

Title –

Lazy days at international banks: how Credit Suisse and HSBC support illegal logging and unsustainable timber harvesting by Samling/Barama in Guyana, and possible reforms.

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Summary

Credit Suisse and HSBC are two of the three international banks which underwrote the Initial Public Offering (IPO) on the Hong Kong stock exchange of Samling Global Limited, a transnational forest products company originating in Sarawak, Malaysia. Both banks publish codes of corporate social and environmental responsibility (CESR), both have extensive requirements for practice of due diligence in financial operations, both are signatories of the UNEP Finance Initiative and the UN Global Compact. HSBC has had from 2004 a forest sector guideline based on safeguard policies of the International Finance Corporation of the World Bank Group. Credit Suisse may have an unpublished forest sector policy.

Samling raised US\$ 269 million for this IPO for its re-structured conglomerate. Neither HSBC nor Credit Suisse appear to have noticed that Barama Company Limited, the Samling subsidiary in Guyana, is heavily engaged in illegal and unsustainable logging, in abuse of foreign direct investment incentives, and in illegal trade in tropical forest logs. Following interventions by Global Witness and World Rainforest Movement, HSBC has engaged the Tropical Forest Trust to aid in improvement in CESR performance.

In contrast, Credit Suisse has refused to accept the evidence of illegalities and has attributed the failures in due diligence to the lack of appropriate advice or warning from the technical consultant (Pöyry Singapore) which had been engaged directly by Samling. Credit Suisse has also tried to blame WWF, parts of whose federation have been engaged with Barama to improve its forest management performance to FSC standard, and to regain the currently suspended FSC certificate issued by SGS Qualifor.

Both the international codes of conduct (UN Global Compact and UNEP Finance Initiative) lack external audit systems and penalties for non-compliance. The two international banks seem to have done little to implement their own CESR commitments and due diligence procedures in this case. They appear to have made a few millions of dollars from underwriting the Samling IPO in March 2007. Were those dollars worth the damage to their reputations ?

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Options are suggested for improvement by the two international banks, Credit Suisse and HSBC, and by Samling and Barama. Keys to improvement are greater transparency in procedures, published indicators of compliance which are objectively verifiable, better internal audits, internal or external penalties for compliance failures, and open reporting of external scrutiny. The UNEP Finance Initiative and the UN Global Compact are dead letters without critical scrutiny of reporting on compliance and without penalties for non-compliance.

The most important element for improvement is a genuine and self-critical commitment to implementation of CESR codes of conduct.

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Acronyms and abbreviations

ASI Accreditation Services International GmbH, Bonn, Germany
BMF Bruno Manser Fonds, Bern, Switzerland
BVI British Virgin Islands
CESR corporate social and environmental responsibility
CS Credit Suisse Group, HQ in Zürich, Switzerland
DFID Department for International Development, HQ in London, UK
DGIS Directorate-General for International Cooperation, The Netherlands
ECTF Edinburgh Centre for Tropical Forestry, UK
EP Equator Principles
EPA Environmental Protection Agency, Guyana
FDI foreign direct investment
FSC Forest Stewardship Council, International Centre at Bonn, Germany
GEA Guyana Energy Authority
GfbV Gesellschaft für bedrohte Völker or Society for Threatened Peoples, Berne, Switzerland
GFC Guyana Forestry Commission
GRA Guyana Revenue Authority
HSBC HongKong Shanghai Banking Corporation, HQ in London, UK
IFC International Finance Corporation, World Bank Group, Washington DC, USA
IMF International Monetary Fund, World Bank Group, Washington DC, USA
IPO Initial Public Offering
ISO International Organisation for Standardisation, HQ in Geneva, Switzerland
ITTO International Tropical Timber Organisation, HQ in Yokohama, Japan

IWPI Interior Wood Products Inc., Guyana
MTCC Malaysian Timber Certification Council
OECD Organisation for Economic Co-operation and Development, HQ in Paris, France
SGS Qualifor forestry and wood products services unit of SGS SA, South Africa
TFT Tropical Forest Trust, Crassier, Switzerland
UNEP United Nations Environment Programme
WTO World Trade Organisation
WWF World Wildlife Fund or Worldwide Fund for Nature

Introduction

More than a decade ago, financial institutions were funding illegal logging. At meetings in London of the financial working group of the UK Tropical Forest Forum, Mark Mansley (Delphi International) and Mark Campanale (then head of the ‘Green Team’ at the National Provident Institution, now at SRI Business Development in Henderson Global Investors) showed in 1996-7 how illegal logging was drawing in funds. Computer-assisted automatic equity buying systems were tracking the huge earnings ratios claimed by Malaysian loggers then recently registered on the Kuala Lumpur and Singapore stock exchanges; in these studies, Campanale found a claim to an annualised return of 43 per cent.

Bans on log exports from Peninsular Malaysia and Sabah in the late 1980s had encouraged experienced loggers to look to other countries. Malaysian loggers were operating in or seeking concessions in Cambodia, central Africa, Guyana, Myanmar, Papua New Guinea, Russia and Suriname (Zhu *et al.* 2004). In those days before codes of conduct for corporate social responsibility were widespread, UK pension funds were notable buyers of shares in such Malaysian transnationals and thus supporters of illegal and unsustainable logging when the loggers were operating in countries with more lax administrations than in Malaysia. The entry into force of the UK Pensions Act 1995 in 2000 made such transactions subject to explicit due diligence requirements¹ (IDS 2002).

During this last decade, from the mid-1990s, most large financial institutions have responded to internal pressures and concerns from government, shareholders and civil society about their ethical practices (Hildyard and Mansley 2001, Saunders 2005). Published codes of conduct are now normal, and due diligence procedures are transparent. An inherent weakness is that the private sector and international codes of conduct and compacts are almost all voluntary, not legally binding. Nevertheless, it was surprising that two major international banks, Credit Suisse and HSBC, were willing to act as underwriters for an Initial Public Offering (IPO) of the re-structured Samling Global Limited in March 2007. Samling has a mixed reputation for adherence to government logging regulations in different countries. It has been in dispute with indigenous Penan communities in Sarawak for over ten years, and has been criticised for its performance in Guyana since 1991.

This paper is a brief summary of Samling’s abuse of its highly privileged position in Guyana, the involvement of the two international banks in its IPO, and some suggested options for corrective action by the banks, Samling and its subsidiary Barama in Guyana.

Background to the Barama Company Limited in Guyana

Guyana had a siege economy for almost two decades ending in 1985. Under IMF pressure, the

Marxist-orientated closed economy was progressively liberalised, with nationalised industries being sold back into the private sector. There was a somewhat untutored government belief that South-South investment would be more generous than more North-South foreign direct investment. In the late 1980s, the Barama Company Ltd. (Barama, a new creation of the Malaysian logger Samling and the Korean industrial company Sunkyong) was one of the Southern enterprises offered very generous and secret foreign direct investment (FDI) terms by Guyana. The government seems not to have known about the OECD Code of Conduct for Multinational Enterprises² and similar guidelines.

When Barama's long-term forest harvesting concession began in 1991, it engaged the Edinburgh Centre for Tropical Forestry (ECTF) to provide a wide range of technical support. Shortly thereafter, an institutional support project for the Guyana Forestry Commission (GFC – the national forest service) provided additional technical guidance, with funding from the UK Department for International Development (DFID). There is some evidence that Barama followed official prescriptions in its early years in Guyana, with help or supervision from ECTF and DFID Technical Cooperation Officers alongside the Guyana Forestry Commission.

Between 2002 and 2004, WWF Guianas unilaterally selected two loggers in Guyana to improve their management practices to make them eligible for certification in the international scheme of the Forest Stewardship Council (FSC). WWF did not have an open bidding process for this funding in Guyana. One of the two enterprises selected by WWF for the Guyana Forest and Environmental Conservation project was Barama. Funding came from WWF-US through the WWF Guianas sustainable forest management project (Lethier *et al.* 2002), alongside DGIS (Netherlands) and the French Fund for Global Environment (France). Barama was aided to enrol in the SGS pre-certification support programme then run from Malaysia. SGS Qualifor was selected to conduct the audit. In the absence of a national forest stewardship standard congruent with FSC global principles and criteria for forest management, SGS developed a local adaptation of the generic SGS Qualifor forest stewardship standard in 2005-6³. This local adaptation built upon the prior work of the multi-stakeholder Guyana National Initiative for Forest Certification (Forte *et al.* 2001).

The FSC-endorsed certification of February 2006⁴ was challenged on several grounds, including the failure of SGS to interpret correctly the FSC policy on partial certification of large enterprises, and the failure to look at the systematic failures of Barama management shown by the type and number of minor Corrective Action Requests.

Both Barama and WWF are becoming willing to acknowledge the relatively minor failures in environmental protection⁵. However, they are still unwilling to acknowledge publicly the much more serious illegal and fraudulent operations detailed in the dossier⁶ prepared for the Swiss NGOs Bruno Manser Fonds (BMF) and Society for Threatened Peoples (GfbV - Gesellschaft für bedrohte Völker). This dossier has been compiled from investigations over the last two years, and was presented through BMF and GfbV to staff of Credit Suisse (CS) on 3 May 2007 and to the annual shareholders meeting of CS on the following day.

At this stage it would be inappropriate for Barama to regain its FSC certificate, unless it is prepared to give up its highly profitable piratical logging of areas illegally sub-leased from other concession holders and from illegally contracted Amerindian titled lands. Barama draws 55-72 per cent of its declared total log supply from areas outside its own concession⁷. The fact that it has no management plan for the areas covered by the SGS Qualifor certificate in February 2006 shows its lack of commitment and a lack of rigour by SGS; see end note 4. An independent accountant has drawn attention to anomalous features of Barama's reports on its company

accounts⁸.

The Initial Public Offering of Samling Global Limited⁹

Samling began life in the early 1960s as a small-scale family-owned logging operation in Sarawak, Malaysia, just as the Japanese post-war boom was accelerating and demand for imported timber was rising fast. Samling has had logging interests in Cambodia and Papua New Guinea and has declared one logging concession in Sarawak and forest plantations in China and New Zealand. Samling has been gradually re-structuring its various component holdings, at least since 2002. Samling bought out the 20 per cent share of Sunkyong in Barama in 2005. In the following year, re-organisation brought the words (British Virgin Islands) into Barama's name and that of its parent Caribbean Esskay Limited holding company; BVI is a well-known tax haven. The overall parent, Samling Global Limited, is incorporated in another tax haven, Bermuda.

The reasons for the re-structuring associated with the IPO are not entirely clear but it seems likely that the extensive but uncoordinated property portfolio mainly in Southeast Asia, acquired over many years from profits on logging, was draining the resources of the family owners. Such investment in property and in shipping was traditional for timber tycoons in Sarawak in the late 1960s and early 1970s. The IPO also raised money for expansion of activities, including more logging in Guyana.

37 NGOs from 18 countries protested¹⁰ at the news of the IPO at the end of February 2007. The NGOs urged potential shareholders not to invest in a group which had been in conflict with indigenous Penan communities in Sarawak for years, and which was not complying with its FSC certificate conditions in Guyana. Failings by two of the underwriting banks were also cited.

Protests about Barama's "in bad faith" logging agreements with two indigenous Amerindian Village Councils in Guyana were made locally in Guyana in 2006-7¹¹ and during the presentations to Credit Suisse in Switzerland on 3 and 4 May 2007¹².

The IPO was underwritten by Zürich-based Credit Suisse as global coordinator with London-based HSBC and Australia-based Macquarie Bank as joint bookrunners bringing in other underwriters. About one quarter of the greatly increased number of shares were sold during the IPO launch, which was over-subscribed. Samling Global Limited raised US\$ 269 million for its IPO. Trading was initially at a 15 per cent premium over the IPO price, giving the Samling group a market capitalization of US\$ 1.2 billion¹³.

When the IPO prospectus required by the Hong Kong stock exchange was published in February 2007, information became available about Barama which has never before been in the public domain in Guyana. End note 6 references the dossier which draws substantially upon the IPO prospectus and in particular on annex VI. This annex contains the independent technical report commissioned by Samling from the Singapore office of the Finnish consultancy Jaako Pöyry. So far as we can tell, the underwriting banks did not commission either a review of the Pöyry study or their own technical reviews.

Pöyry was evidently unaware of forest legislation and regulations in Guyana or other relevant legislation, and was confident in revealing most of the extent of illegal sub-letting of forest harvesting concessions and the "in bad faith" logging agreements. Annex VI of the IPO also revealed the intentions to log fast and hence unsustainably, to increase log production for export,

and showed the reliance on the sub-let concessions and Amerindian lands for 55-72 per cent of the total log supply. Pöyry in 2005-6 seemed to be unaware of the Corrective Action Requests and observations made by the FSC-accredited SGS Qualifor in February 2006 but could not have been aware of the later report by the accreditation authority ASI in January 2007, in relation to Barama.

Repairing the damage to financial institutions

Although the uptake of Samling shares raised an amount of cash (US\$ 269 million) which is large for most tropical forestry situations, it is small in relation to daily international financial transactions. Why, then, should famous international banks risk their reputations by supporting such a dubious entity? If Credit Suisse and HSBC are genuinely committed to due diligence and sustainable forestry, why be so careless? At least HSBC has admitted so far unspecified errors, but Credit Suisse simply refuses the evidence. This is all the more surprising, as Credit Suisse has previously made great efforts to verify legality in relation to Asia Pulp & Paper (Chan Fishel 2003).

For each of the four main actors in this case, we present the challenges which they face, our perceptions of their main options for a positive response, and counter arguments and supplementary cautions.

In the response options, we have drawn on the proposals on the role and responsibilities of financial institutions in the Collevocchio Declaration on Financial Institutions and Sustainability, 2003¹⁴. This Declaration contains six principles (sustainability, 'do no harm' – the precautionary principle, responsibility, accountability, transparency, and sustainable markets and governance). We have drawn also on the proposals of Saunders (2005) for private sector entities. It was clear from her studies, as well as from NGOs Global Witness and the Forest Peoples' Programme, that it is relatively easy to adopt paper procedures but more difficult for banks and producer companies to implement those procedures consistently without vigilant monitoring by external stakeholders. Less than ethical companies, and closed governments, will need to accept that long-term trading in a globalised market requires willingness to accept and to respond positively to such scrutiny.

There is deliberate duplication between the following sections for the two international banks, Credit Suisse and HSBC, so that each bank can see separately what we suggest applies to itself. Key letters and numbers tie the challenges to the response options and to the supplementary cautions for each of the four actors – Credit Suisse (A-C), HSBC (D-F), Samling (G-I), Barama (J-N).

Credit Suisse

Challenges

(from Bulkan dossier compiled for BMF and GfbV and presented to Credit Suisse on 3 and 4 May 2007; see end note 6)

Credit Suisse has failed to apply adequately three Principles of the UN Global Compact, which it has signed¹⁵, in its under-writing of the Samling IPO which raised US\$ 269 million on the Hong Kong stock exchange for the re-structured transnational company in early March 2007. Those three Principles are:

(On the Environment)

Principle 7 - Businesses should support a precautionary approach to environmental challenges; and

Principle 8 - Undertake initiatives to promote greater environmental responsibility.

(And on Anti-corruption)

Principle 10 - Businesses should work against all forms of corruption, including extortion and bribery.

Credit Suisse has also failed to apply relevant articles from the UNEP Finance Initiative, to which it is a signatory. In particular, Article 2.3 states –

“We recognize that identifying and quantifying environmental risks should be part of the normal process of risk assessment and management, both in domestic and international operations. With regard to our customers, we regard compliance with applicable environmental regulations and the use of sound environmental practices as important factors in demonstrating effective corporate management.”¹⁶

In addition, Credit Suisse appears not to have applied adequately its own internal procedures, with respect to its Sustainability Policy, Due Diligence Requirements and Responsibility¹⁷.

Response options

A1. CS should recognise that it cannot relieve itself of its commitments by commissioning third parties to do its work. Relying on the work of contractors Pöyry Singapore and WWF International / Guianas, commissioned by Samling itself for technical assistance, is not due diligence. CS should develop necessary skills in-house or commission consultancy advice which is wholly independent of the client. Such due diligence would require evaluation of the client’s performance against the CS policies and sector guidelines.

A2. CS should treat the errors in underwriting the Samling IPO as a case study and demonstrate how its procedures and their application will be strengthened. CS should publish and distribute widely a self-critical report.

A3. CS should emphasise internally and to its clients the need for a genuine and self-critical commitment to implementation of CESR codes of conduct.

A4. CS should work with the secretariats of the UN Global Compact, UNEP Finance Initiative and the Equator Principles to improve reporting procedures and to insert monitoring procedures and some penalty system for failures in compliance. This is a different exercise from C1 below.

B1. CS should adopt or adapt the forest sector guideline developed in 2004 by fellow banker HSBC, which itself makes use of the safeguard policies of the International Finance Corporation [URL = www.ifc.org]. The CS forest policy or sector guideline should be integrated with other CS codes on corporate social and environmental responsibility, and CS due diligence and sustainability procedures. The forest policy or sector guideline should be published and widely distributed, including through the CS website.

B2. The CS forest policy should be associated with procedures for internal audit of compliance decisions, and for independent external review; both according to published timetables. External reviews should be published and widely distributed, without CS editing except for matters of commercial confidentiality.

B3. CS should require its clients to develop time-lined action plans to improve their performance in relation to the international commitments and due diligence requirements of CS. Preparation of the action plans should be a condition for receiving CS assistance. CS should monitor and publicly report on the state of progress indicators built into the action plans, using

external reviewers as appropriate for credibility. Systematic failure to implement the action plan should lead to publicised sanction by CS against its client.

C1. Given the volume of evidence provided by Samling itself in its IPO prospectus of its disreputable operations, but not interpreted as such, CS should work with other Equator Principles (EP) signatories to learn lessons relevant to the EP and publish and distribute conclusions. HSBC would be an obvious associate in such work, as a fellow underwriter for the Samling IPO. This is a different exercise from A4 above.

Counter arguments and supplementary cautions

Vague assurances about tracking the future performance of Samling (of the kind issued by HSBC at the end of May 2007) are not acceptable. A time-lined action plan with objectively verifiable indicators and independent monitoring of the financial accounting and forest performance of Samling Global Limited is necessary to restore confidence that Credit Suisse will actually carry out its due diligence procedures and public CESR commitments.

HSBC – HongKong Shanghai Banking Corporation

Challenges

HSBC has failed to apply adequately three Principles of the UN Global Compact, which it has signed, in its under-writing of the Samling IPO which raised US\$ 269 million on the Hong Kong stock exchange for the re-structured transnational company in early March 2007. Those three Principles are:

(On the Environment)

Principle 7 - Businesses should support a precautionary approach to environmental challenges; and

Principle 8 - Undertake initiatives to promote greater environmental responsibility.

(And on Anti-corruption)

Principle 10 - Businesses should work against all forms of corruption, including extortion and bribery.

HSBC has also failed to apply relevant articles from the UNEP Finance Initiative, to which it is a signatory. In particular, Article 2.3 states –

“We recognize that identifying and quantifying environmental risks should be part of the normal process of risk assessment and management, both in domestic and international operations. With regard to our customers, we regard compliance with applicable environmental regulations and the use of sound environmental practices as important factors in demonstrating effective corporate management.”¹⁸

In addition, HSBC appears not to have applied adequately its own policies and internal procedures¹⁹. Recognising that disputes over environmental and social standards in forestry are not simple issues, the summary of the Forest Land and Forest Sector Guideline (2004) from HSBC reasonably ends with the following paragraph –

“This is, however, a complex industry, and one where standards vary country by country and continue to evolve. In line with our global approach to environmental issues, we will apply the FSC or equivalent standards or national standards where these are at least as rigorous. It is, however, not possible to put in place a prescriptive guideline that covers all aspects in detail at the

local level. Our lending executives therefore are expected to make reasoned, common sense judgements in implementing this guideline. However, exceptions will be a rare occurrence.”²⁰

HSBC has apparently made more specific commitments than other Equator Principles signatories but in this Samling case has failed to ensure that its performance matches its promises. HSBC should not offset the FSC certificate of Samling-owned forest plantations in New Zealand or the MTCC certificate of the Sarawak logging concession against the continued piratical behaviour of Samling’s subsidiary Barama in Guyana.

Response options

D1. It is unclear if HSBC itself undertook due diligence work to implement its own commitments and procedures with respect to the Samling IPO. It is unclear if HSBC, like Credit Suisse, relied on the work of contractors Pöyry Singapore and WWF International / Guianas, commissioned by Samling itself for technical assistance. HSBC should recognise that it cannot relieve itself of its commitments by commissioning third parties to do its work. HSBC should develop necessary skills in-house or commission consultancy advice which is wholly independent of the client. Such due diligence would require evaluation of the client’s performance against the HSBC policies and sector guidelines.

D2. HSBC should treat the errors in underwriting the Samling IPO as a case study and demonstrate how its procedures and their application will be strengthened. HSBC should publish and distribute widely a self-critical report. HSBC has already engaged the Tropical Forest Trust (TFT) to assist, although TFT itself has been quick to stress that it has not been commissioned to make a formal review. The terms of reference for the association with TFT should be published.

D3. HSBC should emphasise internally and to its clients the need for a genuine and self-critical commitment to implementation of CESR codes of conduct.

D4. HSBC should work with the secretariats of the UN Global Compact, UNEP Finance Initiative and the Equator Principles to improve reporting procedures and to insert monitoring procedures and some penalty system for failures in compliance. This is a different exercise from F1 below.

E1. HSBC should review, and revise if necessary, the full version of its forest sector guideline. The revised guideline should be integrated with other HSBC codes on corporate social and environmental responsibility, and HSBC due diligence and sustainability procedures. The forest sector guideline should be published in full and widely distributed, including through the HSBC website.

E2. The HSBC forest sector guideline should be associated with procedures for internal audit of compliance decisions, and for independent external review; both according to published timetables. External reviews should be published and widely distributed, without HSBC editing except for matters of commercial confidentiality.

E3. HSBC should require its clients to develop time-lined action plans to improve their performance in relation to the international commitments and due diligence requirements of HSBC. Preparation of the action plans should be a condition for receiving HSBC assistance. HSBC should monitor and publicly report on the state of progress indicators built into the action plans, using external reviewers as appropriate for credibility. Systematic failure to implement the action plan should lead to publicised sanction by HSBC against its client.

F1. Given the volume of evidence provided by Samling itself in its IPO prospectus of its disreputable operations, but not interpreted as such, HSBC should work with other Equator Principles (EP) signatories to learn lessons relevant to the EP and publish and distribute conclusions. This is a different exercise from D4 above.

Counter arguments and supplementary cautions

HSBC has issued on 24 May 2007 a weak assurance to track the performance of Samling. HSBC has accepted the oral assurance of Samling that it will support efforts to restore the suspended FSC certificate for Barama. HSBC appears to be unaware, or unconcerned, that Barama has failed to date to publish an action plan to deal with the major and minor corrective action requests from the FSC-accredited certification body SGS Qualifor which were issued in January 2007. The failure of HSBC to demand a time-lined action plan with objectively verifiable progress indicators undermines confidence in its own commitments and procedures.

Samling Global Limited

(transnational logging and forest products company, HQ in Malaysia)

Challenges –

- G. One-sided foreign direct investment (FDI) arrangements 1991 & 2001 & 2004 with the Government of Guyana ignored available models such as OECD guidelines for multinational enterprises.
- H. Inadequate Samling HQ supervision of Barama as local subsidiary, or connivance in illegal activities.
- I. Seeks certification of the quality of forest management for reputational or financial reasons but invests minimally.

Response options –

- G1. as the named Partner, re-negotiate the FDI arrangements to conform to international norms such as OECD, including time-bound action plan(s) for carrying out investments in Guyana and training of Guyanese.
- H1. establish, publish and implement a company-wide code of conduct using as a base the Malaysian MPI overseas investment code from 1980s/1990s issued by Dr Lim Keng Yaik of the then federal Ministry of Primary Industry; include commitments to legal operations and against all forms of corruption.
- I1. publish motivation for seeking forest certification and verification of chains of custody.
- I2. admit independent forest monitoring as a norm in all forest holdings.

Counter arguments and supplementary cautions -

- G1a. ensure that there are objectively verifiable progress indicators, means of verification, and independent monitoring of progress.
- G1b. accept performance penalties for failing to comply with timetable and with the substance of the agreement, to be built into the revised FDI arrangements.
- G1c. accept independent audit to check that penalties are paid fully and on time, and that systems are updated to prevent recurrence.
- H1a. develop internal audit system for company compliance, a public reporting system for information about compliance, and an appeal or whistleblower system for dealing with alleged non-compliance.
- H1b. subscribe to the UN Global Compact and the UNEP Finance Initiative, and commit publicly to eliminate corrupt and illegal practices from all parts of Samling Global Limited and its subsidiary and associated enterprises.
- I1a. subscribe to a WTO- and ISO-compatible international scheme providing forest certification and verification of chain of custody for all forest holdings.

Samling's possible defences ?

Possibly Samling's main defence is that the President(s) of Guyana gives awards to Barama for exporting, even though it claims to be untaxably unprofitable (and although earning a possible net

profit on log exports alone of US\$ 45 million in 2005-6). Also, Samling may be relying on the open letter from the Commissioner of the Guyana Forestry Commission (GFC) dated 11 January 2007 (a week prior to the critical ASI public summary of its monitoring report on the SGS Qualifor surveillance mission in November 2006). The Commissioner states that Barama is operating legally and in compliance with the GFC Code of Practice on Timber Harvesting, and that its operations are sustainable.

In answer, one can point to the faults listed in the SGS Qualifor report of February 2006 which had not been corrected by the time of the SGS surveillance and ASI monitoring in November 2006, plus the stream of Press reports of mal-feasance to which Barama has provided no rebuttals, nor engaged with civil society stakeholders (until the last week of May 2007). So Barama's operations remain (a) illegal, (b) not conforming to the GFC Code of Practice for Timber Harvesting (whatever the GFC Commissioner may claim), and (c) not equivalent to responsible forest management in the FSC sense. Quoting Presidential and GFC plaudits is not credible when neither of these offices carries out objective monitoring.

The next line of Samling defence may be that Barama deals directly with the President and does not need to obey the law by referring applications to rent Guyanese-owned forest harvesting concessions²¹) to the GFC and its Board of Directors. Against this line of defence, one can set the legal opinion of Khemraj Ramjattan (former legal counsel of the GFC) and his consultancy report (Ramjattan 2002) and that of Haraksingh, (2002), on the corporate responsibilities of the GFC Board, which do not permit such side-stepping of the Board's roles.

If the President sets aside the corporate laws of Guyana when dealing with Barama, by invoking the Guyanese political principle of Democratic Centralism, he is still liable to inform the GFC Board under the provision for open government set out in Article 13 of the National Constitution 1980. Democratic Centralism is an approach to government by which the President, the Party-in-Power and the Executive arm of government can set aside the legally enacted laws and regulations "in the national interest", without any published criteria as to what the national interest might be. Because Democratic Centralism is covered by no law, Credit Suisse and HSBC ought to be especially diligent in determining exactly what is the legal status of Presidential decisions affecting Barama.

Barama Company Limited

(re-incorporated in Guyana in August 2001; a wholly-owned subsidiary of the investment holding company Caribbean Esskay Limited, incorporated in BVI in May 1992; itself a wholly-owned subsidiary of Samling Global Limited, incorporated in Bermuda in June 2005; note that the co-ownership of Barama by the Korean company Sunkyong Limited was acquired by Samling in April 2005). Information from the IPO prospectus of Samling Global Limited - Our history and corporate structure (page 118) and Appendix I accountants' report (page I-84) – February 2007.

Challenges

- J. Weak commitment to responsible forest management – application for independent, third-party, voluntary certification of the quality of forest management in any of the international schemes requires observance of all current policies, procedures and standards.
- K. Weak commitment to full implementation of FDI arrangements, 1991 & 2001 & 2004 – it would be desirable to revise the FDI arrangements to match the OECD guidelines for multinational companies. However, this revision should be between the Government of

- Guyana and Samling as the Partner named in the FDI documents. This is not the responsibility of the subsidiary company Barama.
- L. Illegal activities – sub-letting of “landlorded” concessions, bad faith negotiation of logging agreements on titled Amerindian Village Lands, lack of Environmental Impact Permit for logging road, restricted access to a public road, off-concession abuse of FDI tax reliefs, unpaid taxes²².
 - M. Environmental protection failures – see public summaries of SGS Qualifor certification report (February 2006) and ASI monitoring of SGS Qualifor surveillance mission (January 2007) and WWF Guianas public summary (May 2007).
 - N. Social protection failures - see public summaries of SGS Qualifor certification report (February 2006) and ASI monitoring of SGS Qualifor surveillance mission (January 2007) and WWF Guianas public summary (May 2007).

Response options

J1. Commitment to responsible forest management – develop a well publicised commitment covering all forest-related aspect of Barama’s operations. This commitment should fulfil the intention of the FSC international Board of Directors that the partial certification policy for large holdings should apply to all parts of such holdings, even though not all parts are required to be included in applications for certification. Although an owner or manager can declare a schedule and intention to submit all parts for certification, Barama is required (and should have been required in 2005) to ensure that all parts satisfy the requirements for responsible forest management, at or before applying for partial certification. The current consultation draft of this FSC policy, document FSC-POL-20-002 V3-0 dated 25 May 2007, confirms this position.

K1. Commitment to full implementation of FDI arrangements, 1991 & 2001 & 2004 – there has been public censure of Barama for non-compliance with the terms of its FDI agreement by the Minister for Forestry at a press conference on 8 December 2006²³ and subsequently.

K2. Barama should develop an action plan with a calendar of investments and operational deadlines, indicators of progress, means of verification, and independent audit that the action plan is being properly and fully implemented.

K3. Article 10 of the FDI arrangement requires the owner of Barama and the Government of Guyana to agree on a local pricing policy for local marketing of Barama products. Unilateral announcements by Barama about local price changes are contrary to the FDI terms²⁴. Barama’s abuse of its illegally acquired dominant position as a log supplier is contrary to the intention of the FDI arrangement.

L1. Illegal activities – Barama should immediately cease its illegal operations, including - sub-letting of “landlorded” concessions; its “bad faith” logging agreements on titled Amerindian Village Lands; its construction and use of logging roads without prior Environmental Impact Permits; its restriction of access to a public road; its off-concession abuse of FDI tax reliefs.

L2. Barama should immediately pay off its unpaid taxes, including - the export commission on greenheart logs from its own forest harvesting concession TSA 04/1991 and the whole commission on logs obtained by legal and illegal means from other areas; backlogs of area (acreage) fees; backlog of royalties and all other taxes.

L3. Barama should cease its applications for more and more duty-free fuel under its FDI arrangements, and should cease using such fuel outside its own concession, either under its own name or as supplied to its subsidiaries, contractors, and associates. This use is contrary to an explicit Cabinet directive in 2006.

M1. Environmental protection failures – Barama should develop, publish widely and implement an action plan to eliminate the environmental protection failures noted in the three above-mentioned evaluations, by SGS Qualifor, ASI, and WWF Guianas. All activities in the action plan should be associated with indicators of progress, means of verification by independent

forest monitors, a schedule of deadlines, and a mechanism to identify and address slippages in the calendar of the action plan. The action plan should include a mechanism for reviewing all environmental aspects of the Guyana-specific standard for responsible forest management developed by SGS Qualifor²⁵.

N1. Social protection failures - Barama should develop, publish widely and implement an action plan to eliminate the social protection failures noted in the three above-mentioned evaluations. All activities in the action plan should be associated with indicators of progress, means of verification by independent forest monitors, a schedule of deadlines, and a mechanism to identify and address slippages in the calendar of the action plan. The action plan should include a mechanism for reviewing all social aspects of the Guyana-specific standard for responsible forest management developed by SGS Qualifor; see end note 3.

N2. Amerindian Village Lands – Barama should agree a culturally and practically relevant package of compensation with the despoiled Amerindian Village Councils, with which it negotiated through the subsidiary IWPI “in bad faith” logging agreements and to which it failed to pay agreed resource access charges. Bad faith agreements are not permitted according to Article 55 (1) (d) in the Amerindian Act 2006.

Counter arguments and supplementary cautions

It is evident that the relevant government departments and agencies in Guyana – Environmental Protection Agency (EPA), Guyana Energy Authority (GEA), Guyana Forestry Commission (GFC), Guyana Revenue Authority (GRA, including the Customs Administration), Ministry of Home Affairs – are not capable on their own of providing effective supervision and control of the transnational Barama. Bottom-line requirements for EU Voluntary Partnership Agreements for continued export of timbers into the European Union include independent forest monitoring (IFM). It would be sensible for Guyana to learn and apply lessons available globally on IFM, which is a partnership between civil society and government and the private sector.

Barama’s possible defences ?

(i)

(from Asia Sentinel 22 March 2007)

Credit Suisse said in a statement that the bank's business relationship with its client 'was put through a comprehensive review process, during which compliance with local environmental regulations and international standards of sustainable management of natural tropical forests was a particularly important issue. We concluded, in line with the other banks involved, that the client's activities are in compliance with these standards. Controversial topics were raised with the client and discussed.'

Answer – the SGS Qualifor (February 2006) and ASI (January 2007) reports show that the failures of Barama are not occasional or scattered. Taken together, as FSC requires a holistic view, the failures in relation to FSC criteria show a persistent inability to demonstrate responsible forest management as assessed against the FSC international standard. There are failures against local environmental regulations (EPA and national forest law), as well as against the non-binding GFC Code of Practice for Timber Harvesting which Barama claims to be following.

(ii)

Barama should only be assessed for SFM performance in those compartments which it proposed for FSC assessment

Answer – the FSC policy on partial certification requires that all areas under the effective managerial control of the applicant enterprise must demonstrate responsible forest management (including compliance with FSC criterion 1.1 on national law and regulation). It is evident that

the illegally landlorded (rented) forest harvesting concessions and Amerindian areas are not managed sustainably. Moreover, this is acknowledged in the Samling IPO prospectus which indicates that Barama intends to log through by 2016. And see Response Option J1 above.

(iii)

The various reports and allegations may indicate persistent incompetence but they do not demonstrate that Barama has engaged consistently in corruption of the Government of Guyana

Answer - the detected non-compliances require the incompetence or connivance of several government agencies – EPA, GEA (failure to test fuel for tax-paid marker when used by Barama outside TSA 04/1991), GFC, GRA (abuse of duty free equipment and fuel imports, Customs declarations for exports), Home Affairs (labour conditions and employment) over a long period. Renting of landlorded concessions is large-scale and blatant. The illegality of the logging contracts with titled Amerindian communities is illustrated by the claim by the IWPI director Basdeo Singh at an Akawini Village Meeting to be “untouchable”, plus Barama statements to Akawini Village Council and Village Meetings. There are persistent unexplained discrepancies in declared log prices between Guyanese and Chinese Customs data, comparing technically similar timbers because there are no ITTO data from China on Guyanese log cif prices. These discrepancies are textbook evidence of under-invoicing or transfer pricing. The Minister for Forestry agreed on 8 December 2006 to open an investigation and to make data available (see end note 23) but within a month of the Minister’s statement the Commissioner of GFC refused to say what was loaded on log ship MV Rong Chen²⁶.

It is the combination of non-compliances across several aspects of Barama’s activities which provide *prima facie* evidence of persistent corruption. Plus (since 2000) Barama’s control over access to its logging areas (it is against the law for a private entity to close a road on public land), and non-publication of forest management documents in Guyana (no FSC-required public summaries). The most self-consistent (Ockhamite) explanation of persistent non-compliances is corrupt payments to prevent legal monitoring.

Prima facie – at first appearance; on the face of things (Oxford dictionary of law, third edition, 1994)

Replicable lessons

Keys to improvement are greater transparency in procedures, published indicators of compliance which are objectively verifiable, better internal audits, internal or external penalties for compliance failures, and open reporting of external scrutiny. The UNEP Finance Initiative and the UN Global Compact are dead letters without critical scrutiny of reporting on compliance and without penalties for non-compliance.

The most important element is a genuine and self-critical commitment to implementation of CESR codes.

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Readers may be surprised at the references to articles and letters in independent newspapers. This is a reflection of the near-absence of open discussion fora in Guyana, the lack of recent tradition for sustained oral debate, and the closed and secretive nature of executive government without a functional parliament to call it to public account. Use of the independent daily Press enables issues to be raised and pursued in quick succession, which is important when the national natural forest resources and economy are being pillaged rapidly.

Other pertinent letters and Press accounts are posted on the URL = www.guyanaforestryblog.blogspot.com.

Acknowledgements

This paper has been made possible by access to the prospectus of the Initial Public Offering of Samling Global Limited on the Hong Kong stock exchange, to which our attention was kindly drawn by Lukas Straumann of Bruno Manser Fonds. We have benefited greatly from advice by James Hewitt on trade statistics. We have made use of correspondence from Anthea Lawson at Global Witness and from Marcus Colchester from the Forest Peoples' Programme / World Rainforest Movement in relation to HSBC.

¹ From July 2000, UK pension funds have been required to state "the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of

investments, and their policy (if any) directing the exercise of rights (including voting rights) attaching to such investments"; quoted in Mansley & Hildyard (2002, page 13).

² URL = <http://www.oecd.org/dataoecd/56/36/1922428.pdf> for OECD Guidelines for Multinational Enterprises.

³ URL = [http://www.forestry.sgs.com/ad-63gy-01 - fm_standard_\(guyana\).pdf](http://www.forestry.sgs.com/ad-63gy-01 - fm_standard_(guyana).pdf) dated 1 February 2005, for local adaptation for Guyana of the generic FSC forest stewardship standard by SGS Qualifor.

⁴ URL = http://www.forestry.sgs.com/9205-gy - barama_ma2005-10 - ad36a-03_gm.pdf dated 17 February 2006. SGS dealt brusquely with the objections from civil society to the certification, and that led to complaints to Accreditation Services International GmbH (ASI, the accreditation authority for FSC of SGS Qualifor). Hubert de Bonafos of ASI and Daniel Arancibia of FSC Latin America and the Caribbean monitored the SGS surveillance mission in November 2006. A group of eight Guyanese, drawn from civil society and the lead Amerindian NGO presented to SGS Qualifor a list of 36 points relating to Barama's non-compliance with FSC Principles & Criteria, without obtaining a reply to date.

SGS Qualifor is in default by not publishing the public summary of its surveillance report, but there were a significant number of both major and minor CARs, which led to the suspension of the SGS Qualifor certificate to Barama. ASI published the public summary of its monitoring report in January 2007; URL = <http://www.accreditation-services.com/Documents/ASI-Forest%20Management%20Audit-Guyana-SGS-2006-Final.pdf> dated 15 January 2007, and that has been circulated widely.

WWF Guianas, by then headed by Dominiek Plouvier, announced then that it would support Barama to regain its FSC certificate; URL = http://www.stabroeknews.com/index.pl/article_general_news?id=56515844 dated 11 March 2007, unsigned article entitled "Forestry certificate suspension: Barama correcting faults" and http://www.stabroeknews.com/index.pl/article_general_news?id=56516373 dated 18 March 2007, unsigned article entitled "Barama corrects forest management deficiencies: expects reversal of suspension". WWF (including WWF US) went with Barama to FSC International Centre in Bonn to persuade FSC and ASI to restore the certificate, but that was refused.

The encouraging message from WWF Guianas at that time has been replaced by a more sober assessment during February-March 2007, summarised in a locally published note; URL = <http://www.stabroeknews.com/index.pl/article?id=56519586> dated 5 May 2007, unsigned article entitled "WWF restates call to Barama for major commitment to responsible forestry". It is still unclear if WWF appreciates the magnitude of the illegal operations and the environmental damage caused by Barama, although the most recent report indicates some realisation; URL = <http://www.stabroeknews.com/index.pl/article?id=56521485> dated 2 June 2007 by Johann Earle, entitled "Barama says shortage of local skills delaying veneer plant" and quoting WWF Guianas country manager in Guyana, Patrick Williams.

⁵ URL = <http://www.stabroeknews.com/index.pl/article?id=56521485> dated 2 June 2007 by Johann Earle, entitled "Barama says shortage of local skills delaying veneer plant", and quoting Barama's forest manager, Neil Chand.

⁶ URL = <http://www.stabroeknews.com/index.pl/article?id=56520728> dated 20 May 2007, entitled "The evidence against Barama was consolidated in a dossier which I presented to the Credit Suisse Bank on May 3, 4". This is a shortened version of the dossier, without the end notes, in order to fit the space limitations of a daily newspaper. The full version, updated after the meetings with Credit Suisse, is available from the author, e-mail janette.bulkan@yale.edu.

⁷ Pages 132-134 in section Global Offering, Business, in IPO prospectus of Samling Global Limited, February 2007, URL = <http://www.hkex.com.hk/listedco/listconews/sehk/20070223/LTN20070223016.htm>.

⁸ URL = http://www.stabroeknews.com/index.pl/article_business?id=56521556 dated 2 June 2007 by Christopher Ram, entitled "Barama and the Law"

⁹ URL = <http://www.hkex.com.hk/listedco/listconews/sehk/20070223/LTN20070223016.htm> for IPO prospectus from Samling Global Limited, February 2007.

¹⁰ published in the global edition of the International Herald Tribune on 7 March 2007; URLs = <http://www.bmf.ch/en/news/?show=33> and http://www.bmf.ch/files/news/IHT_ad_quarter_press.pdf; see also http://www.illegal-logging.info/item_single.php?item=news&item_id=1920&approach_id=15.

¹¹ URL = http://www.stabroeknews.com/index.pl/article_archive?id=56499854 dated 20 July 2006 by Howard Bulkan, entitled "Not a good deal for an Amerindian village or the country" and <http://www.stabroeknews.com/index.pl/article?id=56516165> dated 16 March 2007 by Johann Earle, entitled "Akawini villagers want out of logging deal – say it was made in bad faith".

¹² URL = <http://www.bmf.ch/de/news/?show=51> – News item on the Press release from Bruno Manser Fonds entitled "Credit Suisse soll Urwald völker mit 10 Millionen Dollar entschädigen".

¹³ URL = http://www.illegal-logging.info/item_single.php?item=news&item_id=1979&approach_id=4 – from Asia Sentinel 23 March 2007.

¹⁴ URL = <http://www.foe.org/camps/intl/declaration.html>. For each of the under-listed six commitments, the Collevocchio Declaration suggested immediate steps which the financial institutions could take. If Credit Suisse and HSBC had subscribed to these commitments and implemented the immediate steps, they would surely not have engaged with Samling Global Limited.

1. Commitment to Sustainability

Financial Institutions (FIs) must expand their missions from ones that prioritize profit maximization to a vision of social and environmental sustainability. A commitment to sustainability would require FIs to fully integrate the consideration of ecological limits, social equity and economic justice into corporate strategies and core business areas (including credit, investing, underwriting, advising), to put sustainability objectives on an equal footing to shareholder maximization and client satisfaction, and to actively strive to finance transactions that promote sustainability.

2. Commitment to 'Do No Harm'

FIs should commit to do no harm by preventing and minimizing the environmentally and/or socially detrimental impacts of their portfolios and their operations. FIs should create policies, procedures and standards based on the Precautionary Principle to minimize environmental and social harm, improve social and environmental conditions where they and their clients operate, and avoid involvement in transactions that undermine sustainability.

3. Commitment to Responsibility

FIs should bear full responsibility for the environmental and social impacts of their transactions. FIs must also pay their full and fair share of the risks they accept and create. This includes financial risks, as well as social and environmental costs that are borne by communities.

4. Commitment to Accountability

FIs must be accountable to their stakeholders, particularly those that are affected by the activities and side effects of companies they finance. Accountability means that stakeholders must have an influential voice in financial decisions that affect the quality of their environments and their lives -- both through ensuring that stakeholders' rights are protected by law, and through practices and procedures voluntarily adopted by the FI.

5. Commitment to Transparency

FIs must be transparent to stakeholders, not only through robust, regular and standardized disclosure, but also through being responsive to stakeholder needs for specialized information on FIs' policies, procedures and transactions. Commercial confidentiality should not be used as an excuse to deny stakeholders information.

6. Commitment to sustainable markets and governance

FIs should ensure that markets are more capable of fostering sustainability by actively supporting public policy, regulatory and/or market mechanisms which facilitate sustainability and that foster the full cost accounting of social and environmental externalities.

¹⁵ United Nations Global Compact, URL = <http://www.unglobalcompact.org/AboutTheGC/index.html> and ... <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>, where see Principles 7, 8 and 10. Credit Suisse and HSBC have signed the UN Global Compact.

¹⁶ UNEP Finance Initiative, URL = <http://www.unepfi.org/signatories/statements/fi/index.html>. Credit Suisse and HSBC have signed the UNEP Finance Initiative. This Initiative is rooted in the UNEP Statement by Banks on the Environment and Sustainable Development (1992), associated with the UNCED Earth Summit at Rio de Janeiro. Much of the wording of that Statement has carried over into the UNEP Finance Initiative. And see “The Materiality of Social, Environmental and Corporate Governance Issues to Equity Pricing” by the UNEP Finance Initiative Asset Management Group (2004), URL = http://www.unepfi.org/fileadmin/documents/amwg_materiality_equity_pricing_report_2004.pdf.

¹⁷ URL = <http://www.credit-suisse.com/>

then attach the following pages to form each of the 7 URLs -

- [responsibility/en/common_values.html](http://www.credit-suisse.com/responsibility/en/common_values.html) – commitment to sustainability
- [responsibility/en/principles.html](http://www.credit-suisse.com/responsibility/en/principles.html) – principles and agreements – top right hand size has a panel with clickable links to the Code of Conduct, Sustainability Policy 13 September 2006 (see second bullet under section 5, products and services) and Due Diligence Requirements (see third paragraph). This page refers to the UN Global Compact and to the Equator Principles (which do not apply in this case as Barama is not a project for loan funding)
- [responsibility/en/implementations.html](http://www.credit-suisse.com/responsibility/en/implementations.html) – see last paragraph – duties of the Operational Ecology specialist unit
- [responsibility/en/sustainable_rating.html](http://www.credit-suisse.com/responsibility/en/sustainable_rating.html)
- [governance/en/code_of_conduct.html](http://www.credit-suisse.com/governance/en/code_of_conduct.html)
- [governance/en/standards_policies.html](http://www.credit-suisse.com/governance/en/standards_policies.html)
- [governance/en/auditors.html](http://www.credit-suisse.com/governance/en/auditors.html)

Sustainability Policy of 13 September 2006, document CS-RPA 09/13/2006, section 5 Products and Services – second bullet – “by integrating environmental and social risks in the financial services business in our risk assessments we support our clients in their risk management and risk mitigation.”

Due Diligence Requirements, third paragraph, Management of environmental and social risks in the lending business – “The early identification of environmental and social risks is a key aspect of product development and product enhancement. To avoid credit, liability and reputation-related risks, for example, sensitive transactions undergo a clearly defined process that enables environmental risks to be identified and assessed.”

Responsibility / Commitment to Sustainability / Implementation – “Specialist units and teams of staff with a direct involvement – such as Product Management, Risk Management and the Operational Ecology specialist unit – ensure that the sustainability strategy is duly implemented”.

¹⁸ UNEP Finance Initiative, URL = <http://www.unepfi.org/signatories/statements/fi/index.html>. Credit Suisse and HSBC have signed the UNEP Finance Initiative.

¹⁹ a. HSBC web page “CR at HSBC” states “We aim to lend and invest responsibly, avoiding projects where the potential for social and environmental damage outweighs the economic benefits” and “Companies like ours must share responsibility for the environment with governments and citizens for minimising the damaging effects of human activity - ... and the depletion of resources”; URL = <http://www.hsbc.com/hsbc/csr/csr-at-hsbc>.

b. HSBC web page “Frequently asked questions” states Question 9 – “Does HSBC have a code of good ethical conduct ?” and responds “Yes. HSBC has long espoused high ethical standards in the conduct of its business ... a strong sense of responsibility [has] been our hallmark[s] in dealings with our stakeholders”; URL = <http://www.hsbc.com/hsbc/csr/csr-at-hsbc/faqs#9>.

c. HSBC web page “Key CR issues” notes under Commercial Banking that “1. Environmental credit risk needs to be managed carefully to minimise ecological damage caused indirectly through financing” and “2. Emerging markets pose certain regulatory and ethical risks”. The same web page notes under Corporate, Investment Banking and Markets – 1. Social, environmental and financial risks and opportunities of major projects – that “We developed, in 2004, a strategy for managing sustainability risks, “From Risk to Opportunity”. We have since put in place a new head office function, Group Sustainable Development, to

implement the strategy ...”. In addition, “Employees ... receive training on sector guidelines relevant to their business area when each guideline is issued”; URL = <http://www.hsbc.com/hsbc/csr/csr-at-hsbc/key-csr-issues>.

d. HSBC web page “International Commitments” lists seven external codes of conduct, of which three are directly applicable to the case of the Samling IPO: - UNEP Finance Initiative, UN Global Compact, OECD guidelines for multinational enterprises; URL = <http://www.hsbc.com/hsbc/csr/csr-at-hsbc/stakeholder-engagement/international-commitments>.

e. HSBC web page “Sector guidelines” mentions that Forest Land and Forest Products Sector Guideline, issued in May 2004. Only a 2-page summary is accessible although it is known that the full guideline contains at least 19 pages. The guideline set out broad principles of good forest management. HSBC notes “the apparent high environmental and social risks inherent in the forestry industry and related downstream activities”. HSBC refers to its following of the Safeguard Policies in respect of Forestry from the International Finance Corporation (URL = www.ifc.org) and thus declares that “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 in respect of illegal logging
 - Logging operations that include any species listed in CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna), Appendix I
- “• Companies which purchase, trade or process timber from the above sources
- “• Projects located in and which significantly degrade or convert Critical Natural Habitats”.

The Sector Guideline from HSBC contains a section on Social impacts –

“Certain FSC principles (international Forest Stewardship Council) cover the impacts on affected societies, such as land title and land use rights, the rights of indigenous peoples, community relations and workers’ rights and economic benefits from forest land use. We will ensure that we are aware of these issues and that our customers are observing international standards in this respect”.

²⁰ URL = <http://a248.e.akamai.net/7/248/3622/e68469fa4d3f21/www.img.ghq.hsbc.com/public/groupsite/assets/csr/forestlandpdf.pdf> for summary of HSBC Forest Land and Forest Products Sector Guideline (May 2004).

²¹ Wood Cutting Leases and Timber Sales Agreements and State Forest Permissions

²² URL = http://www.stabroeknews.com/index.pl/article_archive?id=23671866 dated 7 July 2005 by Howard Bulkan, entitled “Fantastic tax concessions are being enjoyed by Barama who may control about 50% of all production forests”.

²³ Relevant Press articles and letters begin with URL = <http://www.stabroeknews.com/index.pl/article?id=56508102> dated 18 November 2006, unsigned article entitled “Govt to review national forestry policy after export-of-logs debate” Saturday, November 18th 2006, and <http://www.stabroeknews.com/index.pl/article?id=56509485> dated 9 December 2006, by Nicosia Smith entitled “Forestry transfer pricing probe on – Commissioner Singh – Barama, Jialing to come under closer scrutiny”, and equivalent columns in the independent Kaieteur News and the government-owned Guyana Chronicle. However, Barama has published no time-lined action plan to show how it will implement its commitment in 1999 to invest US\$32 million; updated to US\$ 35 million in May 2007 – see URL = http://www.stabroeknews.com/index.pl/article_archive?id=56510154 dated 20 December 2006, feature article in Stabroek News by Johann Earle entitled “Barama promising major developments next year plant” and URL = <http://www.stabroeknews.com/index.pl/article?id=56521485> dated 2 June 2007, by Johann Earle entitled “Barama says shortage of local skills delaying veneer plant”. But this is more than 16 years after Samling promised to provide training to local workers; article 11.3 in its FDI agreement of February 1991.

²⁴ URL = <http://www.stabroeknews.com/index.pl/article?id=56520529> dated 18 May 2007, unsigned article entitled "Precision [Woodworking Ltd.] will now have to pay comparable international price for Barama locust: response to what Barama says is Janet Bulkan "family vendetta"". Locust is the furniture quality timber *Hymenaea courbaril*, known in Brazil as jatobá or courbaril and in Trinidad as stinking toe.

²⁵ URL = http://www.forestry.sgs.com/ad-63gy-01_fm_standard_guyana.pdf dated 1 February 2005, for local adaptation for Guyana of the generic FSC forest stewardship standard by SGS Qualifor.

²⁶ Some of the letters in Stabroek News, Kaieteur News and Guyana Chronicle: URL = http://www.stabroeknews.com/index.pl/article_archive?id=56509816 dated 14 December 2006 by Mahadeo Kowlessar entitled "Can these shipping documents be published?"; URL = http://www.stabroeknews.com/index.pl/article_archive?id=56510172 dated 20 December 2006 by Seelochan Beharry entitled "Who is watching what species or how many logs are being exported?"; URL = http://www.stabroeknews.com/index.pl/article_letters?id=56510481 dated 25 December 2006 by Mahadeo Kowlessar entitled "The GFC and Guyana Revenue Authority need to tackle the prima facie case of falsification of export records for logs", and in Kaieteur News entitled "A prima facie case of falsification of log exports"; (no URL recorded) letter dated 25 December 2006 by Patrick Jackson entitled "Guyana's log exports to Asia", and in Guyana Chronicle entitled "Timber shipment questions"; URL = <http://www.stabroeknews.com/index.pl/article?id=56510911> dated 27 December 2006 by Patrick Jackson entitled "Which timber exporters had cargo on the Rong Chen?" and repeated under a different title on 30 December; URL = <http://www.stabroeknews.com/index.pl/article?id=56510568> dated 3 January 2007 by Patrick Jackson entitled "Could the Commissioner provide details of the cargo on the 'Rong Chen'?". These requests were refused by the Commissioner of Forests, contradicting his Minister's assurance on 8 December 2006 that data would be made public, in his note in Stabroek News, URL = <http://www.stabroeknews.com/index.pl/article?id=56510894> dated 3 January 2007 entitled "Questioned timber above board – Commissioner Singh - GFC not releasing cargo details".