a subsidiary of:

Independent Legal Review Confirms PT Lonsum in Compliance with Indonesian Labour Laws

Dear Valued Stakeholders,

On 02 November 2018, Roundtable on Sustainable Palm Oil ("RSPO") issued its decision related to the result of the verification audit done ("RSPO Report") in June 2018 in view of complaint filed by, among others, Rainforest Action Network ("RAN") against PT PP London Sumatra Indonesia Tbk ("Lonsum"). The RSPO based its decision on the 23 findings highlighted in the RSPO Report, 11 of which specifically alleged that Lonsum violated Indonesian labour laws. Lonsum provided documentary evidence to both the RSPO auditor and the RSPO Complaints Panel to confirm our compliance with Indonesian Labour Laws, however both the RSPO auditor and RSPO Complaints Panel refused to accept our evidence, and further denied us the opportunity to meet the Complaints Panel to present our evidence.

With respect to RSPO' decision, Indofood Agri Resources Ltd. (the parent company of Lonsum) engaged Hiswara Bunjamin & Tandjung (in association with Herbert Smith Freehills – "HBT") to conduct an independent legal review related to the allegations. **Based on their review, HBT concluded that the allegations were unfounded and that Lonsum fully complies with labour laws of the Government of Indonesia.**

Please see attached full report for your reference.

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PT PP LONDON SUMATRA INDONESIA TBK ("LONSUM")

INDEPENDENT LEGAL REVIEW OF THE AUDIT FINDINGS BY THE ROUNDTABLE ON SUSTAINABLE PALM OIL ("RSPO") ON ALLEGED INDONESIAN LABOUR LAW VIOLATIONS

10 September 2019

1. INTRODUCTION

1.1 In 2016, Lonsum received complaints regarding alleged violations of Indonesian law in its plantation operations from, among others, Rainforest Action Network ("**RAN**").

1.2 During the course of 2016, Lonsum sought to engage numerous times with RAN, providing detailed responses to the complaints, and requesting evidence from RAN to corroborate and allow Lonsum to fully investigate the complaints. RAN failed to engage with any of Lonsum's responses or requests; instead, RAN proceeded to file a complaint with RSPO.

1.3 RSPO appointed independent auditors to conduct a verification audit in relation to RAN's complaint, which took place from 4 to 7 June 2018 and commissioned the auditors to subsequently produce a verification report (the "**RSPO Report**"). On 2 November 2018, RSPO issued its decision on the complaint ("**RSPO Decision**").

1.4 Lonsum has since resigned its membership of the RSPO due to RSPO's conduct in relation to the RSPO Report. In particular, Lonsum considers that:

1.4.1 RSPO failed to take note of Lonsum's comments on a draft of the RSPO Report, including documentary evidence it submitted with its comments;

1.4.2 Lonsum was denied the opportunity to meet with the RSPO to discuss the draft of the RSPO Report and its comments thereto; and

1.4.3 RSPO failed to address the material inconsistencies in the findings as between its verification audit and more than twenty previous RSPO-accredited audits of Lonsum, which Lonsum passed as RSPO compliant.

1.5 The RSPO Decision refers to 23 findings in the RSPO Report, 11 of which specifically allege that Lonsum has violated Indonesian manpower law (the "**Allegations**"). The remaining 12 findings deal with alleged violations of RSPO standards.

1.6 The Allegations concern the following four issues:

1.6.1 compliance with regulations specifying maximum overtime hours;

1.6.2 rights of casual and non-permanent ("**PHL**")[1] workers;

1.6.3 union busting activities; and

1.6.4 discrimination against female workers.

1.7 Lonsum's parent company, Indofood Agri Resources ("**IndoAgri**"), engaged Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills, to conduct an independent legal review of these Allegations. This Report sets out our findings and conclusions. This Report deals solely with issues of Indonesian law, specifically Indonesian employment law.

1.8 This Report has been produced solely for the use and benefit of Lonsum and IndoAgri. It may not be relied on by any other party and no responsibility, duty of care or liability whatsoever (whether in contract or tort or otherwise including for, but not limited to, negligence) is or will be accepted by Hiswara Bunjamin & Tandjung (HBT), Herbert Smith Freehills LLP (HSF LLP) or any other HSF entity (together with HSF LLP, HSF) or by any of HBT or HSF's respective partners, members, employees, consultants or agents, nor any firm with whom HSF or HBT has an association or alliance or any of the members, employees or consultants of such firm, to any other party in connection with this Report.

1.9 In addition to this **Part 1**, this Report comprises four further parts, as follows:

1.9.1 **Part 2** briefly describes the work we have undertaken to prepare this report;

1.9.2 **Part 3** briefly introduces the framework of Indonesian employment law;

1.9.3 **Part 4** sets out an executive summary of our findings.

1.9.4 **Part 5** sets out our detailed analysis regarding the Allegations.

2. METHODOLOGY AND DOCUMENTS/ INFORMATION RELIED ON

2.1 In preparing this Report, we have:

2.1.1 reviewed the RSPO Report and RSPO decision;

2.1.2 identified the legal basis and facts cited in support of each of the specific Allegations;

2.1.3 reviewed Lonsum's policies which were applicable at the time the RSPO audit was conducted;

2.1.4 reviewed documents on-site during our site visit on 1 and 2 August 2019 and retained samples for record;

2.1.5 conducted interviews with Lonsum personnel; and

2.1.6 analysed Lonsum policies and identified practices by reference to the laws and regulations relevant to each of the Allegations.

2.2 We have also reviewed correspondence between Lonsum, RAN and RSPO relating to the Allegations.

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[1] "PHL" or *pekerja harian lepas* (casual daily workers) is a term used to refer to workers who are hired on a casual daily basis.

2.3 Our conclusions in this report are based solely on the documents and information that we have been able to consider in the course of our review. Some of this information, particularly information relating to individual employees is confidential and certain of our conclusions are therefore set out in a way that does not identify the employees concerned or set out specific details of the confidential information we have relied upon.

3. INDONESIAN EMPLOYMENT LAW

3.1 Indonesia has ratified the eight "core" International Labour Organization ("**ILO**") conventions, which are:

3.1.1 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

3.1.2 Right to Organise and Collective Bargaining Convention, 1949 (No. 98);

3.1.3 Forced Labour Convention, 1930 (No. 29);

3.1.4 Abolition of Forced Labour Convention, 1957 (No. 105);

3.1.5 Minimum Age Convention, 1973 (No. 138);

3.1.6 Worst Forms of Child Labour Convention, 1999 (No. 182);

3.1.7 Equal Remuneration Convention, 1951 (No. 100);

3.1.8 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

3.2 Indonesia has implemented its obligations under the core ILO conventions through the introduction of Law No. 13 of 2003 on Manpower ("**Law 13/2003**") and also Law No. 21 of 2000 on Labour Unions ("**Law 21/2000**").

3.3 In its current form, Law 13/2003 is considered to be one of the most employee-friendly labour law frameworks in the ASEAN region.

3.4 Indonesia's Ministry of Manpower is the main enforcement agency in respect to the application of Law 13/2003. The Ministry of Manpower is authorised to issue implementing regulations for Law 13/2003 as well as initiate investigations in relation to potential violation(s) of Law 13/2003.

4. EXECUTIVE SUMMARY

4.1 Subject to paragraph 4.2 below, it is our view that Lonsum's policies and practices are in compliance with applicable Indonesian laws and regulations, and the Allegations that Lonsum has violated such laws and regulations are therefore not substantiated.

4.2 With respect to the first Allegation concerning compliance with maximum overtime hours in Article 78(1) of Law 13/2003, Lonsum's policies and practices reflect the maximum overtime limit set in Law 13/2003. However, during the peak season in 2017 (August, September, and October) the payrolls of three employees were found to have exceeded the maximum overtime limit set in Lonsum's policies (and the workers were fully paid for in accordance with the correct overtime rates). This was a technical breach of Lonsum's policies and Law 13/2003, but one which was minor and isolated.

4.3 Further, our review of random samples of Lonsum's overtime paperwork showed that Lonsum was in compliance with its policies and the law relating to overtime work. The isolated breach in 2017 was an exception rather than the norm.

4.4 With respect to the Allegations concerning the rights of PHL workers (Allegations 2 to 5), these are all unfounded for the following reasons.

4.4.1 Tasks that Lonsum assigned to its PHL workers are irregular in nature and volume-based; these tasks conform to the characteristics of works described under MMR100/2004 (defined below). In addition, and contrary to what is stated in the RSPO Report, Lonsum has a monitoring system in place to ensure that MMR100/2004 is complied with.

4.4.2 In calculating the daily wages of PHL workers, Lonsum has strictly followed the statutory formula prescribed under the manpower regulations regarding wages.

4.4.3 Transparency, equal opportunity and fairness are reflected in Lonsum's recruitment process. Information on vacant positions at Lonsum is well-publicised so that candidates are well informed about the opportunities. Recruitment qualifications are clearly regulated internally to ensure all candidates are assessed fairly against the same standard.

4.4.4 Lonsum has hired three security personnel as permanent workers having considered their service period with Lonsum as PHL workers. This demonstrates Lonsum's compliance with MMR100/2014.

4.5 With respect to the Allegations concerning union busting (Allegations 6 to 8), these are unfounded for the following reasons.

4.5.1 Lonsum's actions which were alleged to restrict labour union activity were management actions driven by unrelated motives and were in fact taken in due observance of Lonsum's obligations as an employer, such as for the purpose of ensuring safety of the workers at the workplace.

4.5.2 Lonsum's collective labour agreement ("**CLA**") was negotiated by and between authorised representatives, as required under Law 21/2000.

4.5.3 Issuance of internal memoranda by Lonsum is within its power to manage the company and is not prohibited under Law 13/2003. In fact, Lonsum's internal memoranda were issued to implement the CLA and not to contradict the provisions therein.

4.6 Finally, with respect to the Allegations concerning discrimination against female workers (Allegations 9 to 11), we also consider them to be unsubstantiated for the following reasons.

4.6.1 The additional rice allowance is equally available to married male and female workers. The difference in eligibility requirements is driven by applicable regulatory and cultural background in Indonesia where there is an assumption (both at law and as a matter of culture) that the head of household has primary responsibility to provide for the family. Lonsum's policy and practices in relation to the additional rice allowance also reflects Lonsum's compliance with the binding terms of the CLA.

4.6.2 Similarly, Lonsum's policy on additional health benefits also reflects the same regulatory and cultural background. More importantly, the policy has been formulated in line with the Indonesian Government's relevant guidelines.

4.6.3 Finally, the requirement for a medical examination for workers taking menstrual leave conforms to the binding terms of the CLA, and the incorporation of such a requirement in the CLA is mandated under Law 13/2003.

5. ANALYSIS

A. Compliance with maximum overtime rules

5.1 Allegation 1 relates to an alleged violation of permissible overtime hours under Law 13/2003, which is 3 hours per day and 14 hours per week.

5.2 As a matter of policy, we note that Lonsum has a strict policy in place to regulate permissible overtime hours. This policy clearly provides for the maximum overtime hours that can be carried out by each worker. The policy is implemented by a supervisory system on the ground, which requires a worker to go through a multi-tier approval process before performing overtime work.

5.3 Our review of payroll information showed that the three employees specified in the RSPO Report worked overtime for more than three hours per day and 14 hours a week only on a limited number of occasions. These occasions occurred during the peak crop season, in the period from August to October 2017, during which the volume of crop to be processed may increase unexpectedly. We are satisfied that the additional overtime worked by three workers in 2017 was an isolated breach of Lonsum's policies and Law 13/2003.

5.4 Lonsum has in place a multi-tier approval requirement for overtime work, which ensures that the overtime hours were consented to by the worker.

5.5 Finally, we note that all the overtime hours have been properly accounted for by Lonsum in calculating the relevant workers' pay.

B. Rights of PHL workers

5.6 There are four Allegations relating to the rights of PHL workers:

5.6.1 Allegation 2 relates to the nature of work undertaken by Lonsum's PHL workers', which is alleged to be continuous such that they are entitled to be employed permanently.

5.6.2 Allegation 3 relates to PHL workers' wages, which are alleged to be lower than the mandatory minimum wage.

5.6.3 Allegation 4 relates to an alleged lack of transparency, equal opportunity, and fairness for Lonsum PHL workers who wish to become permanent workers.

5.6.4 Allegation 5 relates to an alleged failure to promote PHL security personnel whose service period exceeded the limit set under the relevant regulation.

Allegation 2: Nature of work undertaken by PHL workers

5.7 PHL employment status is unique because its existence was not described in Law 13/2003. The law, which was enacted in 2003, describes only two types of employment relationships, fixed-term and permanent.

5.8 PHL employment status was created in 2004 under the Minister of Manpower Regulation No. Kep-100/Men/VI/2004 on the Implementing Procedures for Definite Period Employment Agreement (**"MMR 100/2004"**). MMR 100/2004 provides an alternative for

employers to employ a PHL worker for tasks that are irregular in terms of time and volume. The regulation also permits an alternative wage structure which is solely based on the worker's attendance at work. However, employers are restricted from employing a particular PHL worker for more than twenty days in three consecutive months. If this restriction is breached, PHL workers shall be deemed to be permanent employees.

5.9 Lonsum has internal guidance which clearly delineates the tasks that can be assigned to PHL workers. These tasks are not part of Lonsum's regular production process, and are typically assigned to PHL workers when the need arises. We understand that, in the absence of any clear regulatory restrictions on the nature of works that can be assigned to PHL workers, Lonsum had sought a clarification from the local manpower office on this issue. The manpower office suggested that any works which are not related to the production process could be assigned to PHL workers, and Lonsum relied on this view in formulating its internal guidance on PHL workers' types of work.

5.10 Lonsum maintains a manual daily register as well as an online system which records the attendance of PHL workers and their completed volume of work. This system serves as a control mechanism to ensure that PHL workers do not work for more than twenty days in a month and also evidences the tasks assigned to PHL workers (which are irregular and volume-based). Lonsum's efforts to (i) clearly categorise the tasks assigned to PHL workers; (ii) monitor the works that PHL workers completed from time to time; and (iii) seek clarification from the manpower office demonstrate an intention to fully comply with MMR 100/2004.

5.11 On the basis of the above, we consider Allegation 2 to be unfounded. In light of that conclusion, the question of whether the relevant PHL workers are entitled to permanent employment does not arise.

Allegation 3: Compliance with minimum wage requirement

5.12 Minimum wage requirements are specified by local governments annually. Lonsum implements the changes on an annual basis by issuing internal memorandums to set the applicable minimum wages at Lonsum for that specific year, including for PHL workers.

5.13 In addition to applying the government-issued minimum wages, Lonsum's memorandums also adopt the formula prescribed under the Government Regulation No.7 of 2015 on Wages ("**GR78/2015**") for the calculation of wages. As PHL workers are paid solely on the basis of their daily attendance at work, the formula for calculating a PHL worker's daily rate is specifically regulated. For a PHL worker who works on a 6-day per week working cycle, the applicable formula for calculating the daily rate payable is the monthly minimum wage divided by 25.

5.14 On the basis of the above, it is clearly demonstrated that Lonsum complies with the applicable minimum wages requirement and Allegation 3 is unfounded.

Allegation 4: Criteria for promotion

5.15 Lonsum has a clear policy outlining the qualifications of candidates for permanent positions. This policy applies in all areas of Lonsum's estates and mill, including in relation to individuals who are currently working as PHL workers. Vacancies are announced on the announcement boards at Lonsum's and the relevant village head (*kepala desa)* office, and during morning briefings.

5.16 We understand that this policy remains the reference point for Lonsum's management when they recruit permanent workers. Where a PHL worker wants to apply for a permanent position, the general rule is that the PHL worker should meet the qualification by way of passing skills and medical tests. As such, all candidates (whether or not he/she has been a PHL worker in the past) are treated equally.

5.17 On the basis of the above, there is no lack of transparency, equal opportunity, or fairness for PHL workers wishing to become permanent workers at Lonsum and Allegation 4 is unfounded.

Allegation 5: Lonsum's failure to upgrade PHL Security Personnel

5.18 Three PHL Security Personnel were identified to have worked more than the permissible service period of a PHL worker (*ie.* more than twenty days for three consecutive months). However, we note that Lonsum has complied with the applicable regulations by promptly promoting these three PHL workers to permanent positions.

5.19 On the basis of the above, Allegation 5 is unfounded.

C. Perceived union busting

5.20 Under Law No. 21 of 2000 on Labour Union ("**Law 21/2000**"), workers have broad rights to participate in and carry out labour union activities, including to join a labour union of his/her choice and to engage in collective bargaining.

5.21 The RSPO Report sets out three allegations in relation to union busting as follows.

5.21.1 First, Lonsum is alleged to have intimidated workers who were choosing to join a newly established labour union at Lonsum.

5.21.2 Second, it is alleged that the CLA ignored the aspirations of workers at estate or mill level.

5.21.3 Third, internal memorandums that Lonsum issued from time to time were perceived to replace the applicable CLA.

Intimidation

5.22 We have found that Lonsum's actions which were alleged to constitute intimidation against certain labour union representatives were in fact well-reasoned management decisions that Lonsum took in accordance with its internal policies, including for health, safety and disciplinary reasons.

5.23 For example, it was alleged that Lonsum demolished a temporary rain shelter to prevent workers who were mostly members of the newly established labour union from gathering. In fact, Lonsum demolished this rain shelter because it discovered that the location of the shelter exposed the workers to hazardous substances. Lonsum built a permanent canteen for the workers (before having the rain shelter demolished), and notified the workers of this change.

5.24 Similarly, there was no connection between any of the other actions alleged, which were legitimate management actions, and the workers' ability to carry out labour union activities.

5.25 Finally, we have found that other allegations of verbal intimidation between workers were not attributable to Lonsum.

Negotiation of the CLA

5.26 The negotiation and entrance into a CLA are specifically regulated by Ministry of Manpower Regulation No. 28 of 2014 on the Procedure to Formulate and Validate Company Regulation and Collective Labour Agreement ("**MR 28/2014**"). MR 28/2014 specifies who can appear as authorised representatives of both employers and workers. It is not a legal requirement that all workers be directly involved in a CLA negotiation.

5.27 Lonsum's CLA was negotiated with the authorised representatives of its workers, and therefore cannot be considered to have hindered the workers' rights in relation to collective bargaining.

Issuance of HR memorandums

5.28 At the outset, we note that the RSPO Report did not specify which HR Memorandums were considered not to be in compliance with Indonesian law.

5.29 Indonesian manpower law does not in general prevent a company from issuing memorandums or applying any policies that it deems necessary, including relating to human resources. What the law does prohibit is for a company to issue a set of company regulations to replace the existing CLA. Lonsum's HR memorandums, on the other hand, only implement or elaborate the general principles set out in the CLA, and none of the HR Memorandums we reviewed contradict any provisions of the CLA.

D. Discrimination against female workers

5.30 The RSPO Report alleges that Lonsum discriminated against female workers through its policy and practices on additional rice allowance, access to health facilities and female PHL workers' entitlement to menstrual and maternity leave. These allegations are discussed in turn below.

Additional rice allowance

5.31 Lonsum's additional rice allowance benefit allowance entitles both married men and women to receive additional rice allowance for their dependents. In order to qualify for this allowance, a married woman must show that her spouse is not able to work (and support the family) and/or he is not available (due to divorce or death). A married man does not need to provide similar evidence and will be assumed to be supporting his spouse family.

5.32 In the first place Lonsum's policy on additional rice allowance benefit is implemented pursuant to the terms of the CLA, i.e. it is a policy that has been agreed by authorised representatives of the employees pursuant to Law 21/2000. To provide for a different policy would contravene the CLA.

5.33 Separately, while there is a difference in the eligibility requirements for male and female workers to receive the additional rice allowance, in our view this difference reflects the prevailing cultural and regulatory expectation that an Indonesian household is headed by the man who has primary responsibility for providing for his family. Article 34(1) of Law No 1 of 1974 provides that a married man has an obligation to support and provide for his family, including his spouse and children (on the other hand, no such obligation is posed on a married woman). Against this backdrop, the allowance allows Lonsum to assist married men to fulfil this obligation. In other words, Lonsum's policy is aligned with the legal and cultural expectation in Indonesia. Indeed, we are aware of other major employers in Indonesia adopting similar policies to reflect this norm.

5.34 Finally and more importantly, Law 13/2003 provides only that employers should give workers equal rights regardless of their gender. Lonsum's additional rice allowance benefit is not a violation of this provision as the differentiating factor in the policy is **not** the gender of the employee but his/her marital status and whether he/she has the responsibility of providing for his/her family: an unmarried woman will be entitled to the same rice allowance as an unmarried man; and a married woman who has to support her family (as a matter of fact, due to the factors identified above, e.g. death of spouse) will also be entitled to the same additional rice allowance as a married man (who has to support his family as a matter of law and norm). It cannot be said therefore that this policy constitutes gender discrimination.

Access to health facility

5.35 Workers at Lonsum are provided with an additional benefit of access to an on-site clinic. All workers (male and female) and their families (spouse and up to 3 children) can receive first aid services at the clinic in the form of an initial examination, and if they are in need of further medical services, will be referred to the nearest government hospital or health care facility using their BPJS membership. Similar to the policy in respect of rice allowance, the children of a female worker can utilise Lonsum's health facility if:

5.35.1 she is a widow and has not re-married,

5.35.2 her husband can no longer work; and

5.35.3 her husband does not receive health benefits from his employer and is not a BPJS participant.

Furthermore, the spouse of a female worker can too enjoy the health benefit from Lonsum if the husband is incapacitated and therefore, unable to work or if he is more than 60 years of age and does not have any source of income.

5.36 Expenses incurred for any further medical services are first recovered from the 'BPJS' public health insurance scheme in Indonesia. For the families of male workers, as well as for the families of female workers whose husbands are unable to work, any remaining balance will be paid by Lonsum. It is only where female worker's husband is able to work that any remaining balance is not paid by Lonsum. This is pursuant to the applicable regulations, which instruct employers to qualify health benefits for married female workers against health benefits not received by her spouse.[2] The position adopted in the regulations reflects the default recognition of a husband as the head of a household in Indonesia, and Lonsum has clearly complied with the regulations that apply on this subject.

5.37 For these reasons, we conclude that the additional health facility benefit is compliant with Indonesian law.

Female workers' right to maternity and menstrual leave

5.38 As we have mentioned above, the Indonesian manpower law (which creates rights in relation to menstrual and maternity leave) was enacted before creation of PHL worker status. The essence of maternity and menstrual leave is that workers should keep receiving wages for the days they do not attend work.

5.39 In our view, it would be tenuous to try and apply this mechanism to PHL workers. PHL workers receive their wages based on each day of attendance at work. By law, when PHL workers do not come to work, whether due to maternity or menstruation, they are not entitled to receive wages. The concepts of maternity and menstrual leave do not apply to PHL workers. This is even clearer in the case of maternity leave, which is meant to last for up to three months. Such a period of leave is incompatible with a PHL worker's service period, which is not meant to last for more than twenty days in three consecutive months.

5.40 The RSPO Report also alleged that female permanent workers' reproductive rights were compromised because female workers are required to undergo a medical examination before taking menstrual leave. However, we understand that Lonsum issued its policy on this practice to comply with the CLA, which provides for such an examination for menstrual leave. Lonsum had no intention to restrict female workers from taking menstrual leave.

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[2] Minister of Manpower Circular Letter No. SE-04/MEN/88 on the Prohibition of Discrimination to Female Worker and Minister of Manpower Circular Letter No.SE.04/M/BW/1996 on the Prohibition of Discrimination against Female Worker under the company regulation or collective labour agreement.

5.41 In addition, we note that Lonsum's clinic is attended by qualified female nurses. Lonsum has therefore taken steps to ensure that the examination is carried out with propriety and dignity.

5.42 On the basis of the above, we do not consider that Lonsum has denied its female workers' any rights to take maternity or menstrual leave.

Hiswara Bunjamin & Tandjung

Hiswara Bunjamin & Tandjung
in association with
Herbert Smith Freehills