

# Timber Legality Risk Assessment South Africa

Version 1.2 | April 2018



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The contents of this risk assessment is based on the risk assessments developed for FSC™. This risk assessment is not equal to the approved FSC risk assessments when implementing the controlled wood standard FSC-STD-40-005. Only formally approved FSC risk assessments shall be used for the implementation of the FSC standards.

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For risk assessment conducted according to the FSC-STD-40-005, ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such (highlighted) can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification. You can see the countries with approved risk assessment in the FSC document: FSC-PRO-60-002b V2-0 EN List of FSC-approved Controlled Wood documents 2015-11-04. “

The original document of FSC can be accessed here <https://ic.fsc.org/en/document-center>.

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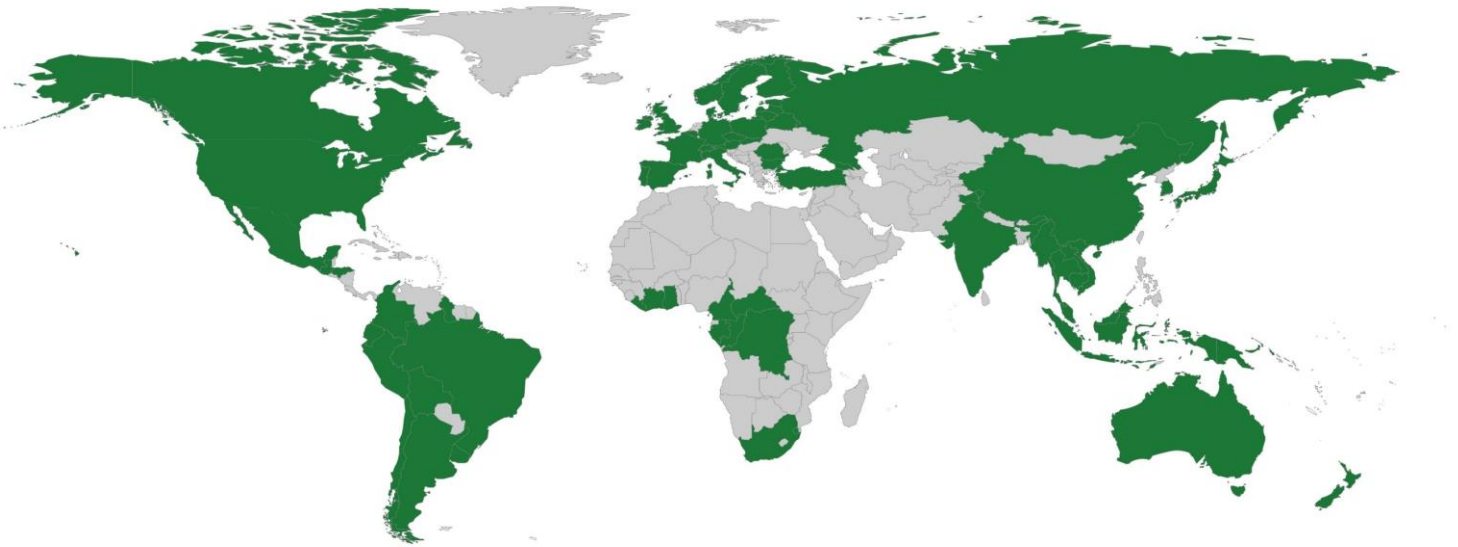
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## A. Introduction

This Timber Legality Risk Assessment for South Africa provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCon has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

In that time, NEPCon has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.



Map created by StatSilk (2016). StatPlanet: Interactive Data Visualization and Mapping Software. //www.stat silk.com

*Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber*

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on the [NEPCon Sourcing Hub](#).

For risk assessment conducted according to the FSC-STD-40-005, ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification.

You can see the countries with approved risk assessment in the FSC document: [FSC-PRO-60-002b V2-0 List of FSC approved Controlled Wood documents](#).

All FSC Risk Assessments can be downloaded in the [FSC Document Centre](#).

This risk assessment was prepared by NEPCon between 2014 and 2015 as follows:

<b>Draft prepared by NEPCon:</b>	January 2015
<b>Stakeholder consultation</b>	October-December 2017
<b>Final approval by FSC:</b>	April 2018
<b>FSC CW effective date:</b>	3 April 2018

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NEPCo originally published the Timber Legality Risk Assessment for South Africa in August 2017. Since then, minor amendments to the Assessment have been made, but the risk designations have not changed.

## B. Overview of legality risks

**Timber Risk Score:** 100 / 100 in 2018

This report contains an evaluation of the risk of illegality in South Africa for five categories and 21 sub-categories of law. We found:

- Low risk for 13 sub-categories.
- No legal requirements for 8 sub-categories.

### Timber source types and risks

There is only one timber source type in South Africa. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation, however this does not apply to South Africa.

#### **Plantation forest**

Fast-growing plantations of exotic species, grown in commercial operations. Nearly all plantations are privately owned and managed.

This table summarises the findings of the timber legality risk assessment by source type.

Legal Category	Sub-Category	Risk conclusion
		Plantation forest
Legal rights to harvest	1.1 Land tenure and management rights	Low
	1.2 Concession licenses	Low
	1.3 Management and harvesting planning	Low
	1.4 Harvesting permits	Low
Taxes and fees	1.5 Payment of royalties and harvesting fees	N/A
	1.6 Value added taxes and other sales taxes	Low
	1.7 Income and profit taxes	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Low
	1.9 Protected sites and species	Low
	1.10 Environmental requirements	Low
	1.11 Health and safety	Low
	1.12 Legal employment	Low
Third parties' rights	1.13 Customary rights	N/A
	1.14 Free prior and informed consent	N/A
	1.15 Indigenous/traditional peoples' rights	N/A
Trade and transport	1.16 Classification of species, quantities, qualities	N/A
	1.17 Trade and transport	N/A
	1.18 Offshore trading and transfer pricing	N/A
	1.19 Custom regulations	Low
	1.20 CITES	Low
	1.21 Legislation requiring due diligence/due care procedures	N/A



## C. Overview of the forest sector in South Africa

Of South Africa's forest, 10% is primary forest, 71% is naturally regenerated, and 19% comprises plantations. Commercial forestry in South Africa is based exclusively on plantation forestry. Since its origins at the beginning of the 1900s, the industry has become well established, with a high level of self-imposed internal regulation; reflected in over 80% of the commercial forestry area being FSC-certified. Three genera dominate the market, namely Eucalyptus, Pinus and Acacia species.

Although this risk assessment covers both natural forests and exotic commercial plantations, the actual situation in the country is such that natural forests are protected, with limited commercial activity. Government issues permits to Organizations to selectively harvest and sell natural timber. These timber species do not enter the FSC supply chain and is not used for large scale commercial activities (FSC Southern Africa).

Ownership of the South African commercial forest area is primarily private. The Department of Agriculture, Forestry and Fisheries owns and manages approximately 85 451 hectares (7%) of a total of approximately 1.2 million hectares of plantation forestry in South Africa. SAFCOL, a state owned enterprise manages 187 417 of FSC certified area. It is estimated that there is 45 167 ha (4%) of communal land within the forestry sector (FSA, 2015 and DAFF Plantation Register, 2003). Ownership of the private forest area can be divided into three categories: the bulk of the area, owned by private companies and state owned enterprises; followed by farms planted by commercial farmers; and lastly a very small portion of forest plantations on community land.

Harvesting permits are only required to harvest natural timber (indigenous trees) in South Africa. Indigenous trees area selected by DAFF officials and the number and location are stipulated on the permit. Any landowner has the right to harvest plantation timber on his land, based on his management objectives and financial needs. There is no legislation requiring the checking of any harvesting activity per se, however there is Best Operating Practice available. As mentioned above, natural forests are fully protected in South Africa, with limited incentive to harvest them for commercial purposes on any large scale, as none of the natural wood species is used or marketed on any significant scale within the commercial plantation forestry products produced in South Africa.

The establishment of plantation forestry is regulated in South Africa via the Department of Water Affairs and Sanitation (regulation of water use), The Department of Environmental Affairs and its provincial counterparts (regulating the impact of plantations on ecosystems and biodiversity) as well as the Department of Agriculture, Forestry and Fisheries: Agricultural Branch (regulating the impact on water, soil and vegetation for agricultural purposes). This Controlled Wood Category was assessed accordingly for Natural and commercial Plantation timber bearing in mind that in South Africa, only commercial Plantation timber products (timber from exotic species) enters the FSC supply chain.

The list of sources provided in FSC-PRO-60-002a, section 3.3.3, has been reviewed in regards to the national legality risk assessment for South Africa. The following sources have been used: World Bank Worldwide Governance Indicators and the Transparency International Corruption Perceptions Index. The remaining sources were determined to be not relevant to the legality risk assessment for South Africa.

South Africa has an average governance score according to the World Bank Governance Index. On a range from -2.5 to +2.5, South Africa has a 2013 score of 0.13 in relation to 'rule of law' and, on control of corruption, a 2013 score of -0.12. According to Transparency International, South Africa has a Corruption Perception Index of 45 (2016). However, there is no/negligible levels of corruption in the forest sector. This is based on no significant risk when dealing with South African land administration; Property rights are explicitly guaranteed by the constitution and respected in practice; and corruption in the South African tax authorities presents a low risk for companies (<https://www.business-anti-corruption.com/country-profiles/south-africa>).

Additionally, perceived corruption among tax authorities in South Africa is significantly lower than the continental average. The South African Revenue Service (SARS) operates a 24-hour Fraud and Anti-Corruption Hotline where companies can report corruption related to the tax administration. Within the Natural Resources Sector, the Mining Sector displays vulnerability to corruption and illegal activities (<https://www.business-anti-corruption.com/country-profiles/south-africa>). Although the threshold of a CPI of 50 set by FSC is not met, the assessment is not leading to specified risk for legality in the forest sector.

Regarding taxation, the South African Revenue Service (SARS) is not considered to be highly corrupt. Consultation with stakeholders through interviews has confirmed the perception that the South African forest sector is well-regulated and enforced by the government. The South African forestry industry has a high level of self-governance with a high level of certification and company due diligence.

The Department of Water and Sanitation (DWS) has committed in providing an update on their Verification and Validation process in the annual review of the NRA. This will be used to determine if any of the quaternary catchments have greater than or equal to 20% of forestry area are unauthorized. The 20% Threshold (legal determination) was determined by DWS (relevant authority) and supported by the NRA-WG. Should they exceed this threshold, identified quaternary catchments shall be determined to be specified risk. The NRA-WG supported the annual review process and to update data sources and risk designations, where relevant.

### ***Sources of information***

The list of sources provided in FSC-PRO-60-002a, section 3.3.3 has been reviewed for relevance in regards to the national legality risk assessment of South Africa . The following sources have been used:

- a) Chatham House: <http://www.illegal-logging.info/>;
- b) EU FLEGT process:  
[http://ec.europa.eu/comm/development/body/theme/forest/initiative/index\\_en.htm](http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm);
- c) Government reports and assessments of compliance with related laws and regulations;
- d) Independent reports and assessments of compliance with related laws and regulations
- e) Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- f) Stakeholder and expert consultation outcomes from NRA development processes;
- g) Transparency International Corruption Perceptions Index:  
[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi);

- h) World Bank Worldwide Governance Indicators:  
<http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- i) In cases where other sources of information are not available, consultations with experts within the area were conducted.

Where relevant, they have been specifically referenced under “sources of Information” for each applicable sub-category.

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.*

##### 1.1.1. Applicable laws and regulations

- National Water Act (No. 36 of 1998), specifically: Chapter 4
- National Environmental Management Act, 1998 (Act 107 of 1998)
- Environmental Impact Assessment Regulations
- National Environmental Management Biodiversity Act, 2004 (Act 10 of 2004)
- Alien and Invasive Species regulations
- Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983)
- Companies Act (No. 71 of 2008), Specifically, Sections 11–22
- Tax Administration Act (No. 28 of 2011), specifically Chapter 3 (Sections 22–24)
- Value-Added Tax Act (No. 89 of 1991), specifically Part III (Sections 23–26). Also Part A of Schedule 2 relating to Plants (Item 5)
- Land Tenure Rights Acts, 1991
- Land Administration Act, 1995
- Formalities in respect of Leases on Land Act, 1969
- Land Reform Act, 1996
- Restitution of Land Rights Act, 1994
- Communal land rights Act, 2004

##### 1.1.2. Legal authority

- Department of Water Affairs and Sanitation (DWS) (National Water Act)
- Department of Environmental Affairs and provincial counterparts
- Department of Agriculture, Forestry and Fisheries (Agricultural Branch) Land Use and Soil Management
- National and Provincial Heritage Resources Agencies
- Department of Trade and Industry Companies and
- Intellectual Property Commission
- South African Revenue Service
- Department of Agriculture, Forestry and Fisheries Forestry and Fisheries
- Department of Rural Development and Land Reform

##### 1.1.3. Legally required documents or records

- Water use authorization Environmental Authorization or Record of Decision

- NEMBA Alien invasive species regulation authorization and management plan
- Conservation of Agricultural Resources Act, Directive and Consent
- National Heritage Resources Act Authorization
- Business registration document (CC or Pty Ltd)
- Tax clearance certificate
- Receiver of Revenue to provide proof of tax registration

#### 1.1.4. Sources of information

- CIPC website: [www.cipro.co.za/](http://www.cipro.co.za/)
- National Water Act (No. 36 of 1998), specifically: Chapter 4
- National Environmental Management Act, 1998 (Act 107 of 1998)
- Environmental Impact Assessment Regulations
- National Environmental Management Biodiversity Act, 2004 (Act 10 of 2004)
- Alien and Invasive Species regulations
- Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983)
- <http://faolex.fao.org/docs/pdf/saf123836.pdf>
- Companies Act (No. 71 of 2008), Specifically, Sections 11–22
- <http://www.justice.gov.za/legislation/acts/2008-071amended.pdf>
- Tax Administration Act (No. 28 of 2011), specifically Chapter 3 (Sections 22–24)
- <http://www.sars.gov.za/AllDocs/LegalDoclib/AABC/LAPD-LPrim-Act-2012-01%20-%20Tax%20Administration%20Act%202011.pdf>
- Value-Added Tax Act (No. 89 of 1991), specifically Part III (Sections 23–26). Also Part A of Schedule 2 relating to Plants (Item 5)
- <http://tools.sars.gov.za/WebTools/LNB/sarsLegislation.asp>
- Stakeholder 1 (Forestry South Africa)
- Land Tenure Rights Acts, 1991
- Land Administration Act, 1995
- Formalities in respect of Leases on Land Act, 1969
- Land Reform Act, 1996
- Restitution of Land Rights Act, 1994
- Communal land rights Act, 2004
- Chief Land Claims Commissioner's Annual Report 2016/2017
- <http://www.ruraldevelopment.gov.za/publications/annual-report/file/5762>
- Stakeholder – Grant Thornton
- Business Anti-corruption Portal <https://www.business-anti-corruption.com/country-profiles/south-africa>

#### 1.1.5. Risk determination

##### *Overview of Legal Requirements*

The permit was replaced in 1998 with a water use license (WUL) issued under the National Water Act, 1998. Under this Act, plantation forestry was declared a "stream flow reduction activity" for which a WUL was required. The NWA recognized lawful (pre-72 & permitted) plantations that were in existence two years prior to the promulgation of the Act, i.e. October 1996 to October 1998 as an existing lawful water use (ELWU). In addition to these authorized plantations should also be Registered in terms of the National Water Act, 1998.

Since the promulgation of the Environmental Conservation Act, 1989, (ECA) replaced by the National Environmental Management Act, 1998, an environmental impact assessment for the establishment of a plantation was required. If approved by the competent authority an environmental authorization is issued.

In terms of the Conservation of Agricultural Resources Act, 1983 a Directive and Consent is issued for plantations. In addition to the requirements of this Act, the control of alien and invasive species is regulated as indicated in the National Environmental Management Biodiversity Act, 2004.

This act requires that each landowner control and eradicate alien invasive species on his property. For new afforestation of specifically listed alien invasive species, authorization is required in terms of this act.

The occurrence of graves and objects of historical/ archeological value on land proposed for the establishment of plantations requires a heritage resources authorization to protect the identified heritage resources.

All authorizations have various conditions attached which are legally binding.

The Department of Rural development and Land Reform is responsible for ensuring that security of tenure is provided for all. The Land Reform Programme consists of four elements: Land Restitution, Land Redistribution, Land Tenure Reform, and Development. The Programme aims to reverse the current land ownership patterns that were part of the legacy of the Native Land Act of 1913.

This Act formally adopted territorial segregation as a principle of a post- Union South Africa land policy.

The Restitution of Land Rights Act of 1994 requires that a person, direct descendent of an estate or community is entitled to restitution if dispossessed of a right in land, after 19 June 1913, as a result of past racially discriminatory laws or Practices. The claimant lodges a claim for Restitution. The initial deadline date was set to no later than 31 December 1998, but changed to 30 June 2019.

### *Description of Risk*

The potential risks in South Africa are as follows:

- Disputes of land tenure rights
- Land managers are not operating within a legally registered entity
- Lack of tax registration

The above mentioned risks have a low probability of occurrence or high severity due to legislation and legal processes open for submission of disputes (per. Communication CNRA, Grant Thornton, Accounting Firm; Chief Land Commissioners Report 2016/2017).

The introduction of the Restitution Programme in 1995 has contributed to changing patterns of land ownership through the award of 3 million hectares of land, 1.5 million hectares of which have been transferred to persons and communities who qualified for restitution and opted for land restoration.

As evidence of enforcement of the Land Reform Programme, the Chief Land Claims Commissioner's 2016/2017 Annual Report recorded that between 1965 and 2017, a total of 77

483 claims were settled. The majority of beneficiaries have chosen financial compensation as their preferred form of restitution. The land restitution system in South Africa is accepted by all parties as being a fair and legitimate system and poses no risk in terms of conflict.

South African commercial forestry has a high level of self-imposed, internal regulation, as reflected by the high percentage of FSC-certified plantations in the country today (approximately 80% of the total forestry area is FSC certified).

The larger role players constitute about 80% of the total plantation forestry in the country.

Commercial timber farmers manage about 207 523 ha (16 %) of the total area and community growers the remaining 4%. All landowners and managers are required to be registered as water users under the National Water Act.

The only entities potentially posing a risk of non-payment of water charges are community forest owners. However, for areas under 10 ha, owners must register for all uses but are exempted from the payment of water use charges. In the latest draft water pricing strategy of the Department of Water and Sanitation it is recommended that low income forest owners with more than 10ha forestry be exempted from paying of water use charges for the first 5 years after establishment of the trees. Thereafter the water use charge is phased in over 5 years increasing with 20% each year. This is pending approval of the Water Pricing Strategy by DWS.

There are sub-committees active in certain provinces of South Africa which feed into Government structures for decision making. Such examples include the Stream Flow Reduction Activity License Assessment Advisory Committee (LAAC), which is active in KwaZulu- Natal and the Eastern Cape.

Business registration in South Africa is very well policed and enforced by the South African Revenue Service (SARS). The supportive evidence includes the significant increase in the number of registered tax payers - both companies and individuals. The South African Revenue Service is known for its efficiency and effectiveness in tax registration across the country (Refer to Indicator 1.7). It is not possible to acquire a tax clearance certificate if a company's tax affairs are not up-to-date and in order.

The risk in terms of scale is negligible as the occurrence is very improbable in the South African business environment (Business Anti-Corruption Portal).

The impact of businesses operating illegally and the consequential non- payment of tax, should it occur, would have a small financial impact due to the low tariffs that need to be paid. However, the occurrence is negligible, as stated above. There is no evidence of transgression of land tenure rights in natural forests. There were no concerns raised with regard to this sub-criterion during consultations with stakeholders and local experts.

There are no significant issues based on the current information provided by authorities. The Department of Water and Sanitation (DWS) is committed in providing an update on their Verification and Validation process in the annual review of the NRA. This will be used to determine if any of the quaternary catchments have greater than or equal to 20% of forestry area unauthorized.

Should they exceed this threshold, identified quaternary catchments shall be determined to be specified risk.

Should the DWS identify areas to be specified risk prior to the annual review of the NRA, the details of the Directive shall be communicated to all FSC COC certificate holders with Controlled Wood within their scope of certification via the FSC Southern Africa sub-regional office.

The stipulations of the directive issued by the authority shall determine its use as Controlled Wood. The stipulations shall be monitored by the authority and non-compliance communicated at the annual review of the NRA. In the absence of a directive, wood may not be harvested/sold to a FSC CoC certified organization from any plantation with unlawful afforestation in the catchment.

Based on the findings of low-scale and manageable impact, it is concluded that the risk in this sub-category is low.

#### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.1.6. Risk designation and specification**

Low risk

#### **1.1.7. Control measures and verifiers**

N/A

### **1.2. Concession licenses**

*Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.*

#### **1.2.1. Applicable laws and regulations**

Not applicable. There is no legislation relating to forest concessions in South Africa.

#### **1.2.2. Legal authority**

N/A

#### **1.2.3. Legally required documents or records**

N/A

#### **1.2.4. Sources of information**

N/A



#### 1.2.5. Risk determination

N/A

#### 1.2.6. Risk designation and specification

N/A

#### 1.2.7. Control measures and verifiers

N/A

### 1.3. Management and harvesting planning

*Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

#### 1.3.1. Applicable laws and regulations

- National Forests Act (No. 84 of 1998), specifically Chapter 2
- NEMA, 107 of 1998

#### 1.3.2. Legal authority

- Department of Agriculture, Forestry and Fisheries
- Forestry South Africa Institute for Commercial Forestry research

#### 1.3.3. Legally required documents or records

- There are no specific documents required in the Act.

#### 1.3.4. Sources of information

##### *Government sources*

- Act (No. 84 of 1998), specifically Chapter 2
- NEMA, 107 of 1998  
<http://cer.org.za/wpcontent/uploads/2014/02/National-Forests-Act-84-OF-1998.pdf>  
[www.daff.gov.za/](http://www.daff.gov.za/)  
<http://www.forestry.co.za/environment/>  
<http://www.icfr.ukzn.ac.za/sites/default/files/pubs/Forest%20Engineering%20Guidelines%202014.pdf>

##### *Non-Government sources*

- Stakeholder 1 (Forestry South Africa)

#### 1.3.5. Risk determination

### *Overview of Legal Requirements*

The National Forests Act (NFA), "promotes sustainable management and development of forests for the benefit of all"

Section 28 Duty of Care under NEMA requires every person who causes, has caused or may cause significant pollution or degradation of the environment to take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorized by law or cannot reasonably be avoided or stopped, to minimize and rectify such pollution and degradation of the environment.

"Reasonable measures" include measures to: investigate, assess and evaluate the impact on the environment; cease, modify or control any act causing pollution or degradation and remedying the effects of pollution or degradation.

The Duty of Care in NEMA may be utilized to implement responsible forest management. Promotion and enforcement of the NFA is through the development of criteria and indicators using the Principles outlined in the Act, which are yet to be promulgated.

Commercial forestry in South Africa is based exclusively on plantation forestry, with a high level of self-regulation within the industry. There is a high percentage of FSC-certified plantations in the country with approximately 80% of the total forestry area being FSC-certified. Of the remaining 20% that constitutes uncertified forestry area, 16% are owned or managed by Government, large organizations or private farmers. The 4% of uncertified forestry area lies within Traditional authority areas (land held under communal land tenure). No formalized planning required. Elements of planning required are covered by the other indicators in Category 1

The forestry industry, as part of its self-regulation, has developed and implemented several guidelines with which the whole industry is expected to comply. These are the following:

1. Guidelines for Forest Engineering Practices in South Africa
2. Environmental Guidelines for Commercial Forest
3. Plantations in South Africa

### *Description of Risk*

However, these rules and guidelines are voluntary.

Stakeholders raised no concerns regarding this sub-criterion; and there are no significant issues that would constitute specified risk. The risk designation is low.

### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.3.6. Risk designation and specification**

Low risk

#### **1.3.7. Control measures and verifiers**

N/A

## 1.4. Harvesting permits

*Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.*

### 1.4.1. Applicable laws and regulations

- National Forests Act, 84 of 1998, Section 12 and 15.

### 1.4.2. Legal authority

- Department of Agriculture, Forestry and Fisheries (DAFF)

### 1.4.3. Legally required documents or records

- Single tree permit for a dead or dying tree

### 1.4.4. Sources of information

#### *Government sources*

- National Forests Act (No. 84 of 1998), Section 12,15  
<http://cer.org.za/wpcontent/uploads/2014/02/National-Forests-Act-84-OF-1998.pdf>
- Stakeholder 2
- (Department of Agriculture,  
Forestry and Fisheries)

#### *Non-Government sources*

- Stakeholder 1 (Forestry South Africa)
- Stakeholder 2 (Department of Agriculture, Forestry and Fisheries)

### 1.4.5. Risk determination

#### *Overview of Legal Requirements*

Sections 12 and 15 of the National Forests Act lists 46 protected trees in South Africa. The Act Section 12 & 15 of the forestry act stipulates the rules for declaring protected trees. Government gazette no 38215 lists 46 trees for protection. The Act requires a license to be issued for any tree that is not in a forest and which is to be removed for whatever reason. Such licenses do not relate to commercial forestry. Harvesting practices for commercial forestry operations are available as best practice guidelines in South Africa, which are self-regulated.

Since 1994 (when South Africa became a democracy), there has been no evidence of dead or dying wood from natural forests illegally entering the country's commercial timber value chain (DAFF). There are no significant issues that would constitute specified risk relating to licenses to cut, disturb, damage or destroy any indigenous (natural) tree in a natural forest.

Based on the findings, it is concluded that the risk in this sub-category is low.

*Description of Risk*

Removal of single trees that are protected in the National Forest Act, harvesting of natural forests.

*Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

**1.4.6. Risk designation and specification**

Low risk

**1.4.7. Control measures and verifiers**

N/A

## TAXES AND FEES

### 1.5. Payment of royalties and harvesting fees

*Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.5.1. Applicable laws and regulations

Not applicable. There are no legislation requiring specific fees to be paid to authorities based on harvesting of forest products.

#### 1.5.2. Legal authority

N/A

#### 1.5.3. Legally required documents or records

N/A

#### 1.5.4. Sources of information

N/A

#### 1.5.5. Risk determination

N/A

#### 1.5.6. Risk designation and specification

N/A

#### 1.5.7. Control measures and verifiers

N/A

### 1.6. Value added taxes and other sales taxes

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

#### 1.6.1. Applicable laws and regulations

- Value-Added Tax Act (no 89 of 1991) Section 7(1)(a); sections 9 - 12

#### 1.6.2. Legal authority

- SARS (South African Revenue Service)

#### 1.6.3. Legally required documents or records

- Tax clearance certificate

#### **1.6.4. Sources of information**

##### *Government sources*

- [www.sars.gov.za](http://www.sars.gov.za)
- Value-Added Tax Act (No. 89 of 1991), specifically Section 7(1)(a); Sections 9–12  
<http://tools.sars.gov.za/WebTools/LNB/sarsLegislation.asp>

##### *Non-Government sources*

- Stakeholder 3 (accounting firm)  
<https://www.business-anti-corruption.com/country-profiles/south-africa>

#### **1.6.5. Risk determination**

##### *Overview of Legal Requirements*

Business registration in South Africa is very well policed and enforced by the South African Revenue Service (SARS) in particular. The evidence of this is the significant increase in the number of registered tax payers, both companies and individuals, since the advent of democracy in South Africa in 1994. SARS is known for its efficiency and effectiveness in revenue collection across the country. It is not possible to acquire a tax clearance certificate if a company's tax affairs are not up-to-date and in order.

##### *Description of Risk*

The risk in terms of scale is negligible as the occurrence is very improbable in the South African business environment.

As a large company needs to claim VAT expenses, it is actually in the company's interest to register for VAT. Therefore, there is no/minimal risk that medium and large companies will not register for VAT. Furthermore, small companies are exempted from registering and therefore charging VAT on their invoices.

No stakeholders raised concerns regarding this criterion.

There are no significant issues that would constitute specified risk.

Based on the findings of low scale and manageable impact, it is concluded that the risk in this sub-category is low.

##### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.6.6. Risk designation and specification**

Low risk

#### **1.6.7. Control measures and verifiers**

N/A

## 1.7. Income and profit taxes

*Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.*

### 1.7.1. Applicable laws and regulations

- Income Tax Act (No. 58 of 1962), specifically: Section 12B First Schedule, paragraphs 12(1)(g), 14, 15

### 1.7.2. Legal authority

- SARS (South African Revenue Services)

### 1.7.3. Legally required documents or records

- Tax clearance certificate

### 1.7.4. Sources of information

#### *Government sources*

- SARS (2017): General website. Available at: [www.sars.gov.za/](http://www.sars.gov.za/) [Accessed on 22 February 2017].
- SARS (2017): Income Tax Act (no 58 of 1962) Section 12B: First Schedule, paragraphs 12(1)(g), 14, 15. Available at: <http://tools.sars.gov.za/WebTools/LNB/sarsLegislation.asp> [Accessed on 22 February 2017].

#### *Non-Government sources*

- GAN Business Anti-Corruption (2015): Country profile - South African Tax Administration. Available at: <http://www.business-anti-corruption.dk/country-profiles/sub-saharan-africa/south-africa/tax-administration.aspx> [Accessed on 22 February 2017].
- Stakeholder 1 (Forestry South Africa)

### 1.7.5. Risk determination

#### *Overview of Legal Requirements*

The risk posed here is that a company does not pay income tax which it is legally obliged to pay to the Receiver of Revenue. Corruption issues highlighted by Transparency International are related to the mining industry, Government and the Presidency which are non-related to the forestry sector

#### *Description of Risk*

Tax collection systems in South Africa are considered robust and well- implemented. Despite a CPI of 45 (below the threshold of 50), tax officials are considered to be relatively uncorrupt (Business Anti-Corruption Portal: <http://www.business-anti-corruption.com>). This subject was discussed during stakeholder consultations as part of the process to develop the CNRA. All stakeholders consulted confirmed compliance. SARS is known for its ability to police and enforce tax collection. Supporting evidence includes the significant increase in the number of registered tax payers – both companies and individuals.

The South African Revenue Service (SARS) is known for its efficiency and effectiveness in revenue collection across the country. It is not possible to acquire a tax clearance certificate if a company's tax affairs are not up- to-date and in order. Further consultation about this issue was carried out with the Operations Director of Forestry South Africa who confirmed the above. The risk in terms of scale is negligible as the occurrence is very improbable in the South African business environment.

The impact of non-registration for income tax can be significant from the perspective of income to the state from large forestry companies.

Corporate governance prohibits large companies from non-payment of the required income tax, so the probability of this happening is extremely low. The impact of community forestry not paying VAT is very low.

Stakeholders raised no concerns regarding this sub-criterion.

There are no significant issues that would constitute specified risk. Based on the findings of low scale and manageable impact, it is concluded that the risk is low in this sub-category

#### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities

#### **1.7.6. Risk designation and specification**

Low risk

#### **1.7.7. Control measures and verifiers**

N/A



## TIMBER HARVESTING ACTIVITIES

### 1.8. Timber harvesting regulations

*Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.*

#### 1.8.1. Applicable laws and regulations

National Forests Act (No. 84 of 1998), Chapter 2

#### 1.8.2. Legal authority

- DAFF (Department of Agriculture, Forestry and Fisheries)

#### 1.8.3. Legally required documents or records

Harvesting permit for Indigenous (Natural) trees

#### 1.8.4. Sources of Information

*Government sources*

- Parliament of the Republic of South Africa (1998): National Forests Act, chapter 2. Available at:  
<http://cer.org.za/wp-content/uploads/2014/02/National-Forests-Act-84-OF-1998.pdf>  
[Accessed on 22 February 2017].

#### 1.8.5. Risk determination

*Overview of Legal Requirements*

Not applicable to commercial plantation forestry

Chapter 2 of the National Forests Act (NFA), "promotes sustainable management and development of forests for the benefit of all"

An extract from Chapter 2 states 'forests must be developed and managed so as to—

- (i) Conserve biological diversity, ecosystems and habitats;
- (ii) Sustain the potential yield of their economic, social and environmental benefits;
- (iii) Promote the fair distribution of their economic, social, health and environmental benefits;
- (iv) Promote their health and vitality;
- (v) Conserve natural resources, especially soil and water;
- (vi) Conserve heritage resources and promote aesthetic, cultural and spiritual values; and
- (vii) Advance persons or categories of persons disadvantaged by unfair discrimination."

### *Description of Risk*

As per the National Forest Act No 84 of 1998 - the Principles, Criteria and Indicators of Standards is the instrument developed for the management of forests.

General management in terms of environmental impact is carried out by the Department of Environmental Affairs, Department of Agriculture, Fisheries and Forestry during ad-hoc compliance audits.

Section 7 of the National Forest Act outlines the harvesting and sale of indigenous (natural) trees. Natural forest areas (not commercial forestry) are under the responsibility of the National Parks Board and the Department of Agriculture, Forestry and Fisheries (DAFF).

Harvesting practices for commercial forestry operations are available as best practice guidelines in South Africa, which are self-regulated.

### *Risk Conclusion*

Based on the above evidence and non-applicability to commercial forestry operations (Plantations), risk is designated as Low. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventative actions taken by the authorities and/or by the relevant entities

#### **1.8.6. Risk designation and specification**

Low

#### **1.8.7. Control measures and verifiers**

N/A

### **1.9. Protected sites and species**

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

#### **1.9.1. Applicable laws and regulations**

- NEMA (1998): National Environmental Management Act No. 107 of 1998, section 24(2)(a) or (b)
- NEMA (2004): National Environmental Management: Biodiversity Act No. 10 of 2004, chapters 3,4,5 and 7
- NEMA (2003): National Environmental Management: Protected Areas Act No. 57 of 2003, chapters 2, 3 and 4
- National Forests Act (No. 84 of 1998), Chapter 3 Part 1 and Part 3
- National Heritage Resources Act no 25 of 1999

#### **1.9.2. Legal authority**

- Department of Environmental Affairs

- Department of Agriculture, Forestry and Fisheries - protection of trees
- The South African Heritage Resources Agency (SAHRA)

### 1.9.3. Legally required documents or records

- Environmental authorization from the Department of Environmental affairs

### 1.9.4. Sources of Information

- <https://www.environment.gov.za/legislation/actsegregulations>
- National Environmental Management Act (No. 107 of 1998) (NEMA), specifically Section 24(2)(a) or (b)  
<http://faolex.fao.org/docs/pdf/saf123691.pdf>
- National Environmental Management Biodiversity Act (No. 10 of 2004), specifically Chapters 3, 4, 5 and 7  
[https://www.environment.gov.za/sites/default/files/legislations/nemba10of2004\\_alienandinvasivespeciesregulations.pdf](https://www.environment.gov.za/sites/default/files/legislations/nemba10of2004_alienandinvasivespeciesregulations.pdf)
- National Environmental Management: Protected Areas Act (No. 57 of 2003), specifically chapters 2, 3 and 4  
[https://www.environment.gov.za/sites/default/files/gazetted\\_notices/nempaa\\_actno57of2003\\_protectedareas.pdf](https://www.environment.gov.za/sites/default/files/gazetted_notices/nempaa_actno57of2003_protectedareas.pdf)
- National Forests Act (No. 84 of 1998), Chapter 3, Part 1 and Part 3  
<http://cer.org.za/wpcontent/uploads/2014/02/National-Forests-Act-84-OF-1998.pdf>
- National Heritage Resources Act

### 1.9.5. Risk determination

#### *Overview of Legal Requirements*

NEMA, 1998 requires that areas adjacent to forestry operations requiring protection be identified and protected during forest operations

#### *Description of Risk*

South African commercial forestry is based exclusively on plantation forestry, with a high level of self-regulation and compliance to FSC FM standard requirements (80% FSC certified area).

The 20% uncertified plantations are largely managed by forestry companies with strong governance systems in place as well as commercial farmers who are known for their legally compliant forest operations. Of the remaining 20% that constitutes uncertified forestry area, 16% are owned or managed by Government, large organizations or private farmers. The 4% of uncertified forestry area lies within land held under communal land tenure.

The requirements stipulated in industry guidelines go beyond the law, which reflect the industry commitment to manage forest resources in a responsible manner.

Forestry land owners voluntarily worked with DWS on the development of a wetland and riparian area identification and delineation guideline in 1999/ 2000, entitled A practical field procedure for the Identification and Delineation of Wetlands and Riparian Areas. In 2000, large

companies committed to implementing the delineation and the buffering of watercourses in their existing afforestation areas. The delineation of watercourses and the implementation of a described buffer distance have, since 2000, been included in all stream flow reduction water use authorizations and record of decisions/ environmental authorizations. The implementation has led to a reduction in plantation afforested land, increased conservation areas which has positively impacted on streamflow (DWS).

Impact: Commercial forestry is based exclusively on plantation forestry, and the impact of not complying with the protection of sensitive areas can lead to a reduction in available water resources and adversely affect biodiversity in some areas.

In the case of natural forests, harvesting is prohibited, with the exception of limited cutting occurring in the southern Cape area; an activity strictly managed by the National Parks Board. None of this harvested wood enters the traditional commercial forestry domain. No stakeholders raised concerns regarding this criterion and the risk is considered low.

The South African Heritage Resources Agency (SAHRA) must be contacted regarding any matters pertaining to the National Heritage Resources Act.

For example, grave sites may be found from time to time during forestry operations. The South African Environmental Guidelines require that local communities be consulted, with grave sites to be managed in cooperation with them; thus protection measures are developed with the relevant community members. All companies record such grave sites internally. The close interaction between forestry operations and communities exist in the identification and maintenance grave sites. There are no records and no other evidence of disputes in this regard in South Africa.

The risk is negligible.

Based on the findings of low scale and manageable impact, it is concluded that the risk in this sub-category is low.

### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

### **1.9.6. Risk designation and specification**

Low risk

### **1.9.7. Control measures and verifiers**

N/A

## **Environmental requirements**

*National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to*

*systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.*

#### **1.10.1. Applicable laws and regulations**

- National Environmental Management Act (No. 107 of 1998) (NEMA)

#### **1.10.2. Legal authority**

- Department of Environmental Affairs
- Department of Water and Sanitation
- Department of Agriculture, Forestry and Fisheries (Land Use and Soil Management)

#### **1.10.3. Legally required documents or records**

- Water use authorization
- Environmental Authorization
- Directive and Consent (CARA)

#### **1.10.4. Sources of information**

##### *Government sources*

- Parliament of the Republic of South Africa (2017): Acts and Regulations. Available at: <https://www.environment.gov.za/legislation/actsregulations> [Accessed on 22 February 2017].
- Department of Water and Forestry affairs (2008): Updated Manual for the Identification and Delineation of Wetlands and Riparian Areas. Available at: [https://www.dwaf.gov.za/Documents/Other/EnvironRecreation/wetlands/DRAFT\\_3\\_Wetland%20and%20Riparian%20Delineation%20Guidelines%202008.pdf](https://www.dwaf.gov.za/Documents/Other/EnvironRecreation/wetlands/DRAFT_3_Wetland%20and%20Riparian%20Delineation%20Guidelines%202008.pdf) [Accessed on 22 February 2017].

##### *Non-Government sources*

- Stakeholder 1 (Forestry South Africa)

#### **1.10.5. Risk determination**

##### *Overview of Legal Requirements*

The listed activities within the National Environmental Management Act defines when Basic Assessments or EIAs are required and how they should be effected. All EIAs are required to be implemented by a registered Environmental Assessment Practitioner (EAP)

The authorizations define how (unplanted) buffer zones should be implemented adjacent to wetlands and water courses. There is a risk that forestry companies do not comply with EIA requirements and/or do not maintain buffer zones as stipulated in the Authorization. The Department of Water Affairs and Sanitation is responsible for the verification and validation process to record and action non-compliance. Government officials including DEA and DAFF monitor compliance

Forest land owners voluntarily worked with DWS on the development of a wetland and riparian area identification and delineation guideline in 1999/ 2000, entitled 'A practical field procedure for the Identification and Delineation of Wetlands and Riparian Areas'. Large companies

committed to implementing the delineation and the buffering of watercourse in their existing afforestation areas in 2000. The delineation of watercourses and the implementation of a described buffer distance have, since 2000, been included in all stream flow reduction water use authorizations and record of decisions/ environmental authorizations.

#### *Description of Risk*

Commercial forestry is based exclusively on plantation forestry, and the impact of not complying with the protection of sensitive areas can lead to a reduction in available water resources and adversely affect biodiversity in some areas. In the case of natural forests, harvesting is prohibited, with the exception of limited cutting occurring in the southern Cape area; an activity strictly managed by the National Parks Board.

No stakeholders raised concerns regarding this criterion. There are no significant issues that would constitute specified risk.

Based on the findings that the scale of non-compliance is negligibly small and the impact is not significant, it is concluded that the combined risk in this sub-category is considered low.

#### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.10.6. Risk designation and specification**

Low risk

#### **1.10.7. Control measures and verifiers**

N/A

### **1.11. Health and safety**

*Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.*

#### **1.11.1. Applicable laws and regulations**

- Occupational Health and Safety Act No. 85 of 1993, section 7

#### **1.11.2. Legal authority**

- Department of Labour

#### **1.11.3. Legally required documents or records**

N/A

#### 1.11.4. Sources of information

##### *Government sources*

- SAFLII (South African Legal Information Institute) (1993): Occupational Health and Safety Act No. 85 of 1993. Available at: [http://www.saflii.org/za/legis/num\\_act/ohasa1993273/](http://www.saflii.org/za/legis/num_act/ohasa1993273/) [Accessed on 22 February 2017].

##### *Non-Government sources*

- Stakeholder 1 (Forestry South Africa)
- Smallholder report to Forestry South Africa – 20/05/2016

#### 1.11.5. Risk determination

##### *Description of Risk*

The Occupational Health and Safety Act (OHSA) defines the legislative requirements related to health and safety in the South African working environment. There is a risk that forestry companies do not comply with health and safety requirements stipulated in the OHSA.

South African commercial forestry has a high level of self-regulation, as reflected by the high percentage of FSC-certified plantations in the country today (over 80% of the total forestry area is FSC-certified). Of the remaining 20% of uncertified area, 16% is managed by large forestry companies and commercial farmers, who (according to stakeholder interviews) have very strong governance systems in place. There is a strong safety culture in South Africa, with all large forestry companies demonstrating a zero tolerance towards unsafe forestry practices on their land. Approximately 85 451 ha (4%) of uncertified commercial timber is in Communal Land which employ contractors for operational activities.

Some of these contractors have poor governance systems with minimal record keeping and application of governance systems (R Mack, expert reference on NRA-WG). This functional scale is found to be a risk, however due to the scale and impact it is found to be overall low risk.

All companies keep an internal record of their accident statistics. The industry norm for managing accidents is the Disabling Injury Frequency Rate (DIFR), but these figures are not collected within a centralized database.

Fatalities and injuries leading to hospitalization need to be reported to the Department of Labour, which then investigates these incidents.

Based on the findings that the scale of non-compliance is negligibly small and the impact is not significant, it is concluded that the combined risk in this sub-category is considered low. There is thus a very small percentage (possibly 4% or 85 451 ha) of members of the forestry industry not applying the requirements regarding H&S as stipulated in the OHS.

##### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### 1.11.6. Risk designation and specification

Low risk

#### 1.11.7. Control measures and verifiers

N/A

### 1.12. Legal employment

*Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

#### 1.12.1. Applicable laws and regulations

- Basic Conditions of Employment Act (No. 75 of 1997), Specifically: Chapters 3, 4, 5 and 6
- Employment Equity Act (No. 55 of 1998), Specifically: chapters 2 and 3
- Labour Relations Act (No. 66 of 1995), Specifically: chapters 2, 3, 4, 5, 6, 7 and 8

#### 1.12.2. Legal authority

- Department of Labour

#### 1.12.3. Legally required documents or records

- Parliament of the Republic of South Africa (2017): Payroll of companies. Available at: [www.labour.gov.za/](http://www.labour.gov.za/) [Accessed on 22 February 2017].

#### 1.12.4. Sources of information

##### *Government sources*

- [www.labour.gov.za/](http://www.labour.gov.za/)
- Annual Reports of The Department of Labour:  
<http://www.labour.gov.za/DOL/documents/annual-reports/annualreport-pfma/2013/annual-reportof-the-department-of-labour-2012-2013>
- Basic Conditions of Employment Act (No.75 of 1997), specifically Chapters 3, 4, 5 and 6  
<http://www.labour.gov.za/DOL/downloads/legislation/acts/basicconditions-ofemployment/Amended%20Act%20%20Basic%20Conditions%20of%20Employment.pdf>
- Employment Equity Act (No. 55 of 1998), specifically Chapters 2 and 3  
<https://www.saica.co.za/Technical/LegalandGovenance/Legislation/EmploymentEquityAct/tabid/3041/language/en-ZA/Default.aspx>
- Labour Relations Act (No. 66 of 1995), specifically Chapters 2, 3,4, 5, 6, 7 and 8  
<http://www.labour.gov.za/DOL/le>



- Smallholder report to Forestry South Africa – 20/05/2016

#### **1.12.5. Risk determination**

##### *Description of Risk*

South African commercial forestry has a high level of regulation, as reflected by the high percentage of FSC- certified plantations in the country today (over 80% of the total forestry area is FSC-certified). Of the remaining 20% afforested areas, 16 % is managed by forestry companies and commercial farmers, which (according to stakeholder interviews) have very strong governance systems in place. Approximately 4% of uncertified timber is in Communal Land.

South Africa has labour legislation that exceeds the requirements stipulated by the ILO. The Labour law is well implemented and functioning throughout the South African working environment.

Labour unions ensure that Organizations, where they play a role, assist with compliance; and a company cannot prohibit its employees from joining a union. In South Africa, very few forestry workers have opted be part of unions (this is inclusive of large multi-national corporates). Joining unions is voluntary and is dependent on the employees to apply to the union. Workers in these areas would rather not join due to the membership fee payable vs. benefits received (as they normally do not have large workforces). Department of Labour is responsible for the monitoring and enforcement of the Labour Law. Furthermore, the Department of Labour investigates all accidents and imposes penalties where a company is found to be negligent.

Communities located in communal areas sometimes utilize the services of contractors to harvest their timber. Some of these contractors have demonstrated non- compliance to payment of minimum wages (R Mack, expert on NRA WG). This functional scale is determined to be a risk. Based on the findings that non-compliance is negligible and of a small scale (<4%, 85 451 ha of forestry area which potentially may not be implementing the requirements of legislation), it is found that this Indicator has an overall Low Risk designation.

##### *Risk Conclusion*

Low risk for Country Level:

(1) Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventative actions taken by the authorities and/or by the relevant entities.

Low Risk for Outsourced Operations on Communal Land:

(2) Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.12.6. Risk designation and specification**

Low risk

#### **1.12.7. Control measures and verifiers**

N/A

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

Not applicable (There is no legislation in South Africa covering Customary rights. No laws related to customary rights in forests exist in South Africa).

#### 1.13.2. Legal authority

N/A

#### 1.13.3. Legally required documents or records

N/A

#### 1.13.4. Sources of information

N/A

#### 1.13.5. Risk determination

N/A

#### 1.13.6. Risk designation and specification

N/A

#### 1.13.7. Control measures and verifiers

N/A

### 1.14. Free prior and informed consent

*Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.*

#### 1.14.1. Applicable laws and regulations

Not applicable. There is no legislation in South Africa covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation. No laws exist that relate to free prior and informed consent in South Africa.

#### 1.14.2. Legal authority

N/A

#### 1.14.3. Legally required documents or records

N/A

**1.14.4. Sources of information**

N/A

**1.14.5. Risk determination**

N/A

**1.14.6. Risk designation and specification**

N/A

**1.14.7. Control measures and verifiers**

N/A

**1.15. Indigenous/traditional peoples' rights**

*Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.*

**1.15.1. Applicable laws and regulations**

Not applicable. There is no indigenous people in the forest areas of South Africa.

**1.15.2. Legal authority**

N/A

**1.15.3. Legally required documents or records**

N/A

**1.15.4. Sources of information**

N/A

**1.15.5. Risk determination**

N/A

**1.15.6. Risk designation and specification**

N/A

**1.15.7. Control measures and verifiers**

N/A

## TRADE AND TRANSPORT

### 1.16. Classification of species, quantities, qualities

*Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).*

#### 1.16.1. Applicable laws and regulations

Not applicable. There are no requirement on classification of species, quantities and qualities in South Africa.

#### 1.16.2. Legal authority

N/A

#### 1.16.3. Legally required documents or records

N/A

#### 1.16.4. Sources of information

N/A

#### 1.16.5. Risk determination

N/A

#### 1.16.6. Risk designation and specification

N/A

#### 1.16.7. Control measures and verifiers

N/A

### 1.17. Trade and transport

*All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.*

#### 1.17.1. Applicable laws and regulations

Not applicable (No trading permits or transport documents are required by law to transport wood in South Africa.)

**1.17.2. Legal authority**

N/A

**1.17.3. Legally required documents or records**

N/A

**1.17.4. Sources of information**

N/A

**1.17.5. Risk determination**

N/A

**1.17.6. Risk designation and specification**

N/A

**1.17.7. Control measures and verifiers**

N/A

**1.18. Offshore trading and transfer pricing**

*Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.*

**1.18.1. Applicable laws and regulations**

- Income Tax Act, Act 58 of 1962, Section 31
- Parliament of the Republic of South Africa (2010): Taxation Laws Amendment Act (TLAA). Available at: [http://www.gov.za/sites/www.gov.za/files/a7\\_2010.pdf](http://www.gov.za/sites/www.gov.za/files/a7_2010.pdf) [Accessed on 22 February 2017].

**1.18.2. Legal authority**

- SARS (South African Revenue Services)

**1.18.3. Legally required documents or records**

- Yearly tax assessments

#### 1.18.4. Sources of information

##### *Government sources*

- Parliament of the Republic of South Africa (2017): Export permit. Available at: [http://www.services.gov.za/services/content/Home/OrganisationServices/exportpermit/Exportpermits/en\\_ZA](http://www.services.gov.za/services/content/Home/OrganisationServices/exportpermit/Exportpermits/en_ZA) [Accessed on 22 February 2017].
- Parliament of the Republic of South Africa (2017): Import permit. Available at: [http://www.services.gov.za/services/content/Home/OrganisationServices/Tax/CustomDuties/applicationforregistrationofanimporter/en\\_ZA](http://www.services.gov.za/services/content/Home/OrganisationServices/Tax/CustomDuties/applicationforregistrationofanimporter/en_ZA) [Accessed on 22 February 2017].
- SARS (1999): Income Tax Act No. 58 of 1962, section 31, practice Note 7/1999. Available at: <http://tools.sars.gov.za/WebTools/LNB/sarsLegislation.asp> [Accessed on 22 February 2017].

##### *Non-Government sources*

- International Tax Review (2014): World Transfer Pricing. Available at: <http://www.internationaltaxreview.com/pdfs/wtp/world-transfer-pricing-2014.pdf> [Accessed on 22 February 2017].
- Stone, G (2013/2014): International Transfer Pricing 2013/14. Available at: <http://www.pwc.com/gx/en/international-transfer-pricing/assets/itp-2013-final.pdf> [Accessed on 22 February 2017].
- OECD (Organisation for Economic Co-operation and Development) (2016): Transfer Pricing Country Profile - South Africa. Available at: [http://www.oecd.org/ctp/transfer-pricing/SouthAfrica\\_TPCountryProfile\\_Jan2013.pdf](http://www.oecd.org/ctp/transfer-pricing/SouthAfrica_TPCountryProfile_Jan2013.pdf) [Accessed on 22 February 2017].

#### 1.18.5. Risk determination

##### *Overview of Legal Requirements*

In relation to transfer pricing, South Africa has had legislation in place since 1995; this has been amended with an effective date of 1 April 2012, with more focus on the taxpayer being proactive in compliance.

The Income Tax Act requires connected parties to deal at arm's-length in respect of cross-border transactions. Taxpayers are required to determine the taxable income that would arise from arm's length transactions, if different from what would be reported. Companies that do not comply with the requirements of off-shore trading will have adjustment to their taxable income. Refer [http://download.pwc.com/ie/pubs/2012\\_international\\_transfer\\_pricing.pdf](http://download.pwc.com/ie/pubs/2012_international_transfer_pricing.pdf)

##### *Description of Risk*

The South African Revenue Service (SARS) has been furnished with greater powers under the Tax Administration Act; and increased audit activity, across all industries, by experts within SARS' specialist Transfer Pricing Unit has been observed. As a result, SARS is actively auditing taxpayers on their transfer pricing and has indicated that it will place greater scrutiny on multinationals with connected-party entities; the Organization has a strict requirement for

documentation and supporting evidence. However, SARS is experiencing a resource issue, with protracted audit outcomes.

Furthermore, when transactions take place in African countries lacking a transfer pricing regime, it is unlikely that mutual agreement procedures will mitigate illegal transfer pricing.

South Africa is not a member of the OECD, but has exchange of information relationships with 119 jurisdictions through 78 Double Taxation Conventions (DTCs), 17 Tax Information Exchange Agreements (TIEAs) and 1 multilateral mechanism (<http://www.eoitax.org/jurisdictions/ZA#agreements>).

The introduction of the amendments in 2012 has led to stricter regulations on transfer pricing. There are still challenges, but consultation with relevant stakeholders raised no issues in the South African forestry sector.

Thus the indicator is considered to be of low risk.

### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.18.6. Risk designation and specification**

Low risk

#### **1.18.7. Control measures and verifiers**

N/A

### **1.19. Custom regulations**

*Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).*

#### **1.19.1. Applicable laws and regulations**

- Customs and Excise Act no. 91 of 1964, Tariff Classification guideline

#### **1.19.2. Legal authority**

- South African Revenue Service
- International Trade Administration Commission (ITAC)

#### **1.19.3. Legally required documents or records**

- Export documentation (SARS confirmation letter of Customs Client Number)
- Bill of loading
- Packing lists

#### **1.19.4. Sources of information**

### *Government sources*

- <http://www.sars.gov.za/>
- Customs and Excise Act (no. 91 of 1964)
- Tariff Classification guideline  
[http://www.vertic.org/media/National%20Legislation/South\\_Africa/ZA\\_Customs\\_Excise\\_Act\\_1964.pdf](http://www.vertic.org/media/National%20Legislation/South_Africa/ZA_Customs_Excise_Act_1964.pdf)

#### Relevant websites:

- Export permit:  
[http://www.services.gov.za/services/content/Home/OrganizationServices/exportpermit/Exportpermits/en\\_ZA](http://www.services.gov.za/services/content/Home/OrganizationServices/exportpermit/Exportpermits/en_ZA)
- Import permit:  
[http://www.services.gov.za/services/content/Home/OrganizationServices/Tax/CustomDuties/applicationforregistrationofanimporter/en\\_ZA](http://www.services.gov.za/services/content/Home/OrganizationServices/Tax/CustomDuties/applicationforregistrationofanimporter/en_ZA)

### **1.19.5. Risk determination**

#### *Overview of Legal Requirements*

The large forestry companies in South Africa are almost all listed on the stock exchange and are required to undergo annual independent financial audits. Regarding the other scales of companies, there is currently no public domain evidence of illegal activities related to import-export licensing being relevant to any of the South African forestry companies. As a rule, forestry companies who export apply for the required export documentation and there is no evidence of companies in the forest industry acting in an illegal manner regarding export permit use.

#### *Description of Risk*

If an export permit were absent, there would be no impact on pricing or value. Non-compliance to legislation would result in fines and possibly imprisonment as per our Custom

Regulations. Stakeholders raised no concerns regarding this indicator. There are no significant issues that would constitute specified risk.

Based on the findings of low scale and low impact, it is concluded that the risk is low in this indicator.

#### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

### **1.19.6. Risk designation and specification**

Low risk

### **1.19.7. Control measures and verifiers**

N/A

## **1.20. CITES**



*CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).*

#### **1.20.1. Applicable laws and regulations**

- NEMA – National Environmental Management: Biodiversity Act (10/2004)

#### **1.20.2. Legal authority**

- The National Minister responsible for environmental affairs is the National Management Authority for CITES related activities.

#### **1.20.3. Legally required documents or records**

- CITES export/re-export permit

#### **1.20.4. Sources of information**

##### *Government sources*

- NEMA National Environmental Management (2004): Biodiversity Act 10/2004. Available at: <http://www.environment.co.za/environmental-laws-and-legislation-in-south-africa/nema-national-environmental-management-biodiversity-act-10-2004-convention-international-trade-endangered-species-cites-regulations-gazette-33002-9240-volume-537-south-africa.html> [Accessed on 22 February 2017].

##### *Non-Government sources*

- CITES (2016): CITES Checklist. Available at: [http://checklist.cites.org/#/en/search/country\\_ids%5B%5D=71&output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=0&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Plantae&page=1&per\\_page=20](http://checklist.cites.org/#/en/search/country_ids%5B%5D=71&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20) [Accessed on 22 February 2017].

#### **1.20.5. Risk determination**

##### *Description of Risk*

Export: No Pinus, Eucalyptus or Acacia species produced in South Africa are listed on the CITES lists and the risk is therefore Low.

Import: Not applicable

##### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.20.6. Risk designation and specification**

Low risk

#### **1.20.7. Control measures and verifiers**

N/A

### **1.21. Legislation requiring due diligence/due care procedures**

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

#### **1.21.1. Applicable laws and regulations**

Not applicable (There is no legislation on Due diligence/Due care on wood and timber in South Africa)

#### **1.21.2. Legal authority**

N/A

#### **1.21.3. Legally required documents or records**

N/A

#### **1.21.4. Sources of information**

N/A

#### **1.21.5. Risk determination**

N/A

#### **1.21.6. Risk designation and specification**

N/A

#### **1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

The table **Timber Source Types in South Africa** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

TIMBER SOURCE TYPES IN SOUTH AFRICA						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Plantation forest	National	Plantation forest	Private (mainly) State (3%)	Private (mainly) State	N/A	All forestry in South Africa is in the form of fast growing exotic plantations in commercial operations
Natural forest	National	Protected forest			A license needs to be obtained to cut, disturb, damage or destroy any indigenous tree in a natural forest. There is no commercial harvesting of natural forests in South Africa of any significant scale.	Not a legal source of timber



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## About

### Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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