix I**.

5. DISPUTES NOT INVOLVING MTCC

5.1 Submission of Disputes

- 5.1.1 All disputes shall be addressed in writing to the MTCC Chief Executive Officer (CEO), with a copy to the MTCC Chairman. The complainant shall submit a short letter that, where applicable,
 - 5.1.1.1 describes the basis of the dispute;
 - 5.1.1.2 summarises the procedures and results to date;
 - 5.1.1.3 explains how the timeliness requirements under Section 5.2 of these Procedures have been met;
 - 5.1.1.4 identifies potential parties to the dispute;
 - 5.1.1.5 explains how the complainant had previously participated in the proceedings giving rise to the dispute; and
 - 5.1.1.6 suggests a solution.
- 5.1.2 The MTCC CEO shall acknowledge receipt of all disputes in writing.

5.1.3 The MTCC CEO shall reject any letter that fails to meet substantially the requirements in subsection 5.1.1. Such a rejection shall:

5.1.3.1 be in writing;

5.1.3.2 specify the reason(s) for the rejection; and

5.1.3.3 indicate how the deficiencies may be rectified.

5.1.4 Where the letter has been rejected as inadequate by the MTCC CEO, the complainant can appeal to the MTCC Chairman, whose decision on the adequacy of the letter shall be final.

5.2 Timeliness

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

5.2.2 The MTCC CEO shall reject as untimely matters that are submitted beyond the period specified in subsection 5.21.

5.2.3 Where a letter has been rejected as untimely by the MTCC CEO, the complainant can appeal to the MTCC Chairman, whose decision on the timeliness of the letter shall be final.

5.3 Notification to Dispute Resolution Committee

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

5.4 Responding Party

5.4.1 The Secretariat shall, at the same time, forward copies of the dispute (and its supporting documents) to any party named in the dispute as a potential responding party.

5.4.2 Whenever it appears to the Chair of the DRC, that a person not currently named as a responding party should be invited to join the proceedings in that capacity, the Chair shall direct the Secretariat to send to that person a copy of the dispute (and its supporting documents) and invite such participation.

5.4.3 Organisations or persons named as responding parties shall have 20 working days, following the Secretariat's transmission to them of the dispute (and its supporting documents), to submit to the Secretariat their own response briefs.

5.4.4 The response briefs shall address the issues presented by the complaint, and shall:

5.4.4.1 be in writing;

5.4.4.2 be accompanied by supporting documentation not already presented by the complainant;

5.4.4.3 identify the type and location of any other non-documentary supporting evidence; and

5.4.4.4 explain why any persons not already part of the proceedings should be invited to participate.

5.4.5 Respondents added to the proceedings other than by the complainants in the dispute shall be given a reasonable period of time, not exceeding 20 working days, to file their own supporting documents.

5.4.5.1 To the maximum extent practicable, time spent waiting for the initial briefs of later-added parties shall not otherwise delay any pending proceeding nor serve to extend the time periods for actions required, under these Procedures, of the DRC.

5.4.5.2 Briefs submitted beyond the time permitted by these Procedures shall be lodged by the Secretariat and forwarded to the Chair of the DRC, who shall indicate the extent (if any) to which the DRC will consider the material contained in the brief.

5.4.6 The Secretariat shall promptly forward copies of the respondent(s)'s briefs to the parties involved in the dispute and the DRC.

5.5 Consideration of Dispute by DRC

5.5.1 Within 15 working days of the receipt of the respondent(s)'s briefs, the DRC shall decide whether to proceed to hear the dispute.

5.5.2 Upon reaching its decision, the DRC shall issue a written statement that either declines or agrees to hear the dispute.

5.5.3 If the DRC makes a decision to hear the dispute, the DRC shall convene to discuss and make its decision on the dispute. Under normal circumstances, the DRC shall decide on the dispute solely on the basis of the briefs submitted to the DRC.

5.5.4 In exceptional circumstances, the DRC may do any or all of the following:

5.5.4.1 request supplemental briefing on any pertinent matter from any of the parties to the dispute;

5.5.4.2 seek assistance from the Secretariat;

5.5.4.3 seek the assistance of consultants or outside experts; and/or

5.5.4.4 hold site visits, oral hearings or other proceedings that might help resolve the dispute.

5.5.5 The decision of the DRC shall be based on a simple majority, and shall be final.

5.5.6 The DRC shall issue a statement of its decision within 20 days of its decision to hear the dispute. The DRC shall inform the complainant, MTCC and other responding parties about the outcome of the dispute resolution process, including recommendations or remedial actions, in writing.

5.5.7 The flow chart for the procedures of dealing with disputes in which the MTCC is not involved as a responding party is given in **Appendix II**.

6. Costs

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

7. Conflicts of Interest

7.1 Recusal

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

7.2 Recusal: Vacating a Decision

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

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

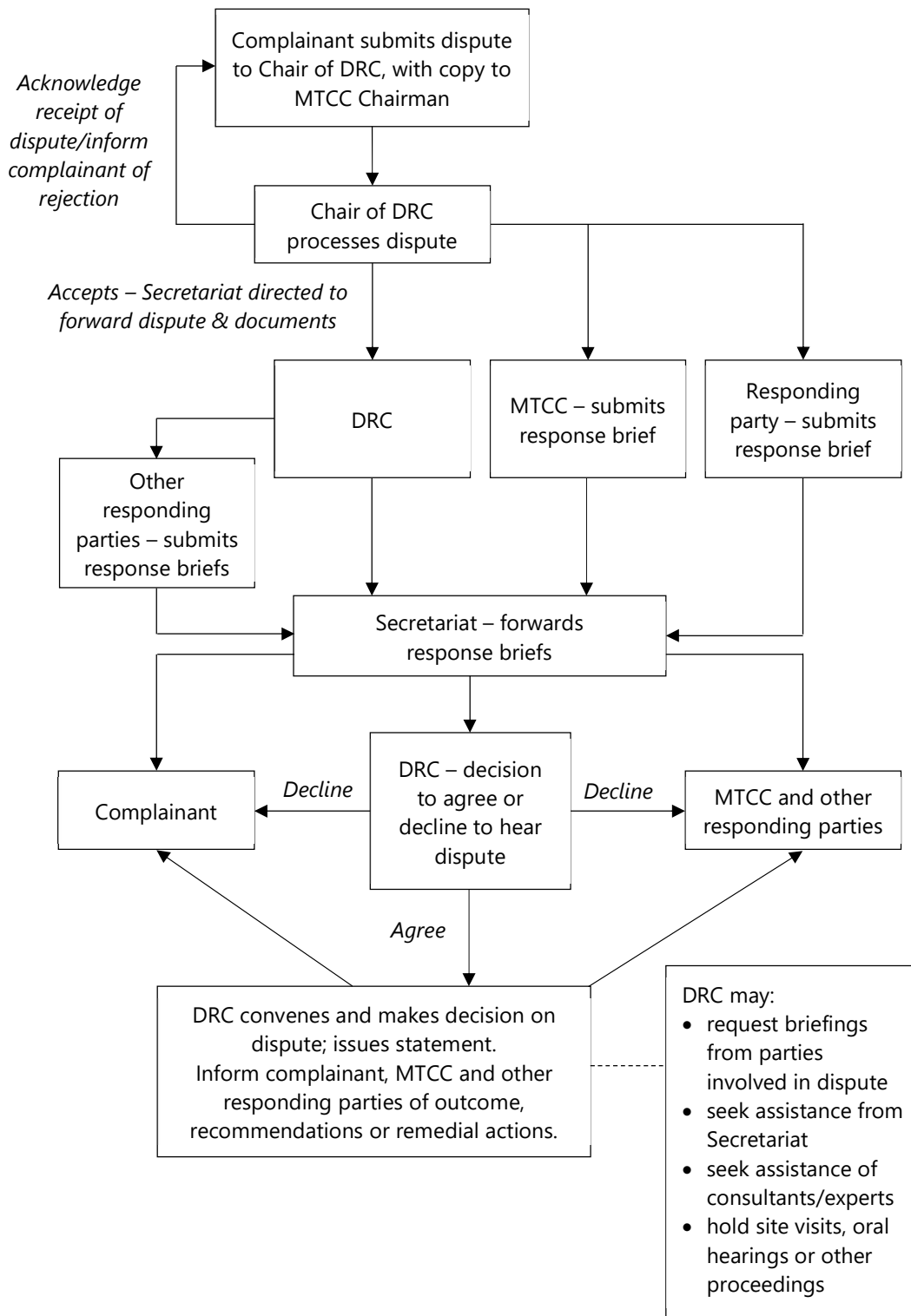
7.2.2 A motion to vacate a final decision for reasons of an undisclosed conflict shall be made immediately after the discovery of the undisclosed conflict, but in no event more than 20 working days after the transmission of the final decision in the matter by the DRC.

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

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

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

FLOW CHART FOR RESOLUTION PROCEDURES FOR DISPUTE INVOLVING MTCC



FLOW CHART FOR RESOLUTION PROCEDURES FOR DISPUTE NOT INVOLVING MTCC

