

## Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Dutch National Contact Point (NCP) for the OECD Guidelines by

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Friends of the Earth Europe (FoEE) and Milieudefensie-Friends of the Earth Netherlands (FoENL)

*against:* Rabobank, concerning financial services provided to Bumitama Agri



**Friends of  
the Earth  
Europe**



**milieudefensie**  
Friends of the Earth Netherlands

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## Summary

***This specific instance sets out breaches of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by Rabobank. It is submitted by: Friends of the Earth Europe (FoEE) Milieudefensie - Friends of the Earth Netherlands (FoENL)***

The specific instance is directed to the *Dutch National Contact Point*.

Friends of the Earth is concerned about the activities and conduct of Rabobank in relation to loans it provided to Bumitama Agri Group (BGA) and the adverse environmental impacts at the Bumitama managed GY/GMS palm oil plantation in Kalimantan, Indonesia. Rabobank's services are directly linked to the adverse impacts through the bank's business relationship with Bumitama. In 2012 and 2013, after Rabobank should have known the severe environmental, social and legal problems with Bumitama's operations, the bank provided two significant loans to the company.

The OECD Guidelines (Chapter II, paragraphs 10 and 12 and the related Commentary) say that multinational enterprises should carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts that are directly linked to their operations or services by a business relationship. In the event that an enterprise is directly linked to an adverse impact through a business relationship, the enterprise should use its leverage to influence the entity causing the adverse impact(s) to prevent or mitigate the impact(s). If attempts at mitigation fail, an appropriate response is for the enterprise to suspend or discontinue the relationship. Enterprises should account for and communicate how the impacts are being addressed and the impact/effectiveness of the steps they have taken.

The Commentary on Human Rights (Chapter IV) recommends that enterprises carry out human rights due diligence. This entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.

Friends of the Earth's concerns relate to Rabobank's failure to undertake appropriate risk-based due diligence to identify, prevent and mitigate adverse impacts caused by its business relationship with BGA, Rabobank's failure to communicate about this, and its reluctance to use its leverage to influence BGA to prevent and mitigate impacts by – for example – committing to withhold further financial services from BGA until BGA secure the legal permits for the operation of the GY plantation.

Rabobank has repeatedly stated that it is engaging with BGA through the Roundtable on Sustainable Palm Oil (RSPO), but has not shared the content of these conversations.

Rabobank has failed to provide stakeholders with information on the specific due diligence steps it has undertaken to identify, prevent and mitigate adverse impacts caused by BGA in the GY/GMS case.

This specific instance describes how Rabobank has failed to successfully use its leverage to persuade BGA to stop clearing land or to discontinue its illegal operations. In fact, Rabobank continued to provide financial services to the company even after it became clear that Bumitama's activities were causing adverse impacts.

Friends of the Earth has raised the problems with Bumitama Agri with Rabobank repeatedly since October 2013. Friends of the Earth has met with Rabobank three times, including on one occasion with the local director of Walhi-Friends of the Earth Indonesia from West-Kalimantan, and has also taken part in three conference calls and numerous e-mail exchanges and phone conversations to discuss the case.

The complainants conclude that, on the basis of evidence provided by AidEnvironment, as well as evidence provided from Friends of the Earth's direct communication with Bumitama, and from field research conducted by Friends of the Earth Netherlands (all documented below), Rabobank has breached the OECD Guidelines to requirements on:

Chapter II General Policies (paragraphs 10 and 12)

Chapter IV Human Rights (commentary 45 for due diligence)

## Summary

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*continued*

### Requests

Friends of the Earth requests that Rabobank bring its activities and conduct into line with the OECD Guidelines by:

1. Publicly disclosing the concrete due diligence procedures and steps it has taken to identify, prevent and mitigate the adverse impacts caused by its business relationship with Bumitama. This should include Rabobank's assessment of what the impact of its due diligence on preventing and mitigating adverse impacts has been. This should also include specific information about the number of meetings Rabobank has had with BGA and who was present at those meetings, as well as details on how Rabobank has intervened through the RSPO to address the problems with BGA.
2. Exercising its leverage to prevent future adverse impacts from its business relationship with BGA by publicly committing to withhold financial services from BGA and by committing to divest from the company until BGA has resolved problems concerning the legality and sustainability of its operations.
3. Implementing its own Environmental, Social and Governance (ESG) policy in a transparent and effective way in the Bumitama case and in future cases

Friends of the Earth requests that the Dutch NCP offers its good offices to find a mutually acceptable solution in this matter. If a dialogue-based, mutually acceptable solution is not possible, Friends of the Earth requests that the NCP employs the other problem-solving tools at its disposal with the aim of achieving effective implementation of the OECD Guidelines. This should include conducting an examination of the allegations and facts in this specific instance, making a determination as to whether or not Rabobank has acted in accordance with the OECD Guidelines, and issuing recommendations to improve implementation of the Guidelines.

## Chapter 1 Background to the complaint

Bumitama Agri Ltd (BUMI.SI) is headquartered in Jakarta, Indonesia, and operates through a number of subsidiaries. It controls over 200,000 hectares of plantation land bank in Central Kalimantan, West Kalimantan and Riau, Indonesia.

Bumitama has been involved in clearing forested land in Kalimantan since 2009 to make way for palm plantations.<sup>1</sup> Bumitama has been a member of the Roundtable on Sustainable Palm Oil since 2007. The company sells to global palm oil traders including Malaysian company, IOI Corp, Wilmar International, Golden Agri-Resources Ltd and Musim Mas Holdings.

*In research published in November 2013 (see Annex 1), Friends of the Earth documents that:*

- Bumitama has acted without the necessary permits, contravening national laws. Land for the Bumitama-managed plantation in West Kalimantan was cleared in breach of national laws, without the necessary permits or proper approval from the Ministry of Forestry or the Environmental Monitoring Agency. This former concession covers at least 7,000 hectares of “ghost estates”— plantations that lack valid permits. Selling palm oil from unpermitted plantations is illegal.
- Bumitama’s investors knowingly or unknowingly purchased shares in an illegal operation. Prospective investors were informed in Bumitama’s prospectus in April 2012 that Bumitama’s expansion plans included preferential rights to manage and harvest palm oil from a plantation that was operating illegally without the required licenses, and that the Hariyanto family – the majority owner of Bumitama Agri – would bear the liability risk while the permits were obtained. Despite this admission of illegality, all the shares were sold.

*The research also found that:*

- Bumitama has knowingly destroyed forest that is home to endangered orang utans and is partially on deep peat land. In April 2013, in response to a complaint filed with the RSPO, Bumitama promised it would not clear land near forest reserves in West Kalimantan until studies had been completed to appraise the land’s ecological importance. These reserves host one of the largest, and last, populations of the Central Bornean orang utan in the region.
- Satellite imagery shows that almost 500 hectares of forest in the area were cleared between May and September 2013. So while Bumitama was negotiating with the RSPO to address the complaint, the company continued to clear land, *despite its pledge to stop*.

In the report published by Friends of the Earth, two cases are specifically mentioned: PT Ladang Sawit Mas (LSM) and PT Gemilang Makmur Subur (formerly known as the Golden Youth-GY Plantation).

*Further information as listed below can be found in the annexes:*

1. Report: ‘Commodity Crimes’, Friends of the Earth, published 21st of November 2013
2. Minutes of a conference call between Bumitama and Friends of the Earth, 19 February, 2014
3. Minutes from meeting 4 March 2014 to follow of two conference calls between Rabobank and FoEE and FoENL (20 February 2014 and 4 March 2014).
4. Communication between Bumitama and Friends of the Earth between September 2013 and January 2014
5. Evidence provided by AidEnvironment 12 February, 2014
6. Response from Bumitama to AE’s information, 27 February, 2014.
7. Video: Paradise Lost (Jason Taylor for FoE)
8. Profundo Report on Bumitama Agri’s financiers.
9. Bumitama’s Diary of Destruction, Friends of the Earth, published 28 March 2014.
10. RSPO complaint about Bumitama GY/GMS
11. Rabobank’s ESG policy

<sup>1</sup> Friends of the Earth, ‘Commodity Crimes’, 2013, page 4

## Chapter 2 Rabobank's relationship with Bumitama and the adverse impacts

Despite Bumitama's track record, Rabobank agreed to provide loans to Bumitama Agri.

*The following financial services have been provided:*

- In October 2010, the Bumitama Gunajaya Agro Group, a subsidiary of Bumitama Agri, secured a five-year credit facility for US\$ 135 million (€ 97.31 million) from a syndicate of five banks. This was used for refinancing. Rabobank participated in the syndicate, committing €14.41 million.<sup>2</sup> The loan was fully repaid at the end of December 2012.<sup>3</sup>
- In November 2012 Bumitama Agri secured a credit facility for US\$ 170 million (€ 133.71 million) from a syndicate of banks. This was divided in two tranches: a three-year revolving credit facility for US\$ 50 million (€ 39.33 million) and a five-year loan for US\$ 120 million (€ 94.38 million). This was used for refinancing the October 2010 loan facilities and for general corporate purposes. Rabobank participated in the syndicate, committing €17.38 million.<sup>4</sup>
- In May 2013, the Bumitama Gunajaya Agro Group, a subsidiary of Bumitama Agri, secured a credit facility for US\$ 150 million (€ 114.62 million) from a syndicate of banks. This was divided in two tranches: a five-year loan for US\$ 70 million (€ 53.49 million) and a three-year loan for US\$ 80 million (€ 61.13 million). The proceeds were used for general corporate purposes. Rabobank participated in the syndicate, committing an estimated €15.28 million.<sup>5</sup>

Based on these facts, Friends of the Earth concludes that Rabobank's business relationship with Bumitama links it to the adverse impacts described above. Rabobank provides a significant level of finance to Bumitama and its engagement with the company is covered by Rabobank's palm oil policy.

2 Thomson ONE Banker, "Tearsheet 2621738115", Thomson ONE Banker ([www.thomsonone.com](http://www.thomsonone.com)), 21 October 2010; Bloomberg Database, "Loan Finder", Bloomberg Database, Viewed in October 2013; HSBC, "DBS Indonesia and HSBC together with its Syndication Banks Completed Syndicated Loan Facility for Bumitama Gunajaya Agro Group", HSBC, 21 October 2010 ([www.hsbc.co.id/1/2/misc/media-release/21-oct-10](http://www.hsbc.co.id/1/2/misc/media-release/21-oct-10)).

3 Bumitama Agri, "Annual Report 2012", Bumitama Agri, April 2013.

4 Thomson ONE Banker, "Tearsheet 2910214115", Thomson ONE Banker ([www.thomsonone.com](http://www.thomsonone.com)), 12 November 2012; Bumitama Agri, "SGX Announcement: US\$170,000,000 Term Loan Facility And Revolving Loan Facility", Bumitama Agri, 12 November 2012.

5 Thomson ONE Banker, "Tearsheet 2980397115", Thomson ONE Banker ([www.thomsonone.com](http://www.thomsonone.com)), 8 May 2013; Bumitama Agri, "SGX Announcement: US\$150,000,000 term loan facility and revolving loan facility", Bumitama Agri, 8 May 2013.

## Chapter 3: Breaches of the OECD Guidelines

The complainants believe that, on the basis of the evidence provided by AidEnvironment as well as evidence provided in direct communications between Bumitama and Friends of the Earth and field research conducted by Friends of the Earth Netherlands, Rabobank has breached the Guidelines in relation to:

Chapter II General Policies

Chapter IV Human Rights (commentary 45 for due diligence)

### 3.1 Breaches related to Chapter II General Policies and Chapter IV Human Rights

Rabobank has breached paragraphs 10 and 12 under the section on General Policies (II) which require enterprises to:

‘Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.’ (10)

‘Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.’ (12)

Rabobank has also breached the Guidelines as outlined in commentary 45 under the section on Human Rights (IV): ‘Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.’ (Chapter IV, commentary 45)

#### 3.1.2 Evidence

This section focuses on information obtained by Friends of the Earth through research by Profundo, AidEnvironment and through field research which shows evidence that Rabobank has breached OECD guidelines on general policies and chapter IV.

Rabobank palm oil policy is published on its website<sup>6</sup> and lays out the scope of their palm oil supply chain policy:

‘Our Palm Oil Supply Chain Policy applies to all commercial banking services such as credit facilities, project finance, advisory services and trade finance provided by Rabobank in the palm oil sector. The policy provides conditions for assessing upstream companies (palm oil growers and mills). Downstream companies (traders, processors, manufacturers, wholesalers and retailers) will be assessed on how they take their responsibility in the supply chain.’

‘Rabobank requests a company with regard to: RSPO to commit to achieving compliance with the principles and criteria; certification to strive for RSPO-certification or verification against the RSPO principles and criteria; protection of preserved areas not to be involved in palm oil operations in areas designed as primary forest, national or international legally protected or preserved areas or in any area required to maintain high conservation values since 7 October 2001. The same counts for palm oil operations with continuing unresolved land conflicts.

If certification is not yet fully accomplished, Rabobank will request a company with regard to: Legality to show the legality of its operations and comply with all applicable local, national and international ratified laws and regulations, industry minimum standards.’

‘Rabobank is aware that the process of implementing sustainable management standards and practices is challenging and takes time. We accept that some clients are more advanced than others, as long as clients are able to show significant progress in implementing environmentally and socially responsible management practices and responsible purchasing. If we have reason to believe the client does not comply with the above mentioned conditions or shows insufficient progress in integrating sustainability measures in daily operations, we will engage with the client to achieve the desired improvements within an arranged time frame.’

This shows that Rabobank is fully aware of the risks that exist in the palm oil sector and has therefore developed a policy to prevent Rabobank from financing companies that are engaged in land right conflicts, environmental degradation or the illegal production of palm oil.

<sup>6</sup> <https://www.rabobank.com/nl/images/Palm%20Oil.pdf>



## Chapter 3: Breaches of the OECD Guidelines

*continued*

According to Rabobank, they carry out an assessment of all new and current clients. In correspondence with Friends of the Earth on 4 November 2013, Rabobank stated that: 'The Rabobank has a sectoral policy on the palm oil value chain which provides aspects to address in lending as well as investment criteria. Rabobank requires companies involved in the production of palm oil to commit to the standards and criteria of RSPO (or equivalent), and fully implement them. This means, among others, adherence to the RSPO criteria on free, prior and informed consent. Rabobank is also [a] member of the human rights working group of RSPO, that has as an objective to address human rights issues and propose solutions to them in the RSPO.'

Friends of the Earth (FoE) addresses below how Rabobank has failed to implement its own policy by providing financial services to BGA and, following FoE's complaints about BGA to Rabobank, failed to take immediate measures to ensure the desired improvements or to provide a clear timeframe for such improvements, thereby failing to communicate how impacts were being addressed. Rabobank claims to have engaged with Bumitama several times which is not disputed by Friends of the Earth, but despite this engagement, the problems have not been solved.

### **Bumitama's problematic track record:**

Bumitama has been involved in many cases of deforestation, clearing High Conservation Value (HCV) forest and operating without the right permits in place. Several of these cases occurred before Rabobank provided loans to the company in 2012 and 2013.

NGOs have been campaigning to stop these violations in a number of ways: publishing reports, engaging directly with Bumitama Agri and engaging with important shareholders including Bumitama's European and US financiers and with Bumitama's clients Wilmar International and IOI corporation.

A short overview of the complaints and reports is given in Section A (Complaints to the RSPO) and B (Reports by Friends of the Earth)

### **A. Complaints to the RSPO**

In total, five complaints have been filed against Bumitama with the RSPO.

1. 2 July 2012: A complaint was filed by Sawit Watch against PT Hati Prima Agro (HPA) (a subsidiary of Bumitama Agri Ltd.) on the legality of PT HPA. After several court cases, the Administrative High Court decided that the revocation of location permit should be revoked. The Indonesian Ministry of Forestry has appealed against this decision and the case is still in court. Sawit Watch did not participate in the court case, but has continued to raise the issue of legality of PT HPA with the RSPO. For more information see: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=23](http://www.rspo.org/en/status_of_complaint&cpid=23) 02 July 2012.

*Four months after this complaint was filed, in November 2012, Rabobank extended a loan to Bumitama with a total value of € 17.38 million. At the time, the complaint had not been concluded.*

2. 11 March 2013: A complaint was filed by the Centre for Orang Utan Protection against PT Nabatinduo Karya Utama (a subsidiary of Bumitama Agri Ltd.). The company is alleged to have breached Principle 5 of the RSPO standards: Environmental responsibility and conservation of natural resources and biodiversity; and Principle 7: Responsible development of new plantings. The company is also accused of clearing High Conservation Value (HCV) forest, which provides habitat for various endemic animals including orang utans. The case has not been resolved. For more information see: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=32](http://www.rspo.org/en/status_of_complaint&cpid=32) 11 March 2013
3. 8 April 2013: A complaint was filed by International Animal Rescue and Friends of Borneo against PT Ladang Sawit Mas (LSM) (a subsidiary of Bumitama Agri Ltd.). LSM is alleged to have breached Principle 5: Environmental responsibility and conservation of natural resources and biodiversity; and Principle 7: Responsible development of new plantings by clearing HCV forest and endangering the lives of orang utans found there. The case has not been resolved yet. See for more info: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=31](http://www.rspo.org/en/status_of_complaint&cpid=31). 08 April 2013

*In May 2013, despite the three complaints filed against Bumitama, Rabobank agreed to provide a loan of € 15.28 mln.*



4. 19 September 2013: Friends of Borneo/Friends of the National Parks Foundation, Indonesia/Siesfund, Australia filed a complaint against PT Andalan Sukses Makmur (a subsidiary of Bumitama Agri Ltd.), alleging that the company had cleared HCV forest and planted palm oil in Tanjung Puting National Park, in violation of Indonesian national law. According to the complaint, they have also planted in coastal reserve areas and on riparian land, both of which are prohibited under Indonesian law. Mediation is still ongoing. For more information see: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=40](http://www.rspo.org/en/status_of_complaint&cpid=40). 19 September 2013
5. The latest complaint was filed on 29 April 2014, by Friends of Borneo and concerns the connections between RSPO member Bumitama and PT Gemilang Makmur Subur GY/(GMS). The GY plantation has been managed by Bumitama since 1 November 2011. PT GMS does not have a forestland release permit, an environmental permit or a valid location permit for the land and plantations previously developed by PT GY Plantation. Yet, Bumitama produces and sells 'Fresh Fruit Bunches' (FFB) from this land, in violation of several Indonesian laws. Bumitama is also contaminating the RSPO certified chain of custody with an illegal product. The complaint has not yet been posted on the RSPO website.

Friends of the Earth alerted Rabobank to the problems with Bumitama on 18 October 2013. On 6 November 2013, a sustainability manager responded: 'I cannot endorse the loan value estimates provided by FoE nor confirm their veracity. The loan to Bumitama is a syndicated loan provided by a syndicate of financial institutions. Rabobank is not the lead arranger of this loan.'

Since then, Rabobank has repeatedly told Friends of the Earth that they were engaging with Bumitama and are following the course of the RSPO complaint procedure against Bumitama closely in order to decide their next steps.

Friends of the Earth has repeatedly asked Rabobank for information on their timeline for engagement with Bumitama, as well as for information on meetings, content of the meetings and concrete action points, but Rabobank has simply referred to RSPO procedures and refused to disclose concrete information on their engagement with Bumitama or provide a concrete timetable.

*None of the above mentioned complaints has been resolved so far.*

## B. Friends of the Earth Reports

Friends of the Earth has published two reports about Bumitama's broken promises, see attachments 1 and 9, and has shown how Bumitama repeatedly breaks promises to improve its activities:

### 1. Broken promises on land clearing

Bumitama has made several commitments and statements regarding its LSM plantation, which have been breached repeatedly.

- 18 April 2013: Bumitama Agri's Board of Directors stated: "The Company is committed to preserving the endangered wildlife found in LSM's landbank, and fully intends to complete the LSM HCV/ SIA Assessment before it recommences the operations of LSM."
- 14 October 2013: Bumitama committed to stop land clearing and planting
- 23 January 2014: Bumitama wrote to Friends of the Earth stating that there 'is no land clearing activities in LSM since our last letter to the RSPO on LSM matters dated 14 October 2013'.
- 19 February 2014: In a conference call with FoE, Bumitama explained that there was a gap in communication between Bumitama management and the Bumitama staff on the LSM plantation, and that instructions had not been fully understood, implemented or followed. During the call Bumitama reiterated the fact that planting had only stopped during the HCV assessment and that LSM had started planting again straight afterwards.<sup>7</sup>

*The RSPO has also made requests to Bumitama:*

- 7 May 2013: RSPO's Complaints Panel asked Bumitama to stop all work until complaints are resolved
- 1 July 2013: RSPO's Complaints Panel asked Bumitama to cease development

Despite Bumitama's pledges and RSPO requests, satellite images provided by AidEnvironment show that the land to the north of the water conservation area inside LSM's IUP boundaries was cleared after 14 October 2013.

<sup>7</sup> See annex 2 for transcript of the call.

## Chapter 3: Breaches of the OECD Guidelines

*continued*

### Satellite images

These new plantation developments are clearly visible in comparing the satellite images of 22 November 2013 and 10 February 2014 in AidEnvironment's assessment. These lands are shown in bright green in Attachment 4 of Bumitama Agri Ltd's (BAL<sup>8</sup>), rebuttal (see images provided by AidEnvironment).

**Conclusion: Bumitama has repeatedly breached its own commitments to stop clearing HCV forest and it has violated the relevant national law. Bumitama has also repeatedly violated RSPO rules.** Rabobank was clearly aware of these activities through its involvement in RSPO and its communication with Friends of the Earth. Since they have knowingly continued and increased their financial support for Bumitama without successfully addressing these problems, we believe that Rabobank is breaching its own palm oil policy and the OECD guidelines.

### 2. Broken promises on clearing of HCV area and violation of Indonesian law

Bumitama claims that no HCV forest has been cleared in the LSM plantation. During a conference call with FoE on 19 February 2014 Bumitama said that LSM conducted a HCV assessment and an SIA (sustainability impact assessment) with HCV consultants on 27 April and 3 May 2013. A public consultation was held on 13 June 2013.

Bumitama has repeatedly claimed that land clearing only took place outside the HCV area in LSM. But from the HCV assessment and from the AidEnvironment evidence, it is obvious that HCV land was cleared. An earlier version of the HCV assessment also confirms that the land clearing that took place between April and September not only broke the promise made to the RSPO to stop all land clearing, but also violated Indonesian law. The HCV assessment confirms that the land was (partial) deep peat (>3m peat) and orang utan habitat. According to Indonesian law, the development of deep peat land are prohibited.

Presidential Instruction No. 11/2011 prevents the issuance of any new plantation and concession permits in primary forests and peat lands.

**Conclusion: Bumitama cleared land in a HCV area, despite statements that it would not do so. This constitutes a breach of RSPO principles and a violation of Indonesian law.**

### 3. Managing the GY plantation without the right permits

Bumitama took over the management of the GY plantation which was operating without the right permits, thereby bringing illegally produced palm oil into the supply chain. When FoE approached Bumitama for the first time in September 2013, Bumitama claimed they were operating legally, but later they acknowledged that this was not the case.<sup>9</sup>

In the research conducted by AidEnvironment, published in November 2013, it was clear that the GY plantation was not included on the list of permits provided by the Ministry of Forest (MoF) in Indonesia.

In Bumitama's Prospectus, dated 3 April 2012 Bumitama stated: 'On 1 November 2011, our Group entered into the GY Cooperation Agreement. The shareholders of GY are KMS and Westbrook, each an associate of one of our Controlling Shareholders, the Hariyantos. As GY has yet to secure some of the licences required for the operation and management of its plantations, KMS and Westbrook have borne the risk of such non-compliance by acquiring GY from unrelated third parties and entering into the GY Cooperation Agreement with our Group.'<sup>10</sup>

Furthermore, in a conference call with Friends of the Earth on 19 February 2014 Bumitama admitted that the GY plantation did not have the necessary permits to operate legally, that is had applied for the right permits but that it did not expect to obtain them in the near future. This means that Bumitama is fully aware that the GY plantation does not have the right permits but continues to manage it anyway. So far Bumitama has not shared any evidence to show that the fruit bunches produced on the former GY plantation are being separated from the certified bunches from other plantations. Mixing RSPO certified palm oil with illegally sourced palm oil is also a violation of the RSPO rules.

<sup>8</sup> BAL is the stock exchange operated company, thereunder is the operating company and subsidiary Bumitama Agri.

<sup>9</sup> See annex 4 for communications between Bumitama and Friends of the Earth.

<sup>10</sup> [http://files.shareholder.com/downloads/AMDA-VWON6/0x0x663207/8E4A2D0B-7C80-4B7EBD70-43C682510F24/Bumitama\\_Agri\\_Ltd\\_Prospectus.pdf](http://files.shareholder.com/downloads/AMDA-VWON6/0x0x663207/8E4A2D0B-7C80-4B7EBD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf)

## Chapter 4: conclusions and recommendations

### Conclusions

Although Rabobank has told Friends of the Earth that they have both engaged with Bumitama directly as well as via the RSPO, the bank has not provided stakeholders with crucial details of their due diligence process or precise steps taken. Furthermore, whatever actions Rabobank has taken have failed to prevent or mitigate the adverse impacts of Bumitama's operations and have not stopped the illegal production of palm oil.

### Recommendations

In November 2013, Friends of the Earth asked Rabobank to use its influence over Bumitama and ensure that problems were solved. Eight months later, the GY plantation is still being managed by Bumitama without the necessary legal permits and the other problems have also not been solved.

Therefore, Friends of the Earth wants Rabobank to stop providing financial services and to commit not to issue any more loans or purchase any more shares in Bumitama, and take steps towards public divestment from the company.

*Specifically, we demand that Rabobank:*

1. Publicly discloses the concrete due diligence procedures and steps it has taken to identify, prevent and mitigate the adverse impacts caused by its business relationship with Bumitama. This should include Rabobank's assessment of what the impact of its due diligence on preventing and mitigating adverse impacts has been. This should also include specific information about the number of meetings Rabobank has had with BGA and who was present at those meetings, as well as details on how Rabobank has intervened through the RSPO to address the problems with BGA.
2. Exercises its leverage to prevent future adverse impacts from its business relationship with BGA by publicly committing to withhold financial services from BGA and by committing to divest from the company until BGA has resolved problems concerning the legality and sustainability of its operations.
3. Implements its own Environmental, Social and Governance (ESG) policy in a transparent and effective way in the Bumitama case and in future cases

Friends of the Earth requests that the Dutch NCP seeks a mutually acceptable solution in this matter. If a dialogue-based, mutually acceptable solution is not possible, Friends of the Earth requests that the NCP employs the other problem-solving tools at its disposal with the aim of achieving effective implementation of the OECD Guidelines. This should include conducting an examination of the allegations and facts in this specific instance, making a determination as to whether or not Rabobank has acted in accordance with the OECD Guidelines, and issuing recommendations to improve the implementation of the Guidelines.

## Appendices

1. Report 'Commodity Crimes', Friends of the Earth, published 21 November 2013
2. Minutes: conference call Bumitama-Friends of the Earth 19 February 2014
3. Minutes: from meeting 4 March 2014 to follow two conference calls between Rabobank and FoEE and FoENL, 20 February 2014 and 4 March 2014.
4. Communication between Bumitama and Friends of the Earth between September 2013 and January 2014
5. Evidence provided by AidEnvironment 12 February 2014
6. Bumitama's response to the information provided by AidEnvironment, 27 February 2014.
7. Video: Paradise Lost (Jason Taylor for FoE)
8. Profundo Report on Bumitama Agri's financiers.
9. Bumitama's Diary of Destruction, Friends of the Earth, published 28 March 2014.
10. RSPO complaint about Bumitama GY/GMS
11. Rabobank's ESG policy

## Friends of the Earth Europe Member Groups

**Austria, Vienna** GLOBAL 2000 | GLOBAL 2000. **Belgium – Wallonie, Namur** Les Amis de la Terre | Friends of the Earth Wallonia & Brussels. **Belgium – Flanders, Gent** Friends of the Earth Vlaanderen & Brussel | Friends of the Earth Flanders & Brussels. **Bulgaria, Sofia** Za Zemiata | Friends of the Earth Bulgaria. **Croatia, Zagreb** Zelena Akcija | Friends of the Earth Croatia. **Cyprus, Limassol** Friends of the Earth | Friends of the Earth Cyprus. **Czech Republic, Brno** Hnutí Duha | Rainbow Movement. **Denmark, Copenhagen** NOAH | NOAH Friends of the Earth Denmark. **England/Wales/Northern Ireland, London** Friends of the Earth | Friends of the Earth. **Estonia, Tartu** Eesti Roheline Liikumine | Estonian Green Movement. **Finland, Turku** Maan Ystävät Ry | Friends of the Earth Finland. **France, Montreuil** Les Amis de la Terre | Friends of the Earth France. **Georgia, Tbilisi** Sakhartvelos Mtsvaneta Modzraoba | Greens Movement of Georgia. **Germany, Berlin** Bund für Umwelt und Naturschutz Deutschland | Friends of the Earth Germany. **Hungary, Budapest** Magyar Természetvédők Szövetsége | National Society of Conservationists. **Ireland, Dublin** Friends of the Earth | Friends of the Earth Ireland. **Italy, Rome** Amici della Terra | Friends of the Earth Italy. **Latvia, Riga** Zemes Draugi | Friends of the Earth Latvia. **Lithuania, Kaunas** Lietuvos Zaliuju Judėjimas | Lithuanian Green Movement. **Luxembourg, Luxembourg** Mouvement Ecologique | Ecological Movement. **Macedonia, Skopje** Dvizhenje na Ekologistite na Makedonija | Ecologist's Movement of Macedonia. **Malta, Valletta** Moviment għall-Ambjent | Friends of the Earth Malta. **The Netherlands, Amsterdam** Vereniging Milieudefensie | Friends of the Earth Netherlands. **Norway, Oslo** Norges Naturvernforbund | Norwegian Society for the Conservation of Nature. **Poland, Krakow** Polski Klub Ekologiczny | Polish Ecological Club. **Scotland, Edinburgh** Friends of the Earth Scotland | Friends of the Earth Scotland. **Slovakia, Banská Bystrica** Priateľia Zeme – Slovensko | Friends of the Earth Slovakia. **Spain, Madrid** Amigos de la Tierra | Friends of the Earth Spain. **Sweden, Gothenburg** Jordens Vänner | Friends of the Earth Sweden. **Switzerland, Basel** Pro Natura | Friends of the Earth Switzerland. **Ukraine, Kiev** Zelenyi Svit | Green World.



**Friends of  
the Earth  
Europe**



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Friends of the Earth Netherlands

**for the people | for the planet | for the future**

**Friends of the Earth Europe** is the largest grassroots environmental network in Europe, uniting more than 30 national organisations with thousands of local groups.

We are the European arm of Friends of the Earth International which unites 74 national member organisations, some 5,000 local activist groups, and over two million supporters around the world.

We campaign on today's most urgent environmental and social issues. We challenge the current model of economic and corporate globalization, and promote solutions that will help to create environmentally sustainable and socially just societies. We promote environmentally sustainable societies on the local, national, regional and global levels. We seek to increase public participation and democratic decision-making. Greater democracy is both an end in itself and is vital to the protection of the environment and the sound management of natural resources. We work towards environmental, social, economic and political justice and equal access to resources and opportunities on the local, national, regional and international levels.