

Timber Legality Risk Assessment Guatemala

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COUNTRY RISK
ASSESSMENTS



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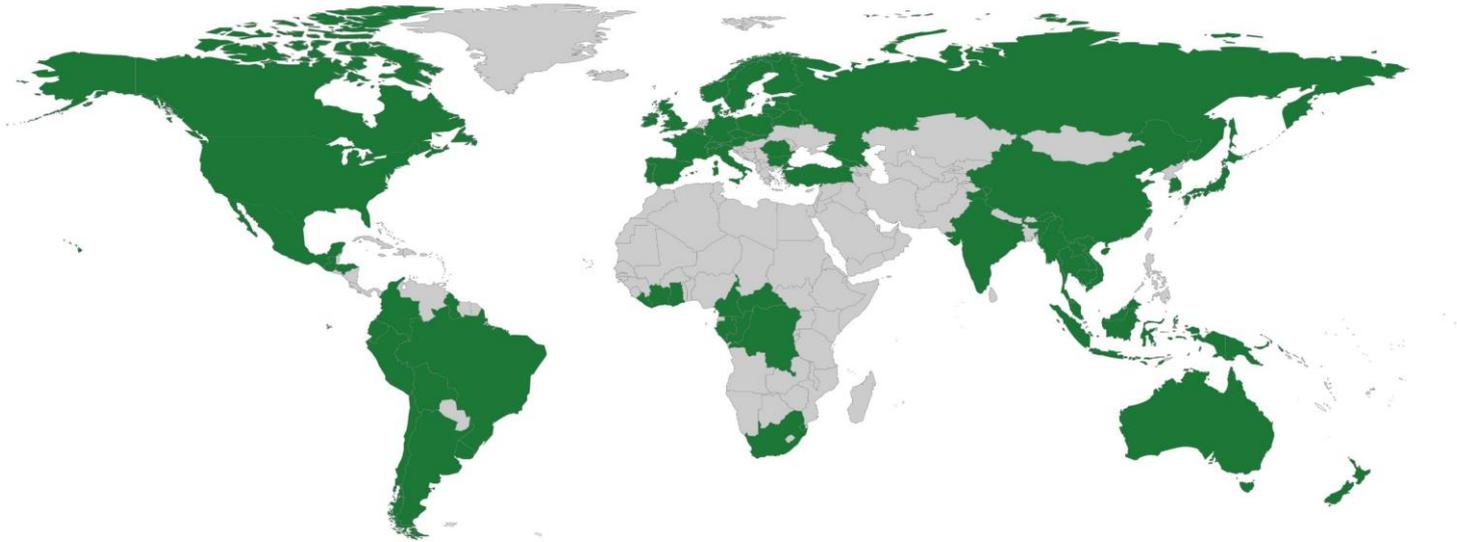
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A. Introduction

This Timber Legality Risk Assessment for Guatemala 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 StatSik (2016). StatPlanet: Interactive Data Visualization and Mapping Software. //www.statistik.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 NEPCon’s website.

B. Overview of legality risks

Timber Risk Score: 18 / 100 in 2017

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

- **Specified risk for 14 sub-categories.**
- **Low risk for 3 sub-categories.**
- **No legal requirements for 4 sub-categories.**

The Timber Risk Score for Guatemala is 18 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities and trade and transport.

For **Legal Rights to Harvest**, there is a risk of:

- Uncertain / unregistered land tenure in the General Property Registry. This applies primarily to national and collective lands, zones that have been invaded and areas where land is bought from municipalities by landholders (sub-category 1.1).
- Illegitimately allocation / granting of property rights due to corruption and because there is no reliable cadastral land register (1.1).
- Local communities losing access to their land during the establishment of protected areas (1.1).
- Insufficient/absence of management plans or low adherence to approved management plans. This is compounded by poor capacity of government for monitoring and enforcement (1.3).
- Harvesting without permits in protected areas due to poor governance (1.4).

For **Taxes and Fees**, there is a risk that value-added taxes (VAT) are not paid according to law, usually via non-issuance of invoices when timber is traded (VAT and ISR) (1.6).

For **Timber Harvesting Activities**, there is risk of:

- Non-compliance with timber harvesting regulations because poor law enforcement and confusing bureaucratic processes. The harvesting rules are considered as bureaucratic, not very accessible, and overly complex, both technically and legally; There is a lack of institutional capacities (1.8).
- Illegal harvesting of protected timber species in protected areas. In the southern part of Petén Department (San Luis, Poptún and Dolores) there are consistent reports of illegal harvesting and transport, especially from the Chiqibul Mayas Montañas Biosphere Reserve (a protected area close to Belize) (1.10.).
- Non-compliance with environmental regulations (e.g. forest degradation), especially in non-certified management units. Reportedly, these areas only implement minimal environmental requirements and very little monitoring and/or enforcement is carried out (1.10).
- Non-compliance with the minimum measures established to protect the safety and health of workers in non-certified management units (1.11).

- Lack of, or violations of labour contracts (e.g. avoiding basic procedures such as registering employees in the Guatemalan Social Security System). Contracts are frequently lacking in rural areas, verbal contracts are common and rights are frequently not respected including maximum working hours, minimum wage and labour exploitation (1.12).

Regarding **third parties' rights**, there is a risk that customary law and indigenous people's rights are violated (1.15).

For **Trade and Transport**, there is a risk of:

- Fraudulent specification of species, quantity and quality of timber and wood products during transportation (1.16).
- Illegal trade and transport of timber and other forest products due to corruption, forged or misused documents and an ineffective tracking system. There are multiple ways in which illegalities are allegedly committed, including by transportation of a species that is like another, illegal night time transportation, theft of natural resources, misuse of shipping documents, and reuse of shipping tickets as well as by understatement of volumes (1.17).
- Illegal trade of CITES species, including rosewood (1.19).

Timber source types and risks

There are two main timber source types found in Guatemala, timber grown in protected areas and timber grown outside the protected areas. Within these two high level source types, there are a number of sub-types related to the ownership of the land. 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. We have analysed the risks for all source types and found the risks are the same, where there are legal requirements in place.

Protected areas Timber from community and industrial natural forest concessions in protected areas – Multiple Use Zones in a Biosphere reserve: The land is government owned and jointly administered by community (90%) and industry (10%) via a concession system. A permit for harvesting and trading wild timber flora products in protected areas is required.

Timber from Municipal Communal Farms (ejidos) and lumber yards: Managed by the municipality under INAB (*Instituto Nacional de Bosques – INAB*); consists of forests located in the National System of Protected Areas (*Sistema Nacional de Areas Protegidas – SIGAP*). A forest permit is required. This is one of the less frequently used categories in Guatemala.

Timber from plantations in a protected area: Landholdings are in the General Property Registry (*Registro General de Propiedad*) and are privately owned and managed under CONAP (*Consejo Nacional*

de Áreas Protegidas — CONAP). A Permit for harvesting and trading wild timber flora products in protected areas is required.

Timber from private plantations in the possession of individual owners inside a protected area: Plantations located on landholdings that are not registered in the General Property Registry are considered national government lands in the possession of individuals (only applies to areas <15 ha.). Managed under CONAP, a Permit for harvesting and trading wild timber flora products in protected areas is required.

Timber from agroforest systems located inside a protected area: Privately owned and managed under CONAP consists of agroforest arrangements where a certain number of trees are present. A Permit for harvesting and trading wild timber flora products in protected areas is required.

Non-protected areas

Timber from agroforest systems located outside a protected area: Privately owned and managed under INAB, a Forest permit is required.

Timber from private plantations in the possession of individual owners outside a protected area: Managed under INAB, a Forest permit is required.

This matrix summarises the findings of the timber legality risk assessment set out in this report.

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

C. Overview of the forest sector in Guatemala

According to the Forest Coverage Map of Guatemala (2012), approximately 3,711,366 ha of the nation's inland territory is forested; 51.9% of this total is located in protected areas. In addition, of the total existing forest, about 25.52% is made up of broadleaf species (located in the northern part of the country, in Petén Department — principally in the Maya Biosphere Reserve — MBR), 2.76% is made up of coniferous species (located in the western region of the country—Quiché, Huehuetenango, Totonicapán and San Marcos Departments), 0.63% is forest plantations (pine, *Tectona grandis*, and *Gmelina arborea*, among others) and the remaining percentage is made up of other types of forests (mixed and mangroves).

All forest activities are divided administratively between two institutions: The National Forest Institute (Instituto Nacional de Bosques — INAB) and the National Council for Protected Areas (Consejo Nacional de Áreas Protegidas — CONAP).

Most of the forests not in protected areas are privately or municipally owned, whereas in protected areas (especially in the categories of national park management and multiple-use zones) are State-owned. Forest permits are categorised into those for harvesting in protected areas and unprotected areas.

In the case of permits in protected areas, the authority for CONAP's actions is the Law on Protected Areas (*Ley de Áreas Protegidas*) (Decree 4-89 and its regulations – government resolution 759-90 – based on Article 64 of the Political Constitution of the Republic). For this purpose, there is a Manual for Forest Administration, which establishes as a requirement the presentation of a management plan and an environmental assessment document (if applicable), as well as legal documents for the applicant and the landholding. This manual establishes the following types of commercial harvesting: forest management plans for natural forests, forest health and/or salvaging plans, plans for logging and recovery by a change in land use, projects for forest establishment and/or plans for forest harvesting in agroforest systems, as well as plans for management of seed sources.

CONAP regulates authorisation of forest permits based on the volume requested (for larger volumes, the authorisation must be the responsibility of its national council, and for smaller volumes an authorisation may be granted by its technical coordinating offices or regional offices). In protected areas, there are also modalities for authorising non-commercial uses (family consumption, road maintenance, and scientific purposes, among others). Everything related to the authorisation of Non-Timber Forest Products is the responsibility of CONAP at the national level (inside or outside protected areas).

Taking management of broadleaf forests as an example, where FSC Forest Certification is required by the relevant contracts, specifically in the Multiple Use Zone (Zona de Uso Múltiple – ZUM) of the Maya Biosphere Reserve (Reserva de la Biosfera Maya – RBM) in northern Guatemala, nine community forest and two industrial concessions have been in existence since the year 2000. (This certification is required as of the third year and must be maintained throughout the term of the contract, which is for 25 years.) The total area represented by these concessions amounts to 485,210 ha. This process is administered by CONAP (in the forest-industry phase); however, INAB regulates everything related to transportation of timber through an instrument known as the Electronic Information System for Forest Enterprises (Sistema Electrónico de Información de Empresas Forestales – SEINEF).

In zones outside protected areas, management of forest resources is the responsibility of the National Forest Institute (Instituto Nacional de Bosques), which conducts its activities under the regulations for Legislative Decree 101-96 (Forestry Law) (Decreto Legislativo 101-96-Ley Forestal) and Articles 64, 97 and 119 of the Political Constitution of the Republic, principally in the area of Permits and Plans for Management and Harvesting of Forest Products, which are regulated specifically in Title V, Chapter I (forest harvesting and management). INAB issues permits for harvesting forest products under management plans authorised by the institution, which are divided principally into two groups (coniferous and deciduous). Every management plan is authorised by the Regional Director, depending on his or her jurisdiction, and subsequently authorisation of Annual Operating Plans may be given by the relevant Sub-Regional Director. (In contrast to CONAP, in these cases there is total decentralisation.)

Permits exist for:

- Forest management plans,
- Forest health programmes (trees affected by pests or diseases or for their containment and propagation),
- Salvage plans (forest products affected by any natural phenomena),
- Changes in land use, and
- Scientific purposes.

Other management plans are also authorised by INAB, including those for forest plantations (for timber, energy, seed production, and forest restoration purposes), for management of agroforest systems, for management of protected forests, which, except for protected forests, are exempt from forest licensing.

INAB divides management plan categories into Coniferous (with formats for less than 5 ha, up to 15 ha, and larger than 45 ha – with increasing complexity as the area increases) and Deciduous (with formats for fewer than 45 ha and more than 45 ha—following the logic of complexity and area).

Further, in Guatemala the exportation of roundwood is prohibited by law, unless it comes from voluntary plantations that have been properly registered.

Finally, regarding zoning and the types of forests present in Guatemala, the MBR with the largest proportion of managed broadleaf forests is located in the northern part of Petén; there are also some *Tectona grandis* and *Gmelina arborea* forest plantations (that are fairly large) located in this department, whereas those located in the Verapaces Region (Alta and Baja Verapaz, Quiché) are principally pine forests and plantations owned by medium and smallholders. Those in the High Plateau Area (known as the Altiplano) are mainly small remnants of forests and plantations covering smaller areas.

Additional sources:

- FAO, 2015, Forest Resource Assessment – Guatemala, <http://www.fao.org/documents/card/en/c/a3123f84-0340-42e4-a048-8247481fd450/>
- Forestlegality.org, 2016, Risk tool, <http://www.forestlegality.org/risk-tool>
- GFW (Global Forest Watch), 2017, Country - Guatemala, <http://www.globalforestwatch.org/country/GTM>

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- ITTO (International Timber Trade Organization), 2005, Status of tropical forest management 2005 – Guatemala, http://www.itto.int/sfm_detail/id=12510000
 - PROFOR, 2017, Auditing Timber Supply to the Forest Industry in Guatemala, <https://www.profor.info/knowledge/auditing-timber-supply-forest-industry-guatemala>

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

- Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by Legislative Resolution No. 18-93 dated 17 November 1993). Date of Publication: 31 May 1985- Title II, Article 39, 64, 67 and 119. Available at: www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf
- Decree-Law 4-89 on Protected Areas. (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations. Date of publication: 10 January 1989 – Chapter III, Article 37; Chapter I, Article 109.
- Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and Its appendices. Date of Publication: 16 November 2011 - Chapter II, Section "A". Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>
- Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal). Date of publication: 31 October 1996 – Title III, Article 31. Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15_Ley_Forestal_Decreto_101_96.pdf
- Resolution 01.43.2005, Regulations for the Forest Law. (Resolución 01.43.2005 Reglamento de la Ley Forestal), Date of Publication: 06 December 2005 – Chapter II, Article 3; Chapter V, Article 36; Chapter VI, Article 40. Available at: http://thereddesk.org/sites/default/files/reglamento_de_la_ley_forestal.pdf

1.1.2. Legal authority

- All government institutions in Guatemala, and especially the judiciary. <http://www.oj.gob.gt/>
- National Council for Protected Areas (Consejo Nacional de Áreas Protegidas – CONAP). <http://www.conap.gob.gt/>
- National Forest Institute (Instituto Nacional de Bosques – INAB). <http://www.inab.gob.gt/>

1.1.3. Legally required documents or records

In protected areas:

- Community or industrial forest concession: the document which represents the right to exercise management rights is the current Concession Contract.
- For cases of harvesting on private landholdings: certification by the Real Property Registry (which shows the landholding number, page and book) with the corresponding map. If a registration does not exist, the following documents must be presented:
 - a) Certification issued by the competent municipal authority verifying possession of the real property and, if applicable, written testimony in public deed showing such possession, or
 - b) Legalised photocopy of the testimony of the lease contract for the real property covered by the application for forest management.
- In the case of small landholders (reforestation or SAF): a municipal certification issued by the competent municipal mayor.

Outside of protected areas:

- In the case of municipal or State-owned lands: the document submitted is verification of a concession for forest management.
- In the case of private landholdings: the general property registration is requested.
- In the case of landholders: the official document is represented by a certification issued by the competent municipal mayor.

1.1.4. Sources of information

Non-Government sources

- Land tenure and agrarian conflicts in Guatemala. (La tenencia de la tierra y la conflictividad agraria en Guatemala) Observatorio del Gasto Social (2008). Available at: http://www.congcoop.org.gt/images/Estudio_de_Tierra.pdf [Accessed 21 February 2016]
- Lucas Eguizábal, H.D. 2005. "The legal basis of the constitutional action of injunction against general registration of real property, as a protective measure for private property" ("La procedencia de la acción constitucional de amparo en contra del registrador general de la propiedad inmueble, como medio de protección a la propiedad privada"). School of Legal and Social Sciences (Facultad de ciencias jurídicas y sociales) USAC. Available at: http://biblioteca.usac.edu.gt/tesis/04/04_6092.pdf [Accessed 21 February 2016]
- Forgery of Land Titles (Falsificación de títulos de propiedad). Emisoras Unidas. (13/05/2013). Available at: <http://noticias.emisorasunidas.com/etiquetas/falsificacion-titulos-propiedad> [Accessed 21 February 2016]
- FAO-Banco Mundial. 2012. Assessment of the impact of timber harvesting rights for standing timber and other fees on forest management in Guatemala (Evaluación del impacto del cobro por derechos de aprovechamiento de madera en pie y otras tasas

sobre el manejo forestal en GUATEMALA). Available at:
<http://www.fao.org/fileadmin/templates/tci/pdf/GUATEMALACompleteLOW.pdf>
[Accessed 03 May 2016]

Interviews with experts

Interviews with various experts in the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to have a better understanding of the applicable legislation, the current situation and the risks associated with land tenure and management rights.

1.1.5. Risk determination

Overview of legal requirements

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by legislative resolution No. 18-93 dated 17 November 1993).*

The Constitution states that private property is guaranteed as an inherent right of human beings. According to the law, any person may dispose freely of his or her goods.

The State guarantees exercise of this right and must create the conditions to facilitate the owner's use and enjoyment of his or her goods in such a way as to achieve individual progress and national development for the benefit of all Guatemalans (Art. 39). In addition, Art. 119 (Obligations of the State) (Obligaciones del Estado) states, in point j), that rural development programmes must be actively promoted in order to increase and diversify national production based on the principle of private property and protection of the family patrimony. Farmers and artisans must be given technical and economic assistance.

Specifically, in the area of property, the Constitution establishes protection of indigenous lands and agricultural cooperatives. The lands of indigenous communities, cooperatives, or any other forms of communal or collective tenure of agrarian property, as well as the family patrimony and low-cost housing, shall be given special protection by the State, credit assistance, and preferential credit and technical assistance to guarantee their possession and development, in order to ensure a better quality of life for all inhabitants. Indigenous communities and other holders of lands that belong to them historically and that they have traditionally managed in a special way, shall maintain that system (Art. 67); further, the lands of indigenous communities shall be supported through special programmes and appropriate legislation. The State shall provide government lands to indigenous communities that need them for their development (Art. 68).

In addition, the Constitution establishes that conservation, protection and improvement of the Nation's natural heritage shall be declared to be in the Nation's interests. The State shall promote the creation of national parks, reserves and nature refuges, which are inalienable. A law shall guarantee their protection and that of the fauna and flora that exist in them (Art. 64).

2. *Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations.*

In order to grant concessions for the harvesting and management of wild flora, forest resources, and forestation or reforestation in legally declared protected areas under its administration, CONAP shall seek technical assistance from an appropriate government or private agency in order to identify, sectorise, or contract for appraisal of the resources susceptible to this activity (Art. 37 of the regulations for the Law on Protected Areas (Ley de Áreas Protegidas).

3. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and Its appendices. (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*

In Chapter II, the Resolution establishes among the requirements for presenting applications for authorisation of forest harvesting in protected areas, and in its Section "A", item c), that the user must submit certification of registration of ownership of the real property covered by the application with the corresponding map. The certification must have been obtained within a period of no more than three months before the date of its presentation.

If the real property has not been recorded in the property registry, the applicant must submit:

- a) Certification issued by a competent municipal authority verifying possession of the real property and, if applicable, testimony in a public deed confirming possession, or
- b) A legalised photocopy of the testimony of the lease contract for the real property covered by the application for forest management.

In addition, in protected areas, the Manual for Forest Administration establishes, in its second chapter, section "A", that persons applying for authorisation of commercial management plans must submit a certification of registration of the real property covered by the application with the corresponding map. (The certification must have been issued within a period of no more than three months before the date of its presentation.)

4. *Decree 101-9 Forest Law (Decree 101-96 Ley Forestal)*

Article 31 (Specific Prohibitions) of the Forest Law establishes that lands granted under a concession may not in any case be the object, on the part of the concessionaires, of supplementary titling, usurpation or any other measure or procedure for attempting to acquire ownership thereof.

5. *Resolution 01.43.2005 Regulations for the Forest Law*

Through the Regulations for the Forest Law, INAB establishes that for lands to be qualified for forest use and to obtain the corresponding declaration, the owner must submit an application to the INAB offices corresponding to the jurisdiction of the area to be declared, to include (among other items):

- a) Document verifying ownership; if a certification from the Property Registry does not exist, another legally valid document will be accepted;

b) Topographic map showing the area expressed in hectares, boundaries, access and other data about the property (Article 3).

In addition, Article 30 (Forest health permit or salvaging permit – item a), Article 36 (Permits for change of land use – item b), and Article 40 (Permits for Forest Harvesting – item b), require that a document that verifies ownership (property title) and also certification of registration of the property and the corresponding map be submitted.

Title to land is the principal legal basis for authorisation of commercial management plans in Guatemala. This applies outside protected areas, as specified in Articles 30, 36 and 40 of the Forest Law Regulations.

Description of risk

Several of the officials interviewed indicated that there is little possibility that management plans based on a “false general property registration” would be approved because it is very easy for the government agencies in charge of such approvals (CONAP and INAB) to verify through the property registry the information submitted to them as support for approval of a management plan in a determined area. The risk of illegality is more associated with national and collective lands (where there are problems of clarity and about who represents them – collective land owners).

One interviewee reflected that at present there are some processes for regularising land tenure that have not been concluded (no one is in charge), so there is a higher likelihood of finding illegal timber, and there may be invasions of national and collective lands (since the lands appear to be abandoned). Since there is no reliable cadastral land register, the government may show some weakness in exercising its ownership of the lands. In addition, according to comments from some stakeholders, part of the illegal timber in circulation comes mainly from zones that have been invaded, areas where land is bought from municipalities by landholders, or which may be in protected areas.

According to interviews with stakeholders, there are cases of usufructs having been given to communities in municipal communal farms (ejidos), but, following changes of administration in municipal councils or mayoralties, these usufructs have been transferred to private landholders, resulting in disputes that unfortunately end in logging being used as a way to devalue the forest. (This is the case in the Bioltza Nature Reserve in San José, Petén.). Another aspect reflected in the interviews indicates the possibility that legal documents and real property titles may be used to apply for a permit for one landholding, but in fact the logging then occurs on some other landholding. This problem is also linked to the fact that there is no finalised cadastral land register for the whole country and that there are latent problems with regard to boundaries.

There are also serious problems stemming from the establishment of the Guatemalan System of Protected Areas and the establishment of large reserve areas, since these did not take into account the presence of communities established prior to the declaration of those protected areas. (This occurs mainly in national parks.) According to Governability Monitoring in the MBR (Monitoreo de la Gobernabilidad en la RBM), a report by CONAP (2013), in these zones, lack of governability is common, as is harvesting of natural resources and the sale of land. (These practices are common in

the Maya Biosphere Reserve (Reserva de la Biosfera Maya), especially in the Laguna de Tigre and Sierra del Lacandon National Parks.)

Further, an interviewee local to the MBR reflected that there are problems in the General Property Registry (Registro General de la Propiedad), where property titles have been forged; there have even been property sales processed solely in documents (corruption), and in these processes the real owners lose their properties. (This was the case of the Carmelita Route in the MBR).

Considering the above points, it is important to accept that there is a specified risk for this category.

Risk Conclusion

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.1.6. Risk designation and specification

Specified risk inside and outside protected areas.

1.1.7. Control measures and verifiers

- Verify the legality of the General Property Registration submitted with the application for authorisation of commercial management plans. (This is done by consulting the General Property Registry (Registro General de la Propiedad), which may be done electronically, by telephone or by personal consultation.)
- Consult the General Property Registry (Registro General de la Propiedad) (verification of the landholding, page and book).
- Request the most recent possible property registrations.
- Consult neighbours adjacent to the property for which application is being made in order to verify the identity of the owner of the real property.
- When inspections are made, the boundaries of the landholding must be verified.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

1. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations. Date of publication: 10 January 1989.

- Law on Protected Areas, Chapter II, On management of protected areas, Article 19 Concessions (Ley de Áreas Protegidas, Capítulo II, Del manejo de las áreas protegidas, Artículo 19 Concesiones).
- Regulations for the Law on Protected Areas, Title III, Chapter I, Concessions, Article 27, Approval, Article 28, Areas under CONAP's administration (Ley de Áreas Protegidas, Título III Concesiones, Capítulo I, Artículo 27, Aprobación, Artículo 28, Áreas bajo la administración del CONAP).
- Regulations for the Law on Protected Areas, Chapter III, Concessions for Harvesting and Management of renewable Natural Resources, Article 37, Concessions (Ley de Áreas Protegidas, Capítulo III, Concesiones de Aprovechamiento y Manejo de Recursos Naturales Renovables, Artículo 37, Concesiones).
- Title IV, On the executive organism in charge of application of this law, Chapter I, On the National Council for Protected Areas and its Executive Secretariat, Article 69 (Amended by Article 18 of Decree 110-96 by the Congress of the Republic) CONAP's faculties, item f. (Título IV, Del órgano de dirección y encargado de la aplicación de esta ley, Capítulo I Del Consejo Nacional de Áreas protegidas y su secretaría ejecutiva, Artículo 69. (Reformado por el Artículo 18 del Decreto 110-96 del Congreso de la República). Atribuciones del CONAP Inciso f.). Available at: http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

2. Decree 101-96 Forest Law. (Decreto 101-96 Ley Forestal) Date of publication: 31 October 1996.

- Title I General Provisions, Chapter I Purpose and general policies, Article 3.- Sustainable Harvesting (Título I Disposiciones Generales, Capítulo I Objeto y políticas generales, Artículo 3.- Aprovechamiento sostenible).
- Title II, On the executive organism in charge of application of this law, Chapter I, General Provisions, Article 6, item e (Título II Del órgano de dirección y encargado de la aplicación de esta ley, Capítulo I Disposiciones Generales, Artículo 6, Inciso e).
- Chapter II, Organization of the Institute, Article 14, item g (Capítulo II, Organización del Instituto, Artículo 14, Inciso g).
- Title III, On Concessions, Single chapter, Forest concessions, Articles 26 to 33 (Título III De las concesiones, Capítulo único Concesiones forestales, Artículo 26 al 33). Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15.Ley_Forestal_Decreto_101_96.pdf

3. Resolution 01.43.2005 Regulations for the Forest Law. Date of publication: 06 December 2005.

- Chapter IV Forest Concessions, Articles 12 to 29. Available at: http://theredddesk.org/sites/default/files/reglamento_de_la_ley_forestal.pdf

1.2.2. Legal authority

- National Council for Protected Areas (Consejo Nacional de Áreas Protegidas — CONAP). Handles everything related to forest establishment, management and harvesting in the various categories of protected areas. Point 1. Available at: <http://www.conap.gob.gt/>
- National Forest Institute (Instituto Nacional de Bosques — INAB). Handles everything related to forest establishment, management, harvesting and incentives and oversight of forest enterprises. Points 2 and 3. Available at: <http://www.inab.gob.gt/>

1.2.3. Legally required documents or records

For CONAP:

- Show an appropriate level of organisation as an association or as community committees;
- Verify by means of a written document signed by the municipal mayor for that jurisdiction that certifies:
 - that the community exists;
 - that the majority of its members live in it continuously;
 - that there is an Executive Board for the organization that represents it; and
 - any additional indication that may be pertinent in order for the concession being applied for to meet its objectives without negatively affecting third parties;
- Legalised photocopy of the by-laws and first testimony of the duly justified deed of its constitution, or any other document to verify its degree of organisation and representation;
- Legalised photocopy of the documents that verify the legal representation exercised and if applicable; legalised photocopy of the representative's residency identification card;
- Representation of the management plan's proposed technique or profile;
- The concrete offer expressed in quetzals; and
- Technical support from an accompanying NGO that is duly recognised by CONAP).

For INAB:

Concession contract. The concession contract must include at least:

- The general personal identification requirements for the concessionaire and the Forest Manager, in accordance with the Law on Government Contracting;
- Identification of the resolution by the Executive Board that awarded the concession;

- c) Identification data for the property covered by the concession;
- d) Description of the concession, including the place, village, municipality, area to be included in the concession, date on which the work should begin and end according to the management plan, term covered by the concession;
- e) Schedule of general activities during the term of the concession;
- f) Commitments regarding forest harvesting, silviculture and protective measures that must be taken during the term of the concession;
- g) Prices and payment mode, form, and terms for the products to be harvested;
- h) Appointment of the Forest Manager proposed by the concessionaire, establishing the professional responsibilities assumed in solidarity;
- i) Form in which adjustments and modifications to the Management Plan will be resolved;
- j) Description of the type of guarantee constituted to ensure compliance with the contractual obligations, as established in Articles 30 and 56 of the Forest Law and decisions by the Executive Board. If a bond, the value of the standing timber should be calculated, to be adjudicated, according to the operating plan for the next five-year period coming up; and
- k) Articles 22 to 26 of these Regulations and the duly approved Management Plan form a part of the contract.

Annual evaluation. INAB and the Forest Manager are required to conduct annual controls and evaluations of the operation jointly in order to verify the continued life and proper application of the duly authorised approved or modified Management Plan.

Registration of the concession. The concession contract must be registered in INAB's books and in the corresponding Property Registry.

1.2.4. Sources of information

Government sources

- Rules for granting concessions for harvesting and management of renewable natural resources in the Multiple-Use Zone of the Biosphere Reserve (Normas para el otorgamiento de Concesiones de aprovechamiento y manejo de Recursos Naturales Renovables en la Zona de Uso Múltiple de la Reserva de la Biosfera). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/datos-abiertos/category/217-art-10-numeral-16-contratos-licencias-o-conseiones-para-el-usufructo-o-explotacion-de-bienes-del-estado.html?download=1897:normaconcesioes> [Accessed 22 February 2016].
- CONAP 2002. Policy framework for concessions for integral management of natural resources in protected areas in Petén (Política marco de concesiones para el manejo integral de recursos naturales en áreas protegidas de Petén). Available at: http://pdf.usaid.gov/pdf_docs/Pnacx145.pdf [Accessed 22 February 2016]

Non-Government sources

- Girón Rivas, CR. 2009. Legal analysis of the procedure for granting forest concession in Guatemala (Análisis legal del procedimiento para otorgar concesiones forestales en Guatemala). School of Legal and Social Sciences (Facultad de Ciencias Jurídicas y Sociales). USAC. Available at: http://biblioteca.usac.edu.gt/tesis/04/04_7895.pdf [Accessed 22 February 2016].
- Gálvez Ruano, J. 2012. Forest concessions in Petén (Concesiones forestales en Petén). Available at: <https://www.plazapublica.com.gt/content/concesiones-forestales-en-peten> [Accessed 22 February 2016]
- Alianza Mesoamericana. 2015. Forest concessions in Guatemala, international emblematic experience (Concesiones Forestales de Guatemala, experiencia emblemática Internacional). Available at: <http://www.alianzamesoamericana.org/concesiones-forestales-de-guatemala-experiencia-emblematica-internacional/> [Accessed 22 February 2016].

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with the granting of concession licenses.

1.2.5. Risk determination

Overview of Legal Requirements

1. *Decree-Law 4-89 On Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations.*

CONAP may grant leases or harvesting concessions in the protected areas that it administers, provided that the corresponding master plan establishes this and clearly allows it, and CONAP must enter into the corresponding concession contracts (Art. 19 of the Law on Protected Areas). With regard to their approval, Art. 27 of the regulations states that: "Granting concessions in legally declared protected areas of SIGAP requires CONAP's approval, and must follow the rules for use established by the management category and approved plans." Article 28 states that in legally declared protected areas under its administration located on national lands, CONAP may grant concessions, provided that the management category for the area and its master plan allow and clearly state the intended activities.

2. *Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal).*

The Forest Law states that rights to sustainable harvesting of forest resources, including timber, seeds, resins, gums and other non-timber products, may be granted by concessions if the forests are on national, municipal, communal lands or those of autonomous or decentralised entities; or by licences in the case of lands that are private property, covered by forests. Concessions and licenses for harvesting forest resources in protected areas shall be granted exclusively by the National Council on Protected Areas under the relevant contracts, in accordance with the Law on Protected Areas and other applicable rules (Art. 3). This clearly establishes that there is

separation of administration and authorisation of forest operations inside and outside protected areas.

However, outside protected areas it is possible to grant, deny, supervise, extend and cancel the use of forest concessions and permits for forest harvesting projects, as stated in item e) of Article 6 of the Forest Law. INAB's executive board is empowered to authorise the purchase of real and personal property, assets, and contracts for construction works and services, in accordance with the Law on Government Contracting (Ley de Contrataciones del Estado), as well as to grant, deny, extend, or cancel forest concessions (Art. 14, item g).

INAB may give two categories of government lands: a) Forested areas and b) Non-forested areas (Art. 26). Art. 27 states, regarding concessions in forested areas, that INAB may grant concessions for forested areas to Guatemalan citizens, either individuals or legal persons, for the purpose of conducting sustainable forest management. For this, there must necessarily be a Management Plan for the corresponding area. And Art. 28 states, regarding concessions in non-forested areas, that INAB may grant lands for forest use that are not forested as a concession to Guatemalan citizens, either individuals or legal persons, for the purpose of having these areas reforested by artificial or natural regeneration. Any government agency, whatever its nature, is required to inform INAB about any areas under its jurisdiction, and after forest use has been established but still unforested, INAB may grant concessions for them to be reforested and for sustainable harvesting from them, provided that the type of property allows this procedure. The procedure for concessions of the areas to which this article refers is subject to the prohibitions contained in Article 31 of this law.

Article 30 describes the conditions and characteristics under which concessions are granted:

- Specific prohibitions: Lands given in a concession may not in any case be the object, on the part of concessionaires, of supplementary titling, usurpation, or any other means or procedure attempting to acquire them as property (Art. 31).
- Registration of concessions: Concessions must be registered in the books set up for this purpose by INAB and must be recorded in the corresponding Property Registry (Art. 32).
- Payment for the concession: A concession granted in the unforested area category shall pay twelve per cent (12%) of the value of the standing timber on the plantation established at the time of harvest, in accordance with Article 74 of the current law. This amount will be allocated, with fifty per cent (50%) going to the municipality or municipalities in the jurisdiction as specific funds for forest control and vigilance. The other fifty per cent (50%) shall be placed in INAB's Privative Forest Fund. The cost of awarding the concession shall not be different from that established in this article (Art. 33).

3. Resolution 01.43.2005 Regulations for the Forest Law.

In Articles 12 to 19, Chapter IV (Forest Concessions) (Concesiones forestales) of the Resolution details the concession process. Some important articles are:

Article 12: Identification of areas to be granted as concessions. INAB, in coordination with the municipalities and other government agencies, shall identify the areas of government property that are eligible to be granted as concessions for forest management. Once the area has been determined, the municipality or government agency in charge of its care or administration shall issue a resolution in which authorisation is given to enter into an agreement with INAB for the concession.

Article 15: Public offer. After signing the agreement referred to in Article 12 of these Regulations, INAB's Executive Board shall issue a resolution inviting participation in a public offer, which must contain, as a minimum:

- a) The specific place in the area to be submitted to the concession process;
- b) Who administers it or the authority under which it falls, as the case may be;
- c) The resolution authorising the concession;
- d) The size of the area covered by the concession;
- e) The registration of the property;
- f) The scope of the concession;
- g) The objectives of the concession;
- h) The characteristics of the concession;
- i) The duration of the concession;
- j) The conditions for participating, in accordance with Article 30 of Legislative Decree 101-96; and
- k) The commitments to be acquired by the interested party with regard to carrying out silvicultural practices and any protective measures that must be implemented or adopted.

Article 21: Concession contract. The concession contract must include at least:

- a) The general personal identification requirements of the concessionaire and the Forest Manager, in accordance with the Law on Government Contracting;
- a) Identification of the resolution by the Executive Board that awarded the concession;
- b) Identification data for the property covered by the concession;
- c) A description of the concession, including the place, village, municipality, area to be included in the concession, dates on which the work should begin and end according to the management plan, and the term covered by the concession;
- d) The schedule of general activities during the term of the concession;
- e) The commitments regarding forest harvesting, silviculture and protective measures that must be adopted during the term of the concession;
- f) Prices and payment mode, form, and terms for the products to be harvested;
- g) The appointment of the Forest Manager proposed by the concessionaire, establishing the professional responsibilities assumed in solidarity;

h) The manner in which adjustments and modifications to the Management Plan will be resolved;

i) A description of the type of guarantee constituted to ensure compliance with the contractual obligations, as established in Articles 30 and 56 of the Forest Law and decisions by the Executive Board. If a bond, the value of the standing timber should be calculated, to be adjudicated, according to the operating plan for the next five-year period to be implemented; and

j) Articles 22 to 26 of these Regulations and the duly approved Management Plan form a part of the contract.

Description of risk

In the case of Guatemala, a great deal is known about community and industrial forest concessions in the Multiple Use Zone (Zona de Uso Múltiple – ZUM) in the Maya Biosphere Reserve (Reserva de la Biosfera Maya – RBM) (in territory administered by CONAP). However, very little is known about concessions on government or municipal lands granted by INAB, in spite of the fact that there is ample clarity about its application in the Forest Law and its regulations.

There are publications by several NGOs that describe the concession process in the hands of communities in the MBR as having been successful. These publications include: Alianza Mesoamericana. 2015. Forest Concessions in Guatemala, international emblematic experience (Concesiones Forestales de Guatemala, experiencia emblemática Internacional), and Gálvez Ruano, J. 2012. Forest concessions in Petén (Concesiones forestales en Petén), and propose it as a model scheme for other regions. At present there are nine communities and two industrial concessions in the MBR, all of which have FSC forest certification (<http://www.info.fsc.org/>), and have been established for periods of 25 years (on average, they began their contracts in the year 2000).

On the other hand, to date outside of protected areas there have been no concessions granted to municipalities or on government lands (email correspondence with the engineering department in charge of INAB's National Forest Registry).

It is also important to mention that the ZUM-MBR concessioning process is a participative process that is the object of several consultations. According to a statement by ACOFOP, since 1994, when the first community forest concession (known as San Miguel La Palotada) was established, the process has been systematised and an opportunity has been given to accede to the forest concessioning process to communities that were located in the zone (and had been there for a long time before it was declared to be a protected area). At present there are three concessions with a resident population (Carmelita, Cruce a La Colorada and Uaxactún) and another six communities without a resident population but that have shown that they have a relationship with their forests (especially for harvesting non-timber products). The whole concession process took about a decade of negotiations and justification (1992-2002), has a legal foundation, and technically has shown proper management of the forest (including a very low occurrence of forest fires or illegal logging (report of Governability Monitoring (Monitoreo de la gobernabilidad) in the Maya Biosphere Reserve, CONAP, 2014). Finally, it has been mentioned that several government

institutions, NGOs, and projects have participated in and are acquainted with the concession process.

It is also necessary to mention that interviews conducted with people who are acquainted with the concession process in the MBR, indicate some risks, among them political changes in Guatemala, that strongly require attention because of the possibility that they represent a change in the conservation strategy in that reserve. Another aspect is that, on average, between 15 and 25 years of the contract have gone by and challenges are foreseen for obtaining an extension. Nevertheless, an active process is maintained and the balance is positive, both for timber and non-timber forest management, as well as for conservation of the zone.

Therefore, both inside and outside protected areas, the risk of non-compliance with the legal requirements for obtaining a concession license, using illegal measures such as bribery, is minimal.

Risk conclusion

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

This indicator has been evaluated as 'low risk', both inside and outside protected areas.

1.2.6. Risk designation and specification

Low risk in protected areas (the only place where concessions may be granted).

1.2.7. Control measures and verifiers

No mitigation or preventive measures required.

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

GENERAL LEGISLATION

1. Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by legislative resolution No. 18-93 dated 17 November 1993). Date of Publication: 31 May 1985.
 - Title II – Human Rights, Chapter 1 – Individual Rights, Article 28 (Título II Derechos Humanos, Capítulo I Derechos Individuales, Artículo 28).
 - Twelfth Section, Economic and Social Regime Articles 125 and 126 (Sección Décima, Régimen económico y social, Artículos 125 y 126). Available at: http://www.oas.org/juridico/mla/sp/qtm/sp_qtm-int-text-const.pdf

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

2. Decree-Law 4-89 On Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations. Date of publication: 10 January 1989.
 - Law on Protected Areas, Chapter III On rational harvesting of wild flora and fauna, Chapter I, Harvesting wild flora and fauna. Articles 34 and 35. (Ley de Áreas Protegidas, Capítulo III del aprovechamiento racional de flora y fauna silvestre, Capítulo I, aprovechamiento de flora y fauna silvestre. Artículos 34 y 35). Available at:
http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
3. Resolution 07-21-2011 Approval of the Manual for Forest Management in Protected Areas and Its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos). Date of publication: 16 November 2011.
 - Section "E" Planning Sustainable Forest Management (Sección "E" Planificación del Manejo Forestal Sostenible). Available at:
<http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

4. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal). Date of publication: 31 October 1996.
 - Title I General provisions. Purpose and general policies, Articles 1 – 6 (Título I Disposiciones generales Objeto y políticas generales, Artículos 1-6).
 - Title V On forest harvesting, management and industrialization, Chapter I Forest harvesting and management Articles 48, 59, 50, 51, 55, 56 (Título V Del aprovechamiento, manejo e industrialización forestal, Capítulo I Aprovechamiento y manejo del bosque), Artículos 48, 49, 50, 51, 55, 56).
 - Chapter II Obligations and projects for forest repopulation, Articles 67, 68 and 70 (Capítulo II Obligaciones y proyectos de repoblación forestal, Artículos 67, 68, 70).
 - Chapter I Cutting Rights, Article 87 (Capítulo I Derecho de corta, Artículo 87).
 - Chapter II On forest registration and statistics, Article 88 (Capítulo II Del registro y la estadística forestal Artículo 88).
 - Chapter II On forest criminal offenses, Article 97 (Capítulo II De los delitos forestales Artículo 97. Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15_Ley_Forestal_Decreto_101_96.pdf
5. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal). Date of publication: 06 December 2005.
 - Chapter VI Harvesting, management and industrialization, Articles 40, 41, 47, 48, 49, 50, 51, 52, 55, 56 (Capítulo VI Aprovechamiento, manejo e industrialización,

Artículo 40, 41, 47, 48, 49, 50, 51, 52, 55, 56). Available at:
http://thereddesk.org/sites/default/files/reglamento_de_la_ley_forestal.pdf

1.3.2. Legal authority

- All Guatemalan government institutions, especially the judiciary. Inasmuch as the Constitution is the legal foundation in Guatemala, all institutions are bound to comply with it and especially the judiciary. Point 1. Available at: <http://www.oj.gob.gt/>
- National Council for Protected Areas (Consejo Nacional de Áreas Protegidas – CONAP). Handles everything related to forest establishment, management and harvesting in the various management categories in protected areas. Points 2 and 3. Available at: <http://www.conap.gob.gt/>
- National Forest Institute (Instituto Nacional de Bosques – INAB). Handles everything related to forest establishment, management, harvesting and incentives and oversight of forest enterprises. Points 4 and 5. Available at: <http://www.inab.gob.gt/>

1.3.3. Legally required documents or records

For CONAP, the following legal documentation is required in order to opt for harvesting management and planning:

- The application;
- A legalised photocopy of the personal identification document of the legal representative or owner;
- The current concession contract (for concessions), or the general property registration for landholdings (forests or plantations);
- Municipal certification for small landholders, and;
- A legalised photocopy of the forest manager's registration (in addition to the management plan and environmental document).

For INAB, the following legal documentation is required in order to opt for harvesting management and planning:

- The application,
- The General Property Registration,
- A map of the landholding,
- A photocopy of the DPI,
- The registration of the person preparing the plans and the forest manager's registration (in addition to the management plan).

1.3.4. Sources of information

Government sources

- Manual for Forest Administration in Protected Areas (Manual para Administración Forestal en Áreas Protegidas). CONAP. Available at:

<http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html> [Accessed 22 February 2016].

- Technical Considerations and Proposed Rules for Forest Management for Conservation of the Soil and Water (Consideraciones Técnicas y Propuesta de Normas de Manejo Forestal para la Conservación de Suelo y Agua). INAB.

Non-Government sources

- Current Status of Information about Forest Management (Estado actual de la información sobre manejo forestal). FAO. 2002. Available at: <http://www.fao.org/docrep/006/ad402s/AD402s08.htm> [Accessed on 22 February 2016].
- Current Situation and Trends in the Forest Sector (Situación actual y tendencias del sector forestal). FAO. Available at: <http://www.fao.org/docrep/007/j3029s/j3029s07.htm> [Accessed 22 February 2016].

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, current situation and the risks associated with tenure, management and harvesting planning.

1.3.5. Risk determination

Overview of Legal Requirements

1. Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by legislative resolution No. 18-93 dated 17 November 1993)

The procedure for applying for a forest management plan has its foundation in Guatemala's political constitution, through Art. 28 (right to petition).

Subsequently, Art. 125 has to do with the exploitation of non-renewable natural resources and indicates that technical, rational exploitation of hydrocarbons, minerals and other non-renewable resources is declared to be of public utility and necessity. In addition, reforestation of the country and conservation of forests is declared to be of national urgency and in the social interest. Exploitation of all these resources shall be exclusively by Guatemalans, either individuals or legal persons. Forests and vegetation on the banks of rivers and lakes and adjacent to water sources shall receive special protection (Art. 126).

2. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations

On its part, in its protected areas, CONAP takes Article 76 as the basis for issuing licences, which indicates that the issuance of licenses for harvesting, hunting, sports fishing, shipping, commercial tenure, management, exporting and trading wild flora and fauna products falls to the National Council for Protected Areas. All licences or permits issued by CONAP are considered to be personal and non-transferrable.

3. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and Its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

This manual establishes the following levels of planning for sustainable forest management:

- a) National Planning;
- b) Forest Management Plan (*Plan de Manejo Forestal* – PMF), and;
- c) Annual Operating Plans – AOP (*Planes Operativos Anuales* – POA).

In addition, in forest concessions in the Maya Biosphere Reserve (*Reserva de la Biosfera Maya* – RBM), Five-Year Plans included in the Updating of General Management Plans shall be applied for medium-term forest management planning and must be based on the concept of regulation of cutting.

In addition, detailed charts are given in order to define the criteria for management of mature forests and of low-productivity forests with conifer and mixed species, as well as regulation criteria, formulas and scenarios for Allowable Annual Cutting (Technical AAC) (*Corta Anual Permisible* – CAP Técnico).

4. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)

Arts. 1 to 6 of this decree set out the fundamental aspects of Forest Management Plans. Later, in Art. 49, the license is described: A licence shall be the authorisation for implementation of the Management Plan. Any forest harvesting of timber or other timber products, except for family consumption or from voluntary plantations and voluntarily planted agroforest plantations, may be done only with a licence that will be granted by INAB in the period indicated in the previous article. Art. 50 indicates that an application for forest harvesting shall be adjusted, insofar as possible, to the provisions of the Civil and Mercantile Procedures Code (*Código Procesal Civil y Mercantil*) but will not be admitted if it is not accompanied by a Management Plan and if it does not meet the technical requirements established in the regulations.

Art. 51 deals with the technician who is responsible for the preparation of the Management Plan in accordance with the nature and size of the harvest.

Other articles (67, 68 and 70) establish the mechanisms for forest repopulation derived from the management plan. Now, with regard to the fee for the forest licence (Art. 87), the Decree establishes that any persons to whom a licence for forest harvesting is granted shall pay an amount equivalent to ten per cent of the value of the standing timber, which must be paid at the time that the licence is authorised.

Finally, Art. 97 establishes that failure to comply with the Forest Management Plan is a criminal offense.

5. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)

For INAB, forest harvesting licences (Art. 40) are the authorisation for forest harvesting, whether or not for commercial purposes, whose objectives are to implement the Forest Management Plans, whether for scientific, production, protection, health or salvaging purposes. Licenses shall be granted, when it is proper to do so, by INAB through the

Manager or Regional Directors in the various forested regions of the country. The licence application files shall be presented at INAB's sub-regional offices.

Regarding the duration of Forest Management Plans (Art 47), the Forest Management Plan shall be for a minimum term of five years, during which period the cutting and harvesting activities and compliance with the commitments for forest repopulation and protection shall occur. In cases in which cutting and harvesting take longer than five years, it will be necessary for the Forest Management Plan for harvesting to be updated every five years.

The annual operating plan (Art. 48) shall be the document for execution, monitoring and annual supervision of the approved Forest Management Plan, and shall contain information in accordance with the instructions issued by INAB.

Other articles refer to modifications to Forest Management Plans and specifications for forest management and regeneration (Arts. 51 and 52).

Description of Risk

According to FAO (Current situation and trends in the forest sector in Guatemala (Situación actual y tendencias en el sector forestal en Guatemala):

<http://www.fao.org/docrep/007/j3029s/j3029s07.htm>), major efforts have been made to support management of natural forests, oriented principally toward generation of support instruments, including: development of simplified models for management of conifers and manuals for sustainable forest management. Both INAB and CONAP have clearly-established forest planning instruments (both for broadleaf and coniferous forests), and there are variations applied to the area under management. However, in CONAP'S opinion, the Forest Management Plan as such, the cost of its preparation and subsequent implementation, are objects of resistance on the part of forest users interested in simple logging.

FAO also states (Status of Forest Information in Guatemala (Estado de la información forestal en Guatemala) 2002: <http://www.fao.org/docrep/006/ad402s/AD402s08.htm>), regarding Forest Management Plans ('How are they prepared, applied and implemented?'), that these have been seen as a requirement that the legislation includes, prior to achieving approvals for harvesting forest products found in the forests. In this regard, many plans tend to reflect only the presently harvestable products, without considering technical aspects that properly guide interventions in forests. The lack of evidence of rational, sustainable harvesting processes for forest resources in Guatemala led to efforts to achieve a viable utilisation model for the country being refocused. Therefore, inside or outside protected areas, the risk of proceeding with the required management planning documents is that they are not always of the expected technical quality, especially because they are looked on as a legal requirement.

Some comments by expert interviewees in this field suggest that "many management plans are made for officials instead of making them for the landowners or for sustainability", and on this subject they refer fundamentally to financial sustainability (especially in forests with a low timber load). It is felt that the capacity of government institutions is insufficient to monitor the actions requested by them. This is the case for EIAs (Environmental Impact Studies) (*Estudios de Impacto Ambiental*), which are a

document that reflects many mitigation measures that are not carried out in practice and are not supervised by the agency in charge.

Finally, it was indicated that in large protected zones (such as the MBR in Petén), follow-up and monitoring of forest concessions (both community and industrial) have been achieved; however, on private landholdings located in the Buffer Zone in that reserve, the financial capacity is still lacking to establish more efficient monitoring mechanisms.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.3.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.3.7. Control measures and verifiers

- Verify that there is a Management Plan approved by the competent authority.
- Verify that a Forest Manager who is duly registered in INAB and/or CONAP as the person responsible for preparing the management plan has been appointed.
- Verify that there is an Annual Operating Plan duly approved by the competent authority.
- Review documentation reflecting the process of authorisation of the Management Plan and/or AOP, including technical field reports.
- Review payments of the corresponding fees that support the approved volume and species.
- Review maps that show the areas under management, boundaries and other geographic references.
- Review commitment to recovery that has been legally established between the owner of the landholding and the State.

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

GENERAL LEGISLATION

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by legislative resolution No. 18-93 dated 17 November 1993). Date of Publication: 31 May 1985.*

- Tenth Section Economic and Social Regime, Articles 125 and 126 (Sección Décima Régimen económico y social, Artículos 125 y 126). Available at: www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

2. *Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations. Publication date: 10 January 1989.*

- Law on Protected Areas, Title III, On rational harvesting of wild flora and fauna, Chapter I, Harvesting of wild flora and fauna, Article 33, Harvesting, Article 35, Authorisation (Ley de Áreas Protegidas, Título III Del aprovechamiento racional de la flora y fauna silvestre Capítulo I Aprovechamiento de la flora y fauna silvestre Artículo 33. Aprovechamiento, Artículo 35. Autorización).
- Regulations for the Law on Protected Areas, Title IV, Chapter I, Harvesting of wildlife, Article 47, Hunting capture, cutting and gathering, Article 48, Application requirements (Reglamento de la Ley de Áreas Protegidas, Título IV Capítulo I Aprovechamiento de vida silvestre Artículo 47. Caza, captura, corte y recolecta, Artículo 48. Requisitos de solicitud). Available at: http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
- 3. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos). Date of Publication: 16 November 2011.*
- Chapter II, Requirements for submission of applications for authorisation of harvesting wild timber flora in protected areas. (Capítulo II Requisitos para presentar solicitudes de autorización de aprovechamiento de flora silvestre maderable dentro de áreas protegidas).
- Chapter III, Guidelines for authorisation of management, harvesting and transportation of wild timber flora (Capítulo III Lineamientos para la autorización de manejo, aprovechamiento y transporte de flora silvestre maderable). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

4. *Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal) Date of Publication: 31 October 1996.*

- Title I General Provisions, Purpose and general policies Articles 1-6 (Título I Disposiciones generales, Objeto y políticas generales, Artículos 1 – 6).
- Title V On forest harvesting, management and industrialisation, Chapter I Forest Harvesting and Management, Articles 48, 49, 50, 51, 55, and 56 (Título V Del aprovechamiento, manejo e industrialización forestal, Capítulo I Aprovechamiento y manejo del bosque, Artículos 48, 49, 50, 51, 55, 56).
- Chapter II Obligations and projects for forest repopulation Articles 67, 68, and 70 (Capítulo II Obligaciones y proyectos de repoblación forestal Artículos 67, 68, 70).
- Chapter I Cutting rights Article 87 Forest harvesting licence fee (Capítulo I Derecho de corta Artículo 87 Monto de la licencia para aprovechamiento forestal).
- Chapter II On forest registration and statistics Article 88 Forest harvesting and sustained management, Article 52 Forest Manager (Capítulo II Del registro y la estadística forestal Artículo 88 Aprovechamientos y manejo sostenido del bosque, Artículo 52 El Regente Forestal). Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15.Ley_Forestal_Decreto_101_96.pdf

5. *Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal) Date of Publication: 06 December 2005.*

- Chapter VI, Harvesting, management and industrialisation Articles 40, 41, 47, 48, 49, 50, 51, 52, 55, and 56 (Capítulo VI, Aprovechamiento, manejo e industrialización Artículos 40, 41, 47, 48, 49, 50, 51, 52, 55, 56). Available at: http://thereddesk.org/sites/default/files/reglamento_de_la_ley_forestal.pdf

1.4.2. Legal authority

- All government institutions in Guatemala, and especially the judiciary. Considering that the Constitution is the legal foundation in Guatemala, all institutions are bound to enforce it and especially the judiciary. Point 1. Available at: <http://www.oj.gob.gt/>
- National Council for Protected Areas (Consejo Nacional de Áreas Protegidas – CONAP). Handles everything related to forest establishment, management and harvesting in the various management categories in protected areas. Points 2 and 3. <http://www.conap.gob.gt/>
- National Forest Institute (Instituto Nacional de Bosques – INAB). Handles everything related to forest establishment, management, harvesting and incentives and oversight of forest enterprises. Points 4 and 5. Available at: <http://www.inab.gob.gt/>

1.4.3. Legally required documents or records

- For CONAP: Licence to harvest and market wild flora timber products in protected areas.
- For INAB: Forest licence.

1.4.4. Sources of information

Government sources

- Inter-institutional action plan for the prevention and reduction of illegal logging in Guatemala (Plan de acción interinstitucional para la prevención y reducción de la tala ilegal en Guatemala). INAB. 2010. Available at: <http://www.marn.gob.gt/Multimedios/436.pdf> [Accessed 28 February 2017]
- Manual for Forest Administration in Protected Areas (Manual para la administración forestal en áreas protegidas). CONAP. Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html> [Accessed 22 February 2016]

Non-Government sources

- Diagnosis of the current status of illegal logging in southern Petén (Diagnóstico sobre el estado actual de la tala ilegal en el sur de Petén). Asociación Balam (2013). This is currently not available online. It can be provided by email on request (dtrujillo@asociacionbalam.org).
- Characterisation of the chain of timber products in the municipalities of Tecpán Guatemala, Chimaltenango and San Juan Sacatepéquez, Guatemala (Caracterización de la cadena productiva de la madera en los municipios de Tecpán Guatemala, Chimaltenango y San Juan Sacatepéquez, Guatemala). IARNA. 2009. Available at: <http://biblio3.url.edu.gt/IARNA/SERIETECNINCA/34.PDF>
- Current status of information about forest management (Estado actual de la información sobre manejo forestal). FAO. 2002. Available at: <http://www.fao.org/docrep/006/ad402s/AD402s08.htm> [Accessed 22 February 2016]
- Current situation and trends in the forest sector (Situación actual y tendencias del sector forestal). FAO. Available at: <http://www.fao.org/docrep/007/j3029s/j3029s07.htm> [Accessed 22 February 2016]
- Transparency International Corruption Perception Index 2014. Available at: <http://www.transparency.org/country/#GTM>. [Accessed 22 February 2016]

Interviews with experts

Interviews with various experts in the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, current situation and the risks associated with harvesting permits.

1.4.5. Risk determination

Overview of Legal Requirements

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by legislative resolution No. 18-93 dated 17 November 1993)*

Art. 125 of the political constitution of the republic deals with exploitation of non-renewable natural resources and declares that technical, rational exploitation of hydrocarbons, minerals, and other non-renewable natural resources is of public utility and necessity. The State shall establish and promote appropriate conditions for their exploration, exploitation and trading. In addition, reforestation of the country and conservation of forests is declared to be of national urgency and social interest. The law shall determine the form and requirements for rational exploitation of forest resources and their renewal, including resins, gums, uncultivated wild plant products and other similar products, and shall encourage their industrialisation. Exploitation of all these resources shall be exclusively by Guatemalans, either individuals or legal persons. Forests and vegetation on the banks of rivers and lakes and adjacent to sources of water shall be given special protection (Art. 126).

2. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas) and its regulations

Forest harvesting in protected areas is based on Arts. 33 and 35, which indicate that, for the purposes of this law, harvesting of flora and fauna is understood to be any action of seeking, gathering, removing, reproducing, capturing or killing examples of plants or wildlife, as the case may be. For harvesting of wild products protected by this law, its regulations and related laws, any interested party must have an authorisation issued by CONAP.

These articles also indicate that hunting, capturing, cutting and gathering specimens, parts and derivatives of wild flora and fauna require a licence issued by CONAP's Executive Secretariat. When it is desired to carry out any of these activities in a protected area, the approval of the agency that administers it must be obtained and the activity must have been expressly approved in the corresponding master and operating plans (Art. 47).

3. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices. (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

The manual for forest administration establishes the requirements for submitting applications for authorisation of management plans for commercial purposes.

LEGAL DOCUMENTATION

- a) The user must submit an application which clearly describes the objective(s) of the activity to be performed, giving the applicant's exact address for receiving notices, their telephone number, fax number and/or email address.
- b) A legalised photocopy of the residency card or personal identification of the applicant or legal representative and a legalised copy of the document verifying duly registered representation, if that is the case.
- c) Certification of registration of the real property covered by the application with the corresponding map. The certification must have been obtained within a period of no more than three months from the date of its presentation.
- d) If the property has not been recorded in the property registry, the applicant must present:

- i. Certification issued by the competent municipal authority verifying possession of the real property and, if applicable, testimony in public deed confirming possession or,
 - ii. A legalised photocopy of the testimony of the lease contract for the property covered by the application for forest management.
- e) A legalised photocopy of the certification of registration in CONAP's National Registry of Forest Managers for the person responsible for providing technical assistance in preparation of the proposal and implementation of the management plan.
- f) A legalised photocopy of the forest manager's residency card or personal identification document.

TECHNICAL DOCUMENTATION

- a) Submit application for authorisation based on the applicable form, depending on the project's commercial objectives or forest management plan, which must be prepared by a forest manager who has been duly registered in CONAP's National Registry of Forest Managers, based on the technical guidelines contained in this manual (participation by a manager is waived for applications for authorisation of projects for reforestation and/or establishment of agroforest systems smaller than 5 hectares).
- b) For applications for authorisation of change of land use in areas with forest coverage greater than 1 hectare, a Study of Use of Soil Capacity must be presented, prepared based on the methodology established by the National Forest Institute.
- c) For all applications for approval of commercial projects and forest management plans, an Environmental Assessment Document must be presented, as required in the Ministry of the Environment and Natural Resource's "Restrictive List of Projects, Construction Works, Industries or Activities".
- d) For approved Forest Management Plans to be put into operation, following issuance of the corresponding forest licence, the user must submit an Annual Operating Plan. (This applies to management plans that provide for more than one annual harvesting.)

4. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)

The initial articles (1 to 6) describe Forest Management Plans; subsequently, Art. 49 describes the licence: A licence shall be the authorisation for implementation of the Management Plan. Any forest harvesting of timber or other timber products, except for family consumption or from voluntary plantations and agroforest systems planted voluntarily, may be done only with a licence issued by INAB. It will be exclusively for the owner or legitimate possessor of the land or forest area in question and it shall be under his responsibility and vigilance for the period required by the Management Plan, according to the regulations. Art. 50 states that a forest harvesting application shall adjust, insofar as applicable, to the provisions of the Civil and Commercial Procedures Code, but shall not be admitted if it is not accompanied by a Management Plan and if it does not comply with the technical requirements established in the regulations. INAB must decide on the Management Plan submitted within a period of sixty (60) days from administrative admission of the licence application. After admitting the licence application, INAB will have a maximum period of sixty (60) days to approve or disapprove it.

Now, with regard to the forest license fee (Art. 87), it has been established that any person to whom a forest harvesting licence is granted shall pay an amount equivalent to ten per cent of the value of the standing timber, which must be paid in cash at the time the licence is authorised.

5. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)

For INAB, forest harvesting licences (Art. 40) are the authorisations for forest harvesting, whether for commercial purposes or not, that have as their objective the implementation of Forest Management Plans, whether for scientific, production, protection, forest health or salvaging. Such licenses shall be granted by INAB, when proper, through the Manager of Regional Directors, in the various forest regions of the country. The licence application files shall be presented at INAB's sub-regional offices, and shall include the following documentation:

- a) An application that contains, as a minimum, the property owner's general personal data, place for receiving notices, the application in concrete terms and a duly authenticated signature;
- b) Certification of the Property Registry verifying ownership of the property, indicating the annotations and liens that it contains. If the property is not recorded in the Registry, another legal document verifying the property may be accepted; and
- c) The Forest Management Plan.

The term of the licence shall be established by INAB for a period that guarantees implementation of effective measures in the Forest Management Plan and the meeting of the commitments that the licence implies. The license shall be issued for a period of no less than five years.

Description of Risk

Internationally, in the Transparency Corruption Index Guatemala is positioned 123rd of 168. According to the action plan for the prevention and reduction of illegal logging in Guatemala (<http://www.inab.gob.gt/Paginas%20web/plandeaccion.aspx>), illegal harvesting creates forest deterioration in environmental terms and leads to a lack of respect for the current laws and authorities, contributing to ungovernability. Illegal harvesting is also unfair competition for legal sources. That study also indicates that more than 95% of the flow of forest products in the county occurs on the margins of the law. Estimates by the Integrated Forest Count (*Cuenta Integrada del Bosque*) indicate that 76% of this volume is firewood and 24% timber.

The study also mentions that the increase in the levels of uncontrolled traffic in forest products is consistent with a) a lack of institutional capacity to control deforestation in forested areas, b) a lack of effective controls in transportation of forest products; c) a lack of an effective system for issuing permits for transportation of forest products; d) harvesting and traffic of timber under the cover of distortions in the use of permits for family harvesting of forest products, and; e) a lack of an effective system of control for volumes of timber processed in forest industries.

For its part, Asociación Balam (Diagnosis of the current status of illegal logging in southern Petén (*Diagnóstico sobre el estado actual de la tala ilegal en el sur de Petén*))

reports that in the southern part of Petén Department (San Luis, Poptún and Dolores), 98% of the timber shipped is illegal. The Institute of Agriculture, Natural Resources and the Environment (*Instituto de Agricultura, Recursos Naturales y Ambiente – IARNA*) of Rafael Landívar University, in a report on characterization of the timber production chain in the municipalities of Tecpán Guatemala, Chimaltenango and San Juan Sacatepéquez, indicates that, according to stakeholders in the forest sector, among the mechanisms used to convert an illicit product into a licit one are: i) direct contracts with Diprona, ii) falsification of documents (licences and shipping tickets), and iii) reuse of shipping notes. Most of the firewood is sold in the illicit market, which represents a big risk for shippers. IARNA also indicates that trading the illicit product affects the competitiveness of the forest sector, especially forest production, since people acquiring illegal products are able to offer them at a lower cost.

FAO indicates that in Guatemala there are no exact figures, but that estimates have been made that illegal logging for the purpose of timber production represents from 30 to 50 per cent of the volume of commercial timber harvested yearly.

As such, the risk of illegal logging occurring both inside and outside protected areas is high.

As one of the experts interviewed commented: "On some occasions, users prefer to show an over-volume in shipping documents, in order to avoid paying fines or bribes to institutions that are in charge of control on the highways, such as DIPRONA or PNC." Others stated that there is a "lack of institutional capacity for monitoring all movements of forest transportation in Guatemala, so the responsibility lies in the hands of the manager and owner of the landholding." Others reflected that in protected areas, since there is a shortage of personnel available in the institutions, the times that go by for approval of management plans are lengthy, which creates a big risk that the legal processes will be skipped. Finally, it was indicated that there have been proven cases of corruption in government institutions, note that the persons responsible for this have been dismissed and no judicial process opened against them.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.4.6. Risk designation and specification

Specified risk both in and outside of protected areas.

1.4.7. Control measures and verifiers

- Verify the existence of a current Forest Licence (in the case of harvestings authorised by INAB) or a licence for harvesting and trading wild flora timber products in protected areas (in the case of harvestings authorised by CONAP).

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- Verify the existence of a formally constructed file in CONAP or INAB that shows the authorisation process on which the endorsement for issuance of a licence is based.
 - Verify payment of forest taxes, as part of the authorisation of the forest licence.
 - In the field, verify the volumes, species and location of the forest harvesting, in accordance with the licence granted.
 - In the field, verify the process of acquisition and issuance of shipping waybills (in the case of authorisation by CONAP) or forest shipping tickets (in the case of authorisation by INAB).
 - Verify the role of the forest manager in the forest harvesting.
 - Visit the institutions in charge of authorising licences in order to verify the existence of technical reports that disclose the activities before, during and after harvesting.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

1. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos). Date of publication: 16 November 2011.*
 - Chapter VI Guidelines for administration of guarantees of forest recovery in protected areas (*Capítulo VI Lineamientos para la administración de garantías de recuperación forestal en áreas protegidas*).
 - Chapter VII Guidelines for estimating the value of standing timber (*Capítulo VII Lineamientos para la estimación del valor de la madera en pie*). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

2. *Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal). Date of publication: 31 October 1996.*
 - Title VIII On the taxation, control and statistics regime Chapter I Cutting rights. ARTICLE 87 Fee for forest harvesting licence (Título VIII Del régimen impositivo, control y estadística, Capítulo I Derecho de corta, ARTICULO 87 Monto de la licencia para aprovechamiento forestal). Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15_Ley_Forestal_Decreto_101_96.pdf
3. *Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal). Date of publication: 06 December 2005.*
 - Chapter VI Harvesting, management and industrialisation ARTICLE 56 Guarantees for forest repopulation (CAPITULO VI Aprovechamiento, manejo e industrialización ARTÍCULO 56. Garantías para la repoblación forestal). Available at: http://thereddesk.org/sites/default/files/reglamento_de_la_ley_forestal.pdf

1.5.2. Legal authority

- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas* – CONAP): for the purposes of the administration and collection of taxes on fees for harvesting, the basis of this authority is established in the Forest Law and its regulations.

(Fees collected by CONAP with regard to harvesting are: permit rights, intrinsic value of the standing timber, and surety bond covering the commitment to forest repopulation. Subsequently, in the transportation phase, payment is made for the corresponding shipping waybills. All of the amounts collected by CONAP go into a specific account in the institution's restrictive funds.)

- National Forest Institute (*Instituto Nacional de Bosques* – INAB): basically collects the same fees as CONAP; however, they go into a different account (which is an INAB account).

1.5.3. Legally required documents or records

- For the National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas* – CONAP): payment certification voucher issued on General Accounting Comptroller's Office Form 63-A2 in the name of CONAP, in addition to presentation of certification of payment of a surety bond policy for reforestation commitment.
- For the National Forest Institute (*Instituto Nacional de Bosques* – INAB): payment certification voucher issued on General Accounting Comptroller's Office Form 63-A2 in the name of INAB, in addition to presentation of certification of payment of a surety bond policy for reforestation commitment.

1.5.4. Sources of information

Non-Government sources

- FAO-World Bank. 2012. Evaluation of the impact of collection of fees for harvesting standing timber and other fees on forest management in Guatemala (*Evaluación del impacto del cobro por derechos de aprovechamiento de madera en pie y otras tasas sobre el manejo forestal en Guatemala*). Available at: <http://www.fao.org/fileadmin/templates/tci/pdf/GUATEMALACompleteLOW.pdf> [Accessed 03 May 2016]

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with tenure and payment of rights and fees for harvesting.

1.5.5. Risk determination

Overview of Legal Requirements

1. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*

The value of standing timber will be established by CONAP according to an evaluation of the market price and the environmental services that the trees provide in protected areas. Periodic updates must be approved by CONAP's Council and published in the Official Gazette. To estimate the yield in firewood, logs and woodchips per tree, the following percentages shall be used for coniferous species: a) logs = 80%, b) firewood = 10%, and c) woodchips = 10%. For broadleaf species, the percentages to be applied are: a) logs = 80%; b) firewood (branches) = 20%.

In broadleaf forests, the amount to be paid as a fee on the value of the standing timber and for guarantees of compliance with the commitments to recovery must be estimated annually based on the commercial census data and the annual operating plan approved by CONAP. In mixed and coniferous forests, the amount to be paid as a fee on the value of the standing timber and for guarantees of compliance with the commitments to recovery must be established based on the forest Management Plan approved by CONAP.

This will only be modified if the current fee schedule changes following authorisation of a new annual operating plan.

2. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)

According to Art. 87 (Fee for forest harvesting licence) (*Monto de la licencia para aprovechamiento forestal*), any person to whom a forest harvesting licence is granted shall pay an amount equivalent to ten per cent of the value of the standing timber, which must be paid in cash at the time the licence is authorised. Fifty per cent of the amount collected shall be transferred to the municipalities in which the harvested forests are located; this amount shall be allocated specifically to forest control and vigilance; the remaining fifty percent shall be placed in the Restrictive Forest Fund.

This payment is waived for forest products coming from:

- a) Plantations registered with INAB that were not established due to reforestation obligations and agroforest systems; and
- b) Forests that have been managed according to a Management Plan approved by INAB and that have complied with all of the commitments established in the licence. INAB shall publish the value of the standing timber annually in the Official Gazette and that value shall take effect from the first of September of each year.

3. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)

The regulations for the Forest Law indicate (Art. 56), regarding guarantees for forest repopulation, that the following may be accepted as guarantees of forest repopulation:

- a) *Surety bond*: Compliance with forest repopulation may be guaranteed by a surety bond issued in favour of INAB.
- b) *Cash deposit*: Any person required to guarantee forest repopulation may do so by making a deposit in favour of INAB in cash in a bank in the system. INAB will only return the amount deposited to the interested party after the corresponding release has been given.
- c) *Mortgage*: Any user who wishes to guarantee compliance with the forest repopulation obligation with a mortgage must submit the following documentation:

- a. An express application;
 - b. Certification issued by the property registry;
 - c. Appraisal performed by an authorised appraiser; and
 - d. A summary completed in accordance with the model prepared by INAB’s legal adviser;
 - e. During the effective term of the licence, the mortgaged real property may be replaced by another that in INAB’s opinion has the same or better conditions and characteristics, in accordance with the above.
- d) *Fiduciary guarantee*: The user may guarantee compliance with the forest repopulation obligations with a solidary or joint fiduciary guarantee in a private document with authenticated signature or in public deed, depending on the area covered by the intervention.
- e) *Government bonds*: Compliance with forest repopulation obligations may be guaranteed by a deposit of government bonds for a nominal value that is at least equal to the value of forest repopulation.

For voluntary plantations registered in the National Forest Registry in which there is a failure to comply with the repopulation commitment, the plantation given as a guarantee will be considered obligatory plantation.

In every case, with the exception of surety bonds and government bonds, the guarantee shall cover, as a minimum, one hundred and ten percent (110%) of the cost of forest repopulation, which includes the establishment and maintenance phases, and must be for a minimum of four years.

Description of Risk

Taxes generated by forest operations in Guatemala are directly related to the following three aspects:

- a) Payment of the intrinsic value of the timber (10% of the value of the standing timber). A different fee schedule is used for INAB and CONAP;
- b) Payment for issuance of a forest licence (applies only to CONAP);
- c) Payment for issuance of shipping waybills or forest shipping tickets; and
- d) Payment for guarantee of recovery of forest coverage (reforestation or management of natural regeneration). Various modalities are applied.

FAO-World Bank (2012), indicate that the two institutions in charge of collecting fees for standing timber are CONAP and INAB. In the last five years, CONAP has received between Quetzals 1.2 million and Q1.4 million, which represented 3% of its budget.

Both the INAB and CONAP procedures establish that the respective fees must be paid prior to issuance of a licence and transportation documents. In addition, field verifications are made to check the forest species to be harvested, and these species are also verified during oversight of sawmills and forest transportation.

Payment of harvesting rights and fees is a procedure that is considered to be properly controlled by the institutions, so the risk here is minimal. It should be mentioned that,

logically, any timber involved in an attempted illegal sale or that enters sawmills (for washing) has not had its associated harvesting rights and fees paid. Experts who were interviewed consider that the fees to be paid are not high enough to affect the profitability of forest operations, and thus loss of profits cannot be used as an excuse to justify illegalities. It is also important to mention that institutions such as the General Accounting Comptroller have the authority to monitor the institutions that collect harvesting rights and fees, so the possibility of avoidance of these payments is very low. Finally, organisations such as FSC (through its forest certification mechanism), the Tax Administration Superintendency (*Superintendencia de Administración Tributaria – SAT*) and the accounting systems of the companies themselves monitor proper payment of taxes derived from forest harvesting authorisations in Guatemala.

Risk Conclusion

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

This indicator has been evaluated as 'low risk', both inside and outside protected areas.

1.5.6. Risk designation and specification

Low risk both inside and outside protected areas.

1.5.7. Control measures and verifiers

- Receipts shall exist for payments of harvesting-related royalties, taxes, harvesting fees and other charges.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Classification of species, volumes and qualities shall match the royalties and fees paid.

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

GENERAL LEGISLATION

1. Decree-Law 27.92 Law on Value Added Tax (*Ley 27-92. Ley del Impuesto al Valor Agregado*). Date of publication: 09 April 1992. Available at: <http://portal.sat.gob.gt/sitio/index.php/leyes/impuestos/leyes-y-reglamentos.html>
2. Governmental Resolution 5-2013. Regulations for the Law on Added Value Tax (*Acuerdo Gubernativo 5-2013 Reglamento de la Ley del Impuesto al Valor Agregado*). Date of publication: 04 January 2013. Available at: <http://portal.sat.gob.gt/sitio/index.php/leyes/impuestos/leyes-y-reglamentos.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

3. Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (*Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita*). Date of publication: 11 April 2014.

- Article 7. Special considerations (*Artículo 7. Consideraciones especiales*).

1.6.2. Legal authority

The Tax Administration Superintendency (*Superintendencia de Administración Tributaria --SAT*) is in charge of verifying issuance of the respective invoices at the national level.

1.6.3. Legally required documents or records

- Issuance of accounting invoices for trading timber products.
- Declaration of the taxes corresponding to SAT.

1.6.4. Sources of information

Government sources

- Estimate of productivity, efficiency and non-compliance with payment of the Added Value Tax (VAT) in Guatemala (*Estimación de la productividad, eficiencia e incumplimiento del pago del Impuesto al Valor Agregado (IVA) en Guatemala*). 2014. SAT: Available at: <http://portal.sat.gob.gt/sitio/index.php/estadisticas/47-estadisticas-tributarias/7897-analisis-y-estudios-tributarios.html> [Accessed on 23 February 2016].

Non-Government sources

- Tax evasion of VAT was 36% in 2014 (*Evasión tributaria del IVA fue 36% en 2014*) Prensa Libre. Accessed on 23 February 2016 at: <http://www.prensalibre.com/economia/evasion-tributaria-del-iva-fue-36-en-2014>
- ICEFI states that evasion of VAT and Income Tax (ISR) exceeds 40% (*ICEFI asegura que evasión del IVA e ISR supera el 40%*). Available at: <http://www.prensalibre.com/presentan-plan-para-rescatar-a-la-sat-tras-fraude-fiscal> [Accessed on 23 February 2016]
- UICN – EFI. Analysis of international trade in timber products and its administrative governance (*Análisis del comercio internacional de productos de madera y su gobernanza administrativa*). 2014. Available at: http://cmsdata.iucn.org/downloads/analisis_del_comercio_internacional_version_digital.pdf [Accessed on 05 May 2016].

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with Added Value Tax (VAT) and other sales taxes.

1.6.5. Risk determination

Overview of Legal Requirements

1. *Decree-Law 27-92 Law on Added Value Tax – VAT (Decreto Ley 27-92. Ley del Impuesto al Valor Agregado – IVA)*

The tax established in this law must be paid (Art. 4) on:

- 1) The sale or transfer of goods (including timber) or for services provided;
- 2) Importations (applies to timber).

In this regard, the tax base on sales shall be the price of the operation less any discounts granted in accordance with commercial practices.

In Guatemala, invoicing for the sale of timber processed in sawmills is mandatory.

2. *Governmental Resolution 5-2013 Regulations for the Law on Added Value Tax (Acuerdo Gubernativo 5-2013. Reglamento de la Ley del Impuesto al Valor Agregado)*

The purpose of these regulations is to establish rules for application of the provisions of the Law on Added Value Tax and matters related to administrative collection of this tax, as well as procedures to facilitate its collection and control (Art. 1).

It applies in the case of timber, considered to be goods; and according to Article number 3 item 1) of the law, VAT is not assessed on deliveries of goods on consignment made by one seller to another seller, so long as the consignee does not sell or transfer or donate the goods received on consignment.

3. *Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)*

The Forest Law does not contain anything related specifically to authorisation of a timber product (nor is there any specification in its regulations), but there are specific regulations for forest transportation. However, both INAB and CONAP are of the opinion that the regulations and proper payment of VAT are an SAT responsibility.

In its Art. 7, the law establishes the special considerations under which other mechanisms are given for forest transportation, and explains in item b) any invoice authorised by the Tax Administration Superintendency for forest products from forest enterprises the volume of which is less than one cubic metre.

Description of Risk

Fiscally, in Guatemala, an invoice must be issued for any product sold (although an invoice does not necessarily have to figure for transportation of the product).

Officially, SAT indicates the following for the year 2014: In Guatemala, the estimate of non-compliance with payment of the Added Value Tax—VAT shows that it is perhaps the most important one in the tax system, since during the period covered by the study (2015) the average relative importance of this tax was 48.1%.

For the year 2014, evasion of VAT amounted to 36% as reported by *Prensa Libre* and could amount to Q11 billion that the tax authorities did not collect in that year. Another journalistic source states that evasion normally amounts to 30% (*Siglo 21*).

When timber is shipped, a shipping ticket from the company is usually used, often avoiding the issuance of an invoice (on which VAT must be paid). As the data issued by official and non-official sources show, the risk of this illegal act being committed is high.

Although there are no detailed reports about the matters described above, a group of experts was consulted (on 6, 7 and 8 April 2016), and they indicated that companies that are registered and legal do comply with the rules. However, in a country with high levels of government corruption, there is mistrust on the part of most business owners (including those in the forest industry) about the tax system (VAT and others), so mechanisms are identified to avoid paying (failing to issue invoices or issuing them with understated figures, for example). Finally, the interviewees indicated that with the implementation of the Electronic Information System for Forest Enterprises (*Sistema Electrónico de Información de Empresas Forestales – SEINEF*), registration of enterprises has improved somewhat, having increased from 1,200 to approximately 2,000 enterprises registered; this is a good effort to gradually achieve proper regulation and promote payment of taxes. Nevertheless, the risk that VAT will be evaded in Guatemala is high and this situation applies both inside and outside protected areas.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.6.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.6.7. Control measures and verifiers

- Verify that the user has issued current accounting invoices.
- Verify timber species, volumes and prices (depending on qualities) shown in the accounting invoice.
- Verify monthly, quarterly and annual payment of VAT to SAT (depending on the regime in which the user is registered).
- Cross-check between duplicates of invoices issued and the report submitted to SAT.
- Cross-check between issuance by the enterprise of accounting invoices and shipping tickets (they should coincide with regard to species and volumes shown).
- Verify the quarterly report submitted to INAB (in which the enterprise's daily movements are verified) with issuance of accounting invoices.
- Consult the VAT declaration made to SAT electronically.

- Visit the SAT reference office to learn details related to payment of VAT or assessment of fines.
- Review payment of tax on the intrinsic value of timber to the oversight institutions (INAB or CONAP).

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

GENERAL LEGISLATION

1. *Decree 26-92 Income Tax Law and reconciled regulations (governmental resolution 206-2004) (Decreto 26-92. Ley del impuesto sobre la renta y reglamento concordado (acuerdo gubernativo 206-2004)).* Date of publication: 22 July 2004. Available at:
http://portal.sat.gob.gt/sitio/index.php/component/docman/doc_download/620-ley-de-isr-y-reglamento-concordado.html
2. *Decree number 10-2012 Law to Update Taxes (Decreto número 10-2012. Ley de actualización tributaria).* Date of publication: 16 February 2012. Available at:
<http://portal.sat.gob.gt/sitio/index.php/leyes/impuestos/leyes-y-reglamentos.html>

1.7.2. Legal authority

The Superintendency of Tax Administration (SAT) is in charge of verifying issuance of the corresponding invoices at the national level.

1.7.3. Legally required documents or records

- Issuance of accounting invoices for trading timber products.
- Declaration of the corresponding taxes to SAT.

1.7.4. Sources of information

Government sources

- Current Situation of Income Tax, Tax expense, Non-Compliance and Perspectives (*Impuesto Sobre la Renta Situación Actual, Gasto Tributario, Incumplimiento y Perspectivas*). 2011. Available at:
http://portal.sat.gob.gt/sitio/index.php/leyes/doc_download/2996-gt-isr.html
[Accessed on 23 February 2016]

Non-Government sources

- ICEFI states that evasion of VAT and Income Tax (ISR) exceeds 40% (*ICEFI asegura que evasión del IVA e ISR supera el 40%*). Available at:
<http://www.prensalibre.com/presentan-plan-para-rescatar-a-la-sat-tras-fraude-fiscal> [Accessed on 23 February 2016]

1.7.5. Risk determination

Overview of Legal Requirements

1. *Decree number 10-2012 Law to update taxes (Decreto número 10-2012. Ley de actualización tributaria):*

A tax is decreed on all income obtained by individuals and legal persons, entities or estates that are specified in this law, whether they are citizens or foreigners, residents or non-residents in this country, whether domiciled or not in this country. The tax is generated every time that taxable income is produced and is determined in accordance with the provision of this law (Art. 1).

The following types of income obtained by passive subjects are taxed, according to their sources:

1. Income from profit-making activities;
2. Income from work;
3. Income from capital and earnings from capital.

Without prejudice to the general provisions, the regulations corresponding to each income category are established and the tax is to be paid separately in accordance with each of the titles of this law. Income obtained by non-resident taxpayers is taxed in accordance with the categories indicated in this article and the provisions contained in Title V of this law (Art. 2).

Considering that Art. 3 (scope of application) indicates that income obtained throughout all of the nation's territory is subject to the tax, and is defined in accordance with what is set forth in the Political Constitution of the Republic of Guatemala, as well as income from capital obtained abroad by residents of Guatemala, as indicated in Art. 3, its applicability to trade in timber is clear.

Description of Risk

In Guatemala, income tax (ISR) applies to trade in timber. The risk profile relating to ISR is very similar to that for VAT, since when an accounting invoice is issued both taxes must be paid. The situation explained in the previous indicator (VAT), in which it is permissible to use the invoice as the transportation document when the volume to be transported, generated in a forest industry, is less than one cubic metre, also applies to ISR. Over one cubic metre, it is necessary to use the enterprise's shipping note as the transportation document. Therefore, the risk occurs with non-issuance of invoices when timber is traded, by which both taxes are evaded (VAT and ISR). There is no interinstitutional coordination (corroborated by stakeholders) to put INAB on the same line (through its oversight of forests), because it is governed by different legislation.

One of the tools that was useful in increasing collection in 2010 was a favourable decision by the Constitutionality Court in favour of the Tax Administration to require externally-audited financial statements from taxpayers under this regime. The whole subject of (ISR) will be discussed later in connection with industrialisation of timber from natural forests (both inside and outside protected areas); nonetheless, it is important to mention that voluntary plantations are exempt and can export roundwood without applying

income tax (ISR). Recent journalistic reports indicate that up to 67% of income tax owing in Guatemala is evaded (*Siglo 21*, 2014). Considering the evasion disclosed officially and by journalistic sources, the risk that income tax will be evaded is considered to be high. In addition, the interviewed experts in Guatemala agree with the opinion that evasion of taxes such as VAT and ISR is very common.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.7.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.7.7. Control measures and verifiers

- Verify that the user has issued current accounting invoices.
- Verify timber species, volumes and prices (depending on qualities) shown in the accounting invoice.
- Verify monthly, quarterly or end-of-year payment of income tax (ISR) to SAT (depending on the regime in which the user is registered).
- Cross-check between duplicates of invoices issued and the report submitted to SAT.
- Cross-check between issuance of accounting invoices and the enterprise's shipping tickets (they should coincide with regard to the species and volumes shown).
- Verify the quarterly report submitted to INAB (in which the enterprise's daily movements are verified) with issuance of accounting invoices.
- Consult the Income Tax declaration (ISR) to SAT electronically.
- Visit SAT's reference office to learn the details related to payment of income tax (ISR) or assessment of fines.
- Review payment of the tax on the intrinsic value of the timber to the oversight institutions (INAB or CONAP).

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

1. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its Appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*. Date of publication: 16 November 2011.
- Chapter II Requirements for submitting applications for authorisation of harvesting of wild timber flora in protected areas (Commercial Forest Management Plans – Authorisation for Non-Commercial Forest Harvesting) (*Capítulo II Requisitos para presentar solicitudes de autorización de aprovechamientos de flora silvestre maderable dentro de áreas protegidas (Planes de Manejo Forestal Comercial - Autorización para Aprovechamiento Forestal no Comercial)*). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

2. *Resolution 01-43-2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)*. Date of Publication: 06 December 2005.
- Chapter VI Harvesting, management and industrialisation (*Capítulo VI Aprovechamiento, manejo e industrialización*), Articles 40 to 55.
3. *Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin. (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)* - describes the actions following forest harvesting outside of protected areas. Date of publication: 11 April 2014.
4. *Technical Considerations and Proposed Forest Management Rules for Conservation of Soil and Water. (Consideraciones Técnicas y Propuesta de Normas de Manejo Forestal para la Conservación de Suelo y Agua)*. Date of publication: 2013. Describes the technical aspects to be considered at the time of forest harvesting (especially for protection of the soil and water)
5. *Resolution No. JD 03.31.2014 Regulations for the forest incentives programme (Resolución No. JD 03.31.2014 Reglamento del programa de incentivos forestales)*.

Describes the way in which the law on forest incentives will be applied, payment amounts, and incentive categories, among others. Date of publication: 26 September 2014

6. *Resolution No. JD 03.43.2005 Regulations for forest managers (Resolución No. JD 03.43.2005 Reglamento para regentes forestales)*. Date of publication: 06 December 2005

1.8.2. Legal authority

- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): Handles everything related to forest establishment, management and harvesting in the various management categories in protected areas. Point 1. <http://www.conap.gob.gt/>
- National Forest Institute (*Instituto Nacional de Bosques – INAB*): Handles everything related to forest establishment, management, harvesting and incentives and oversight of forest enterprises. Points 2 to 6. <http://www.inab.gob.gt/>

1.8.3. Legally required documents or records

- For CONAP: Forest management plan adhering to the respective rules, depending on the area and initial environmental form (subsequent to the management plan, an Annual Operating Plan--AOP (*Plan Operativo Anual—POA*) must be submitted); harvesting and trading licence for wild timber for products in protected areas is issued.
- For INAB: Forest management plan (depending on the area applied for); in addition, once the management plan has been authorised, an Annual Operative Plan (*Plan Operativo Anual--POA*) is required. Finally, the Forest Licence is granted.

1.8.4. Sources of Information

Government sources

- Annual Report (*Memoria de Labores*) 2014. INAB. Available at: <http://www.inab.gob.gt/Documentos/Publicaciones/Memoria de Labores 2014.pdf> [Accessed 23 February 2016]
- Interinstitutional action plan for prevention and reduction of illegal logging in Guatemala (*Plan de acción interinstitucional para la prevención y reducción de la tala ilegal en Guatemala*). INAB. 2010. Available at: <http://www.marn.gob.gt/Multimedios/436.pdf>

Non-Government sources

- Current status of information about forest management (*Estado actual de la información sobre manejo forestal*). FAO. 2002. Available at: <http://www.fao.org/docrep/006/ad402s/AD402s08.htm> [Accessed 22 February 2016]
- INAB, CONESFORGUA, IARNA-URL, FAO. 2015. Diagnosis and analysis of illegality in harvesting and trading forest products in Guatemala (*Diagnóstico y análisis sobre la ilegalidad en el aprovechamiento y comercialización de productos forestales en Guatemala*). (Document prepared by César Augusto Sandoval García,

within the framework of the project: "Strengthening governance as a function of the Interinstitutional Plan of Action for the Prevention and Reduction of Illegal Logging in Guatemala and socialization of the country's opportunities to participate in the initiative on international forest legality Guatemala" (*Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala y socialización de las oportunidades del país en participar en iniciativa de legalidad forestal internacional Guatemala - FLEGT*) UE FAO FLEGT / CONESFORGUA / INAB. Available at: http://www.academia.edu/15233258/Diagn%C3%B3stico_de_tala_ilegal_en_Guatemala [Accessed 22 February 2016]

- INAB, CONESFORGUA, IARNA-URL, FAO. 2015. Identification of the principal limitations and opportunities for participating in international legality schemes (*Identificación de las principales limitantes y oportunidades de participar en esquemas de legalidad internacional*). (Document prepared by César Augusto Sandoval García, within the framework of the project: "Strengthening governance as a function of the Interinstitutional Plan of Action for the Prevention and Reduction of Illegal Logging in Guatemala and socialization of the country's opportunities to participate in the initiative on international forest legality Guatemala" (*Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala y socialización de las oportunidades del país en participar en iniciativa de legalidad forestal internacional -FLEGT*)). Guatemala, UE FAO FLEGT / CONESFORGUA / INAB.

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation, and the risks associated with the rules for forest harvesting.

1.8.5. Risk determination

Overview of Legal Requirements

1. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

In Chapter II (Authorisation of Harvestings of Wild Timber Flora in Protected Areas) (*Autorización de Aprovechamientos de Flora Silvestre Maderable dentro de Áreas Protegidas*), this resolution establishes, among the requirements for submitting applications for authorisation of harvesting of wild timber flora in protected areas, and in section "A", requirements for submitting applications for authorisation of forest management plans for commercial purposes, item c), this resolution establishes that: certification of registration of ownership of the real property covered by the application shall be provided with its corresponding map. The certification must have been obtained within a period of no more than three months before the date of its presentation. If the real property does not have a registration in the property registry, the applicant must submit:

- d) Certification issued by the competent municipal authority that confirms possession of the real property and, if applicable, testimony in public deed in which possession is confirmed, or,
- e) A legalised photocopy of testimony of the lease contract for the real property covered by the application for forest management.

2. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)

For INAB, forest harvesting licences (Art. 40) are the authorisations for harvesting a forest, whether or not for commercial purposes, whose objective is to implement forest management plans, either for scientific, production, protection, health or salvaging purposes. These licences shall be granted by INAB, when appropriate, through the Manager of Regional Directors, in the country's different forest regions.

When the Forest Management Plan is approved, INAB will issue a forest harvesting licence to the user which must contain the information required in the licence form approved by INAB (Art. 41).

Finally, Art. 43 deals with cancellation of licences and the associated procedure (Art. 44), as well as the process for finalising licences (Art. 45).

3. Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)

This resolution describes the rules for the various types of forest harvesting outside protected areas:

- Art. 31. Licence for forest health.
- Art. 32. Licence for salvaging.
- Art. 33. Licence for salvaging in case of a forest fire.
- Art. 36. Licences for change of use.

4. Technical Considerations and Proposed Forest Management Rules for Conservation of Soil and Water

This technical manual describes the principal matters related to:

- Forest protection zones around bodies of water;
- Rules to define a protection zone around a body of water;
- The criteria for forest management and soil and water conservation practices outside of forest protection zones for bodies of water; and
- Rules for forest management and soil and water conservation outside protection zones for bodies of water.

This is for general application in zones not protected by INAB.

5. Resolution No. JD 03.31.2014 Regulations for the forest incentives programme (Resolución No. JD 03.31.2014 Reglamento del programa de incentivos forestales).

This resolution describes the way in which the forest incentives law will be applied, payment amounts, and incentive categories, among others. PINFOR has become (since 1997) the principal driving force that promotes reforestation for commercial purposes in Guatemala. As of 2016 it has been replaced by a new forest incentive linked to INAB's PROBOSQUE law.

6. Resolution No. JD 03.43.2005 Regulations for forest managers (Resolución No. JD 03.43.2005 Reglamento para regentes forestales)

The purpose of these regulations is to establish the rules for Forest Managers' technical, administrative and legal activities, defining their duties, rights and obligations in order to ensure their proper participation in forest activities within the framework of Legislative Decree number 101-96, Forest Law (Art. 1).

The Forest Law establishes categories of Managers depending on the nature and size of the harvesting (Art. 3).

The duties and obligations of the Forest Manager are:

- d) Preparation and signing of the Annual Operating Plans covered in the respective Forest Management Plans approved by INAB;
- e) Directing and verifying performance of the forest activities covered in the Forest Management Plans and/or Annual Operating Plans approved by INAB;
- f) Using the forms, rules and procedures approved and disseminated by INAB; and
- g) Preparation and presentation of modifications to the Forest Management Plans and/or Annual Operating Plans and other forest studies approved by INAB, among others (Art. 4).

Description of Risk

In accordance with the action plan for the prevention and reduction of illegal logging in Guatemala, it has been established that illegal harvesting causes environmental deterioration of forests, and leads to disrespect for the current laws and authorities, thus contributing to non-governability.

INAB, CONESFORGUA, IARNA-URL and FAO (Diagnosis and analysis of illegality in harvesting and trading forest products in Guatemala (*Diagnóstico y análisis sobre la ilegalidad en el aprovechamiento y comercialización de productos forestales en Guatemala*)) indicate, with regard to application of environmental justice in Guatemala, that the weak application of environmental regulations is linked to a lack of knowledge about the administrative and judicial processes established. Some limitations preventing prosecutions that result in a sentence lie in the Judicial Organism (JO) itself, attributed to ignorance of the environmental legislation on the part of judges and the high turnover of Justices of the Peace, judges of the first instance and sentencing judges. In addition, the authors themselves, in their document Identification of the principal limitations and opportunities for participating in international legality schemes" (*Identificación de las principales limitantes y oportunidades de participar en esquemas de legalidad internacional*), indicate that it is necessary to know in advance the willingness of the public sector, civil society and the private sector to become involved in a dialogue on

forest legislation and rules that would allow them to propose profound changes directed towards certainty about the legality of timber produced in Guatemala.

Some of the experts consulted said that the rules for harvesting are often seen as difficulties by people who are interested in carrying out forest management initiatives (they are seen as bureaucratic, not very accessible, and overly complex, both technically and legally). Further, it is the opinion of such would-be timber harvesters that the timetaken by government institutions to approving management plans is too long (especially in the case of CONAP, considering that it requires an environmental document that in turn must be reviewed by MARN). Given the increase in the levels of uncontrolled traffic in forest products, it is consistent with a lack of institutional capacities (a generally held opinion in the interviews with INAB and CONAP employees) to directly control deforestation at forest sites. From this it can be deduced that there is an excess of bureaucracy involved in proceeding with forest management and harvesting. This becomes a disincentive for people interested in using the forest management authorisation mechanisms, especially in protected areas.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.8.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.8.7. Control measures and verifiers

- Harvesting must be duly authorised by CONAP or INAB.
- Harvesting must be done within the boundaries of the management unit and applied to the properly authorised species.
- In order to learn the level of respect for implementation of the Management Plan, especially with regard to minimum cutting diameters, species, volumes, seed trees, trees for future harvest and protected species, verify in the field.
- Verify transportation waybills and reports by the forest manager in order to compare authorised and transported volumes per species.
- In the field, verify environmental protection measures for water sources, wildlife and archaeological sites, among others.
- Review maps for the location of the management unit, the AOP and other geographic references.
- Verify the current status of the forest licence, as well as the transportation waybills.
- Make visits to the forest oversight institutions (INAB and CONAP) in order to learn the level of development of the Management Plan and the truth as to compliance

with it. In addition, this would serve to learn about the existence of technical reports or complaints about poor management of the units being managed.

- Verify the role of the forest manager in implementation of the Management Plan and transportation.
- Consult neighbouring management units or landholdings in order to learn their opinions about the management actions implemented.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

1. *Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)* Date of publication: 10 January 1989.
 - Title II On conservation of wild flora and fauna and their habitat Chapter I On the structure of protected areas Article 8 Management category (*Título II De la conservación de la flora y fauna silvestre y de su hábitat Capítulo I De la conformación de las áreas protegidas Artículo 8. Categoría de manejo*) Chapter III Conservation of wild flora and fauna, Article 23, Endangered flora and fauna (*Capítulo III Conservación de la flora y fauna silvestre, Artículo 23. Flora y fauna amenazadas*).
 - Chapter III Conservation of wild flora and fauna, Article 24 List of endangered species. Article 23 Exportation of endangered species. Article 27 Regulation of endangered species (*Capítulo III Conservación de la flora y fauna silvestre, Artículo 24. Listado de especies amenazadas, Artículo 23. Exportación de especies amenazadas, Artículo 27. Regulación de especies amenazadas*).
 - Title V On violations and sanctions Chapter I Misdemeanours and criminal offenses. Article 82 (Amended by Article 26 of Decree 110-96 by the Congress of the Republic) Illegal traffic in flora and fauna. (*Título V De las infracciones y sanciones Capítulo I Faltas y delitos. ARTICULO 82. (Reformado por el Artículo 26 del Decreto 110-96 del Congreso de la República). Tráfico ilegal de flora y fauna*). Available at:
http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
2. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*. Date of publication: 16 November 2011. Technical guidelines for sustainable forest managements. Available at: <http://www.conap.gob.gt/index.php/servicios-en>

[linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html](#)

3. *Law on Protection and Improvement of the Environment (Ley de Protección y Mejoramiento del Medio Ambiente)*. Date of publication: 05 December 1986.
 - Title I, General objectives and scope of application of the law. Chapter I, Fundamental principles. Article 8 (*Título I, objetivos generales y ámbito de aplicación de la ley; Capítulo I, principios fundamentales. Artículo 8*) Amended by Congressional Decree Number 1-93):
http://www.vertic.org/media/National%20Legislation/Guatemala/GT_Ley_Proteccion_Medio_Ambiente_68_86.pdf

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

1. *Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)* Date of publication: 31 October 1996.
 - Title I General provisions, Purpose and general policies Article 2. Application and enforcement of the law (*Título I Disposiciones generales, Objeto y políticas generales Artículo 2. Aplicación y observancia de la ley*).
 - Chapter II On forest criminal offenses Article 99. Logging protected species of trees (*Capítulo II De los delitos forestales Artículo 99. Tala de árboles de especies protegidas*).
 - Title X Transitory and derogatory provisions Single chapter, Article 109. Validity of licences granted previously (*Título X Disposiciones transitorias y derogatorias Capítulo único, Artículo 109. Validez de las licencias otorgadas con anterioridad*).
2. *Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)*, Date of publication: 06 December 2005.
 - Chapter II Land Use, Article 8. Administration of Protected Areas and other areas under INAB'S responsibility (*Capítulo II Uso de la tierra, Artículo 8. Administración de las Áreas Protegidas y otras áreas bajo la responsabilidad del INAB*).
 - Chapter VI Forest harvesting, management and industrialisation Article 53. Harvesting for family consumption (*Capítulo VI Aprovechamiento, manejo e industrialización forestal Artículo 53. Aprovechamiento para consumo familiar*).

1.9.2. Legal authority

National Council for Protected Areas (Consejo Nacional de Áreas Protegidas – CONAP): handles everything related to forest establishment, management and harvesting in the various management categories for protected areas. Points 1-2. Available at: <http://www.conap.gob.gt/>

Ministry of the Environment and Natural Resources (Ministerio de Ambiente y Recursos Naturales – MARN): handles everything related to the presentation and development of

environmental documents that accompany forest management plans in protected areas. Point 3. Available at: <http://www.marn.gob.gt/>.

National Forest Institute (Instituto Nacional de Bosques – INAB): handles everything related to Forest establishment, management, harvesting, incentives and oversight of forest enterprises. Points 4 and 5. Available at: <http://www.inab.gob.gt/>

1.9.3. Legally required documents or records

To be submitted to the National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): Forest Management Plans and AOP in which reference is made to location in the protected area and protection of protected species. Available at: <http://www.conap.gob.gt/>

To be submitted to the National Forest Institute (*Instituto Nacional de Bosques – INAB*): The proposed Forest Management Plan must highlight the possibility of harvesting species protected by law (normally management plans include a list of mitigation measures that describe, when applicable, special zones in the territory—wetlands, archaeological sites and others). Available at: <http://www.inab.gob.gt/>

1.9.4. Sources of Information

Government sources

- Interinstitutional action plan for the prevention and reduction of illegal logging in Guatemala (Plan de acción interinstitucional para la prevención y reducción de la tala ilegal en Guatemala). INAB. 2010. Available at: <http://www.marn.gob.gt/Multimedios/436.pdf> [Accessed 22 February 2016]
- Monitoring governability in the Maya Biosphere Reserve (*Monitoreo de la gobernabilidad en la Reserva de la Biosfera Maya*). Available at: http://www.conap.gob.gt/images/doc/Informe_Gobernabilidad%20RBM_20150406.pdf [Accessed 23 February 2016]
- List of endangered species in Guatemala—LEA and List of species of wild flora and fauna—CITES—in Guatemala (*Lista de especies amenazadas de Guatemala –LEA– y listado de especies de flora y fauna silvestre --CITES de Guatemala*). CONAP. 2009. Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/27-flora.html> [Accessed 23 February 2016]
- Notice of launching of the Technical Report on the Forest Map by Forest Type and Sub-Type (*Noticia del lanzamiento del Informe Técnico del Mapa Forestal por Tipo y Subtipo de Bosque*). 2012. INAB-CONAP. Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/noticias/748-presentan-en-guatemala-mapa-de-cobertura-forestal-2012.html> [Accessed 23 February 2016]

Non-Government sources

- Diagnosis of the current status of illegal logging in southern Petén (*Diagnóstico sobre el estado actual de la tala ilegal en el sur de Petén*). Asociación Balam (2013). Currently not available online; available on request by email to dtrujillo@asociacionbalam.org

- INAB, CONESFORGUA, IARNA-URL, FAO. 2015. Diagnosis and analysis of illegality in harvesting and trading forest products in Guatemala (*Diagnóstico y análisis sobre la ilegalidad en el aprovechamiento y comercialización de productos forestales en Guatemala*) (Document prepared by César Augusto Sandoval García, within the framework of the project: "Strengthening governance as a function of the Interinstitutional Action Plan for the Prevention and Reduction of Illegal Logging in Guatemala and socialization of the country's opportunities to participate in the international initiative on forest legality)" (*Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala y socialización de las oportunidades del país en participar en iniciativa de legalidad forestal internacional--FLEGT*)). Guatemala, UE FAO FLEGT / CONESFORGUA / INAB. Available at: http://www.academia.edu/15233258/Diagn%C3%B3stico_de_tala_ilegal_en_Guatemala [Accessed 22 February 2016]
- Prensa libre- Traffic in precious woods in Petén (*Tráfico de maderas preciosas en Petén*) August 2015. Available at: <http://www.prensalibre.com/guatemala/peten/persiste-trafico-de-maderas-preciosas>
- Prensa libre- Rosewood confiscated in Escuintla (*Incautan rosul en Escuintla*) October 2015. Available at: <http://www.prensalibre.com/guatemala/escuintla/decomisan-madera-ilegal-valorada-en-q2-millones-500-mil>

Interviews with experts

Interviews with various experts during the month of April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with protected species and areas.

1.9.5. Risk determination

Overview of Legal Requirements

1. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)

For optimal administration and management, protected areas are classified as: national parks, biotopes, biosphere reserves, multiple-use reserves, forest reserves, biologic reserves, springs, resource reserves, natural monuments, cultural monuments, scenic routes and roads, marine parks, regional parks, historic parks, wildlife refuges, natural recreational areas, private nature reserves, and others that may be established in the future with similar purposes, which will be integrated into the Guatemalan System of Protected Areas.

Art. 23 indicates that it is considered urgent and a national necessity to rescue species of flora and fauna in danger of extinction or threatened and to protect endemic species, and Art. 24 indicates that the National Council for Protected Areas (CONAP) shall prepare an annual list of wild species of fauna and flora that are in danger of extinction in Guatemala.

Regarding sanctions, Art. 82 (amended by Article 26 and Decree 110-96 by the Congress of the Republic) establishes that a penalty of five to ten years imprisonment and a fine of ten thousand to twenty thousand quetzals will be imposed on anyone who illegally transports, trades, markets or exports live or dead specimens, parts or derivatives from products of wild flora and fauna in danger of extinction, as well as endemic species and those included in the list of species in danger of extinction published by CONAP.

2. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices. (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

The manual is designed to establish the rules for forest management (commercial and non-commercial) that takes place in all protected areas in Guatemala. In it, the technical rules for carrying out forest management in the various types of protected areas that exist in Guatemala (management categories) are given in detail, and in it establishes protection of protected species that are included in specific lists; CONAP's red list, for example, which shows species of flora and fauna in danger of extinction, CITES, protection with a legal basis (this is the true for sapodilla, (*Manilkara zapota - chicle*), and others defined by forest management users. (Formats are given in the manual for preparing Management Plans and in these spaces are provided specifically for defining species to be protected.)

3. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)

Art. 3 establishes that concessions and licences for harvesting forest resources in protected areas are granted exclusively by the National Council for Protected Areas through the corresponding contracts in accordance with the Law on Protected Areas and other applicable rules. In addition, Art. 99 (logging of protected species of trees) indicates that anyone who logs, harvests, debarks, cuts, rings or removes the crown of species of trees that are protected and in decline towards extinction that are contained in the international agreements to which Guatemala is a party and that are included in the legally approved national lists shall be sanctioned as follows according to the volume of timber affected:

- a) From one to five hundred cubic metres of standing timber (1 to 500), a fine of from four hundred to ten thousand quetzals (Q400.00 to Q10,000.00).
- b) From five hundred and one cubic metres (501) of standing timber or more, from one to five (1 to 5) years imprisonment without parole and a fine from ten thousand to fifty thousand quetzals (Q10,000.00 to Q50,000.00).

An exception is made for trees established by artificial regeneration.

4. Resolution 01.43.2005 Regulations for the Forest Law (Resolución 01.43.2005 Reglamento de la Ley Forestal)

Art. 8 (Administration of Protected Areas and other areas under INAB's charge (*Administración de las Áreas Protegidas y otras áreas bajo la responsabilidad del INAB*)) establishes that in order to administer and manage protected areas and other areas that are administered by INAB, INAB may enter into agreements for joint administration with individuals or legal persons, which shall be approved by the Executive Board. In addition, Art. 53 (harvesting for family consumption) item d) establishes that the interested party

assumes a commitment while carrying out the harvesting to safeguard the water sources and protected species, if any, within the limits indicated by INAB.

Description of Risk

According to the Forest Coverage Map of Guatemala (2012), approximately 3,711,366 hectares are forested (34 % of the nation's inland territory). Of this total, 51.9% is located in a protected area. In addition, the forests with the highest presence of commercial timber species, and therefore in a better state of conservation, are located in natural reserves (protected areas), which can be seen by comparing the present forest coverage with the map of the Guatemalan System of Protected Areas.

The experts who were consulted have no doubts that the protected areas are generating a high percentage of logging of protected species (especially mahogany, cedar, rosewood, Jobillo wood (*Astronium Graveolens*) and others with a high commercial value). They also added that the protected areas are very vulnerable to invasions and usurpation, so the State does not have the capacity to protect them. As to specific species, in recent years attention has been drawn to the case of rosewood (*Dalbergia sp.*), in which there has been heavy trafficking to foreign countries. In this specific case, documents for similar species (manchiche – *Lonchocarpus castilloi* – for example) have been used in order to move it within the country and bring it to the point of exportation (see journalistic sources of information for the year 2015 in Petén and Escuintla). In addition, Asociación Balam reports that in the southern part of Petén Department (San Luis, Poptún and Dolores), 98% of the timber transported is illegal and comes mainly from the Chiqibul Mayas Montañas Biosphere Reserve (a protected area close to Belize). Outside the protected areas, illegal logging takes place mainly of species used as an energy source (firewood) and is normally of unprotected species.

The risk of illegal harvesting of timber in protected areas and of protected species is therefore considered to be high.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

The risk identified is specified and applies both inside and outside protected areas.

1.9.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.9.7. Control measures and verifiers

- Ensure that the intangible management categories in the Guatemalan System of Protected Areas (*Sistema Guatemalteco de Áreas Protegidas – SIGAP*), administered by CONAP are respected (national parks, especially).
- Verify authorisation of the environmental document, authorised by the Ministry of the Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales – MARN*) for cases of forest management in protected areas. (This also applies to change in land use outside protected areas.)

- Verify that all forest harvesting authorised in a protected area is endorsed by CONAP through its Manual for Forest Administration in Protected Areas.
- Ensure that all forest harvesting in protected areas uses a shipping waybill for wild timber flora as the transportation document.
- In the field, verify the location of the harvesting and its relation to an eligible management category in protected areas. Also verify the degree of protection of water sources and archaeological sites.
- Visit CONAP's reference office to learn the degree of respect for rules for the protection of species protected by CITES or a national list (such as the List of Endangered Species of Flora and Fauna in Guatemala – LEA).
- Verify the licence for harvesting and trading wild timber flora products in protected areas, in order to learn the authorised species, their volumes and the effective term of the document.
- Compare the CITES list and the LEA list with regard to authorised licences.

1.10. 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

CURRENT LEGISLATION

GENERAL LEGISLATION

1. Decree number 68-86, Law on Protection and Improvement of the Environmental (*Decreto número 68-86. Ley de protección y mejoramiento del medio ambiente*). Date of publication: 05 December 1986.
 - Regulates environmental impacts – for forest operations, there is a taxative list which classifies what type of environmental document is applicable (environmental impact assessment, initial environmental form, and environmental diagnosis, among others). Available at: http://www.vertic.org/media/National%20Legislation/Guatemala/GT_Ley_Proteccion_Medio_Ambiente_68_86.pdf

CURRENT LEGISLATION FOR NATURAL FOREST, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

2. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (*Resolución 07-21-2011 Aprobación del Manual*)

para la Administración Forestal en Áreas Protegidas y sus Anexos). Date of publication: 16 November 2011.

- Technical guidelines for sustainable forest management, Section "S" requirements for submitting applications for authorisation of forest management plans for commercial purposes.
- Technical documentation: This specifies the cases in which the files must be accompanied by an environmental document (initial environmental form or environmental impact assessment). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FOREST, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

3. Technical considerations and Proposed Forest Management Rules for Conservation of Soil and Water. Date of publication: 2013.

1.10.2. Legal authority

- Ministry of the Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales* – MARN): the government agency (ministry) that reviews everything related to environmental impact. Its forest link applies specifically to operations in protected areas and the document that must be submitted is dependent on their management category. Point 1. Available at: <http://www.marn.gob.gt/>
- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas* – CONAP): CONAP's legislation establishes the need to submit an environmental document in order to be able to apply for harvesting. This environmental document is sent to MARN for its approval (prior to issuing the licence) Point 2. Available at: <http://www.conap.gob.gt/>
- National Forest Institute (*Instituto Nacional de Bosques* – INAB): the only case in which an environmental document must be submitted (outside of protected areas) is for authorisation of changes of land use. Point 3. Available at: <http://www.inab.gob.gt/>

1.10.3. Legally required documents or records

- For the Ministry of the Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales* – MARN): resolution on approval of the environmental document submitted (environmental impact assessment or initial environmental form, among others).
- For the National Council on Protected Areas (*Consejo Nacional de Áreas Protegidas* – CONAP): licence for harvesting and trading wild flora timber products in protected areas.
- For the National Florets Institute (*Instituto Nacional de Bosques* – INAB): forest licence.

1.10.4. Sources of information

Government sources

Ministry of the Environment and Natural Resources (Ministerio de Ambiente y Recursos Naturales) Work Memorandum. Available at:

<http://www.marn.gob.gt/Multimedios/2745.pdf> [Accessed 22 February 2016]

Non-Government sources

Environmental Profile of Guatemala 2010–2012 (*Perfil Ambiental de Guatemala 2010 – 2012*) Rafael Landivar University – IARNA (*Universidad Rafael Landivar*). Available at:

http://www.mineduc.gob.gt/portal/contenido/menu_lateral/programas/seminario/docs_13/PERFIL%20AMBIENTAL%20GUATEMALA%202010%202012.pdf [Accessed 25 March 2016]

Interviews with experts

Interviews with various experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with environmental requirements.

1.10.5. Risk determination

Overview of Legal Requirements

1. Decree number 68-86 Law on protection and improvement of the Environment (Decreto número 68-86. Ley de protección y mejoramiento del medio ambiente)

Art. 8 (Amended by Decree of Congress Number 1-93) states that for any project, construction work, industry or any other activity which, because of its characteristics, could result in deterioration of natural resources, either renewable or not, or the environment, or bring about harmful or noticeable changes in the landscape and cultural resources that are a part of the nation's heritage, it will be necessary before its execution to have an environmental impact assessment made by technicians in this field approved by the Environmental Commission. Any official who fails to demand the Environmental Impact study in accordance with this article will be personally responsible for failure to perform his or her duties, and also any private individual who fails to comply with this environmental impact study will be sanctioned with a fine of Q5,000.00 to Q100,000.00. In case this requirement is not met within a period of six months of assessment of the fine, the business will be closed until it is met.

2. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

In the manual for forest administration, various requirements are established for submitting applications for authorisation of management plans for commercial purposes, and the following figures among the technical aspects: "item f) For all applications for approval of Commercial Forest Management Projects and Plans, the environmental assessment document must be presented as required to the Ministry of the Environment

and Natural Resources” (Taxative List of Projects, Construction Works, Industries or Activities).

3. Technical Considerations and Proposed Rules for Forest Management for Conservation of Soil and Water

The technical manual belongs to INAB (and applies outside protected areas). It contains forest protection zones around bodies of water and the criteria for forest management and practices for conservation of soil and water outside the forest protection zones for bodies of water.

Description of Risk

MARN’s annual report 2015, specifically the report by the Directorate of Legal Compliance, indicates that, in compliance with the Law on Protection and Improvement of the Environment, Decree 68-86, Article 30 and Article 16 (item d) of Governmental Resolution number 50-2015 (Internal Organic Regulations for the Ministry) (*Reglamento Orgánico Interno del Ministerio*), in the year 2015 it received, and attended with due diligence to, a total of 1,787 environmental complaints.

Of this total, 868 decisions have been issued and notified containing a sanction (a fine) and/or the obligation to present the environmental document previously approved by the Ministry.

Several experts consulted on this point expressed the opinion that there are violations of to do with the implementation of environmental requirements; only very basic management of environmental impacts is practised. Only management units that have a forest certification (as is the case in the ZUM-RBM) take into account the environmental requirements (protection of water sources, management of chemical products, protection of the soil, and use of heavy machinery in forest operations, among others). The rest of the country implements only generalities, since they are not certified and because very little monitoring is done by the government agencies in charge of following up such matters). This situation is due especially to the fact that environmental requirements in protected areas are only a requirement because the oversight institution (MARN) does not have the capacity to monitor their implementation in the field. Outside protected areas, preparation of an EIA is required only for a change in land use.

Unfortunately, there is no specific information for forests. However, on consulting technical personnel from INAB and CONAP, it appears that there is a high level of non-compliance with the environmental rules, especially because most operations are illicit and it is thus not possible to gather accurate information on them.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as ‘specified risk’, both inside and outside protected areas.

1.10.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.10.7. Control measures and verifiers

- Ensure compliance with protective measures for soil, water and forests established in the management plan.
- Ensure compliance with the measures established by the environmental document for cases of forest harvesting in eligible management categories in protected areas.
- In the field, verify protective measures for water sources, soil erosion, use of chemical products, transportation in the right seasons and other necessary environmental measures.
- Review reports issued by the competent institutions in forest matters in order to learn the degree of compliance with environmental protection measures.
- Review reports issued by the forest manager regarding the degree of implementation of the Forest Management and transportation plan.
- Visit the MARN office in the region where the management plan operates in order to learn whether there are complaints about environmental impact by the authorities or neighbours.
- Verify preventive measures implemented by the personnel who operate the management plan with regard to mitigation of environmental impacts.
- In the office and in the field, verify protection zones established in the Management Plan (forests, riverbanks, cultural protection zones, and nesting sites, among others).

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

GENERAL LEGISLATION

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala)* (Amended by Legislation Resolution No. 18-93 dated 17 November 1993). Date of publication: 31 May 1985.
 - Chapter II Social Rights, Section One, Family Article 51, Protection of minors and the elderly (*Capítulo II Derechos sociales, Sección primera, Familia Artículo 51. - Protección a menores y ancianos*).

- Section Three Indigenous Communities Article 69 Movement of workers and their protection (*Sección tercera Comunidades indígenas Artículo 69.- Traslación de trabajadores y su protección*).
 - Section Seven Health, safety and social welfare Article 93. Right to health. Article 94 Obligation of the State on health and social welfare. (*Sección séptima Salud, seguridad y asistencia social Artículo 93.- Derecho a la salud, Artículo 94.- Obligación del Estado, sobre salud y asistencia social*). Available at: http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf
2. *Decree Number 1441. Guatemalan Labour Code (Decreto Número 1441. Código del trabajo de Guatemala)*. Date of publication: 29 April 1971.
- Title Five Health and safety on the job. Single chapter Health and safety on the job. Article 197. Minimum mandatory obligations for the employer. (*Título Quinto Higiene y seguridad en el trabajo, Capítulo único Higiene y seguridad en el trabajo, Artículo 197. Medidas mínimas obligatorias para el empleador*).
 - Article 201. Unhealthy and hazardous jobs, installations and industries (*Artículo 201. Labores, instalaciones e industriales insalubres y peligrosas*). Available at: http://www.ilo.org/dyn/travail/docs/2072/CODIGO_DE_TRABAJO_DE_GUATEMALA_SEPT2011.pdf
3. *Governmental Resolution 229-2014, (Acuerdo Gubernativo 229-2014)*. Date of publication: 23 July 2014.
- This resolution specifies the obligations of the employer, the worker, and the minimum necessary conditions of occupational health and safety on the job. In total, there are 559 articles referring to means of protection, obligations and specifications for different types of work performed in Guatemala and the aspects to be taken into consideration in regulating occupational health and safety (however, none of them deals specifically with forests). Available at: http://www.igssgt.org/ley_acceso_info/pdf/pdf2014/inciso6/acdo_229_2014.pdf
- 1.11.2. Legal authority**
- Ministry of Labour and Social Welfare (Ministerio de Trabajo y Previsión Social – MINTRAB). Available at: <http://www.mintrabajo.gob.gt/>
- 1.11.3. Legally required documents or records**
- For the Ministry of Labour and Social Welfare (Ministerio de Trabajo y Previsión Social– MINTRAB): the regulations on occupational health and safety are generic and apply to all labour categories in Guatemala. There is no specific section on forestry (covered under farming and industry provisions). Available at: <http://www.mintrabajo.gob.gt/>
- 1.11.4. Sources of information**
- Non-Government sources*

- Current situation and trends in the forest sector (Situación actual y tendencias del sector forestal) FAO. Available at: <http://www.fao.org/docrep/007/j3029s/j3029s07.htm> [Accessed 22 February 2016]

Interviews with experts

Interviews with various experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with safety and health.

1.11.5. Risk determination

Overview of Legal Requirements

1. Constitution of the Republic of Guatemala (Constitución de la República de Guatemala (Amended by Legislative Resolution No. 18-93 dated 17 November 1993)

The Constitution indicates that the State shall protect the physical, mental and moral health of minors and the elderly. It shall guarantee their right to food, health, education and safety and social welfare (Art. 52 – Protection of minors and the elderly (*Art. 51 – Protección a menores y ancianos*). In addition, Art. 90 (right to health) states that being in good health is a fundamental human right, with no discrimination whatsoever, and that the State shall guard the health and social welfare of all its inhabitants. Through its institutions, it shall carry out actions for the prevention, promotion, recovery, rehabilitation, coordination, and relevant complementary actions, in order to provide complete physical, mental and social wellbeing for them (Art. 94).

2. Decree Number 1441 Guatemalan Labour Code (Decreto Número 1441. Código del trabajo de Guatemala)

This decree establishes, as the minimum mandatory measures to be taken by the employer (Art. 197, item g), that all employers are required to adopt the necessary precautions to effectively protect the lives, safety and health of workers during their work. For this purpose, employers must adopt measures intended to warn the worker of any hazards to their health and safety associated with their work.

This decree also indicates that unhealthy work, installations or industries are those that, because of their nature, or due to the materials used, produced, or released or due to solid, liquid or gaseous residues, can create conditions capable of threatening or damaging the health of workers. Hazardous work, installations or industries are those that harm or can harm immediately and seriously the lives of workers, either because of their nature, or because of the materials used, produced or released, or solid, liquid or gaseous residues; or by storage of toxic, corrosive, inflammable or explosive substances in any form. The regulations shall determine which jobs are unhealthy, which are hazardous, and the substances of which production is prohibited or restricted or subject to certain requirements, and, in general, all the rules that these activities must follow (Art. 201).

3. Governmental resolution 229-2014 Occupational health and safety regulations (Acuerdo Gubernativo 229-2014. Reglamento de salud y seguridad ocupacional)

The purpose of this resolution is to regulate general occupational health and safety conditions in which workers for private employers, the State, municipalities and autonomous institutions perform their work, for the purpose of protecting their lives, health and safety while they provide their services (Art. 1).

Every employer or its representative (Art. 4), intermediary or contractor must adopt occupational health and safety measures and put them into practice in the work place, in order to protect the lives, health and safety of their workers, especially with regard to:

- a) Work operations and processes;
- b) Supplying and maintaining their personal protection equipment;
- c) Buildings, installations and environmental conditions; and
- d) Installation and maintenance of barriers, protections, and emergency systems for machinery, equipment and installations.

Description of Risk

Unfortunately, in Guatemala there are no official or extra-official reports about job health and safety conditions in forestry; however, most forest operations (especially those that have no link to forest certification processes) fail to comply with the minimum measures established to protect workers' safety and health (drawn from opinions of interviewees).

Health and safety regulations are in effect, but their implementation is still far off, and even more so the capacity to monitor their enforcement. According to the experts consulted, labour contracts that govern forest operations (which is fundamental) are violated, and this triggers a series of other legal and labour violations. Initiatives by companies to comply with occupational safety measures are just beginning and most of them avoid basic procedures such as registering their employees in the Guatemalan Social Security System (IGSS). Once again, forest management initiatives in natural forests and certified plantations are the only ones that make an effort to keep this subject active and to include basic safety measures for their workers. (It is important to mention that the certification standard requires this specifically.)

It is also necessary to take into account the opinions of other experts that forest activities can be considered high risk, considering that forestry involves operating heavy machinery (skidders, band tractors and forklifts, among others) and power saws in the field, and sawmills in industry. In the field it is common to see equipment being used, such as power saws, without the necessary measures for their safe use being taken (in spite of the fact that this is covered in the official regulations established by Decree 229-2014).

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.11.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.11.7. Control measures and verifiers

- Enforce the legal principles governing health and safety.
- Technical and operational personnel should implement personal protection measures and the use of safety equipment depending on the work they perform.
- Anybody involved in forest harvesting and/or transportation work should be acquainted with measures for the protection of health and safety on the job, as well as identification of high risk zones and highly hazardous chemical products.
- Field visits are recommended in order to verify implementation of the use of personal protection equipment and measures for preventing work-related accidents.
- Visit oversight institutions (such as IGSS), in order to learn whether the personnel involved in forest operations receive the appropriate benefits.
- Verify worker training in health and safety mechanisms, and also in duly approved health and safety regulations.

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

GENERAL LEGISLATION

1. *Decree Number 1441. Guatemalan Labour Code (Decreto Número 1441. Código del trabajo de Guatemala).* Date of publication: 29 April 1971.
 - Title One Single chapter General Provisions. (*Título primero Capítulo único Disposiciones Generales*).
 - Article 2. Employer. Definition (*Artículo 2. Empleador. Definición*).
 - Article 2. Worker. Definition (*Artículo 2. Trabajador. Definición*).
 - Article 2. Freedom to work (*Artículo 2. Libertad de trabajo*).
 - Article 14. Principle of equality (*Artículo 14. Principio de igualdad*).
 - Article 22. Inclusion of guarantees and minimum rights. (*Artículo 22. Inclusión de garantías y derechos mínimos*).

- Article 25. Types of individual contracts (*Artículo 25. Clases de contrato individual*).
 - Article 28. Written contract. Formalities (*Artículo 28. Contrato escrito. Formalidades*).
 - Article 150. Authorisation of the IGT: exceptional cases (minors) (*Artículo 150. Autorización de la IGT: casos excepcionales (menores de edad)*).
 - Attachment: List of International Labour Organization agreements ratified by Guatemala, classified by subjects
 - Article 10. Prohibition of forced labour. Available at: http://www.ilo.org/dyn/travail/docs/2072/CODIGO_DE_TRABAJO_DE_GUATEMALA_SEPT2011.pdf
2. *Decree 295 Organic law on the Guatemalan Social Security Institute (Decreto 295. Ley orgánica del instituto guatemalteco de seguridad social)* Date of publication: 30 October 1946
- Chapter III, Field of application; Article 27. Available at: http://www.igssgt.org/ley_acceso_info/pdf/1LeyOrganica295.pdf

1.12.2. Legal authority

- Ministry of Labour and Social Welfare (*Ministerio de Trabajo y Previsión Social – MINTRAB*).
- Guatemalan Social Security Institute (*Instituto Guatemalteco de seguridad social – IGSS*). Available at: <http://www.igssgt.org/>

1.12.3. Legally required documents or records

- For the Ministry of Labour and Social Welfare: labour contracts, wage book. (*Ministerio de Trabajo y Previsión Social: Establecimiento de contratos laborales, libro de salarios*).
- For the Guatemalan Social Security Institute: confirmations of payment to the IGSS, the IGSS organisational table, IGSS carnet for workers.

1.12.4. Sources of information

Non-Government sources

- Velásquez Ochoa, W.I. 2006. Written individual labour contract and the legal consequences when there is none (Contrato individual de trabajo escrito y sus consecuencias jurídicas al no realizarlo). Law School, USAC. (Facultad de Derecho. USAC). Available at: http://www.biblioteca.usac.edu.gt/tesis/04/04_5709.pdf [Accessed 28 February 2017].
- CODECA. 2013. Labour situation of agricultural workers in Guatemala (*Situación laboral de trabajadores/as agrícolas en Guatemala*). Available at: <http://www.albedrio.org/html/documentos/CODECASituacionLaboral.pdf> [Accessed 22 February 2016].

Interviews with experts

Interviews with various experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with legal employment.

1.12.5. Risk determination

Overview of Legal Requirements

1. Decree Number 1441 Guatemalan Labour Code (*Decreto Número 1441. Código del trabajo de Guatemala*).

This decree states that discrimination on the basis of race, religion, political beliefs or economic situation is prohibited in social welfare, educational, cultural, entertainment or commercial establishments that function for the use or benefit of workers in companies or workplaces that are private property or in those that the State creates for workers in general. The access that workers may have to the establishments referred to in this article may not be conditional upon the amount of their wages nor the importance of the positions they hold (Art. 14 bis).

The Decree also establishes that it should be understood that all individual labour contracts include at least the guarantees and rights granted to workers by the Constitution, this Code, its regulations and other labour or social welfare laws (Art. 22).

It also indicates (Art. 25) that individual labour contracts may be:

- a) For an indefinite period of time, when a termination date is not specified;
- b) For a fixed term, when a date for its termination is specified or when the occurrence of some happening or circumstance is foreseen, such as the conclusion of a construction works project that will necessarily bring the labour relationship to an end (in this second case, the worker's activity that is the reason for the contract should be taken into account, and not the result of the construction works project); and
- c) For a given construction works project, when the price of the worker's services is adjusted globally or on a fixed-sum basis, from the start of the work until its conclusion, taking into account the results of the work, that is, the work performed. Even if the worker receives advance payments on account of the work performed or to be performed, the individual labour contract must be understood to be for a given job performed, always provided that the conditions indicated in the previous paragraph are met.

The Decree also deals, in Article 147, with the work of women and minors, indicating that the work of women and minors must be appropriate, especially to their age, conditions or physical status and intellectual and moral development. In addition, Article 148 prohibits: working in places that are unhealthy or hazardous for men, women or minors; night-time work and overtime work for minors; daytime work for minors in bars or other similar establishments in which alcoholic beverages are sold, and work for minors under the age of fourteen. Further, Article 116 indicates that the actual normal daytime working day may not be longer than eight hours per day, nor exceed a total of forty-eight hours per week. The normal length for night-time work may not be more than

six hours per day, nor exceed a total of thirty-six hours per week. Actual working time is the time that the worker remains at the orders of the employer. Daytime work is work performed between six o'clock a.m. and six o'clock p.m. on the same day. Night-time work is work performed between six o'clock p.m. and six o'clock a.m. of the following day. For the exclusive purpose of payment of wages, normal weekly daytime work shall be forty-five hours per week. An exception to this provision is made for agricultural and livestock workers and those in companies where fewer than ten people are working, whose normal weekly daytime work shall be forty-eight hours of actual work, or a shorter period under circumstances more favourable for the worker. This exception should not be extended to agricultural enterprises where five hundred or more workers are employed.

2. Decree 295 Organic Law for the Guatemalan Social Security Institute (Decreto 295. Ley orgánica del instituto guatemalteco de seguridad social)

This decree indicates that all inhabitants of Guatemala that are an active part of the process of production of articles or services are required to contribute to maintaining the Social Security system in proportion to their income, and have the right to receive benefits for themselves or their family members who depend on them economically, to the extent and of the quality of said benefits that are compatible with the minimum protection that social interest and stability require should be granted to them (Art. 27).

Description of Risk

The fundamental basis of the risk observed in Guatemala is the non-existence of labour contracts. According to Velásquez Ochoa (2006), failures to enter proper labour contract with workers shows that the principle of protection for the worker is being violated, in spite of the fact that said principle is one of the most specific and fundamental to the country's labour laws. Similarly, the principle of good faith and trust, which is implicit in the law, is violated. Velásquez Ochoa also indicates that the failure to create a contract, in most cases, is due to the greed of one of the parties and the ignorance and desperation of the other.

CODECA (2013), discusses the following matters in its report on the agricultural labour situation in Guatemala:

1. Verbal contracts and violation of rights. (76% of contracts are verbal and that 92% do not have personal protection equipment.)
2. That the eight-hour working day is an unknown privilege.
3. Arbitrary tasks and labour exploitation.
4. That many overtime hours are not remunerated.
5. That acations, as well as year-end bonuses, are almost non-existent.
6. The lack of a minimum wage.
7. That Bonus 14 is unknown. (It was established in Decree 42-92 by the Congress of the Republic of Guatemala, known as the Yearly Bonus Law for Workers in the Private and Public Sectors, and represents one additional month's salary per year.)
8. Absence of unskilled labourers from Social Security.

9. That women work more, but always earn less.

10. That there is no right to maternity leave on farms.

11. That children of school age go to work on farms.

Although the CODECA study is specific to agricultural work, it describes the normal situation throughout rural areas in Guatemala.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.12.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.12.7. Control measures and verifiers

- Verify that labour contracts between the employer and the employee comply with the rules established by law.
- Verify the existence of a carnet issued by the IGSS to beneficiaries of this insurance mechanism; else identify private mechanisms that comply with the legal rules for workers.
- Duly regulate the involvement of minors in forest operations in accordance with the law.
- Verify workers' freedom to organize and to exercise their rights.
- Conduct interviews in the field in order to learn the ranges of wages of operators and check these against the corresponding legislation (minimum wage), and visit the offices of the Ministry of Labour and Social Welfare (Ministerio de Trabajo y Previsión Social) in order to verify the existence of any complaints or lawsuits that have been entered.
- In the field, verify the level of knowledge among operators about the existence of labour rights.

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

In the Political Constitution of the Republic, no reference is made to customary rights as such; instead, the Constitution establishes the concept of indigenous populations, as is described in its Arts. 66 to 69.

There is no specific law on customary rights, so this indicator does not apply in this document; it will be reviewed in category 2 of FSC Controlled Wood, below.

GENERAL LEGISLATION

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala)*. (Amended by Legislative Resolution No. 18-93 dated 17 November 1993). Date of publication: 31 May 1985.

- Section Three – Indigenous communities (*Sección tercera Comunidades indígenas*).
- Article 66. Protection of ethnic groups (*Protección a grupos étnicos*).
- Article 67. Protection of indigenous lands and agricultural cooperatives (*Protección a las tierras y las cooperativas agrícolas indígenas*).
- Article 68. Lands for indigenous communities (*Tierras para comunidades indígenas*).
- Article 69. Movement of workers and their protection (*Traslación de trabajadores y su protección*). Available at: www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf

1.13.2. Legal authority

- Congress of the Republic of Guatemala: in charge of general legislative matters and, with the executive branch, supports compliance with the Political Constitution of the Republic. Available at: <http://www.congreso.gob.gt/index.php>
- Office of the Attorney General for the Nation: the agency in charge of representing and defending the interests of the State of Guatemala. Available at: <http://www.pgn.gob.gt/>

1.13.3. Legally required documents or records

Not applicable.

1.13.4. Sources of information

Non-Government sources

- Pérez García. C.E. 2007. Customary Indigenous Law in the Ch'orti' area in the Municipality of Jocotán, in Chiquimula Department. (*El Derecho consuetudinario indígena en el área Ch'orti', del municipio de Jocotán, del departamento de Chiquimula*). Law School (*Facultad de Derecho*). USAC. Available at: http://biblioteca.usac.edu.gt/tesis/04/04_6960.pdf [Accessed 22 February 2016].
- Yrigoyen Fajardo. R. 1999. Indigenous law in Guatemala (*El Derecho indígena en Guatemala*). OEA. Available at: <http://derechoambientalumg.blogspot.com/2012/06/derecho-consuetudinario.html> [Accessed 22 February 2016]
- Sieder. R. 1996. Customary law and democratic transition in Guatemala (*Derecho consuetudinario y transición democrática en Guatemala*). FLACSO. Available at: <http://racheluk.domain.com/wp-content/uploads/2012/08/Sieder-derecho-consuetudinario1.pdf> [Accessed 22 February 2016].

1.13.5. Risk determination

Overview of Legal Requirements

1. Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) (Amended by Legislative Resolution No. 18-93 dated 17 November 1993)

No reference is made in the political Constitution of the Republic to customary rights as such; instead, the Constitution addresses the subject of indigenous populations, as described in its Arts. 66 to 69:

- Article 66. Protection for ethnic groups. Guatemala is made up of various ethnic groups, including indigenous groups of Mayan ancestry. The State recognises, respects and promotes their ways of life, customs, traditions, forms of social organisation, the wearing of indigenous garments by men and women, and their languages and dialects.
- Article 67. Protection for indigenous lands and agricultural cooperatives (*Protección a las tierras y las cooperativas agrícolas indígenas*). The lands of cooperatives, indigenous communities or any other forms of communal or collective tenure of agrarian property, as well as family patrimonies, and low-cost housing shall receive special protection, credit assistance and preferential techniques from the State to guarantee their possession and development, so as to ensure a better quality of life for all inhabitants. Indigenous and other communities that have lands that historically belong to them and that they have traditionally administered in a special way shall maintain the system.
- Article 68. Lands for indigenous communities (Tierras para comunidades indígenas). Through special programmes and adequate legislation, the State shall provide government lands to the indigenous communities that need them for their development.
- Article 69. Movement of workers and their protection (Traslación de trabajadores y su protección). Any work activities that involve movement of workers outside their communities shall be the object of protection and legislation to ensure adequate health, safety and social welfare conditions and that prevent payment of wages not

in keeping with the law, the disintegration of those communities and, in general, any discriminatory treatment.

Description of Risk

Failure to respect the customary rights of populations that have acquired them over time is an issue that creates constant conflict and confusion in Guatemala. For many years, agrarian reforms and the issue of equitable distribution of land have caused any amount of differences and have even led to a civil war. All aspects of the political Constitution of the Republic that conclude in acquired rights, especially for indigenous peoples, are subject to debate, and this has created not only a lack of social stability, but also a serious deterioration of natural resources.

According to the experts consulted, invasions of protected areas are still being justified based on claims of customary rights, and with this comes a process of changes in land use and conflicts which show how necessary it is to possess land for cultivation. In a specific case, Pérez García (2007) describes how Ch'orti' indigenous customary law in the Municipality of Jocotán, Chiquimula, in its application and implementation, does not violate the country's official justice system, but rather minimises the number of court filings; in order to resolve their conflicts, the parties voluntarily submit to the system.

According to Yrigoyen Fajardo (1999), the survival and legitimacy of indigenous regulatory systems reveals that such systems are necessary for the population, both materially and symbolically. This means that: a) the State's justice system is not efficient or culturally adequate for indigenous peoples, and b) the indigenous systems respond better to their social needs and their cultural world. This opens up a whole discussion on the inadequate approach to cultural differences in the application of all aspects of the law, including forest matters.

Sieder (1996) suggests that customary law in Guatemala is probably best understood as a series of rules and practices that vary within and between different communities with the same ethnolinguistic origin. Unfortunately, there is no information on customary law in Guatemala concerning forests. The closest cases are related to community forest concessions in the MBR granted to communities settled prior to declaration of the protected area (Carmelita and Uaxactún). In the rest of the country, INAB has not reported any process of concessions to indigenous or non-indigenous communities. This is in spite of the fact that Article 67 of the political Constitution of the Republic (protection for indigenous lands and agricultural cooperatives) states that the lands of indigenous cooperatives, communities or any other forms of communal or collective tenure of agrarian property, as well as family patrimonies and low-cost housing, shall receive special protection from the State.

Thus, considering all of the debate and consequences related to the inadequate approach to customary law, the risk of violating it throughout the nation is specified.

Risk Conclusion

This does not apply since there is no specific law; however, it is pertinent to note that at present there is a conflict about the very concept of customary law.

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.13.6. Risk designation and specification

Specified risk (or does not apply if it is included in category 2 of Controlled Wood).

1.13.7. Control measures and verifiers

- Consult stakeholders or else seek clarification of disputes over lands with a forest vocation by communities with rights based on the political Constitution of the Republic.
- Visit the office of the Attorney General for the National and/or Human Rights, where information about disputes over lands with a forest vocation or with forest coverage can be located.
- Visit the forest oversight institutions to learn the status of applications for forest harvesting on lands where customary rights are claimed.

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

Guatemala has no specific legislation on free prior and informed consent.

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

GENERAL LEGISLATION

1. *Constitution of the Republic of Guatemala (Constitución de la República de Guatemala)*. (Amended by Legislative Resolution No. 18-93 dated 17 November 1993). Date of publication: 31 May 1985.
 - Section Three Indigenous communities (*Sección tercera Comunidades indígenas*).
 - Article 66. Protection of ethnic groups (*Protección a grupos étnicos*).
 - Article 67. Protection of indigenous lands and agricultural cooperatives (*Protección a las tierras y las cooperativas agrícolas indígenas*).
 - Article 68. Lands for indigenous communities (*Tierras para comunidades indígenas*).
 - Article 69. Movement of workers and their protection (*Traslación de trabajadores y su protección*). Available at: www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf

1.15.2. Legal authority

- Congress of the Republic of Guatemala: in charge of general legislative matters and, with the executive branch, supports compliance with the Political Constitution of the Republic. Available at: <http://www.congreso.gob.gt/index.php>
- Office of the Attorney General for the Nation: the agency in charge of representing and defending the interests of the State of Guatemala. Available at: <http://www.pgn.gob.gt/>

1.15.3. Legally required documents or records

Not applicable.

1.15.4. Sources of information

Non-Government sources

- Yrigoyen Fajardo, R. 1999. Indigenous Law in Guatemala (*El Derecho indígena en Guatemala*). OAS. Available at: <http://derechoambientalumg.blogspot.com/2012/06/derecho-consuetudinario.html> [Accessed 22 February 2016].
- Porrás Castejón, G. SF. Rights of Indigenous Peoples in Guatemalan Legislation (*Derechos de los Pueblos Indígenas en la legislación guatemalteca*). Available at:

<http://www.cc.gob.gt/congreso/23%20de%20septiembre/Ponencia%20%20Lic.%20Porras%20Castej%C3%B3n.pdf> [Accessed 22 February 2016].

Interviews with experts

Interviews with various experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with the rights of Guatemala's indigenous peoples.

1.15.5. Risk determination

Overview of Legal Requirements

1. Constitution of the Republic of Guatemala (Constitución de la República de Guatemala) Amended by Legislative Resolution No. 18-93 dated 17 November 1993)

No reference is made in the political Constitution of the Republic to customary rights as such; instead, the Constitution addresses the subject of indigenous populations, as described in its Arts. 66 to 69:

- Article 66. Protection for ethnic groups. Guatemala is made up of various ethnic groups, including indigenous groups of Mayan ancestry. The State recognises, respects and promotes their ways of life, customs, traditions, forms of social organisation, the wearing of indigenous garments by men and women, and their languages and dialects.
- Article 67. Protection for indigenous lands and agricultural cooperatives (*Protección a las tierras y las cooperativas agrícolas indígenas*). The lands of cooperatives, indigenous communities or any other forms of communal or collective tenure of agrarian property, as well as family patrimonies, and low-cost housing shall receive special protection, credit assistance and preferential techniques from the State to guarantee their possession and development, so as to ensure a better quality of life for all inhabitants. Indigenous and other communities that have lands that historically belong to them and that they have traditionally administered in a special way shall maintain the system.
- Article 68. Lands for indigenous communities (*Tierras para comunidades indígenas*). Through special programmes and adequate legislation, the State shall provide government lands to the indigenous communities that need them for their development.
- Article 69. Movement of workers and their protection (*Traslación de trabajadores y su protección*). Any work activities that involve movement of workers outside their communities shall be the object of protection and legislation to ensure adequate health, safety and social welfare conditions and that prevent payment of wages not in keeping with the law, the disintegration of those communities and, in general, any discriminatory treatment.

Description of Risk

No information was found on indigenous/traditional peoples' law with regard to forests, in spite of the fact that the political Constitution of the Republic deals explicitly with indigenous/traditional law (Indigenous Law in Guatemala – Rights of Indigenous Peoples

in Guatemalan Legislation (*El Derecho indígena en Guatemala - Derechos de los Pueblos Indígenas en la legislación guatemalteca*), cited above). However, there is clear evidence that there is a high risk of disrespect for indigenous/traditional law throughout Guatemala.

There is a major debate on distribution of land, and it is even more intense in the case of indigenous peoples. The subject of invasions is still latent, and with regard to natural resources, the most affected areas are those protected by law, as they are looked on as government lands (belonging to everyone). However, there protections embedded in the constitution (protection of ethnic groups, protection of indigenous lands and agricultural cooperatives, land for indigenous communities, the movement of workers and protection, among others), which are being violated, using other criteria and even other laws.

Given these ongoing debates, the risk for this issue is specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.15.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.15.7. Control measures and verifiers

Country Specific

- Consult stakeholders on indigenous lands used for forestry. Include indigenous leaders as stakeholders.
- Visit the office of the Attorney General of the Nation and/or Human Rights, where information about disputes over indigenous lands used for forestry with forest coverage can be located.
- Visit the forest oversight institutions to learn the status of applications for forest harvesting on indigenous lands where customary rights are claimed.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS

1. *Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)*. Date of publication 10 January 1989.
 - Chapter IV On transportation and trade (*Capítulo IV Del transporte y comercialización*), Article 66 Transportation (*Artículo 66 Transporte*), Article 67 Shipping waybill (*Artículo 67.- Guía de transporte*), Article 68 Commercial exportation licences and trade (*Artículo 68. Permisos de exportación comercial y comercialización*). Available at:
http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
2. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*. Date of publication: 16 November 2011.
 - Chapter II Requirements for submitting applications for authorisation of wild timber flora in protected areas (*Capítulo II Requisitos para presentar solicitudes de autorización de aprovechamiento de flora silvestre maderable dentro de áreas protegidas*).

Chapter III Guidelines for authorisation of harvesting and transportation of wild timber flora (*Capítulo III Lineamientos para la autorización de manejo, aprovechamiento y transporte de flora silvestre maderable*). Available at:
<http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

1. *Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)*. Date of publication: 11 April 2014.

2. *Practical guide for cubing timber (Guía práctica para la cubicación de la madera)*
Date of publication: June 2004.

3. *Resolution No. 03.43.2005 Regulations for forest managers (Resolución 03.43.2005. Reglamento del regentes forestales)*. Date of publication: 06 December 2005.

1.16.2. Legal authority

- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): handles everything related to transportation of forest products from protected areas (only as regards the waybill, from the forest to the industrial enterprise); does not participate in anything related to invoicing timber. After the timber enters the sawmill, CONAP becomes involved once more at the point of exportation when processing the CITES certification process. Points 5 and 6. Available at: <http://www.conap.gob.gt/>
- National forest Institute (*Instituto Nacional de Bosques – INAB*): handles everything related to transportation of forest products outside of protected areas. Included in INAB's rules is verification of transportation from the industrial enterprise to the final destination (through a shipping ticket from the enterprise). INAB is also empowered to supervise sawmills and verify species, amounts and qualities that enter and leave (including yield factors). Recently (2014), INAB implemented the Electronic Information System for Forest Enterprises (*Sistema Electrónico de Información de Empresas Forestales – SEINEF*). Points 7 to 9. Available at: <http://www.inab.gob.gt/>

1.16.3. Legally required documents or records

- For the National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): shipping waybill for wild timber (forest – sawmill). Through its forest department, CONAP is charged with issuance of these waybills in the field (verifying species, amounts and qualities to be transported).
- For the National Forest Institute (*Instituto Nacional de Bosques – INAB*): forest shipping ticket (forest – sawmill), which is issued by the licence holder. For both documents, INAB has the authority to verify amounts and qualities of the species transported.

1.16.4. Sources of information

Government sources

- Interinstitutional action plan for the prevention and reduction of illegal logging in Guatemala (*Plan de acción interinstitucional para la prevención y reducción de la tala ilegal en Guatemala*). INAB. 2010. Available at: <http://www.inab.gob.gt/Paginas%20web/plandeaccion.aspx> [Accessed 22 February 2016]

Non-Government sources

- Traffic in precious woods continues. (*Persiste tráfico de maderas preciosas*) Prensa Libre. 2015. Available at: <http://www.prensalibre.com/guatemala/peten/persiste-trafico-de-maderas-preciosas> [Accessed 22 February 2016].
- Diagnosis of the current status of illegal logging in southern Petén (*Diagnóstico sobre el estado actual de la tala ilegal en el sur de Petén*). Asociación Balam. 2013. Not available online; provided on request by email to dtrujillo@asociacionbalam.org
- INAB, CONESFORGUA, IARNA-URL, FAO. 2015. Diagnosis and analysis of illegality in harvesting and trading forest products in Guatemala (*Diagnóstico y análisis sobre la ilegalidad en el aprovechamiento y comercialización de productos forestales en Guatemala*) (Document prepared by César Augusto Sandoval García, within the framework of the project: "Strengthening governance as a function of the Interinstitutional action Plan for the Prevention and Reduction of Illegal Logging in Guatemala and socialization of the country's opportunities to participate in international forest legality initiative") ("*Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala y socialización de las oportunidades del país en participar en iniciativa de legalidad forestal internacional*" – FLEGT). Guatemala, UE FAO FLEGT / CONESFORGUA / INAB. Available at: [http://www.academia.edu/15233258/Diagn%C3%B3stico de tala ilegal en Guatemala](http://www.academia.edu/15233258/Diagn%C3%B3stico_de_tala_ilegal_en_Guatemala) [Accessed 22 February 2016]

Interviews with experts

Interviews with several experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with the classification of species, amounts and qualities.

1.16.5. Risk determination

Overview of Legal Requirements

1. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)

Art. 67 specifies that the shipping waybill is the official document that certifies the legal origin of specimens, parts or derivatives of wild flora and fauna. The shipping waybill must:

- a) Be issued on safety paper, printed in a series of ten thousand (10,000) units, with each series identified with one letter of the alphabet;
- b) Indicate the period in effect, with a term that may not be less than three nor more than ten days;
- c) Contain a clear description of the legal documentation of origin of which it is the consequence and forms a part;
- d) Specify the quantities and volumes authorised in text and numbers;

- e) Indicate the scientific name, as well as the common name, of the specimens, parts or derivatives;
- f) Indicate the place of origin and destination; and
- g) Be signed, original and copies, by CONAP's Executive Secretary, the person who is substituting for him/her or the regional delegates.

Note especially item d): the forest species being transported must be identified.

2. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

Section C of the Resolution (Guidelines for issuance of shipping waybills for wild timber flora) (*lineamientos para la emisión de guías de transporte de flora silvestre maderable*) establishes that shipping waybills for wild timber flora shall be issued by CONAP delegations in the jurisdiction where the Forest Management Plan is implemented. In cases where, because of mechanical breakdowns, the product transported is stranded, issuance of a new waybill may be delegated to the closest CONAP office, provided that this is justified and coordinated with the CONAP delegation in charge of supervising and monitoring the Forest Management Plan for the area that the product comes from. Any movement of forest timber products originating inside protected areas must be covered with its respective shipping waybill for wild timber flora.

The waybills must specify the common name and the scientific name of the forest species transported and must be issued by officials of CONAP (to fully verify what is being transported).

3. Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)

Art. 8 establishes that a shipping ticket, corresponding to a licence must specify the total volume transported in cubic metres, which is shown in numbers and text and the actual remainder in cubic metres (item a.9).

4. Resolution 03.43.2005 Regulations for forest managers (Resolución 03.43.2005. Reglamento de regentes forestales)

One of the duties and obligations of the Forest Manager is: l) Keeping the holder of the forest harvesting licence informed and involved in the performance of the various activities that are scheduled and carried out; this includes the volumes and remainders for each authorised species.

Description of Risk

The Interinstitutional Plan for the Prevention and Reduction of Illegal Logging in Guatemala (*Plan Interinstitucional para prevención y reducción de la tala ilegal en Guatemala*) states that timber trafficking occurs, among other causes, because of a lack of effective controls on transportation of forest products and because of a lack of an effective system for issuing permits to transport products. Asociación Balam states that, with regard to illegal timber logging chains in southern Petén, the illegal product is "legalised" after it reaches the municipal urban area, using for this purpose documents

("papers") of other authorised harvestings or shipping tickets from companies or lumberyards.

INAB, CONESFORGUA, IARNA-URL and FAO, in their diagnosis of illegality in harvesting and trade, state that there are multiple ways in which illegalities are committed, including by transportation of a species that is similar to another, as well as by understatement of volumes.

Some of the experts consulted described a well-known practice on the part of users who avoid problems with the authorities on the highway by showing an average volume in their shipping documents. It is known, too, that documents are sometimes forged, and that shipping tickets are used more than once (especially in places where the authorities have little or no presence on the highways). Trafficking in species such as rosewood (*Dalbergia sp*), from Alta Verapaz and Petén, exported based on documents for another species known locally as Manchiche (*Lonchocarpus castilloi*), has also been observed (written communications with experts).

The factors mentioned above lead to the conclusion that the risk for this category is specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.16.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.16.7. Control measures and verifiers

- Correctly classify products according to species, quantities, qualities, etc. in sales documents, customs declarations, shipping documents and other documents required by law. Special emphasis should be given to the export process where it has been possible to ship out a protected species based on documentation for another unprotected species with which the timber has a certain degree of similarity.
- Visit the offices of INAB, which is the institution in charge of the oversight process for sawmills, in order to verify existing and traded volumes in accordance with the licences approved for a given industrial enterprise, and also in order to verify findings uncovered by the institution for a given enterprise.
- Verify quarterly reports required by INAB under the mechanism of the Electronic Information System for Forest Enterprises (SEINEF), in order to link them with the volumes entering and leaving the companies by species.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS IN PROTECTED AREAS.

1. *Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)* Date of Publication: 10 January 1989.
 - Chapter IV On transportation and trade, Article 66. Transportation, Article 67. Shipping waybill, Article 68. Commercial export permits and trade (*Capítulo IV Del transporte y comercialización, Artículo 66. Transporte, Artículo 67.- Guía de transporte, Artículo 68. Permisos de exportación comercial y comercialización*). Available at: http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
2. *Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)*. Date of publication: 16 November 2011.
 - Chapter II Requirements for submitting applications for authorisation of harvesting wild timber flora in protected areas (*Capítulo II Requisitos para presentar solicitudes de autorización de aprovechamiento de flora silvestre maderable dentro de áreas protegidas*).
 - Chapter II Guidelines for authorisation of management, harvesting and transportation of wild timber flora (*Capítulo III Lineamientos para la autorización de manejo, aprovechamiento y transporte de flora silvestre maderable*). Available at: <http://www.conap.gob.gt/index.php/servicios-en-linea/centro-de-documentacion/descarga-de-documentos/category/60-forestal.html>

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEMS OUTSIDE OF PROTECTED AREAS

3. *Resolution No. JD 03.12.2014 Regulations for transportation of forest products and their legal origin (Resolución No. JD 03.12.2014 Reglamento para el transporte de productos forestales y su procedencia lícita)*. Date of publication 11 April 2014.
4. *Practical guide for cubing timber (Guía práctica para la cubicación de la madera)* Date of publication: June 2004.
5. *Resolution 03.43.2005 Regulations for forest managers (Resolución 03.43.2005. Reglamento del regentes forestales)*. Date of publication: 06 December 2005.

1.17.2. Legal authority

- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): handles everything related to transportation of forest products from

protected areas (only as regards the waybill, from the forest to the industrial enterprise); does not participate in anything related to invoicing timber. After the timber enters the sawmill, CONAP becomes involved once more at the point of exportation when processing the CITES certification process. Points 5 and 6. Available at: <http://www.conap.gob.gt/>

- National forest Institute (*Instituto Nacional de Bosques – INAB*): handles everything related to transportation of forest products outside of protected areas. Included in INAB’s rules is verification of transportation from the industrial enterprise to the final destination (through a shipping ticket from the enterprise). INAB is also empowered to supervise sawmills and verify species, amounts and qualities that enter and leave (including yield factors). Recently (2014), INAB implemented the Electronic Information System for Forest Enterprises (*Sistema Electrónico de Información de Empresas Forestales – SEINEF*). Points 7 to 9. Available at: <http://www.inab.gob.gt/>

1.17.3. Legally required documents or records

- National Council for Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): shipping waybill for wild timber (forest – sawmill). Through its forest department, CONAP is charged with issuance of these waybills in the field (verifying species, amounts and qualities to be transported).
- National Forest Institute (*Instituto Nacional de Bosques – INAB*): Forest shipping ticket (forest–sawmill), which is issued by the licence holder; enterprise shipping ticket, which is generated by an electronic system known as SEINEF and with this document, transportation of processed products is established from the sawmill to the final destination. For both documents, INAB has the authority to verify amounts and qualities of the transported species.

1.17.4. Sources of information

Government sources

- Interinstitutional action plan for the prevention and reduction of illegal logging in Guatemala (Plan de acción interinstitucional para la prevención y reducción de la tala ilegal en Guatemala). INAB. 2010. Available at: <http://www.marn.gob.gt/Multimedios/436.pdf> [Accessed 28 February 2017]

Non-Government sources

- Diagnosis of the current status of illegal logging in southern Petén (*Diagnóstico sobre el estado actual de la tala ilegal en el sur de Petén*). Asociación Balam. 2013. Not available online; available on request by email to dtrujillo@asociacionbalam.org
- Romero del Cid, S.E. 2011. Legal Analysis of the limitations faced by the National Forest Institute—INAB—in promoting criminal prosecution against illegal logging of trees in Santa Rosa Department (*Análisis jurídico de las limitaciones que enfrenta el Instituto Nacional de Bosques –INAB- para promover la persecución penal en contra de la tala ilegal de árboles en el departamento de Santa Rosa*). USAC. Available at: http://biblioteca.usac.edu.gt/tesis/04/04_9011.pdf [Accessed on 23 February 2016]
- INAB, CONESFORGUA, IARNA-URL, FAO. 2015. Diagnosis and analysis of illegality in harvesting and trading forest products in Guatemala (*Diagnóstico y análisis*

sobre la ilegalidad en el aprovechamiento y comercialización de productos forestales en Guatemala) (Document prepared by César Augusto Sandoval García, within the framework of the project: "Strengthening governance as a function of the Interinstitutional Action Plan for the Prevention and Reduction of Illegal Logging in Guatemala and socialization of the country's opportunities to participate in international forest legality initiative") ("*Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala y socialización de las oportunidades del país en participar en iniciativa de legalidad forestal internacional*" – FLEGT)). Guatemala, UE FAO FLEGT / CONESFORGUA / INAB. Available at:

[http://www.academia.edu/15233258/Diagn%C3%B3stico de tala ilegal en Guatemala](http://www.academia.edu/15233258/Diagn%C3%B3stico_de_tala_ilegal_en_Guatemala) [Accessed 22 February 2016]

- UICN-IARNA. 2015. Diagnosis of the system for verification of forest legality and its effect on competitiveness of legal timber business in Guatemala. (*Diagnóstico del sistema de verificación de la legalidad forestal y su efecto en la competitividad de los negocios de madera legal en Guatemala*). Not yet available online.
- UICN-EFI. 2014. Analysis of international trade in timber products and its administrative governance, Central American Region and the Dominican Republic (*Análisis del comercio internacional de productos de madera y su gobernanza administrativa, Región de América Central y la República Dominicana*) 2000-2011. Available at: http://cmsdata.iucn.org/downloads/analisis_del_comercio_internacional_version_digital.pdf [Accessed 23 April 2016]

Interviews with experts

Interviews with several experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with trade and transportation.

1.17.5. Risk determination

Overview of Legal Requirements

1. Decree-Law 4-89 Law on Protected Areas (Decreto Ley 4-89 Ley de Áreas Protegidas)

The relevant articles indicate that anyone who wishes to engage in transporting specimens, parts, and derivatives of wild flora must have, for each shipment, a shipping waybill issued by CONAP'S Executive Secretariat or its regional delegations at the expense of the interested party. In addition, Article 67 establishes that the shipping waybill is the official document that certifies the legal origin of specimens, parts or derivatives of wild flora. In item d) of this decree, it is stipulated that the authorised quantities and volumes shall be specified in text and numbers.

2. Resolution 07-21-2011 Approval of the Manual for Forest Administration in Protected Areas and its appendices (Resolución 07-21-2011 Aprobación del Manual para la Administración Forestal en Áreas Protegidas y sus Anexos)

Shipping waybills for wild timber flora shall be issued by CONAP delegations in the jurisdiction where the Forest Management Plan is implemented. In cases where, because

of mechanical breakdowns, the product being transported is stranded, issuance of a new waybill may be delegated to the closest CONAP office, provided that this is justified and coordinated with the CONAP delegation in charge of supervising and monitoring the forest management plan for the area that the product comes from.

Any movement of forest timber products originating inside protected areas must be covered with the respective shipping waybill for transportation of wild timber flora. In the case of products from NON-COMMERCIAL harvestings, the shipping waybill should be issued with the proper notation that the product comes from a non-commercial harvesting, specifying in comments the type of non-commercial harvesting and that it cannot be traded.

Transportation of non-commercial forest products is allowed only within protected areas and in their areas of influence, and must not go beyond the boundaries of the territorial scope of the CONAP delegation where the credential was issued.

Description of Risk

In Guatemala, it is permissible to use the invoice as a shipping document when the volume, produced in a forest industry, to be transported is less than one cubic metre. Above one cubic metre, it is necessary to use the company's shipping ticket as the shipping document, which is verified on the highway by various security institutions.

According to UICN-IARNA (2015), based on data from the National Statistical Institute and the Bank of Guatemala (*Instituto Nacional de Estadística and Banco de Guatemala*), 96% forest products moved are harvested with no control, representing approximately 33 million cubic metres annually as of 2010. This gives a sense of the magnitude of the impact on transportation and trade for the nation. UICN-IARNA also indicate that it is necessary to differentiate the forms of illegality of forest activities throughout the nation; based on that accounting, it is possible to separate the modality established in the high plains area (*altiplano*) of Guatemala (illegal night-time transportation, lack of control booths, theft of natural resources, misuse of shipping documents, and reuse of shipping tickets), from that in Petén, where the two major focal points for illegalities are in the MRB and in southern Petén (where 65% of violations occur). within the case of the reservation, this activity is focussed more on precious woods that end up being exported, using documents for other operations, or else which end up in the hands of carpenters' workshops for the manufacture of furniture (for domestic trade).

The Interinstitutional Plan for the Prevention and Reduction of Illegal Logging in Guatemala, (*Plan Interinstitucional para prevención y reducción de la tala ilegal en Guatemala*), specifies that gaps have been identified in the current rules, such as the regulations for transportation of forest products and the procedures for supervision of forest industries, where the former allow improper use of transportation documents and the latter allow the use of invoices to show the origin of forest products. These instruments do not encourage adequate registration, monitoring or cross-control of the information on forest—sawmill activities, because by not being regulated and being issued by the forest enterprises, even by companies that are not registered in the National Forest Registry, the control process is not viable. In addition, UICN-EFI (2014) indicates that "in the economic sphere, illegal logging and trade generate, on the one hand, unfair competition between formal and informal markets, which results in a

devaluation of the timber resource; and on the other, they generate losses for the local and national governments in the form of tax revenues.”

Finally, Balam (2013), UICN-IARNA (2015) and INAB (2010), also support the view that transportation of timber is vulnerable to illegalities based on forged or misused documents.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as “specified risk”, both inside and outside protected areas.

1.17.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.17.7. Control measures and verifiers

- Verify legal and technical documentation in forest enterprises in accordance with the requirements established by INAB, especially in regard to the Electronic Information System on Forest Enterprises (Sistema Electrónico de Información de Empresas Forestales – SEINEF), and report on issuance of enterprise shipping tickets, invoices and other necessary documents.
- Review shipping waybills (CONAP) and/or forest shipping tickets (INAB) issued in accordance with volumes and species based on the forest licences. In addition, verify the industrial enterprise’s reports where the material entering under the various forest licences is specified.
- Review the quarterly report issued by the industrial enterprise, in which the reports of products entering and leaving the industry are shown.
- Verify issuance of invoices for the sale of products, specifying volumes, species and quality traded.
- Verify the existence of timber sales contracts in which the volumes and species included are specified.

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

Guatemala has no specific legislation for offshore trading or for transfer prices in the forest sector.

1.18.2. Legal authority

Not applicable

1.18.3. Legally required documents or records

Not applicable

1.18.4. Sources of information

Non-Government sources

- competitiveness of legal timber business in Guatemala. (*Diagnóstico del sistema de verificación de la legalidad forestal y su efecto en la competitividad de los negocios de madera legal en Guatemala*). Not yet available online.

UICN-EFI. 2014. Analysis of international trade in timber products and its administrative governance, Central American Region and the Dominican Republic (*Análisis del comercio internacional de productos de madera y su gobernanza administrativa, Región de América Central y la República Dominicana*) 2000-2011.

Available at:

http://cmsdata.iucn.org/downloads/analisis_del_comercio_internacional_version_digital.pdf [Accessed 23 April 2016]

1.18.5. Risk determination

Not applicable.

1.18.6. Risk designation and specification

Not applicable.

1.18.7. Control measures and verifiers

Not applicable.

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

1. *Decree 101-96 Forest Law* (Decreto 101-96 Ley Forestal) Date of publication: 31 October 1996
 - It defines, as one of its objectives, "supporting, promoting and encouraging public and private investment in forest activities in order to increase production, trading, diversification, industrialisation and conservation of forest resources."

- Chapter II On forest industry Article 65. Prohibitions on exports and exemptions. Article 88. National Forest Registry. d) Persons who engage in exportation or importation of forest products, whatever their status. (*Capítulo II De la industria forestal, Artículo 65. Prohibiciones de exportación y exenciones, Artículo 88. Registro Nacional Forestal. d) Las personas que realicen actividades de exportación o importación de productos forestales, cualquiera sea su estado*).
- On forest criminal offenses. (*De los delitos forestales*)
- Article 100 Exportation of timber of prohibited dimensions (*Artículo 100. Exportación de madera en dimensiones prohibidas*). Available at: http://www.mem.gob.gt/wp-content/uploads/2015/06/15.Ley_Forestal_Decreto_101_96.pdf

1.19.2. Legal authority

- National Forest Institute (*Instituto Nacional de Bosques – INAB*): responsible for regulating exportation of timber in Guatemala.
- Superintendency of Tax Administration (*Superintendencia de Administración Tributaria – SAT*): responsible for administering the Guatemalan customs system and, for this purpose, a special section has been created regarding customs matters for the various auxiliaries and users of Guatemalan customs.
- Ministry of Agriculture, Livestock Production and Food (*Ministerio de Agricultura, Ganadería y Alimentación – MAGA*): in charge of ensuring that the products in a load have the corresponding permits and meet the technical and phytosanitary specifications required by Guatemala for exportation and importation.

1.19.3. Legally required documents or records

Documents for exportation:

- Invoice; Packing list; Certificate of origin; Insurance certificate; Phytosanitary and health certificates; Shipping documents

Requirements for exporting forest products:

The INAB delegate at the single contact point shall provide a form that must be filled out with the following information:

- Exporter's data (name or corporate name, INAB registration number, domicile for receiving notices, signature and stamp);
- Data of the product to be exported (species, volume in board feet and cubic metres);
- Destination data (country, customs office, address);
- Sales invoice – the document required to show the volume, species and type of product traded and that will serve to guarantee that what is exported corresponds to what was ordered;
- A list of products to be exported, must contain:
 - Product dimensions by species (width, length, thickness);

- Product volume;
- Classification of the quality of the timber by species;
- Documents that cover the legal origin of the products to be exported. These documents must not have been authorised more than six months before their use, but if this time period is exceeded, it must be shown in the yard that the product belongs to the documentation presented, with justification for its having remained in storage (which requires inspection by INAB personnel).
- Payment of Q30.00 in cash in the delegation for each exportation.

1.19.4. Sources of information

Non-Government sources

- UICN-EFI. 2014. Analysis of international trade in timber products and its administrative governance, Central American Region and the Dominican Republic (*Análisis del comercio internacional de productos de madera y su gobernanza administrativa, Región de América Central y la República Dominicana*) 2000-2011. Available at: http://cmsdata.iucn.org/downloads/analisis_del_comercio_internacional_version_digital.pdf [Accessed on 23 April 2016]

Interviews with experts

Interviews with various experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with customs regulations.

1.19.5. Risk determination

Overview of Legal Requirements

1. Decree 101-96 Forest Law (Decreto 101-96 Ley Forestal)

Art. 65 establishes that it is prohibited to export roundwood logs or worked timber or sawn wood with a diameter greater than eleven centimetres, no matter of what length or width.

The following are exempt from this prohibition:

- a) Posts, pilots, sleepers and blocks impregnated under pressure;
- b) Products from duly registered plantations, including voluntary agroforest plantations;
- c) Products from planted forests registered in INAB, with the corresponding certificate;
- d) Parts of furniture and pieces of wood that have added value.

Art. 88 states that, for the purpose of taking a census of lands covered with forests and with a forest vocation, as well as to exercise statistical control of technical and economic activities in this field, the National Forest Registry is created, under INAB, in which the following shall be registered, by the government or at the request of the interested party, as the case may be:

- e) Any persons who engage in activities involving the exportation or importation of forest products, whatever their status may be.

Finally, Art. 100 establishes that anyone who exports timber of species, forms or dimensions that contravene the provisions in Article 65, and that does not come from voluntary plantations, will be sanctioned with imprisonment of three to six years (3 to 6) and a fine equivalent to the value of the exported timber, as reported by the Institute, in accordance with market prices.

2. Decree 14-2013 National Customs Law (Decreto 14-2013. Ley nacional de Aduanas)

This law is intended to develop and systematise the customs rules with regard to administrative violations, in order that they can be applied in a simplified fashion that will allow the taxpayer to have more knowledge of them and will facilitate the National Customs Service's procedures.

Description of Risk

Although there is no official or unofficial information available, there is a high risk that exportation of timber from an illegal origin will occur. According to comments received from experts, some of the risks are: that other species will be included in export containers; that timber will be exported by using the "plastic" code; that timber species included in CITES (such as rosewood) will be exported; and that supporting documentation from companies that operate legally to export timber from the same species harvested illegally (UICN-IARNA 2015) will be used, among others. There are even sources that consider "that illegality and corruption in the forest sector may cover the whole sector, from harvesting and transportation through industrialisation and trading forest products" (UICN-EFI, 2014).

It is well known that Guatemala is going through a customs crisis; there is evidence of systematic customs fraud which has implicated national presidents (trial underway). This places the subject of compliance with customs regulations for exportation of timber and other products in the category of specified risk.

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as 'specified risk', both inside and outside protected areas.

1.19.6. Risk designation and specification

Specified risk both inside and outside protected areas.

1.19.7. Control measures and verifiers

- Review export and import licenses, which must be based on a file that meets the national legal requirements.

- Verify supporting documentation that is the basis for obtaining an export licence (certificate of shipment inspection, shipping inspection ticket, CITES certificate – when applicable –, and invoice, among others).
- Visit INAB’s single contact point for timber exports, where all export licences and their respective supporting documentation are located, in order to verify species, volumes and export prices.
- Verify payment of taxes linked to the export process.

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

CURRENT LEGISLATION FOR NATURAL FORESTS, PLANTATIONS AND AGROFOREST SYSTEM INSIDE AND OUTSIDE PROTECTED AREAS

1. *Decree-Law 4-89 Law on Protected Areas and its regulations (Decreto Ley 4-89 Ley de Áreas Protegidas y su reglamento)*. Date of publication: 10 January 1989.
 - Title IV On the executive body responsible for application of this law. Chapter I. Article 73 CITES authority *Título IV Del órgano de dirección y encargado de la aplicación de ésta ley. Capítulo I. Artículo 73. Autoridad CITES*).
 - Title VI Chapter I Management. Article 91. Scientific authorities (*Título VI. Capítulo I Administración. Artículo 91. Autoridades científicas*). Available at: http://www.conap.gob.gt/phocadownload/Centro_Documentacion/legislacion/ley%20de%20areas%20protegidas%20decreto%204-89-2.pdf
2. *CONAP Resolution 01-27-2013 Manual on Procedures for International Trade in Timber Flora included in Appendices II and III of the Convention on International Trade in Threatened Species of Wild Fauna and Flora (Resolución del CONAP 01-27-2013. Manual de Procedimientos para el Comercio Internacional de Flora Maderable incluida en los Apéndices II y III de la Convención sobre el Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres)*. Date of publication: 20 November 2013.
 - This manual, which is organised by chapters, describes the procedure for permits and certificates, registration as a CITES trading enterprise, expansion and/or updating of registration, and exportation of timber flora included in Appendices II and III of CITES, among other subjects. Available at: http://www.sifgua.org.gt/Documentos/Reglamentos/manual%20de%20comercio%20flora%20maderable%20cites_nv.pdf

1.20.2. Legal authority

National Council on Protected Areas (*Consejo Nacional de Áreas Protegidas – CONAP*): the CITES authority for Guatemala (both inside and outside protected areas). In

addition, CONAP represents both the scientific authority and the management authority for all of Guatemala. Available at: <http://www.conap.gob.gt/>

1.20.3. Legally required documents or records

N/A

1.20.4. Sources of information

Government sources

- CITES Information. CONAP. Available at: <http://www.conap.gob.gt/index.php/diversidad-biologica/cites.html> [Accessed 22 February 2016]
- There is a database that records the CITES permits granted; there are some difficulties with web access.

Non-Government sources

- FAO-INAB-CONESFORGUA. 2015. Progress Report. Strengthening governance as a function of the Interinstitutional Action Plan for the Prevention and Reduction of Illegal Logging in Guatemala. (Informe de avance. Fortalecimiento de la gobernanza en función al Plan de Acción Interinstitucional para la Prevención y Reducción de la Tala Ilegal en Guatemala). Not yet available online.
- UICN-EFI. 2014. Analysis of international trade in timber products and its administrative governance, Central American Region and the Dominican Republic (Análisis del comercio internacional de productos de madera y su gobernanza administrativa, Región de América Central y la República Dominicana) 2000-2011. Available at: http://cmsdata.iucn.org/downloads/analisis_del_comercio_internacional_version_digital.pdf [Accessed 23 April 2016]

Interviews with experts

Interviews with several experts during April 2016, both in Guatemala City and in Petén, helped the authors of this report to better understand the applicable legislation, the current situation and the risks associated with regard to CITES species.

1.20.5. Risk determination

Overview of Legal Requirements

1. Decree-Law 4-89 Law on Protected Areas and its regulations (Decreto Ley 4-89 Ley de Áreas Protegidas y su reglamento)

This law establishes that the lists of species of flora and fauna in Appendices I and II of the Convention on International Trade in Threatened Species of Wild Flora and Fauna, Decree 63-79 of the Congress of the Republic, as approved by the contracting parties, are considered to be official for Guatemala, except for express reservations by the Guatemalan management authority for the convention. Any modifications, additions, deletions, reservations or changes shall be published in the Official Gazette (Art. 25). This law establishes, in Art. 73, that the Executive Secretary is the management

authority for the CITES convention. The Executive Secretary is empowered to designate the scientific authorities that he or she deems pertinent and mechanisms that will improve the convention's functioning. In addition, Art. 91 states that the Executive Secretary may make appointments of scientific authorities for the CITES convention, and may appoint an authority in regions where he or she deems it advisable.

According to CONAP's Procedures Manual for International Trade in Timber Flora included in Appendices II and III of the Convention on International Trade in Threatened Species of Wild Fauna and Flora – CITES, the procedure for obtaining a CITES certificate is:

1. Presentation of application for issuance of a CITES export permit at CONAP's single contact point.
2. Transfer of the application to the Forest Management Department.
3. Evaluation of the application for issuance of the CITES export permit.
4. In order to make the evaluation, the following analyses should be made:
 - Analysis of the technical documentation submitted that supports the export application.
5. Preparation of the technical ruling that guarantees that the product to be exported comes from non-harmful sustainable media.
6. Review of the ruling to guarantee that the product to be exported comes from non-harmful, sustainable media.
7. Signature on the CITES export permit by the Management Authority.
8. Completion of the process.

The requirements are:

- a) The application form for an export, import or re-export permit for timber flora included in the CITES Appendices must be filled out;
- b) A simple copy of the personal identification document – PID – of the owner or legal representative of the enterprise registered in CONAP that is making the application must be provided.
- c) The individual or collective legal persons must have proved their registration in the National Forest Registry.
- d) A simple copy of the resolution approving sawing and/or re-sawing yield percentage per species must be provided.
- e) A packing list of shipping list that shows, at minimum, the type of product, dimensions, and volumes per species and/or bundles, quality grades according to the NHLA International Classification Standard and other characteristics at CONAP'S discretion must be provided.
- f) A copy of the sawing invoice when this is done in a forest industry that is not part of the trading company applying for exportation must be provided.
- g) A copy of the invoice issued to the final destination must be provided, which shows, in addition to the sales volume, qualities of the timber according to the

NHLA international classification standards, total sales price and other particular characteristics.

- h) Users who export timber from Management Units or landholdings that are not their own property must submit special documentation.

Description of Risk

In order to obtain a CITES certificate to export species included in that list, it is necessary to carry out various procedures with the responsible institution which, in Guatemala, is CONAP. In this regard, obtaining a CITES certificate is the final step for exportation and in the previous steps of the process it will have been necessary to comply with all of the relevant legislation in applying for forest harvesting, transportation and processing. As is explained in CONAP's CITES Procedures Manual (2013), after authorisation of the certificate, the user proceeds with an application for physical inspection of the shipment (this can be done at the port or in the plant), by which a technical expert from CONAP will verify the amount, type and species exported. A seal will then be placed on the shipment. The CONAP technician is to be accompanied by the enterprise's legal representative and also must document the following with photographs:

- a) The empty container;
- b) The code for the container and the dray;
- c) The product load;
- d) The closing of the container;
- e) The placement of seals; and
- f) The seals after they have been placed.

Finally, the CONAP technician will prepare a report of his inspection.

In addition, CONAP keeps information related to all processes for issuing CITES certificates and communications with the importing countries (through its management authority) on its web page.

Finally, UICN-EFI (2014), found that for the year 2011, at the national level, all of the countries in the region (Central America and the Dominican Republic) except for Guatemala, showed deficiencies with regard to the availability of CITES export information. (It is possible that the rules and procedures established by CONAP in the process for issuing CITES certificates are generating improvements in the mechanism.)

On the basis of these arguments and the opinions expressed by the experts consulted, it is concluded that the risk for this 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 by the authorities and/or relevant entities taking preventive actions.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

- Publish CITES timber permits online. Available at:
(<http://www.conap.gob.gt/index.php/servicios-en-linea/manejo-forestal/permisos-certificados-cites-flora-maderable.html>).

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

Guatemala does not have any legislation on due diligence.

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 Guatemala** 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 GUATEMALA

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forest	Natural forest in protected areas – national parks	Intangible pure conservation (national parks)	Government	Intangible zones; (areas in which forest harvesting cannot be authorised.	Permit for harvesting and trading wild timber flora products in protected areas	Timber harvesting /NTFP is prohibited
	Natural forest in protected areas – Multiple Use Zones	Zones where sustainable harvesting is practised by communities and industries	Government – Granted as Concession	Joint administration by community (90%) and industry (10%); consists of a process of forest concessions to communities and industry where the national government continues to have land ownership but sustainable harvesting is permitted for a renewable period of 25 years under a contract – complying with a long-term management plan. In addition, this can happen only in Multiple Use Zones in a Biosphere Reserve.	Permit for harvesting and trading wild timber flora products in protected areas	Legal timber from community and industrial concessions

	Natural forest not in a protected area – Municipal Communal Farms (<i>ejidos</i>) and lumber yards	Forests owned by municipalities, considered as firewood reserves and watershed protection, among others	Municipal	Municipal management under INAB; consists of forests located in the National System of Protected Areas (<i>Sistema Nacional de Areas Protegidas – SIGAP</i>) but that are the property of a municipality that manages them under INAB. This is one of the less frequently used categories in Guatemala.	Forest permit	Legal timber from municipal areas
	Natural forest not in a protected area –private landholdings	Forests located on landholdings that are registered in the General Property Registry (<i>Registro General de Propiedad</i>) and therefore are privately owned	Private	Private management under INAB; consists of forests located on landholdings outside SIGAP that are the property of individuals and that are registered in the Guatemalan General Property Registry (<i>Registro General de la Propiedad de Guatemala</i>). The management system is under INAB.	Forest permit	Legal timber from private landholdings not in a protected area
	Plantation in a protected area	Plantations located on landholdings that are in the General Property Registry (<i>Registro General de Propiedad</i>) and	Private	Private management under CONAP; consists of forest plantations located in management categories in protected areas – buffer zones, private reserves, special use zones - but that hold an ownership title and the	Permit for harvesting and trading wild timber flora products in protected areas	Timber from private plantations in protected areas

		therefore are privately owned		management of which is under CONAP).		
Forest plantation	Plantation not in a protected area – Consortiums (Corporations) and individuals	Plantations located on landholdings that are registered in the General Property Registry (<i>Registro General de Propiedad</i>) (in the name of a consortium or of individuals and therefore privately owned)	Private	Private management under INAB; consists of forest plantations where the majority – 98% – have been placed in Forest Incentive Programmes (Voluntary Plantations) and are in the stage of final thinning or cutting and require a forest permit).	Forest permit	Timber from private plantations belonging to consortiums or individuals not in a protected area
	Plantation inside or outside a protected area – In the possession of individuals	Plantations located on landholdings that are not registered in the General Property Registry (<i>Registro General de Propiedad</i>) and are considered to be national government lands in the possession of individuals. (This applies only to those that are less than 15 ha.) If it is inside a protected area, it is	National Government in the possession of an individual	Private management under CONAP or INAB (depending on the location); consists of plantations that have come under the Programme of Incentives for Small Landholders with a forestry or agroforest vocation – PINPEP – which provides support for individuals who do not hold a property title but who show that they possess less than 15 ha of land. The incentive mechanism is paid by INAB, but if the holding is located in a protected area, the individual	Forest permit / Permit for harvesting and trading wild timber flora products in protected areas	Timber from private plantations belonging to individual owners inside or outside a protected area

		managed by CONAP and if outside, by INAB		must have prior authorisation from CONAP).		
Agroforest systems	Agroforest systems	Agroforest systems located on landholdings inside or outside a protected area	Private	Private management under CONAP and/or INAB; consists of agroforest arrangements where a certain number of trees are present, which can apply forest incentives in the agroforest category and, in the future, opt for a permit for commercial harvesting. This type of incentive mechanism and future forest permit system began in 2010. It is also authorised by INAB, but if It is located in a protected area, it must have prior authorisation from CONAP.	Forest permit / Permit for harvesting and trading wild timber flora products in protected areas	Timber from agroforest systems located inside or outside a protected area



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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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