

Forest Legality Risk Specification Guidelines

Version 1.0

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TOOLS



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Introduction

This document provides a step-by-step guide to assessing and specifying legality risks in the forest sector at national or sub-national level in accordance with the FSC® Controlled Wood Standard Category 1: Illegally harvested wood; as well as the Preferred by Nature LegalSource™ Standard. The guidelines have been developed in accordance with the following documents, which should be consulted:

- FSC National Risk Assessment Framework FSC-PRO-60-002a V1-0 EN
- Preferred by Nature LegalSource Standard V2-0



These Guidelines should be used with the **Forest Legality Risk Specification Template (DD-10)**.

The Forest Legality Risk Specification Template

The Forest Legality Risk Specification Template should be used to develop the National Risk Assessment.

The Template consists of three main sections:

- Overview of the forest sector in the country:** providing an overview of the forest sector and legal framework in the country.
- Outline of Timber Source Types:** overview of different sources of timber (e.g. private plantations, or state-managed concessions in permanent production forest areas). The Timber Source Type is identified by a combination of different attributes of the area from which timber can be legally sourced. This includes attributes such as forest type (plantation or natural), ownership, management regime, land classification etc.
- Risk specification template:** the main part of the Template contains the table used to conduct risk specification for each Timber Source Type within the different legal categories.

Developing an Overview of the Forest Sector in the Country

Section A of the Template shall be used to provide a brief description of forest sector and legal framework in the country. This includes identification and description of forest classification (legally established forest land classes) as well as how forest management, licensing and harvesting are governed.

Identifying Timber Source Types

The identification of Timber Source Types (Section B of the Template) is essential to the risk specification process. The identification basically outlines the different Timber Source Types that may occur in the country of origin.

There are various ways that the Timber Source Types can be defined, as follows:

Forest type

This 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)

The risk assessment shall be carried out in the context of meaningful divisions of a country. However, in some cases the assessment may be carried out at national level where that allows risk to be established at a meaningful level; for example, in a small country with uniform legislation and a uniform level of risk in all areas, national level assessment may be adequate.

In cases where 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 types of forest (e.g. natural forest and plantations) and/or between different geographical regions, the risk evaluation shall incorporate these differences when specifying the risk and applying the appropriate control measures.

Assessments should be at a sufficiently fine scale to differentiate between areas of low and specified risk. The following may affect scale of risk designation:

- Districts having different jurisdictions
- Regional level legal structures governing forest management

As a start, the national level shall be used.

Legal land/ forest classification

This category refers to the legal classification of land. Focus should obviously be on land from which timber can be sourced, and this could entail several different legal categories such as, for example, 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 has impacts on how land can be managed and controlled.

Management regime

Independent 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.

Licence type

Licences may be issued to different entities with a range of underlying requirements for the licensee. A licence might be issued for a limited area or time and have other restrictions and obligations. Examples include concession licences, harvesting permits, community forestry permits, etc.

Conducting the Risk Specification

The following seven sections outline each step in the risk specification process, which shall be inserted into the **Forest Legality Risk Specification Template** (DD-10; Section C). When implementing, the outcome from each step shall be inserted into the Template.

Step 1: Defining Applicable Legislation

The scope of assessment for risk of *illegally harvested wood* is defined as: Forest products harvested in violation of any laws applicable to harvesting or trade in that location or jurisdiction including the acquisition of the harvesting rights from the rightful owner; the harvesting methods used and the payment of all relevant fees and royalties. The main categories cover:

- Legal rights to harvest
- Taxes and fees
- Timber harvesting activities
- Third parties' rights
- Trade and transport

Within each of these five categories, there are several sub-categories – with a total overall of 20 sub-categories.

Please note that the categories and sub-categories in the framework are generic in the sense that they are applicable only if there is legal regulation of the particular issue within the country of origin. If no legislation exists covering the issues below, risk can be classified as not applicable, and treated as low as there is no risk of legal violations.

The term “**applicable laws and regulations**” covers legislation relevant to forest management, forest harvesting, trade and transport of forest products; all related to the forest level in accordance with the five categories and 20 sub-categories. The legal requirements shall be identified at a detailed level enabling reference to the relevant paragraph or section of the legislation and shall cover all laws, regulations, legislation and internationally ratified treaties/conventions.

To be able to evaluate compliance, it is important that the scope of legislation is clearly identified at a national and sub-national level where applicable.

Defining applicable legislation:

- Identify and list every applicable law and regulation related to the specific categories and sub-categories.
- **Thereafter refer to** the relevant paragraph(s) in each law and regulation (where applicable).
- If the law/ regulation or part of a law covers a specific issue related to the sub-categories, a short explanation shall be written in parentheses following the paragraph.

Step 2: Identify Legal Authorities

Legal authority (national/ regional/ local) shall be identified to clarify which entity is responsible for ensuring compliance with different laws.

Step 3: Identify Legally Required Documents

Legally required documents and records are defined as documents required to comply with specific legislation. These can be, for example, a license to harvest, a certain tax registration form, an environmental impact assessment, etc. If it is determined that a document is legally required, briefly describe each document.

Table 1: Examples of document evidence related to the five main legality categories

Legality category	Type of records Generally available documents in paper or electronic format e.g.:
 <ul style="list-style-type: none"> 1. Documentation for rights to harvest timber within legally gazetted boundaries. 	<ul style="list-style-type: none"> Documentation of ownership/land use rights Contract or concession agreements Concession licence Concession maps Harvest permits
 <ul style="list-style-type: none"> 2. Payments for harvest rights and timber including duties related to timber harvesting. 	<ul style="list-style-type: none"> Commercial Contracts Logging permit Bank notes VAT documentation Official Tax receipts
 <ul style="list-style-type: none"> 3. Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting. 	<ul style="list-style-type: none"> Official audit reports Environmental clearance certificates Approved harvest plans Logging permits Coupe closure reports Publicly available information demonstrating rigorous legislative supervision and timber tracking and control procedures Official documents issued by competent authorities in a country of harvest etc.
 <ul style="list-style-type: none"> 4. Third parties' legal rights concerning use and tenure that are affected by timber harvesting, as well as worker's rights. 	<ul style="list-style-type: none"> Environmental impact assessments Environmental management plans Environmental audit reports Social responsibility agreements Specific reports on tenure and rights claims and conflicts Health and safety records



- 5. **Trade and customs**, in so far as the forest sector is concerned.

- Transport permits
- Log removal passes
- Contracts
- Bank notes
- Trade notes
- Import/export licences
- Official receipts for export duties
- Export ban lists
- Export quota awards

Step 4: Identify Sources of Information

A list of all government and non-government sources of information used in the risk determination (Step 5) should be developed. This should include:

- Government sources: List all government sources of information used to describe, identify and evaluate risk. Include sources not directly cited which may be useful for the reader to further understand this category
- Non-government sources: List all non-government sources of information used to describe, identify and evaluate risk. Include sources not directly cited which may be useful for the reader to further understand this category.

All sources should be fully cited and links to all sources used for the applicable legislation should be provided if possible.

Available sources to evaluate the risk: The sources may include both FSC™ endorsed and interim Forest Management standards that include annexes with lists of applicable legislation within the country covered by the standard. These lists can be good starting points, but shall be used with caution as they might not be up-to-date nor cover all aspects. For countries that have entered a Voluntary Partnership Agreement (VPA) with EU, there may be valuable information deriving from this process that may be incorporated. If the VPA includes details of legislation exceeding the requirements in the Template – these shall be included as new sub-categories. Furthermore, reports, web pages and other reliable materials produced by NGOs or other organisations working within forestry legality may also be good starting points. The WWF/TRAFFIC *Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex* country report is one example of such sources.

Step 5: Risk Determination

The risk determination step is where the risks of non-compliance with legal requirements within each legality sub-category are described and determined.

The evaluation of risk is comprised of a description of the actual legal requirements related to the sub-category; followed by a description of the risk; and, lastly, a justification of the risk level concluded for each category/ sub-category:

- **Overview of legal requirements:** provide a clear overview of the specific legal requirements in each sub-category.
- **Description of risk:** provide an overview of issues (based on referenced sources) relevant to the legal requirements that may indicate that there is a risk of legal violation, considering:
 - o Threshold for compliance remembering the extent, scale and timeframe
 - o Corruption level, high risk countries: Corruption Perceptions Index (CPI) of less than 50
 - o Governance issues
 - o Available information
- [Note: Further details are provided below in relation to each of the above four categories.]
- **Justification** of the risk level: why the risk level has been concluded, described using any of the above descriptors (threshold, corruption level, etc.) and/or other relevant information sources.
- **Conclusion** shall be clearly formulated as either low risk or specified risk; for example: "based on the findings x, y and z, it is concluded that the risk is specified for this category/ sub-category".

Note on thresholds

When evaluating risk of non-compliance with legal requirements, the **scale and the impact of potential non-compliances shall be considered**. Accidental non-compliances against legislative and other requirements occur for forest operations everywhere in the world, but this does not necessarily make the forest products illegal, nor does it necessarily justify a country or region being classified as specified risk for legality.

As a rule, a country and sub-national region can be considered low risk for specific legal requirements if the potential legal non-compliances are:

- temporary lapses;
- unusual/ non-systematic; or
- limited in their temporal and spatial impact.

Conversely, the risk cannot be considered low if a potential non-compliance:

- continues over a long period of time;
- affects a wide area and/or causes significant damage;
- indicates the absence or breakdown of enforcement of the legal system;
- is not corrected or adequately responded to when identified; or
- has a significant negative impact on the society, the production of forest products and other services, the forest ecosystem and the people directly and indirectly affected by forest operations.

Corruption

In countries considered as high risk for corruption (countries with a Corruption Perceptions Index of less than 50), there is an increased risk that forest operators have obtained required permits and licenses through bribery. Such instances would therefore not be considered in compliance with legal requirements and consultation with relevant experts shall take place to evaluate the extent of corruption.

Special attention should be paid to corruption when considering **legal requirements that require approval from public bodies** such as harvesting permits, concession licenses, customs declarations etc., and the purchase of forest products or harvesting rights from publicly owned land. Corruption is unlikely to vary significantly between different regions within the same country; it may vary, however, between forest sectors.

Governance

In the context of governance, the following issues should be considered during the risk evaluation:

- Administrative capacity to oversee effective implementation of laws and regulations should be assessed.
- Governance and the effective implementation of laws and regulations often directly influence risk of illegal logging.
- Countries or districts with poor governance and/or a high level of corruption in the sector would not usually be able to secure effective implementation of laws and regulations and would therefore also be classified as specified risk for the whole category.

Sources of information to evaluate compliance risks

When the applicable legislation has been identified, the next step is to identify sources that can be used to evaluate the level of compliance with the applicable legislation.



Use the **Supplier Management Form (DD-04)** to plan and track the status of risk mitigation actions.

If possible, independent information shall be used; however, this will not be possible in all cases. Note that some official statistics tend to be biased because the authorities do not want enforcement problems to be made visible.

Below are some examples of the types of information sources which shall be considered:

- Chatham House: <http://www.illegal-logging.info/>
- ELDIS regional and country profiles: <http://www.eldis.org>
- Environmental Investigation Agency: <http://www.eia-international.org>
- EU FLEGT process: <http://www.euflegt.efi.int/about-flegt>
- Forest Legality Alliance: <http://www.forestlegality.org/>
- Government reports and assessments of compliance with related laws and regulations
- Independent reports and assessments of compliance with related laws and regulations, e.g., the Royal Institute of International Affairs: <http://www.illegallogging.org>
- Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>
- Justice tribunal records
- Public summaries of FSC forest management certification reports published at info.fsc.org (information on legal areas where non-compliances have been identified during the certification process that are likely to be common for non-certified operations)
- Public summaries of other third-party forest legality certification/ verification systems
- Stakeholder and expert consultation including outcomes from NRA development processes
- Telapak (for Indonesia): <http://www.telapak.org>
- Transparency International Corruption Perceptions Index: <http://www.transparency.org/research/cpi/>
- World Bank Worldwide Governance Indicators: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- In cases where other sources of information are not available, consultations with experts within the area shall be conducted
- Official statistics

In cases where reliable statistics and information sources do not exist, compliance with the requirements shall be evaluated through consultations with relevant experts.

Step 6: Risk Specification

When risk evaluation has been carried out for each legality category or sub-category, the risk specification shall be clearly identified as either “low risk” or “specified risk”.

Step 7: Establishing Control Measures and Verifiers (Risk Mitigation)

To support the mitigation and management of risks and avoidance of sourcing illegal material, the risk assessment process shall develop verifiers to evaluate the presence or absence of non-compliances where risks have been specified, and guidance on how risks can be mitigated and controlled.

Note on mitigation: It should be emphasised that the process of mitigating and verifying the presence of potential risks may be carried out as a combined effort, depending on the specified risk in question. In some cases, the verifiers identified for a specific legality sub-category will also be useful for implementing risk mitigation actions.

The appropriate verification measures depend on the type of potential non-compliance. Some types of non-compliances can be verified by a field visit to the harvesting sites, while others can be verified based on document control. In some situations, a combination of different verification measures may be required.

About

Supporting Legal Timber Trade

Supporting Legal timber Trade is a joint project run by Preferred by Nature (formerly known as 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 EU LIFE programme and UK aid from the UK government.



About

Responsible Sourcing of Soy, Cattle and Palm Oil

Responsible Sourcing of Soy, Cattle and Palm Oil is a project aimed at creating awareness and capacity among Danish companies to minimise risks of social and environmental problems connected to sourcing palm oil, soy, and cattle from developing countries. The project is run by Preferred by Nature (formerly known as NEPCon) and funded by DANIDA, Ministry of Foreign Affairs of Denmark.