

3.1.1 BACKGROUND

On 17 December 2010, after 19 months of negotiations, the Minister of Agriculture and the Minister of Land Affairs and Public Domain in the Republic of Congo signed a concession agreement with a company called Atama Plantations to 'occupy' 470,000 hectares of federal land for the development of an oil palm plantation and associated industrial complexes.⁶⁰ The majority of the land (402,637 hectares) is in Cuvette Province, while the remaining 67,363 hectares are in Mokeko District in Sangha Province.⁶¹ Eventual palm oil production is expected to be 900,000 tonnes per year.

The concession agreement is for an initial, extendable, period of 30 years. The licensee has to pay royalties of CFA 2,500 (US\$5) per hectare of planted land (half the rate which will eventually be paid by Olam in Gabon, see section 3.2), from when palm oil production starts, but is exempted from customs duties or VAT on imports of equipment, and from all taxes on profits for the first five years of production. Thus far, feasibility studies have identified 180,000 hectares of plantable land, which is an area 17 times the size of Paris.⁶² The company

expects to develop this over a period of 15 years, commencing in early 2013. It is possible the final area of the plantation may be larger, if additional suitable land is found.⁶³

Atama is owned through a complex chain of companies registered in various secretive tax-havens (see Figure 5 for a representation of the company's corporate structure). The Congolese licensee, Atama Plantation SARM, which was registered in June 2008, is wholly owned by an associated company registered in Mauritius in July 2011, Atama Resources Inc, which until recently was wholly owned by a company called Silvermark Resources Inc, registered in the British Virgin Islands (BVI) in 2007. Silvermark is, in turn, wholly owned by a company called Tanaldi Ltd, of which there is almost no information. In addition, Atama Resources Inc owns a second company, Signet Plus SB, registered in Malaysia in December 2011, which provides 'management and accounting services' for the Congolese plantation company.⁶⁴ A number of questions are raised in the following text about the ultimate ownership of Atama.

To date, Atama has begun clearfelling forests for roads and an oil palm

nursery in one area of 5,000 hectares at Epoma in Sangha⁶⁵, while a second 5,000 hectare section of forest in the concession in Cuvette has also been signed off for logging and clearance.⁶⁶

3.1.2 WAH SEONG PURCHASE

In February 2012, Wah Seong Corporation, a Bursa Malaysia (formerly the Kuala Lumpur stock exchange) listed company, announced its intended purchase of a majority 51% stake in Atama Resources Inc, thus becoming majority owners of the oil palm plantation project in Congo.⁶⁷ Previously, Wah Seong has principally been involved in the manufacturing of specialist metal pipes for the oil and gas industry. The company's only previous connection to oil palm in Africa was the supply of equipment for palm oil refineries,⁶⁸ and this will be its first venture into the oil palm plantation industry. Even if only the initial 180,000 hectares are planted, this new project would be the largest oil palm plantation in the Congo Basin and would catapult Wah Seong into the top ten largest oil palm growers in the world.

The \$25 million purchase of Atama by Wah Seong is almost as complicated as the web of companies behind Atama. When the purchase is completed, Wah Seong will, through a specially formed subsidiary WS Agro Industries Pte Ltd, own 51% of Atama's shares, while the original owner (Silvermark/Tanaldi) will retain 39% and another BVI-registered company named Giant Dragon Group will hold the remaining 10%.⁶⁹ As of December 2012, the first phase of the purchase was complete, with Wah Seong holding 41.7% of the shares.⁷⁰ More detail on the purchase and the BVI companies involved is provided in section 3.1.6 below.



Aka man, statement community forest, Samuel Dieval

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“THE FORESTS ATAMA PLANS TO CLEAR COULD YIELD TIMBER WORTH MORE THAN \$500 MILLION.”

3.1.3 POTENTIAL ‘TIMBER GRAB’?

Stock-watchers have questioned how Wah Seong can afford the costs of developing the massive new oil palm plantation, which they estimate at US\$650 million. One analyst has suggested that the cost “could be partly offset by forest clearance such as sale of logs”.⁷¹ This has often happened in the past in Indonesia⁷². Evidence obtained by RFUK suggests that the forests Atama is planning to convert are indeed primary forests with significant timber stocks. The potential profits from harvesting this timber may be one of the main driving factors behind the development.

No maps are publicly available for the Atama concession. Wah Seong declined to provide these documents when requested by RFUK, citing commercial confidentiality. RFUK has, however, obtained copies of official government reports which describe the boundaries of the concession⁷³ and the boundaries of the two 5,000 hectare areas for which the company has obtained authorisation to log and clear.⁷⁴ The most recent available forest maps and satellite imagery suggest that the majority of the broader area the company plans to convert is untouched, primary, closed-canopy tropical forest, much of it swamp forest.

The overall concession is split into two areas. The northern area, in Sangha province, is a 67,000 hectare zone of mixed forest and savannah between a logging concession and a major river. The much larger southern area, in Cuvette, covers 520,000 hectares and is almost entirely made up of primary forest, most of it swamp forest⁷⁵ (see Figure 4). Of this second area, large parts are flooded, so only the licensed 402,000 hectares is expected to be available for the plantation.⁷⁶

According to official reports, by October 2012 the company had already harvested almost 15,000 cubic metres of timber at its first development in Epoma in Sangha, yet had thus far only cleared 120 hectares.⁷⁷ If most of it is primary forest, by a rough yet conservative estimate, the 180,000 hectares the company plans to convert could yield timber worth more than \$500 million.⁷⁸

Wah Seong has admitted to RFUK that, “timber extraction is a necessary part of the process to make available land for an oil palm plantation”⁷⁹. The company has stated to RFUK that it has considered “the sustainability criterion” before deciding to become involved in the Atama plantation project, but has not provided further detail of what this involves.⁸⁰



Atama logs from forest clearance for oil palm, December 2012



Far left: Signing ceremony for the Atama plantation development, Dec 2010 | Middle: Atama Director Chua Seng Yong at second signing ceremony, July 2011 | Right: Atama oil palm nursery, July 2012: JTV Congo

3.1.4 HUGE POTENTIAL FOR NEGATIVE ENVIRONMENTAL AND SOCIAL IMPACTS

As explained above, documents obtained by RFUK indicate that the majority of the area slated for conversion for the Atama plantation is virgin rainforest. Much of this forest would almost certainly be classified as being of 'high conservation value' (HCV) according to standard definitions. Evidence from IUCN (International Union for Conservation of Nature) suggests it is also habitat for large numbers of endangered species, including western lowland gorillas, classified as 'Critically Endangered', chimpanzees, and elephants.⁸¹ The intact swamp forests which make up the majority of the larger southern section of the concession are part of the Western Congolian Swamp Forests Ecoregion, identified by WWF as one of the most outstanding areas of biodiversity on the planet.⁸²

Around 28,000 hectares of the allocated concession land appears to overlap with a proposed new National Park, Ntokou-Pikounda, which was announced in 2006 and is in the last stage of formal establishment.⁸³ The park is believed to contain one of the highest concentrations of great apes anywhere in the world.⁸⁴ The Republic of Congo has recently designated the Ntokou-Pikounda area as a Ramsar (wetlands of international importance) site, noting its rich biodiversity, its importance 'in maintaining the general

hydrological balance of the Congo Basin' and its, 'great cultural, historical and religious value to the resident population'.⁸⁵ Aside from the obvious devastating environmental impacts for biodiversity which would stem from destruction of the forest inside the concession, the improved transport network and migration of workers to the area associated with the plantation development bring further threats to wildlife in neighbouring areas (including the rest of the new National Park) from increased commercial poaching.

Congolese law requires an environmental impact assessment to be carried out for a project such as Atama's, yet Wah Seong declined to confirm in response to queries from RFUK whether any such assessment had been conducted. The company instead stated that it believed it was the responsibility of the Congolese government to ensure that the impacts of the plantation were considered before issuing the licence to operate.

Wah Seong also did not provide any evidence to RFUK that the social impacts of the project had been properly considered and addressed or the free, prior, informed consent (FPIC) of local people sought or obtained. It should be noted that the Republic of Congo passed progressive legislation on the promotion and protection of indigenous peoples in 2011, which may be of direct relevance here. Wah Seong

instead told RFUK that it was "invited by the Government of The Republic of Congo" to cultivate oil palm in the country, that it seeks to "alleviate rural poverty through meaningful long term employment", and that it is helping "an emerging economy to be self-sufficient in food and energy supply without trampling on the hopes and rights of the Congolese people".⁸⁶ Given Wah Seong's failure to provide evidence to the contrary, it is likely that there has been little or no consultation with local forest communities or indigenous peoples.

“WAH SEONG DID NOT PROVIDE EVIDENCE TO RFUK THAT THE FREE, PRIOR, INFORMED CONSENT OF THE LOCAL PEOPLE HAD BEEN OBTAINED.”

“THE INSPECTORS FOUND NUMEROUS BREACHES OF REGULATIONS IN THE LOGGING BEING CARRIED OUT BY ATAMA.”

3.1.5 ILLEGAL LOGGING

In October 2012, a team from the Sangha province forest department made an inspection visit to the first 5,000 hectare area in which Atama had been licensed to clearfell, at Epoma. The team found that Atama had subcontracted the logging to a second company, Lawoncongo SARL, and had set up a sawmill at the site. By the time of the visit, the company had cleared around 80 hectares for roads (including in a neighbouring part of the concession, outside the initial 5,000 hectares), plus a further 40 hectares for the sawmill, log storage yards and an oil palm nursery.⁸⁷

The inspectors found numerous breaches of regulations in the logging being carried out. More than 350 trees had been cut but not recorded in official felling reports. Records were found to have been altered with tip-ex and there was evidence that multiple logs had been given the same log numbers (a method often used to launder illegal logs). The inspectors concluded that Atama was in breach of the terms of the forest clearance license, and issued official forestry infraction notices to the company.⁸⁸

3.1.6 COMPANIES REGISTERED IN THE BRITISH VIRGIN ISLANDS (BVI): UNCLEAR ULTIMATE OWNERSHIP

As stated above, Wah Seong will purchase a 51% majority stake in Atama, while two companies registered in the British Virgin Islands will, once the purchase is completed, own 39% and 10% respectively of the Congolese plantation company.

The first of these two companies, Silvermark Resources Inc, was registered in the British Virgin Islands in November 2007 and prior to the Wah Seong investment was the sole owner of Atama. Silvermark stands to receive \$25 million from Wah Seong for its shares in Atama. The official stock exchange announcement for shareholders published by Wah Seong states that Silvermark Resources Inc is owned by Tanaldi Ltd and lists another company, Greenland Limited, as its sole director. The stock exchange announcement provides proper details on the intermediary companies, but it does not state where or when Tanaldi was registered, who owns it, or the identify of its directors.⁸⁹ Tanaldi and Greenland are noteworthy, as explained further below.



Western Lowland Gorilla, Sergey Uryadnikov-Shutterstock

The second British Virgin Island registered company is Giant Dragon Group Limited, registered in May 2006. Once the purchase is complete, it is due to hold 10% of the shares in Atama (worth US\$5 million), even though there is no evidence that it was connected to Atama prior to the purchase agreement and there is no mention of it contributing to the cost of the Wah Seong purchase from which it will benefit. The official stock exchange announcement by Wah Seong states that Giant Dragon Group is owned by a company called Marston International Ltd, and lists another company - Eastern Sky Ltd - as its sole director. Wah Seong's stock exchange announcement of the intended purchase of Atama does not provide further details of either Marston International or Eastern Sky.

Wah Seong has, for the interest of its shareholders, published detailed information about the proposed purchase, but the information stops short of actually identifying the ultimate current owners of the plantation, (through Silvermark Resources/Tanaldi) or the ultimate owners of Giant Dragon Group. This information is arguably of material interest to Wah Seong's shareholders. However, Wah Seong has stated to RFUK that it has, "made all necessary disclosures to Bursa Malaysia under the Bursa's Listing Requirements in respect of its venture into the Republic of Congo".⁹⁰

Research for this report suggests that Atama's ownership structure may have been deliberately created in order to shield the identity of its ultimate owner or owners. There may be legitimate reasons for this structure, but RFUK has found evidence that the same companies which controlled Atama prior to Wah Seong's involvement (and continue to hold a large minority stake) have been used on more than one occasion to shield the identity of individuals found guilty of serious offences.

The best documented example comes from UK court papers from 2008, which relate to a case in which a British man was found guilty of falsely claiming an inheritance and holding the proceeds in a British Virgin Islands registered company named Trixilix. The sole shareholder of Trixilix was Tanaldi Limited, and the sole director a company called Greenland Limited⁹¹ (the same names identified as ultimately controlling Atama through Silvermark Resources Inc). According to the court documents for this case, the defendant was "shown a list of available companies" by a Singaporean firm which specialises in setting up offshore structures, and one was selected.⁹² There was also a separate formal document through which Greenland gave the defendant full authority to operate the British Virgin Islands registered company through his Swiss bank account.⁹³ This allowed the defendant to control the funds without being named at all in official records. Although there is certainly no direct link between a UK inheritance case and a Malaysian-Congo palm oil development, the similarities in the names and functions of the shareholder and director appear too striking to be a coincidence. In another case, a British Virgin Islands registered company investigated by Thai authorities in 2006-07 for criminal offences was also controlled through a company called "Green Land Ltd" in Brunei, and set up by the same Singaporean offshore services provider involved in the 2008 British fraud case.⁹⁴

Other sources suggest that Tanaldi Ltd might also at one time have been connected to a Mr. Rafat Ali Rizvi, a British-Singaporean businessman, who has been convicted in Indonesia for grand corruption and is wanted by Interpol.⁹⁵ An article, from 2010, on the website of the respected Indonesian news magazine Tempo lists a Brunei-registered company by the name of

Tanaldi Ltd as being owned by Rizvi, and also mentions that a company called Greenland Ltd is connected to him.⁹⁶ In addition, a Singapore stock-exchange filing from 2007 relating to another company, states that Brunei-registered Tanaldi Ltd is "ultimately beneficially owned by Mr Rafat A. Rizvi".⁹⁷ Wah Seong strongly denies that there is any link between Atama Resources or Atama Plantations and Mr. Rafat Ali Rizvi. However, the company declined to answer a request from RFUK to identify the current ultimate beneficial owners of Atama (through Silvermark and Tanaldi) or Giant Dragon Group.

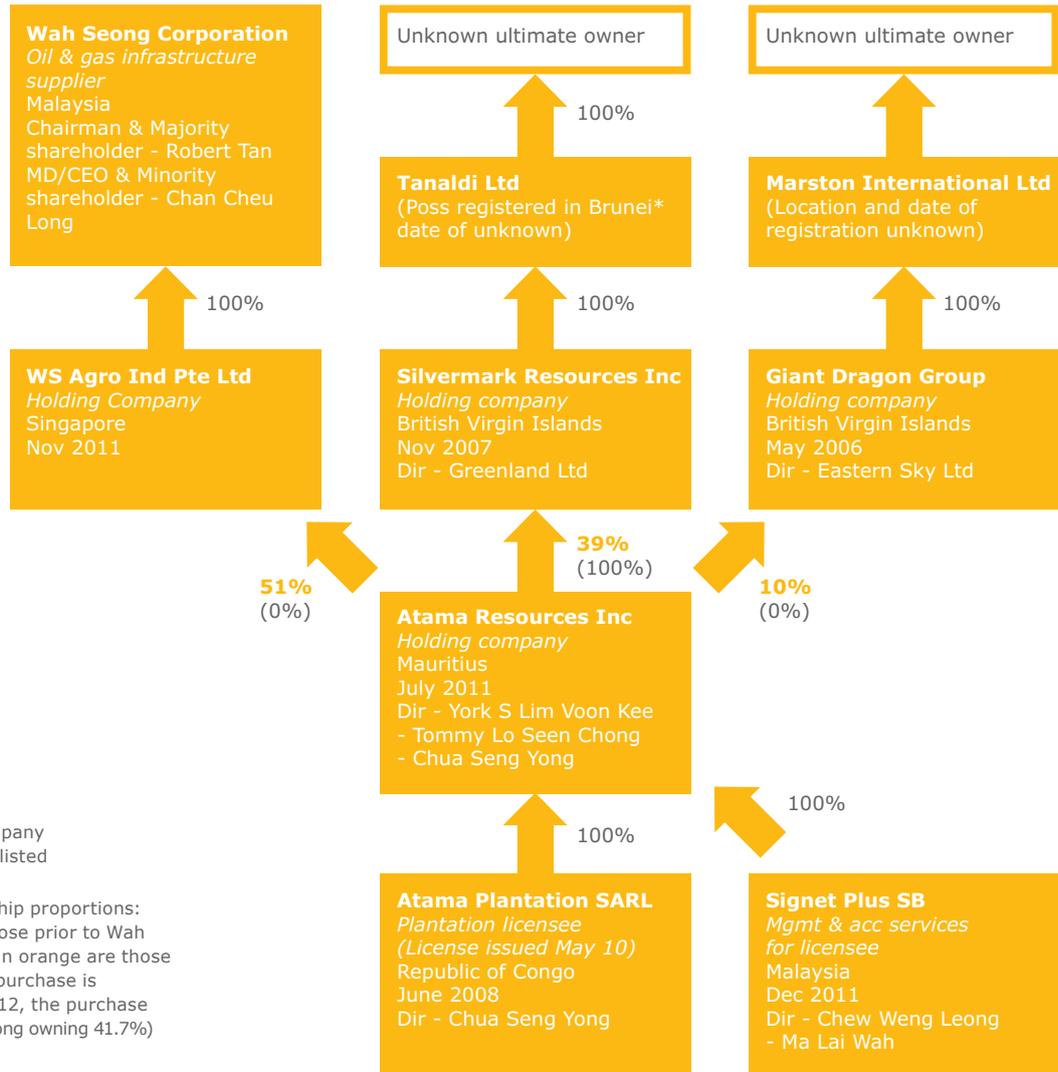
"THE SAME COMPANIES WHICH CONTROLLED ATAMA PRIOR TO WAH SEONG'S INVOLVEMENT HAVE BEEN USED TO SHIELD THE IDENTITY OF INDIVIDUALS FOUND GUILTY OF SERIOUS OFFENCES."

In summary, the evidence from the above cases suggests that Tanaldi is a shelf company used by more than one person, on more than one occasion, and that it has been used specifically for the purpose of hiding the identity of beneficial owners of assets.

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FIGURE 5

*Atama Plantation
Ownership Structure.*



Notes:

Countries represent countries of registration (incorporation)

Dates are registration dates

Dir = directors of relevant company (in some cases companies are listed as directors)

Percentages represent ownership proportions: Percentages in brackets are those prior to Wah Seong purchase; Percentages in orange are those which will exist once the WSC purchase is completed (as of December 2012, the purchase was half complete, with Wah Seong owning 41.7%)

Sources:

For information with asterisks, see report text and associated references; information on Wah Seong ownership and directors from Wah Seong Annual Report, 2012; all other information from official Wah Seong announcements to KLSE, February 2012'



Atama oil palm nursery, Epoma, 2012

3.1.7 CONCLUSION

A company with no significant relevant previous experience has begun felling tropical forests in the Republic of Congo to make way for what could be the region's largest ever oil palm plantation. Almost no public information is available about the project, and its new owners have declined to provide even the most basic information, such as concession maps. There is no evidence of any environmental or social impact assessments having been carried out for the plantation, or that the free, prior informed consent of local

populations has been sought. The evidence which is available suggests that high conservation value, intact primary forests are being converted, including habitat for endangered great-apes and forest elephants. And while Atama has only just started clearing forests, its contractors have already been found to be breaching regulations.

In addition to the serious issues regarding potential social and environmental impacts, questions must also be raised as to why Atama appears originally to have been deliberately structured to hide

the identity of its ultimate owners – even potentially from its current purchasers, Wah Seong. It could be that there are legitimate reasons for this structure, but the past circumstances noted above raise sufficient suspicions for this to be a matter of potentially serious concern to the Congolese government, to Atama's purchasers, to Wah Seong, and to Wah Seong's shareholders.