



Forest Peoples Programme

1c Fossey Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

John Williams, Head of Group Sustainable Development
John Laidlow, Senior Manager, Sustainability Risk Management
Francis Sullivan, Adviser on Environment Group Corporate Affairs
HSBC
8 Canada Square
London
E14 5HQ

27 April 2007

Dear John, John and Francis,

HSBC Forest Policies and Samling Timbers

Thank you for the informative meeting yesterday. We do now feel we have a better understanding of HSBC's policies with respect to forests and indigenous peoples, and the procedures ('due diligence') you require, and use yourselves, to ensure client compliance.

As we noted, we do have the view that Samling, as both a long-term client of HSBC and one which you have recently supported through its listing on the stock exchange, does **not** meet your standards, nor is working towards meeting them. Moreover, as we also noted, most of the information about this lack of compliance is, and has long been, in the public domain. It is therefore disturbing that your procedures did not pick up on this information. We conclude that your due diligence procedures are inadequate and need to be substantially strengthened to prevent any recurrence of this kind of a problem both by strengthening staff capacity and performance and by improving your procedures for information gathering, consultation and analysis.

We were however encouraged to learn of your openness to review the decisions that HSBC made with respect to Samling and indeed that such a review is now already underway and is intended not just to rectify any mistakes in this case but also to contribute to wider improvements in your standards and due diligence. We look forward to being kept informed of the outcome of this review.

You also invited our inputs to this review and indeed enquired about whether we could contribute to other such client reviews in future. As a first contribution to the current review we include some further comments below.

With respect to future contributions, we need to preface our response by noting that Forest Peoples Programme (FPP) is a human rights organisation which seeks to support **but not represent** forest dwelling peoples. In raising issues of concern to communities we thus seek full transparency to facilitate, as far as possible, the direct engagement of affected peoples, so that our voice is not seen as substituting for that of the peoples' themselves. Forest Peoples Programme seeks to strictly observe the principle that we cannot compromise the rights of the peoples whose interests we seek to promote, and we do not negotiate on their behalf without express and direct requests from the communities concerned. What credibility and trust we

have from forest peoples depends on our scrupulous adherence to such principles. We are sure, as a banking institution with your own codes of conduct for dealing with clients which are required to ensure trust, that you can understand our principled position. For its part, FERN, also works with clear accountability lines to the NGOs with which it collaborates.

Thus, given the way we operate, FPP and FERN could only contribute to future assessments if:

- The full forest policy against which any reviews are to be carried out is in the public domain (you explained that your current 19 page policy is not yet available, while the 2 page summary is);
- Our written comments are also in the public domain;
- The final due diligence report in which our comments are included or assessed are also in the public domain.

If this kind of transparency is not possible and where we consider that our inputs could add value and would help improve forest management and forest peoples secure their rights and interests, in line with our own principles, we will limit ourselves to providing information to any consultants or reviewers you or your clients use to carry out due diligence, so we are not directly contributing to the assessments or judgements you then make.

Comparison of Samling against HSBC expressed policy:

You made clear in our discussion that your forest policy has three levels. At the first level certain activities are prohibited. At a second level you encourage compliance with international best practice forestry ('sector lending standard'), through independent third party certification preferably to FSC standards (or equivalent), and thirdly where clients are not yet so certified you seek assurances that there is a credible plan to improve operations to such a standard. We briefly assess Samling against all three levels.

Prohibitions:

The public version of your forest policy¹ is explicit. It notes:

'we will not provide facilities and other forms of financial assistance, including any involvement in debt and equity capital markets activities and advisory roles, in respect of:

- Commercial logging operations in:
 - Primary Tropical Moist Forest
 - High Conservation Value Forest
 - Logging operations that are in violation of local or national laws...
 - Logging operations that include any species listed in CITES...
- Companies which purchase, trade or process timber from the above sources
- Projects located in and which significantly degrade or convert Critical Natural Habitats.'

Samling's operations in both Guyana and Sarawak are substantially in areas of Primary Tropical Moist Forest. In the case of Sarawak, indeed, Samling's current operations in the Upper Baram are in one of the few areas of remaining primary forest outside of protected areas in the entire State.

High Conservation Value Forests include '*areas fundamental to meeting basic needs of local communities (e.g. subsistence, health) and areas critical to local communities' traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in*

¹ HSBC, *Forest Land and Forest Products Sector Guidelines*, May 2004.

cooperation with such local communities)'.² A substantial part of Samling's operations in both Guyana and Sarawak overlap areas used and claimed by indigenous peoples. In both countries the indigenous peoples have protested the extension of these logging concessions over their lands on the grounds that they impoverish them and undermine their cultures.

In Guyana, **over half** of all the timber being processed and traded by Samling comes from outside its main concession area. Much of this timber is being cut at unsustainable rates. In several cases this timber is being acquired based on illegal agreements imposed on indigenous communities to gain access to the timber within their titled lands. In Sarawak, the Penan have been contesting the legality of the concession which has been extended over their customary lands in the courts as a violation of their local (customary) laws and rights as indigenous peoples.

On these three grounds alone, the most cursory of reviews of Samling's operations should have led HSBC to the view that it should not be dealing with the company as a client, much less assisting it to raise further capital through listing on the stock exchange.

Compliance with the standard:

Samling has no natural forest logging operations certified to FSC standards. A bizarre certificate issued by SGS to Samling's Barama Company Limited in Guyana for two out of its seven cutting blocks [and which ignored the massive over-cutting and illegal harvesting occurring off concession] was withdrawn in early 2007, several weeks before Samling's public listing. It is generally agreed that the certificate issued by the Malaysian Timber Certification Council for Samling's operations in the Upper Baram is specious and that the MTCC standard is not equivalent to FSC.

A more detailed treatment than we can give here could readily note how the company's operations in both Guyana and Suriname fail to adhere to FSC Principles and Criteria on numerous counts, as indeed the withdrawal of the controversial FSC certificate in Guyana confirms.

Willingness to improve:

We note (though with some misgivings), that the HSBC policy does, subject to the first level prohibitions, allow HSBC *'to deal with customers who do not have FSC or equivalent certification but are following a credible path towards compliance within a maximum of five years.'* (emphasis added).

In this respect we would like to record our serious doubts about the company's willingness to really improve, especially in its dealings with indigenous peoples. In Sarawak, Samling has been in dispute with the Penan and other Dayak communities over their land rights for over **20 years** but has still to adopt an acceptable means of resolving conflicts. Communities began to blockade Samling's early operations, which violated their customary rights, in 1987. Now some 20 years later, on 20th April this year, five blockades are still up blocking Samling's latest operation. In Guyana, Samling's predatory logging on Amerindian community lands commenced in the early 1990s and led to critical demands for changes in their behaviour. Now, 15 years later, the same malpractices not only continue but have intensified as Samling extends the areas from which it sources timber off-concession.

² <http://hcvnetwork.org/>

On these grounds also Samling is failing the test of showing a good faith commitment to improve its operations and practices.

Conclusion:

We consider the statements in this letter to be statements of fact amply substantiated by information that is in the public domain. On the basis of these facts, it is evident that Samling does not comply with HSBC's forest policy on any of the three levels. Due diligence by the client, carried out by Jaako Poyry, and by HSBC staff should have made this clear after even a superficial enquiry. The fact that Samling remains an HSBC client is thus worrying and implies that major improvements are needed in the performance of the consultants used, in the training of HSBC staff and in the guidance they are given in terms of information gathering and assessment.

In these circumstances, for HSBC to remain credible and maintain a client relationship with Samling, we feel you should require clear and detailed plans from Samling to withdraw from contested areas and halt logging in primary tropical moist forests within, at most, three months.

Furthermore, as we also noted at the meeting, we feel that HSBC should consider depositing any profits it made from the unethical listing of Samling in a not-for-profit organisation committed to improving forest management and affected forest peoples' livelihoods in Guyana and Sarawak.

Wider implications:

HSBC has positioned itself as a bank showing 'leadership in merging social, environmental and business objectives'.³ HSBC is also a member of the Board of the Roundtable on Sustainable Palm Oil which seeks to promote major changes in the palm oil sector through reforms in investment standards and third-party certification. It is thus vital for the credibility not only of HSBC but also wider market-led reform processes such as RSPO that your review procedures are effective and reliable.

We look forwards to learning of your reactions to these comments and of the outcome of your own internal review. We will also be willing to meet again to discuss next steps if and when you think this might be useful. We are in particular interested to discuss how you will be improving your due diligence.

Yours sincerely

Dr. Marcus Colchester
Director, Forest Peoples Programme

Saskia Ozinga
Co-ordinator, FERN

Helen Leake
Policy Adviser, Forest Peoples Programme

Cc. Micheal Geoghegan, HSBC
Steven Green, HSBC
Scott Poynton, TFT

³ Strapline on HSBC email correspondence.