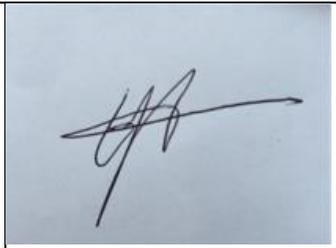


## Mighty Earth complaint against KTS Group associated companies, for violations against the FSC ‘Policy for Association.’

### Information of the individual(s) or organisation(s) that file the complaint:

Name of individual or organisation	Mighty Earth
Contact person (for organisations)	Phil Aikman, Southeast Asia Campaign Director (Contact person for this complaint)
Postal address: <input type="checkbox"/> Street + number <input type="checkbox"/> City <input type="checkbox"/> Area code <input type="checkbox"/> Country	Mighty Earth, c/o Center for International Policy 2000 M Street NW, Suite 720 Washington, DC 20036 USA
Phone number	+ 44 7801212995 (Mighty Earth)
Fax number	
Email address	phil@mightyearth.org
Website	www.mightyearth.org
FSC member (if yes: international/ national, chamber, North/South)	No – Mighty Earth
Date of submission	14 May 2019

Signature of legal representative of the Complainant (Mighty Earth)



Etelle Higonnet, Campaign and Legal Director, Mighty Earth

**Information about the Organisation(s) against whom the complaint is submitted:**

Name	Known KTS Group FSC-Certified companies: <a href="#">KTS Timber Sdn Bhd</a> (valid to 1 August 2022), <a href="#">Bright Wood Sdn Bhd</a> (valid to 29 August 2022) and <a href="#">KTS Logs Marketing Sdn Bhd</a> (certificate terminated on 9 March 2019)
Contact person	Alvin Lau
Postal address	KTS Group Headquarters
📍 Street + number	Crown Towers,
📍 City	88 Jalan Pending,
📍 Area code	Kuching,
📍 Country	Sarawak, Malaysia.
Phone number	
Fax number	
Email address	<a href="mailto:bldpb@bldpb.com.my">bldpb@bldpb.com.my</a> ;
Website	No KTS Group website. BLD Plantation website: <a href="http://www.bldpb.com.my">www.bldpb.com.my</a>
Certificate number (s)	KTS Timber Sdn Bhd (SGS-COC-009529, valid since 2 Aug 2012) Bright Wood Sdn Bhd (SGS-COC-009532, valid since 2 Aug 2012), KTS Logs Marketing Sdn Bhd (SGS-COC-010145, valid since 10 March 2014 but certificate expired 9 March 2019)

**Information to be submitted for a Policy for Association complaint:**

Issue	Information to support the complaint
Objective of the complaint	Demonstrating that the KTS Group has extensively violated the FSC Policy for Association through the <i>'significant conversion of forests to plantations'</i> , <i>'destruction of high conservation values in forestry operations'</i> , <i>'violation of traditional and human rights in forestry operations'</i> and <i>'illegal logging or the trade in illegal wood or forest products.'</i>

Specification of the issues and events that lead to the complaint.	<p>Since at least 2015, several Sarawak-focused NGOs have been campaigning against KTS Group's ongoing deforestation its BLD Plantation Bhd concession located north of Sibul, Sarawak. These NGOs include Friends Of The Orangutan Malaysia (FOTO), Sarawak Dayak Iban Association (SADIA), Sarawak Report<sup>1</sup> (an investigative journalism online news resource set up by Clare Rewcastle Brown, the sister-in-law of the former British Prime Minister Gordon Brown), and members of the Mighty Earth team.</p> <p>In August 2015, five individuals acting on behalf of the Iban community of kampung Tutus - which are claiming that their Native Customary Rights are being violated by BLD Plantation – filed a lawsuit in the High Court of Sabah and Sarawak against Bintulu Lumber Development Sdn Bhd (BLD)<sup>2</sup>, a subsidiary of BLD Plantation Bhd<sup>3</sup>, and another plantation company adjacent to the BLD Plantation Bhd concession. At the time of writing this complaint this case is still pending.<sup>4</sup></p> <p>In October 2015, these NGOs raised the issues with BLD directly with former Sarawak Chief Minister Tan Sri Adenan Satem and urged him to take action. Despite promising he would follow up this issue, no action was taken.</p> <p>In February 2016, the Director of <a href="#">FOTO wrote</a> to Dato Henry Lau Lee Kong, Executive Chairman of BLD Plantation Bhd,</p>
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stating that<sup>5</sup>:

*'BLD must stop this disaster immediately and resolve the conflicts with the local communities. We reiterate our demands to BLD:*

- Immediately stop further exploitation of peat in your concession located north of Sibu and in any other concession owned by the company including in the future.*
- Commit to a strong 'No Deforestation, No Peat and No Exploitation' policy, which also covers your suppliers and subsidiaries. In this regard FOTO can be of assistance.*
- Commit to restore an area of peat and forest at least equivalent to areas previously cleared by BLD Plantations.*
- Fair resolution of conflicts with local communities.'*

Despite the genuine efforts of these NGOs to get BLD Plantation Bhd to immediately halt further deforestation, the company continued to fully develop the concession into oil palm plantations. There has been considerable media covering this conflict within Malaysia.<sup>6</sup>

In 2017, Mighty Earth launched a '[Rapid Response](#)' satellite mapping-based system to identify deforestation and peatland development across 3,500 concessions in Indonesia and Malaysia, covering 21 million hectares. The GIS mapping system allows Mighty Earth, alongside its partners MapHubs and Aidenvironment, to identify and document emerging and ongoing cases of companies engaged in deforestation and/or peatland development.

Rapid Response reports highlighting these cases are regularly sent to the main companies that control the majority of the global trade in palm oil. These companies are expected to intervene with those suppliers involved in deforestation to try and stop it.

Rapid Response [report #4](#) (May 2018) and [report #5](#) (June 2018) highlighted the ongoing conversion of peatland forest in a KTS Group oil palm concession in Sarawak held by BLD Plantation Bhd). This continued in this concession up until at least 6 December 2018.

Several large global palm oil traders have now suspended contracts with BLD Plantation related companies, as sourcing from companies engaged in deforestation, peatland development and human rights exploitation is in violation of the

	<p>companies' <i>'No Deforestation, No Peatland, No Exploitation'</i> (NDPE) policies. This list includes AAK, Bunge Lodders Croklaan, IOI, Louis Dreyfus, and Wilmar.<sup>7</sup> In fact, Wilmar and Bunge expelled BLD and its Kirana palm oil refinery in 2015 when members of the Mighty Earth team, Friends of the Orangutans Malaysia, and other NGOs exposed its large-scale clearance of peatlands and encroachment onto Native Customary Rights lands.<sup>8</sup></p> <p>See section below (<i>'Overview of the steps that were taken to resolve the issues prior to lodging this complaint and the response that was provided'</i>) for further details of issue and events that to the complaint.</p>
<p>The complaint is referring to one or more of the PfA unacceptable activities (please mark the activities):</p>	<ol style="list-style-type: none"> <li>1 . Significant conversion of forests to plantations or non-forest use; <ol style="list-style-type: none"> <li>a) Conversion of more than 10,000 ha of forests under the organization's responsibility in the past 5 years;</li> <li>b) Conversion of High Conservation Value Forests:</li> </ol> </li> <li>2 . Destruction of high conservation values in forestry operations</li> <li>3 . Violation of traditional and human rights in forestry operations;</li> <li>4 . Illegal logging or the trade in illegal wood or forest products.</li> </ol>
<p>Evidence to support each element or aspect of the complaint. Please provide an overview, a description and attach supporting documents.</p>	<p>See 'Supporting Evidence' attached</p>

Overview of the steps that were taken to resolve the issues prior to lodging this complaint and the response that was provided.

See also section above ('Specification of the issues and events that lead to the complaint')

On 18 June 2018, Mighty Earth started communications with BLD Plantation Bhd regarding the company's ongoing deforestation and peatland destruction. We alerted them to the fact that *'As three KTS Group companies – KTS Timbers Sdn Bhd, Bright Wood Sdn Bhd and KTS Logs Marketing Sdn Bhd – currently hold Forest Stewardship Council (FSC) certificates, these companies are formally obliged to not be 'indirectly involved' with sister companies (e.g. BLD Plantations Bhd) that are engaged in significant forest conversion, the destruction of high conservation values or other 'unacceptable activities', as defined by the FSC 'Policy for Association'.'*

Our last written response from KTS/BLD Plantation Bhd was on 3 August 2018. The letter signed by the Executive Director of BLD Plantation Bhd, Tan Haji Wan Abdillah, stated: *'we are in the midst of engaging an independent organisation/consultant to assist us on our sustainability journey. Meanwhile we are pleased to inform that we have no forest clearing activity therein'* (i.e. the company seemingly decided to implement a moratorium on further forest clearing.

However, evidence highlighted in Mighty Earth's Rapid Response report 11, shows that a total of 1,307 ha of peat forest were cleared within the BLD Plantation Bhd concession between 26 August and 6 December 2018 (Area A) and 12 October 12 and 2 December 2018 (Area B) – see Table 1 below. Thus, the moratorium referred to in Tan Haji Wan Abdillah's letter wasn't genuine.

At the time of filing this complaint, BLD Plantation Bhd is in the final stages of developing a 'Sustainable Palm Policy' – which incorporates aspects of a 'No deforestation, no peatland development, no exploitation' (NDPE) policy. However, the policy is not a group-wide policy covering all KTS Group plantation operations. Further, the policy does not address KTS Group's violations of the FSC Policy for Association detailed in this complaint. Hence, the filing and processing of this Policy for Association complaint is necessary to resolve these issues.

**Chronology of main written correspondence with KTS Group/BLD Plantation Bhd:**

18 June 2018: Mighty Earth sent a letter to Dato Henry Lau Lee Kong, the Executive Chairman of BLD Plantation Bhd (initial letter), who is also the KTS Group managing director of the KTS Group.

	<p><u>9 July 2018</u>: Mighty earth received a <u>reply received</u> from Alvin Lau of BLD Plantation Bhd, who is a son of Dato Henry Lau Lee Kong.</p> <p><u>17 July 2018</u>: Mighty Earth <u>replies to</u> the above letter from Alvin Lau.</p> <p><u>31 July 2018</u>: Mighty Earth <u>email</u> to Alvin Lau, BLD Plantation Bhd</p> <p><u>3 August 2018</u>: <u>Reply received</u> from Tan Haji Wan Abdillah, the Executive Director of BLD Plantation Bhd.</p> <p><u>17 August 2018</u>: Mighty Earth reply to above letter. Letter sent to Tan Haji Wan Abdillah, the Executive Director of BLD Plantation Bhd.</p> <p><u>3 September 2018</u>: Mighty Earth <u>email</u> to Tan Haji Wan Abdillah, the Executive Director of BLD Plantation Bhd</p> <p><u>3 March 2019</u>: Mighty Earth <u>email</u> Tan Haji Wan Abdillah, the Executive Director of BLD Plantation Bhd.</p> <p><u>17 March 2019</u>: Mighty Earth <u>email</u> Tan Haji Wan Abdillah, the Executive Director of BLD Plantation Bhd.</p>
<p>Agreement to share the complaint with the Defendant and other Parties to the Complaint.</p>	<p>Yes</p>
<p>Agreement to adhere to the terms and provisions of the PfA complaints procedure (FSC-PRO-01-009).</p>	<p>Yes</p>
<p>Miscellaneous</p>	<p>See Appendices</p>



# Mighty Earth complaint against KTS Group associated companies, for violations against the FSC ‘Policy for Association’: Supporting evidence

## Scope of the complaint

KTS Group FSC-certificate holders first acquired their certificates on 2 August 2012. Hence, we conclude that any ‘unacceptable activities’ conducted by the KTS Group (including but not limited to BLD Plantations Bhd, or its subsidiaries) after the 2 August 2012 should be considered in violation of the FSC Policy for Association.

### 1 . FSC Policy for Association Violation: ‘Significant conversion of forests to plantations or non-forest use’

a) *Conversion of more than 10,000 ha of forests under the organization's responsibility in the past 5 years;*

b) ‘Conversion of High Conservation Value Forests’

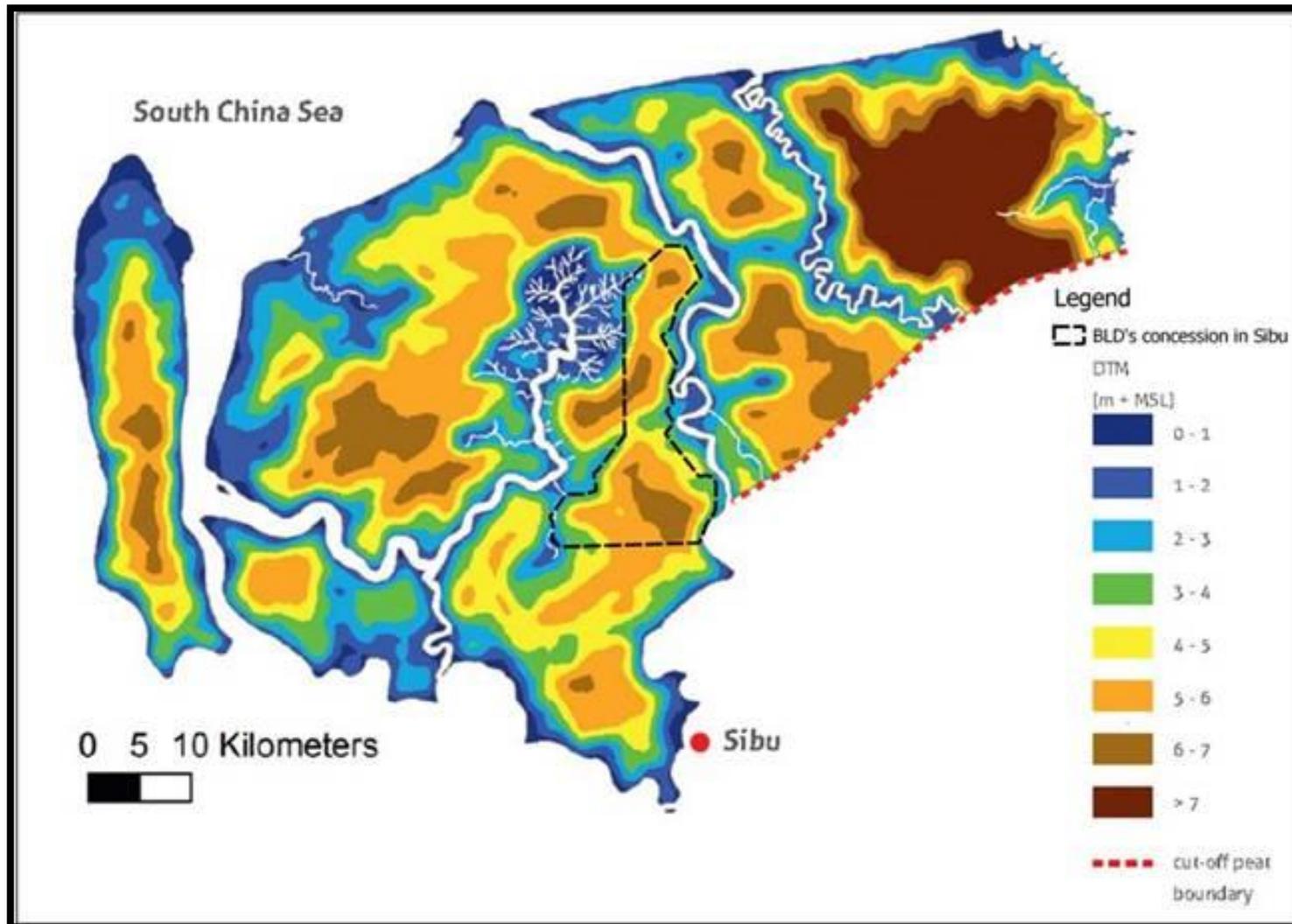
and;

### 2 . FSC Policy for Association Violation: ‘Destruction of high conservation values in forestry operations’

## Context

The BLD Plantation Bhd is located in the Rajang Delta areas of Sarawak, Malaysia. The concession covers a total area of 20,158 hectares and is located on two carbon-rich peatland domes, which have been mapped as being up to 6-7m. See Figures 1 below, which shows the location of the concession and its location in relation to the two peat domes (as well as the depth of the peat).

Figure 1: Spatial location of BLD Plantation Bhd in the Sibuluan region on peatland (source: [Wetlands International report, 2014](#)). The concession is located on very deep peat, which is prone to subsidence and flooding. The concession boundary is shown by black dash lines.



## **Carbon-rich peatland are High Conservation Values and should not be developed into plantations**

The 2013 RSPO 'Manual on Best Management Practices (BMPs) for management and rehabilitation of natural vegetation associated with oil palm cultivation on peat' states that: 'The concept of High Conservation Values (HCVs) was developed to provide a framework for identifying forest areas with special attributes that make them particularly valuable for biodiversity and/or local people. Peat swamp forests form unique ecosystems and are valuable resources for local communities. **By default, these areas would often be defined as HCV areas.** Conservation and maintenance of HCVs are engrained in the RSPO P&C..'<sup>9</sup>

Criterion 7.4 of the 2007 RSPO P&C (before updated in November 2018) states that 'Extensive planting on steep terrain, and/or on marginal and fragile soils, is avoided.' The guidance of 7.4 states: '**Planting on extensive areas of peat soils and other fragile soils should be avoided**'.<sup>10</sup>

The current FSC National Forest Stewardship Standards (NFSS) for Malaysia<sup>11</sup> states that:

'Management indicators for all Ecosystem Services ensure:

i. Peatlands are not drained;

ii. Wetlands, peatlands or natural grasslands are not converted to plantations or any other land use;

iii. Areas converted from wetlands, peatlands or natural grasslands to plantation since November 1994 are not certified, except where

a) The Organization provides clear and sufficient evidence that it was not directly or indirectly responsible for the conversion; or

b) The conversion is producing clear, substantial, additional, secure, long-term conservation benefits in the Management Unit; and

c) The total area of plantation on sites converted since November 1994 is less than 5% of the total area of the Management Unit.

iv. Knowledgeable experts independent of The Organization confirm the effectiveness of management strategies and actions to maintain and/or enhance the identified High Conservation Value areas.'

## Peat forest converted to oil palm plantations since August 2012

It is Mighty Earth's understanding that BLD Plantation Bhd did not commission an HCV assessment prior to the development of the concession or even during the process of developing the concession. This is confirmed by a letter from BLD Plantation Bhd to Mighty Earth dated 3 August 2018:<sup>12</sup>

*'...regarding the development of the land mentioned in your report, we would like to clarify that the land was purchased in 2000, with the Environmental Impact Assessment carried out in 2003 before development was started. The land was purchased as a cleared piece of logged over forest; this is evidenced in the EIA prepared and submitted to the relevant authorities. Subsequent to the approvals obtained, as per legal requirements, BLDP [BLD Plantation Bhd] commenced development of the land. During the time of the initial purchase of the land, a HCS/HCV assessment was not prevalent, nor was it discussed subject.'*

KTS Group FSC-certificate holders first acquired their certificates on 2 August 2012, hence any 'Conversion of High Conservation Value Forests' and/or 'Destruction of high conservation values in forestry operations' from this date would be a violation of the FSC Policy for Association.

Since 2 August 2012, we estimate that at least 12,000 hectares of peat forest was cleared within the concession. Within the last full 5 years (2014-2018), an estimated 11,642 hectares was cleared within the concession.

### **Estimate 1: BLD Plantation Bhd has cleared more than 12,000 ha since 2 August 2012**

Relevant for the following unacceptable activities:

- a) Conversion of High Conservation Value Forests;
- b) Destruction of high conservation values in forestry operations;
- c) Violation of traditional and human rights in forestry operations;
- d) Illegal logging or the trade in illegal wood or forest products.

Using the Hansen/UMD tree cover loss dataset, there was an estimated 8,658 hectares of tree cover loss (assumed to be deforestation) in the BLD Plantation concession between the beginning of 2013 and the end of 2017, which is about 42% of total concession area. An additional area of 940 ha of forest was cleared in 2012, part of which was cleared between 2 August 2012 and 31 December 2012. See Figure 3 and 4 below.

During the period of 9 March 2018 and 6 December 2018, Rapid Response monitoring identified a total of 3,346 hectares of peat forest which were cleared inside the BLD Plantation concession. An additional undetermined hectarage of forest may have been cleared between 1 January 2018 and 9 March 2018. See Table 1 below.

**8,658+3,346 = 12,004 ha (period 2013-2018)**

**Estimate 2: BLD Plantation Bhd has cleared more than 10,000ha of forests within the past 5 years**

Relevant for the following unacceptable activity:

a) Conversion of more than 10,000 ha of forests under the organization's responsibility in the past 5 years.

Using the Hansen/UMD tree cover loss dataset (available up to the end of 2017), there was an estimated **8,588 hectares** of tree cover loss (assumed to be deforestation) in the BLD Plantation concession during the period 2014 and 2017. See figure 3 and 4 below.

During the period of 9 March 2018 and 6 December 2018, Rapid Response satellite monitoring identified a total of **3,346 hectares** of peat forest cleared inside the BLD Plantation concession (See Table 1 below). An additional undetermined area of forest may have been cleared between 1 January 2018 and 9 March 2018.

**8,588 +3,346 = 11,642 ha** (five-year period 2014-2018)

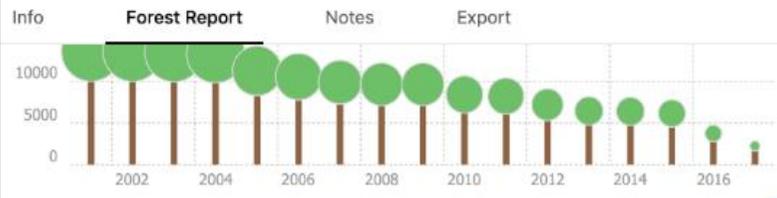
The Policy for Association 'significant conversion' threshold states: '*Conversion of more than 10,000 ha of forests under the organization's responsibility in the past 5 years.*' Hence, the last 5-year period would be May 2014 to April 2019 (inclusive).

If the 292ha figure for 2014 is excluded the figure is 11,642 hectares, the figure for 1 January 2015 to 6 December 2018 would be 11,350ha – i.e. still over the 10,000 hectares 'significant conversion' threshold.

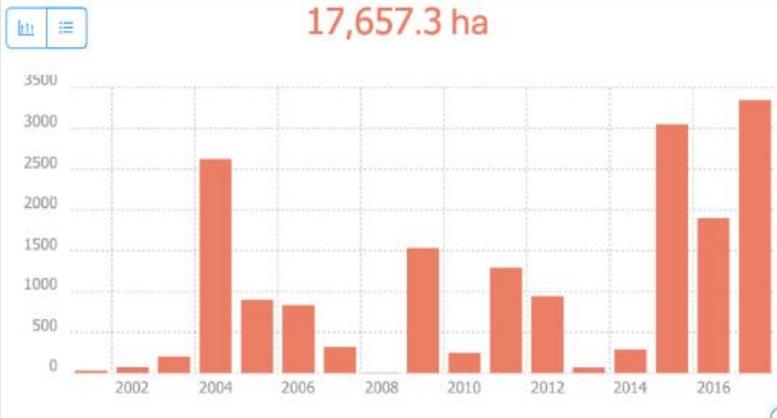
**Figure 3: Tree cover loss (assumed deforestation) 2001-2017, by year (analysis by MapsHubs)**



**Figure 4: An estimated 8,658 hectares of tree cover loss (assumed deforestation) is identified the BLD Plantation Bhd concession for the period 2013-2017. Analysis by MapsHubs.**



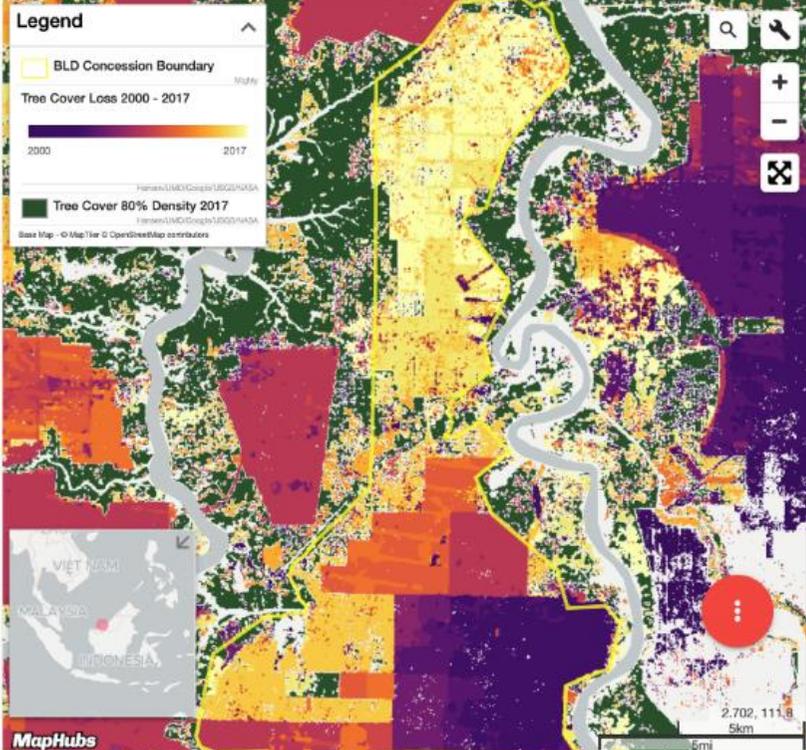
Tree Cover Loss (2001-2017)



**Legend**

- BLD Concession Boundary
- Tree Cover Loss 2000 - 2017  
2000 2017
- Tree Cover 80% Density 2017

Base Map - © Mapbox © OpenStreetMap contributors



**Table 1: Mighty Earth ‘Rapid Response’ report summary of deforestation findings for BLD Plantation Bhd**

Copies of all individual Rapid Response reports, with satellite analysis, can be downloaded at [www.mightyearth.org/rapidresponse](http://www.mightyearth.org/rapidresponse).

Report	Deforestation (ha)	Peat development (ha)	Peat forest deforestation (ha)	Clearance Prep/Stacking lines (ha)	Time Period	Planet images
Report 4	-	-	904	-	March 9 – May 22, 2018	See images below
Report 5	-	-	221	-	May 22 – June 23, 2018	
Report 6	-	-	78	-	June 14 – July 9, 2018	
Report 7	-	-	836	-	July 9 – August 26, 2018	
Report 11	-	-	1,307	-	August 26 – December 6, 2018 (Area A) and October 12 – December 2, 2018 (Area B)	See images below
<b>Total all reports</b>	-	-	<b>3,346</b>	-		

**Figure 4: Planet imagery used in Rapid Response reports 4 and 11. Imagery © 2019 Planet Labs Inc**



**The lefthand graphic shows attal of 904ha of deforestation between March 9, 2018 and May 22, 2018**

**The righthand graphic (Area A) shows 1,283ha of deforestation between August 26, 2018 and December 6, 2018**

**The righthand graphic (Area B) shows 24ha of deforestation between October 12, 2018 and December 2, 2018**

## 2. FSC Policy for Association Violation: ‘Violation of traditional and human rights in forestry operations’

and;

## 3. FSC Policy for Association Violation: ‘Illegal logging or the trade in illegal wood or forest products’.

### Lands with Native Customary Rights (NCR) in Sarawak

Any ‘conversion of forests to plantations’ (regardless of whether it is considered as ‘significant conversion’) that took place on Native Customary Rights (NCR) lands, without the Free, Prior and Informed Consent (FPIC) being granted by an affected person or community can be said to be a ‘violation of traditional and human rights’. The term FPIC is defined by the FSC ‘Malaysia Forest Stewardship Standard’ as meaning ‘consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given’<sup>13</sup> Violation of the principle of FPIC would be one type of violation under the Policy for Association regarding the violation of traditional and human rights in forestry operations.

The FSC Policy for Association defines illegal logging as the ‘harvesting of timber in violation of any laws applicable in that location or jurisdiction including, but not limited to, laws related to the acquisition of harvesting rights from the rightful owner, the harvesting methods used and the payment of all relevant fees and royalties.’ Hence, when laws relating to NCR lands are not upheld, for example, and they are ‘related to the acquisition of harvesting rights from the rightful owner’, this would be another type of violation of the Policy for Association regarding ‘Illegal logging or the trade in illegal wood or forest products’, in addition to the ‘violation of traditional and human rights in forestry operations’.

The FSC ‘Centralized National Risk Assessment’ (CNRA) for Malaysia<sup>14</sup> concludes a ‘Specified risk’ designation for the performance ‘indicator’ related to ‘illegally harvested wood’ in Sarawak (ie 1.1 Land tenure and management rights’). The reason for this designation is that: ‘Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities’.

The CNRA fully describes the situation in Sarawak (emphasis added) that warrants this ‘Specified risk’ designation:

**‘Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in Sarawak.’**

*Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area.*

*Many legal cases are currently in court: in Spring 2014 more than 300 NCR land cases were pending in High Court; and ten cases had in April 2014 been settled in favour of the native people (Suara Sarawak, 2014).*

*The complex nature of land tenure in Sarawak and the high level of corruption has made NCR breaches one of the most prominent issues in Malaysia for many years. The apparently wide gap between customary rights as conceived by the native peoples and the 'Native Customary Rights' as interpreted by the Government regarding the Land Code, has led to numerous land disputes many of which have been referred to the courts (Colchester et al., 2007).*

*Lim (2013) has reported that **over 200 cases of breaches of NCR rights were pending in Sarawak alone** (p. 25). New cases are being filed faster than current cases are resolved. Of the 200 cases, 70 were related to plantation development and violation of traditional and human rights in forestry operations (Lim, 2013). While the current trend is to rule in favour of the plaintiffs, some cases are currently more than a decade old and as such time intensive. Hence, there is a wide array of risks related to land tenure, mainly caused by the complex nature of the tenure system, NCR claims, the amendments to the SCL and the notorious high-level corruption surrounding the Chief Minister and his family.*

*According to the Sarawak Report (2016), 'What we have seen in Sarawak, time and again, is the muscling of native peoples out of their land rights by brute force, backed by corrupt political figures and agencies such as the police.'*

*According to a report from Earthsight in October 2017, since 2010, Shin Yang and other timber companies operating in Sarawak have been linked to corruption and malpractice. In 2013, a local community took Shin Yang to court for not obtaining consent before it began logging on its turf (Mongabay 2017).*

*As the issue is lack of gazettal of land, this issue relates to all sources of timber.*

*Due to the historically high level of cases of corruption, as well as a high level of tenure dispute with native communities, the risk is considered specified for all timber sources.*

#### *Risk Conclusion*

*'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.']*

## Lands with Native Customary Rights in the BLD Plantation concession

According to the Sarawak Dayak Iban Association (SADIA),<sup>15</sup> an association of the Iban community of Sarawak, the majority of the land within the BLD Plantation Bhd-owned concession is considered land with Native Customary Rights. One such area is the ancestral land of the community of kampung Tutus, in the south-eastern part of the concession.

In August 2015, five individuals acting on behalf of Iban community of kampung Tutus - which are claiming that their Native Customary Rights are being violated by BLD Plantation – filed a lawsuit in the High Court of Sabah and Sarawak against Bintulu Lumber Development Sdn Bhd (BLD)<sup>16</sup>, a subsidiary of BLD Plantation Bhd<sup>17</sup>, and another plantation company adjacent to the BLD Plantation Bhd concession. At the time of writing this complaint this case is still pending.<sup>18</sup>

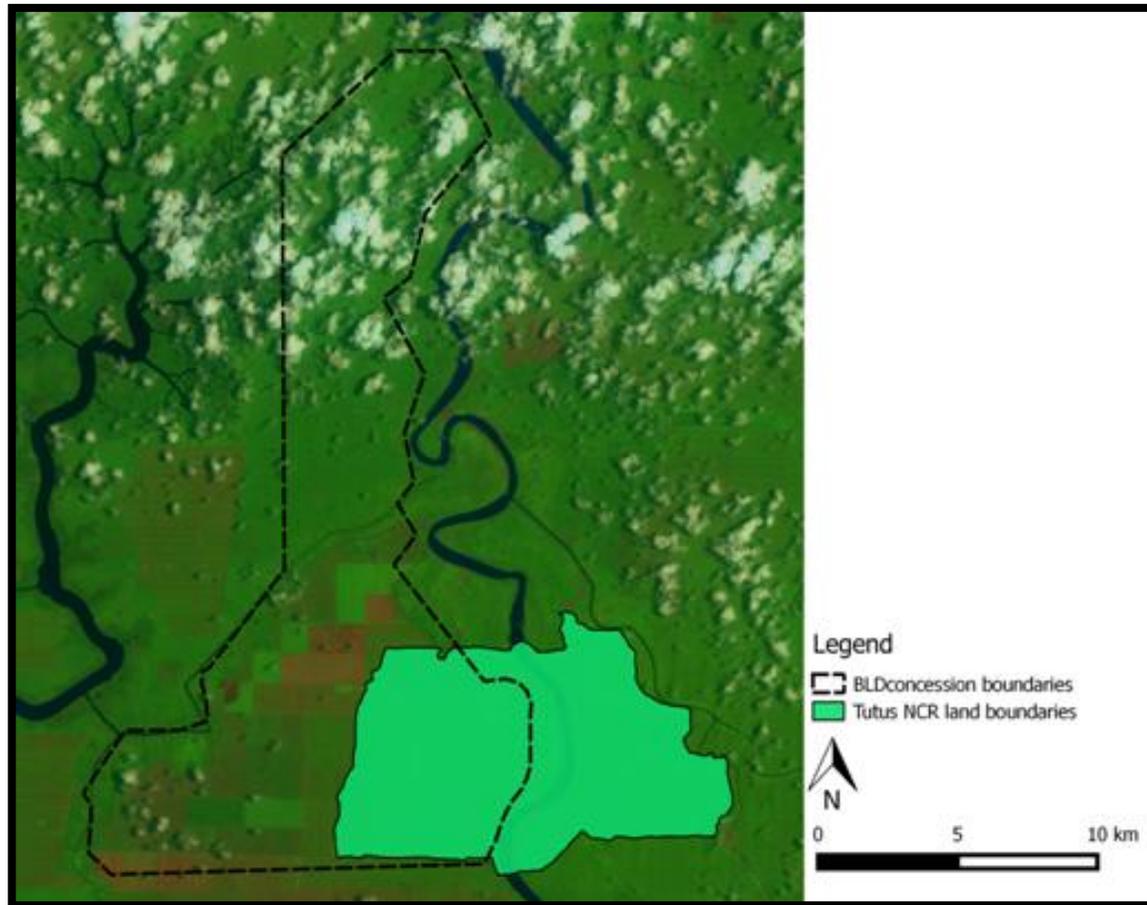
Figure 5 below shows the claimed land with Native Customary Rights in relation to the concession area. The map – which was created with the support of SADIA - shows that 47% of their land with Native Customary Rights overlaps with the BLD Plantation Bhd-owned concession (i.e. ~4,120 hectares).

In a letter to Mighty Earth dated 3 August 2018, BLD Plantation Bhd claims that *'with regards to the Native Customary Lands issue, we categorially state that the issue is in the hands of the legal system. All NCR land rights were addressed before development commenced. BLDP [BLD Plantation Bhd] have always followed the relevant Federal and State laws.'*<sup>19</sup> This claim obviously is being challenged by the five individuals acting on behalf of Iban community of kampung Tutus. This issue needs to be fully and independently investigated as part of this complaint.

A large area of the Iban community of kampung Tutus Native Customary Rights land (inside the BLD Plantation concession) was deforested by the company before the KTS companies received their FSC certificates (i.e. before August 2012). However, BLD Plantation Bhd subsequently cleared new areas to the north of the Iban community of kampung Tutus Native Customary Rights lands, which according to SADIA<sup>20</sup> is also considered land with Native Customary Rights (See Figures 4-9 below, showing new land development in October 2015).

Based on the evidence available, Mighty Earth concludes that any development by BLD Plantation Bhd after August 2012 is a clear *'violation of traditional and human rights'*, as well as a violation of the Policy for Association requirements on *'Illegal logging or the trade in illegal wood or forest products.'* Further, we would argue that so long as the laws on Native Community Rights are NOT being upheld, any continued occupation of land cleared prior to August 2012 where no FPIC had been granted, would also be a violation of traditional and human rights (as per the FSC Policy for Association). The same conclusions would also apply to any developed land with claimed Native Customary Rights in other areas of the BLD Plantation Bhd concession, whereby no genuine FPIC agreements have been obtained.

Figure 5: Iban community of kampung Tutus and their claimed land with Native Customary Rights in relation to the BLD Plantation Bhd-owned concession area. Map courtesy of Friends of The Orangutans (FOTO) Malaysia.



Figures 6 & 7: Deforestation for palm oil planting and construction of a peatland drainage canal within the BLD Plantation Bhd concession, 30 October 2015. The maps provide the location of the coordinates from where photographs were taken (photographs A, B and C are shown further below). Maps courtesy of FOTO.

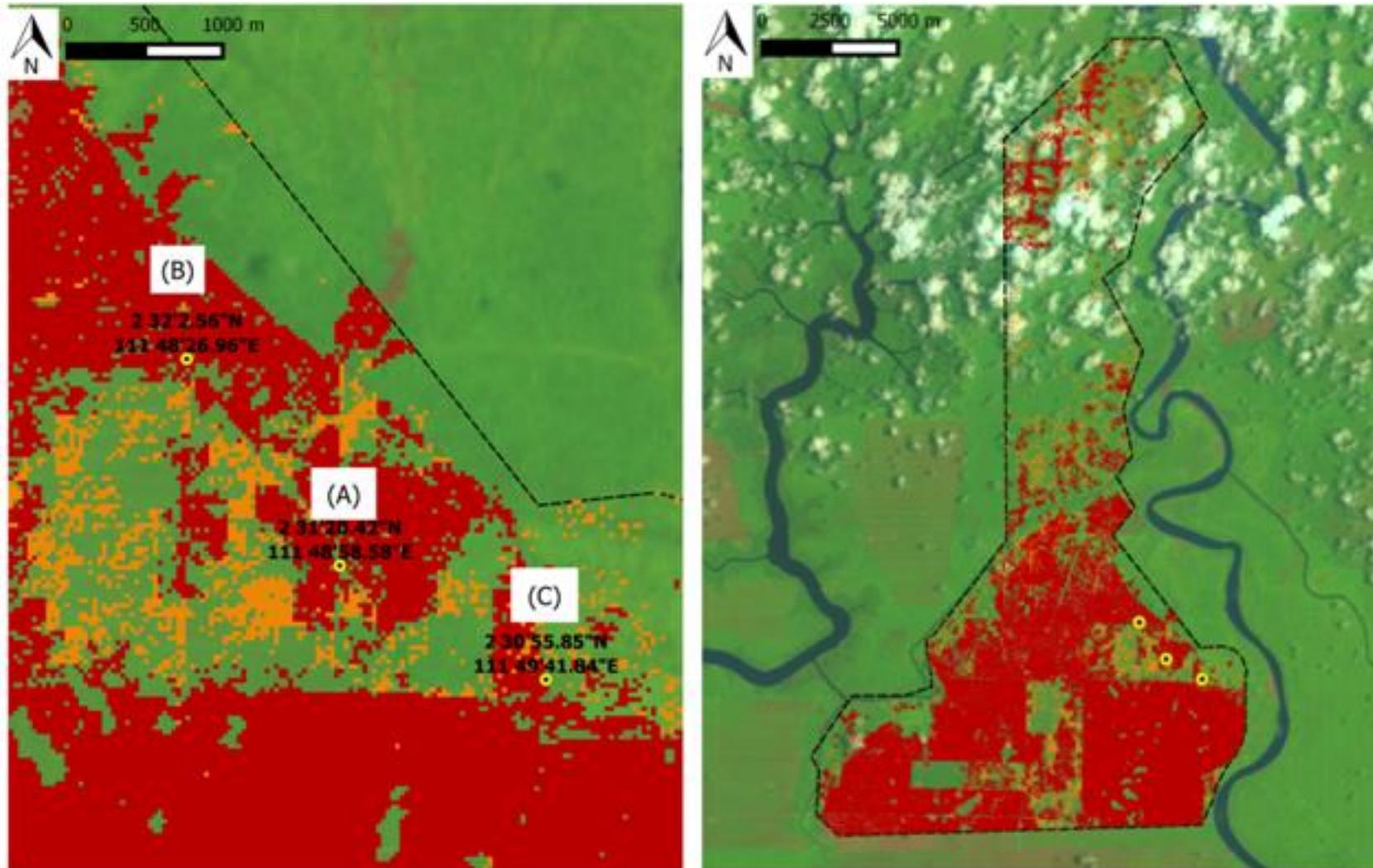


Figure 8/photo A: Construction of peatland drainage canal within the BLD Plantation concession, 30 October 2015. Coordinates 2°31'20.42"N / 111°48'58.58"E. Image courtesy of @FOTO



Figure 9/photo B: Sign of the Iban community village Sungai Sebedi. Coordinates 2°32'2.56"N/ 111°48'26.96"E, 30 October 2015.  
Image courtesy of @FOTO



Figure 10/photo C: Peatland drainage canal in a very recently cleared area. Coordinates 2°30'55.85"N/ 111°49'41.84"E, 30 October 2015.  
Image courtesy of @FOTO



## **KTS Group of Companies: Overview**

1. The KTS group of companies (“KTS Group”) is one of the six largest tycoon-controlled timber conglomerates based in Sarawak. The others are Rimbunan Hijau, WTK, Samling, Shin Yang and Ta Ann. All six groups have all now expanded their business interests into oil palm plantation development.
2. The KTS Group was founded by the late Datuk Seri Lau Hui Kang.<sup>21</sup> His three sons – Dato Henry Lau Lee Kong, Stephen Lau Lee Kiong and Vincent Lau Lee Ming – manage and run the KTS Group’s *‘domestic and global businesses which range from timber and timber-related [businesses], media, oil palm, prawn farming, food manufacturing, glass sand maker and shipbuilding’*.<sup>22</sup>
3. In January 2012 the Borneo Post<sup>23</sup> reported on the 50<sup>th</sup> anniversary of the KTS Group. The article quotes KTS Group managing director Dato Henry Lau Lee Kong as saying: *‘KTS Group will continue to expand in palm oil business, timber tree plantations, property development, food and hospitality business as well as general trading and construction.’*
4. KTS Group’s main expansion into palm oil has been through BLD Plantation Bhd, which was listed on the Bursa Malaysia stock exchange in 2003.<sup>24</sup> The registered office of BLD Plantation Bhd is ‘Crown Towers,’ the KTS Group headquarters.<sup>25</sup>
5. BLD Plantation Bhd’s 2017 Annual Report lists Dato Henry Lau Lee Kong as the Managing Director of the KTS Group of Companies’ and the Executive Chairman of BLD Plantation Bhd.<sup>26</sup> It also lists Robert Lau Hui Yew – the first cousin of the late Datuk Lau Hui Kang and the son of Lau Swee Nguong – as a Non-Executive Director of BLD Plantation Bhd.<sup>27</sup> Lau Swee Nguong is the Chairman of the KTS Group of Companies’.<sup>28</sup>

## **KTS Logs Marketing Sdn Bhd, KTS Timber Sdn Bhd and Bright Wood Sdn Bhd**

6. The KTS Group has three FSC-certified companies: KTS Timber Sdn Bhd (SGS-COC-009529/ SGS-CW-009529), Bright Wood Sdn Bhd (SGS-COC-009532/SGS-CW-009532) and KTS Logs Marketing Sdn Bhd (SGS-COC-010145/ SGS-CW-010145: which expired on 2019-03-09).
7. The Board of Directors of KTS Timber Sdn Bhd consists of Dato Henry Lau Lee Kong, Stephen Lau Lee Kiong, Lau Tee Mei, Lau Kor Ping, Law Hui Kong and Ling Tee Mei.<sup>29</sup>
8. The Board of Directors of KTS Logs Marketing Sdn Bhd consists of Dato Henry Lau Lee Kong, Lau Tee Mei, Lau Kor Ping and Temenggong Lau Lee Ming.<sup>30</sup>
9. The Board of Directors of Bright Wood Sdn Bhd consists of Dato Henry Lau Lee Kong, Stephen Lau Lee Kiong, Law Hui Kong, Ling Tee Mei and Lin Chii Ho.<sup>31</sup>

10. The ultimate controlling shareholders of KTS Timber Sdn Bhd, KTS Logs Marketing Sdn Bhd and Bright Wood Sdn Bhd are Dato Henry Lau Lee Kong, Robert Lau Hui Yew/Lau Swee Nguong (family interests), Temenggong Dato Lau Lee Ming, Stephen Lau Lee Kiong, Haji Wan Abdillah bin Wan Hamid and Haji Wan Mohammad Shebli bin Wan Hamid:

- a) KTS Logs Marketing Sdn. Bhd, KTS Timber Sdn Bhd and Bright Wood Sdn Bhd' are wholly-owned subsidiaries of KTS Timber Industries Sdn Bhd, is a subsidiary (70%) of KTS Holding Sdn Bhd.<sup>32</sup>

The registered office of KTS Timber Sdn Bhd, Bright Wood Sdn Bhd, KTS Timber Industries Sdn Bhd, and KTS Holding Sdn Bhd is 'Crown Towers,<sup>33</sup> the KTS Group headquarters and registered office of BLD Plantation Bhd.

A BLD Plantation Bhd '*Circular to Shareholders*' dated April 2018<sup>34</sup> lists Dato Henry Lau Lee Kong, Robert Lau Hui Yew/ Lau Swee Nguong (family interests), Temenggong Dato Lau Lee Ming and Stephen Lau Lee Kiong as directors with majority shareholdings in BLD Plantation Bhd, as well as directors and the majority shareholders of KTS Holding Sdn Bhd and Bright Wood Sdn Bhd, for example.

- b) The remaining 30% shares in KTS Timber Industries Sdn Bhd are owned by Yumas Corporation Sdn Bhd<sup>35</sup> (24%) and Yumas Enterprise Sdn Bhd<sup>36</sup> (6%), which are both owned by Tuan Haji Wan Abdillah bin Wan Hamid and his brother Haji Wan Mohammed Shebli bin Wan Hamid.<sup>37</sup>

The 'registered address' and 'business address' of Yumas Corporation Sdn Bhd and Yumas Enterprise Sdn Bhd is the KTS Group headquarters.<sup>38</sup>

The BLD Plantation Bhd '*Circular to Shareholders*' dated 27 April 2018,<sup>39</sup> lists Haji Wan Abdillah bin Wan Hamid and his brother Haji Wan Mohamad Shebli bin Wan Hamid as directors with majority shareholdings in BLD Plantation Bhd, as well as directors with majority shareholdings in Yumas Enterprise Sdn Bhd.

## **Directors with major shareholdings in BLD Plantation Bhd**

11. Based on the Bursa Malaysia Record of Depositors as of 2 April 2018:<sup>40</sup>

- a) The Executive Chairman,<sup>41</sup> Dato Henry Lau Lee Kong held a 39.86% deemed interest (indirect through various holding companies) in BLD Plantation Bhd,<sup>42</sup> by virtue of his family's interests in BLD Holdings Sdn Bhd, KTS Holdings Sdn Bhd, Commercial Agencies Sdn Bhd and Teras Intergrasi Sdn Bhd.<sup>43</sup>

- b) The Non-Executive Director,<sup>44</sup> Robert Lau Hui Yew held a 36.48% deemed interest (indirect through various holding companies) in BLD Plantation Bhd, by virtue of his family's interests in BLD Holdings Sdn Bhd, KTS Holdings Sdn Bhd and Vasty Development Sdn Bhd, as well as his family (with Lau Swee Nguong)

interests in BLD Plantation Bhd.

c) The Executive Director,<sup>45</sup> Haji Wan Abdillah bin Wan Hamid held a 17.54% deemed interest (indirect through various holding companies) in BLD Plantation Bhd, by virtue of their family's interests in Syarikat Payang Sdn Bhd and Hamimas Enterprise Sdn Bhd.<sup>46</sup>

## ENDNOTES

<sup>1</sup> Eg <http://www.sarawakreport.org/2016/03/malaysian-environmentalists-hit-back-at-bld-reports-on-peatland-clearing-meticulously-verified/>

<sup>2</sup> Case No SBW-NCy C 5/8/2015

<sup>3</sup> [www.bldpb.com.my/about-us/corporate-profile/](http://www.bldpb.com.my/about-us/corporate-profile/)

<sup>4</sup> Pers. Comm Matek Geram, SADIA – January 2019

<sup>5</sup> [https://1drv.ms/b/s!AI\\_1SYB1Nd5IgcorE\\_vMfNKy2ObdAA](https://1drv.ms/b/s!AI_1SYB1Nd5IgcorE_vMfNKy2ObdAA)

<sup>6</sup> For eg: <https://www.malaysiakini.com/letters/310974>; [www.freemalaysiatoday.com/category/opinion/2016/03/31/contradictions-run-wild-in-blds-claims-over-peatland-clearing/](http://www.freemalaysiatoday.com/category/opinion/2016/03/31/contradictions-run-wild-in-blds-claims-over-peatland-clearing/); <http://www.sarawakreport.org/2016/02/germanys-save-the-rainforest-campaign-tells-hacksaw-giant-to-cut-ties-with-kts/>; <http://www.sarawakreport.org/2015/11/environmentalists-want-answers-from-adenan-as-peatland-clearing-by-kts-continues/>; <http://www.theborneopost.com/2016/03/20/bld-questions-sarawak-reports-allegations-against-oil-palm-plantations/>; <http://www.theborneopost.com/2016/03/06/resorting-to-one-sided-reports-lies-to-run-down-plantation-and-timber-companies/>

<sup>7</sup> Click on the company logo to show the summary of the company's actions on the BLD grievance. <http://www.mightyearth.org/rapidresponse/>. 'No purchase' means the trader has filed a grievance on the BLD case and suspended contracts with its group-level supplier.

<sup>8</sup> [https://us11.campaign-archive.com/?e=\[UNIQID\]&u=3d4c07faca1286fefb208ff11&id=207b1769d9](https://us11.campaign-archive.com/?e=[UNIQID]&u=3d4c07faca1286fefb208ff11&id=207b1769d9)

<sup>9</sup> [www.rspo.org/file/BMP\\_manual\\_2\\_update\\_24\\_april\\_2013\\_small.pdf](http://www.rspo.org/file/BMP_manual_2_update_24_april_2013_small.pdf)

<sup>10</sup> [www.rspo.org/file/RSPO%20Principles%20&%20Criteria%20Document.pdf](http://www.rspo.org/file/RSPO%20Principles%20&%20Criteria%20Document.pdf)

<sup>11</sup> <https://my.fsc.org/en-my/resource-centre/fsc-documents-and-policies>

<sup>12</sup> [https://1drv.ms/b/s!AI\\_1SYB1Nd5IgckTVRXBuSv8Ef-j8w](https://1drv.ms/b/s!AI_1SYB1Nd5IgckTVRXBuSv8Ef-j8w)

<sup>13</sup> p152 <https://my.fsc.org/download.fsc-national-forest-stewardship-standards-nfss-of-malaysia.a-268.pdf>

<sup>14</sup> <https://ic.fsc.org/file-download.fsc-cnra-my-v1-0.a-7398.pdf>

<sup>15</sup> Pers. Comm Matek Geram, SADIA – January 2019

<sup>16</sup> Case No SBW-NCy C 5/8/2015

<sup>17</sup> [www.bldpb.com.my/about-us/corporate-profile/](http://www.bldpb.com.my/about-us/corporate-profile/)

<sup>18</sup> Pers. Comm Matek Geram, SADIA – January 2019

<sup>19</sup> [https://1drv.ms/b/s!AI\\_1SYB1Nd5IgckTVRXBuSv8Ef-j8w](https://1drv.ms/b/s!AI_1SYB1Nd5IgckTVRXBuSv8Ef-j8w)

<sup>20</sup> Pers. Comm Matek Geram, SADIA – January 2019

<sup>21</sup> [www.theedgemarkets.com/article/cover-story-sarawaks-long-standing-business-rivalry](http://www.theedgemarkets.com/article/cover-story-sarawaks-long-standing-business-rivalry)

<sup>22</sup> [www.thestar.com.my/business/business-news/2010/03/27/sarawak-shakers/#3X7IKmh56hEBYpRK.99](http://www.thestar.com.my/business/business-news/2010/03/27/sarawak-shakers/#3X7IKmh56hEBYpRK.99)

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<sup>23</sup> [www.theborneopost.com/2012/01/21/caring-kts-all-set-to-grow-for-another-50-years/](http://www.theborneopost.com/2012/01/21/caring-kts-all-set-to-grow-for-another-50-years/)

<sup>24</sup> [www.theedgemarkets.com/article/cover-story-sarawaks-long-standing-business-rivalry](http://www.theedgemarkets.com/article/cover-story-sarawaks-long-standing-business-rivalry)

<sup>25</sup> BLD Plantations 2017 Annual Report, p6 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>26</sup> BLD Plantations 2017 Annual Report, p7 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>27</sup> BLD Plantations 2017 Annual Report, p7 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>28</sup> Eg. <https://www.pressreader.com/malaysia/the-borneo-post/20170814/281861528607882>; [www.theborneopost.com/2016/07/08/kts-group-ceo-and-directors-join-hari-roya-festivities/](http://www.theborneopost.com/2016/07/08/kts-group-ceo-and-directors-join-hari-roya-festivities/)

<sup>29</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>30</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>31</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>32</sup> Company profiles accessed from the 'Companies Commission of Malaysia' online database..

<sup>33</sup> Company profiles accessed from the 'Companies Commission of Malaysia' online database..

<sup>34</sup> Based on the Record of Depositors as at 2 April 2018, the direct and indirect interests of these interested Directors, interested Directors of subsidiaries, interested Major Shareholders and Persons Connected with them in the Company. P12 Source: BLD Plantation Bhd Circular to Shareholder, 27 April 2018

[http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA\\_DS\\_ATTACHMENTS](http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA_DS_ATTACHMENTS)

<sup>35</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>36</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>37</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>38</sup> Company profile accessed from the 'Companies Commission of Malaysia' online database.

<sup>39</sup> Based on the Record of Depositors as at 2 April 2018, the direct and indirect interests of these interested Directors, interested Directors of subsidiaries, interested Major Shareholders and Persons Connected with them in the Company. P12 Source: BLD Plantation Bhd Circular to Shareholder, 27 April 2018

[http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA\\_DS\\_ATTACHMENTS](http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA_DS_ATTACHMENTS)

<sup>40</sup> Based on the Record of Depositors as at 2 April 2018, the direct and indirect interests of these interested Directors, interested Directors of subsidiaries, interested Major Shareholders and Persons Connected with them in the Company. P22 Source: BLD Plantation Bhd Circular to Shareholder, 27 April 2018

[http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA\\_DS\\_ATTACHMENTS](http://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=186257&name=EA_DS_ATTACHMENTS)

<sup>41</sup> BLD Plantations 2017 Annual Report, p6 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>42</sup> BLD Plantations Bhd 2017 Annual Report, p110 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>43</sup> See also <http://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=2607922>

Dato Henry Lau Lee Kong holds 37,269,576 indirect shares in BLD Plantations Bhd, as reported on 27/8/2015:

(a) 10,496 shares (0.01%) are held by K.T.S. Holdings Sdn. Bhd. in which Dato Henry Lau Lee Kong has substantial interest.

(b) 2,500,703 shares (2.67%) are held by Commercial Agencies Sdn. Bhd. in which Dato Henry Lau Lee Kong has substantial interest. (c) 33,412,330 shares (35.74%) are held by BLD Holdings Sdn. Bhd. in which Dato Henry Lau Lee Kong has substantial interest.

(d) 1,346,047 shares (1.44%) are held by Teras Intergrasi Sdn. Bhd. in which Dato Henry Lau Lee Kong has substantial interest.

<sup>44</sup> BLD Plantations 2017 Annual Report, p6 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

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<sup>45</sup> BLD Plantations 2017 Annual Report, p6 [https://drive.google.com/file/d/18VbcNVVUp2hk\\_T9WXcrprUtxBeo7C6t6/view](https://drive.google.com/file/d/18VbcNVVUp2hk_T9WXcrprUtxBeo7C6t6/view)

<sup>46</sup> See also <http://disclosure.bursamalaysia.com/FileAccess/viewHtml?e=2723197>

Tuan Haji Wan Abdillah bin Wan Hamid holds 104,821 shares and 15,137,470 indirect shares in BLD Plantations Bhd, as reported on 15/12/2016:

(1) Direct Interest

104,821 shares (0.11%) are registered in the name of Tuan Haji Wan Abdillah bin Wan Hamid

(2) Indirect Interest.

(a) 15,137,470 shares (16.19%) are held by Syarikat Payang Sdn. Bhd. in which Tuan Haji Wan Abdillah bin Wan Hamid has substantial interest.

(b) 1,261,337 shares (1.35%) are held by Hamimas Enterprise Sdn. Bhd. in which Tuan Haji Wan Abdillah bin Wan Hamid has substantial interest.