

Timber Legality Risk Assessment Solomon Islands

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This risk assessment has been developed by NEPCon with support from the Pacific Horticultural and Agricultural Market Access Program (PHAMA) Programme, funded by the Australian and New Zealand Governments, and the Solomon Islands Timber Processors and Exporters Association (SITPEA).



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Consultation Draft

This consultation draft has been published by NEPCon in July 2018.

The purpose of the publication of this draft is to encourage more stakeholders to provide feedback on its contents to improve the veracity of the findings.

The following general principles for stakeholder consultation apply:

- A. Stakeholder consultation will be conducted as an integral part of the development of a NEPCon Timber Legality Risk Assessment.
- B. The public consultation phase for the Timber Legality Risk Assessment shall include at least one round of 60 days for comment submissions by stakeholders.
- C. For new risk assessments, a second round of consultation of at least 30 days may also be undertaken where deemed necessary.
- D. Where substantive, unresolved issues persist after the consultation round(s), or where insufficient feedback was received, NEPCon shall carry out additional rounds of consultation, as necessary.
- E. NEPCon shall ensure that participation in the consultation process:
 - i. is open to all stakeholders; and
 - ii. aims to achieve a balance of interests in the subject matter and in the geographic scope to which the standard applies.
- F. Stakeholders shall be provided with appropriate opportunities to contribute to the development of the Risk Assessment.
- G. NEPCon shall:
 - i. identify stakeholder groups that are not adequately represented by the feedback received; and
 - ii. proactively seeks their contributions. This includes addressing constraints faced by disadvantaged stakeholders.
- H. NEPCon shall:
 - i. compile all comments received during a consultation period and
 - ii. prepare a written synopsis of how each material issue has been addressed in the risk assessment;
 - iii. make the synopsis publicly available; and
 - iv. send it to all parties that submitted comments.

Further information about NEPCon process for developing Risk Assessments can be found in the [NEPCon Risk Assessment Development Procedure](#)

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CONSULTATION DRAFT

A. Introduction

This Timber Legality Risk Assessment for Solomon Islands provides an analysis of the risk of sourcing timber from areas of illegal harvesting. NEPCon has been developing 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.

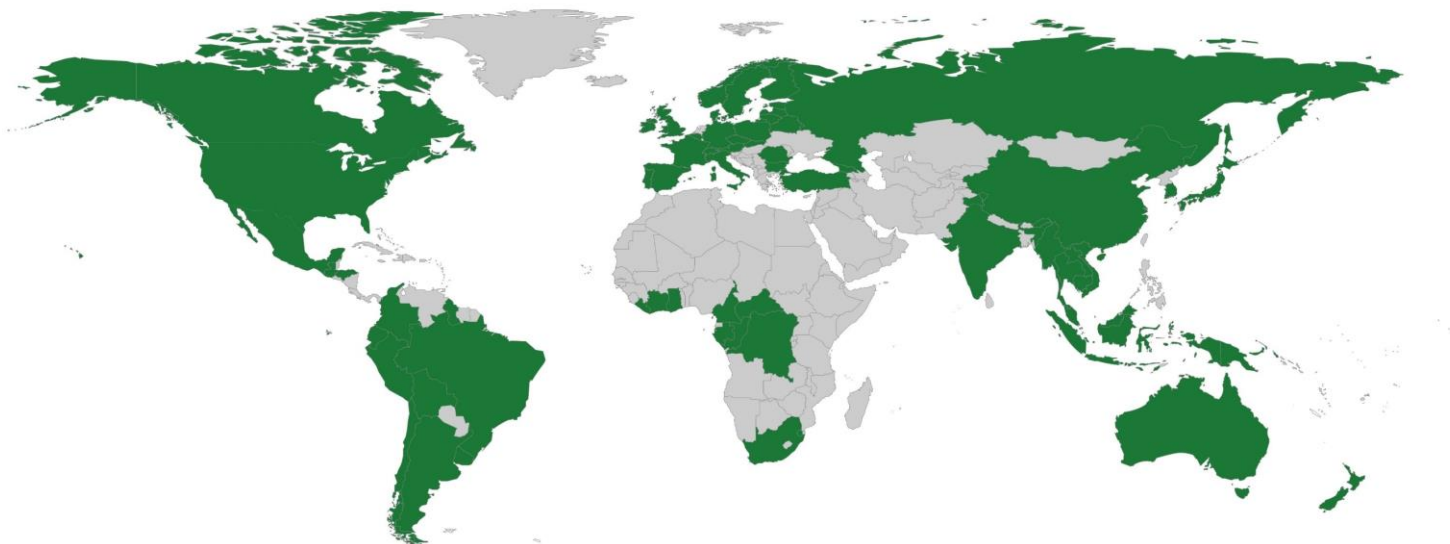


Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

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

The Timber Legality Risk Assessment for the Solomon Islands was developed between March 2017 and June 2018. This risk assessment has been developed by NEPCon with support from the Pacific Horticultural and Agricultural Market Access Program (PHAMA) Programme, funded by the Australian and New Zealand Governments, and the Solomon Islands Timber Processors and Exporters Association (SITPEA).

B. Overview of Legality risks

This report contains an evaluation of the risk of illegality in Solomon Islands for five categories and 21 sub-categories of law.

Overall, we found:

- Specified risk for 18 sub-categories.
- Low risk for 0 sub-categories.
- No legal requirements for 3 sub-categories.

The Timber Risk Score for Solomon Islands is 21 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, and third parties' rights, and trade and transport.

For **Legal rights to harvest**, there is a risk that:

- Risk that the wrong, or not all, customary land owners are identified under the process of granting timber rights to companies
- Risk that the grievance system is inadequate to solve conflicts
- Risk of corruption or conflict of interest when granting tenure rights to customary land
- Risks of non-conformance with the legal requirements relating to management harvesting and planning, including a failure to do EIAs and obtain Development Consents;
- Where Annual plans and Coupe plans are in place, there is a risk that they are poor quality, and the monitoring of compliance with these plans is not consistently and effectively carried out.
- There is a risk of harvesting occurring without the necessary Felling/Milling Licenses, including
 - Logging being carried out before obtaining licenses.
 - Logging without any licence on uninhabited islands
 - Logging without a Felling and/or Milling licence.
 - A duplication of licences (whereby licences from one area are used to cover harvesting in another area) or use of invalid (out of date or cancelled) licences

For **Taxes and fees**, there is a risk that:

- There is a risk that royalties are not paid, or are not paid to all landowners with claims to the land:
- There is a risk that income taxes are not paid in accordance with the law

For **Timber harvesting activities**, there is a risk that:

- There is a risk of non-compliance with the timber harvesting regulations, in large part due to poor monitoring and enforcement, and/or bribery where non-conformances are detected:
- illegal harvesting in protected areas
- illegal harvesting related to protected tree species

- risks of an operator failing to obtain an EIA and be provided with Development Consent;
- risk of failure of the operator to implement (and comply with) the relevant requirements, conditions and environmental monitoring required in the EIA.
- There is a risk that companies are not complying with the legal requirements in regard to occupational health and safety:
- There is no government monitoring of employees, and risk of of companies not complying with legal requirements for health and safety.
- There are problems with lack of personal equipment and equipment might not be up to date. (Personal communications 1).
- There are risks of illegal employment in Solomon Islands, and risks relating to non-compliance with the employment laws.
- There is a risk of the Worst Forms of Child Labour being used in the logging industry, including the commercial sexual exploitation of children (CSEC).

For **Third parties' rights**, there is a risk that:

- Risk that the wrong, or not all, customary land owners are identified under the process of granting timber rights to companies
- Risk that the grievance system is inadequate to solve conflicts
- Risk of corruption or conflict of interest when granting tenure rights to customary land

For **Trade and transport**, there is a risk that:

- Risks exist that the information and data required in the felling and milling licences is not maintained or is not accurate
- There is a risk of misclassification of timber to avoid payment of the export duty.
- A risk that a valid Permit to Export or Specific Authority to Export is not in place
- A risk that the Export duty has not been correctly paid
- A risk that species export restrictions have been violated
- There is a risk that CITES species are not traced according to the law.

Timber source types and risks

There are three main timber source types found in the Solomon Islands and one limited source type.

Knowing the "source type" that timber originates from is useful because different source types can be subject to different applicable legislation and have different attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all these source types and found that risk differs between natural and plantation forest.

Natura	1. Small scale harvesting under a Milling Licence.	Natural Forests on customary land which is owned privately by Individuals and families; local tribal and indigenous communities; and/or
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		private business entities and institutions. Individuals, households & Communities are harvesting the timber (often on land for which they hold rights) under a Milling Licence (Type b). These are small scale operations, perhaps harvesting a few trees per year as part of a diver family or community income.
	1b. Larger scale Harvesting under a Milling Licence	Natural Forests on customary land which is owned privately by Individuals and families; local tribal and indigenous communities; and/or private business entities and institutions. Individuals, households & Communities are harvesting the trees under a Milling Licence (Type b), and the Milling Licence holder intends to use extraction machinery or harvest more than 1000 m ³ /year. These operations are usually slightly larger scale than Source Type 1, but are still not an industrial/large scale source.
	2. Harvesting under a Felling Licence	Natural Forests on customary land which is owned privately by Individuals and families; local tribal and indigenous communities; and/or private business entities and institutions. The forest is managed and harvested by private companies (harvesting on customary land for which they do not hold rights) under a Form 4 Standard Logging Agreement Felling licence from the Commissioner of Forests, and in the case of processing, Milling Licence (Type a). The harvesting rights are obtained by the private companies through a process prescribed by law.

Plantation Forest	3. Large scale commercial operations on Alienated land	Plantations on public land (either Nationally or Regionally held). Plantations are large scale and corporately integrated operations conducted by two large companies, managing plantations or contiguous plots of thousands of hectares.
	4. Community managed plantations on Customary land	Plantations on customary land which is owned privately by Individuals and families; local tribal and indigenous communities; and/or private business entities and institutions. Plantations are managed by villages, families or church communities throughout the Solomon Islands. It

is estimated that community-level plantations may cover around 6000ha will begin to significantly contribute to the national wood flow in the early 2020's.

CONSULTATION DRAFT

The following matrix summarise the findings of the timber legality risk assessment set out in this report:

LEGAL CATEGORY	SUB-CATEGORY	RISK CONCLUSION				
		Natural Forest			Plantations	
		1	1b	2	3	4
Legal rights to harvest	1.1 Land tenure and management rights	Red	Red	Red	Red	Red
	1.2 Concession licenses	Grey	Grey	Grey	Grey	Grey
	1.3 Management and harvesting planning	Grey	Red	Red	Red	Grey
	1.4 Harvesting permits	Red	Red	Red	Red	Red
Taxes and fees	1.5 Payment of royalties & harvesting fees	Green	Green	Red	Red	Green
	1.6 Value added taxes & other sales taxes	Grey	Grey	Grey	Grey	Grey
	1.7 Income and profit taxes	Red	Red	Red	Red	Red
Timber harvesting activities	1.8 Timber harvesting regulations	Red	Red	Red	Red	Red
	1.9 Protected sites and species	Red	Red	Red	Green	Green
	1.10 Environmental requirements	Green	Red	Red	Red	Green
	1.11 Health and safety	Red	Red	Red	Red	Red
	1.12 Legal employment	Red	Red	Red	Red	Red
Third parties' rights	1.13 Customary rights	Green	Green	Red	Green	Green
	1.14 Free prior & informed consent	Green	Green	Red	Green	Green
	1.15 Indigenous/traditional peoples' rights	Green	Green	Red	Green	Green
Trade and transport	1.16 Classification of species, quantities, qualities	Red	Red	Red	Red	Red
	1.17 Trade and transport	Grey	Grey	Grey	Grey	Grey
	1.18 Offshore trading and transfer pricing	Red	Red	Red	Red	Red
	1.19 Custom regulations	Red	Red	Red	Red	Red
	1.20 CITES	Red	Red	Red	Red	Red
	1.21 Legislation requiring due diligence/due care procedures	Red	Red	Red	Red	Red

C. Overview of the forest sector in Solomon Islands

Sustainable development in Solomon Islands has been impeded by some of the most difficult development challenges within the Pacific Islands sub-region. As well as being subjected to natural disasters including earthquakes, tsunamis, volcanic activity and tropical cyclones (the Solomon Islands are a part of the 'Ring of Fire' surrounding the Pacific Ocean basin), the Islands endured human conflict in the form of 'the Tensions': between 1998 and 2003 a period of national civil unrest led to governmental institutions being rendered inoperable, with violence triggering hundreds of deaths and the largest internal displacement (estimated at 20,000 people) in the Pacific region. Land issues – including illegal squatting and use of customary lands, and the commercialisation of land including for plantations – were considered central to the conflict. The country experiences the lowest per capita income and is one of the lowest ranked countries in the region by Human Development Index (HDI) (MDPAC 2010; Chevalier).

The Solomon Islands gained independence from British rule in 1978. Governance is shared between formal state institutions and informal but influential traditional and community institutions reflecting the structure of the islands society. The country is a constitutional monarchy with a national, democratically elected parliament of 50 members (each of whom represents a single geographically defined electorate), governed by a Prime Minister.

As well as a capital city administration in Honiara, there are nine provinces of widely differing size and population:

1. Central
2. Choiseul
3. Guadalcanal
4. Isabel
5. Makira-Ulawa
6. Malaita
7. Rennell-Bellona
8. Temotu
9. Western

Each provincial administration is chosen through area elections and led by a Premier; yet there is very little devolution of power, little capacity, and limited resourcing of these territorial governing entities. Provincial governments are empowered to make laws (referred to as Provincial Ordinances), including laws in relation to forests and environmental issues (The REDD Desk)¹.

A matrix of customary authority, church-based institutions and area-specific community bodies forms the main context for local-level governance, which varies considerably across the Solomon Islands. There are recognised challenges associated with the integration of community level governance with state systems; as well as companies (MDPAC 2010).

¹ <http://thereddesk.org/countries/solomon-islands/legal-frameworks>

The Solomon Islands has a total land area of about 2.8 million hectares. The population is estimated to be 599,419 (2016 estimate), some 80% of whom live in small rural village communities. About 87% of the land in Solomon Islands is under customary land tenure, with the Constitution guaranteeing customary control over the land and forests; i.e. with rights and ownership outside of government and formal legal systems. The majority of customary land titles are unregistered, meaning that there has been no formal survey and registering of boundaries or other characteristics. State land (alienated land) makes up the remaining 13%.

Solomon Islands has among the highest percentage of forest cover in the Pacific region. In 2015 the FAO Global Forest Resource Assessment estimated Solomon Island's total forest cover to be around 78% (just under 2.2 million ha). However, other assessments have found that this figure is more likely to be around 76%, due to extensive logging in recent years (Pauku, 2009).

The area of planted forest is estimated to cover about 27,000 ha (FAO, 2015). Plantation forestry can be split into two main groupings:

- 1) Large-scale and corporately-integrated operations conducted by large companies, managing plantations or contiguous plots (on Alienated land) of thousands of hectares each. Commonly planted species include: *Eucalyptus deglupta*, *Tectona grandis*, *Gmelina arborea*, *Swietenia macrophylla*, *Camnospermum breviopelatum*, *Agathis spp.*, *Terminalia spp.*, *Acacia spp* (Solomon Islands Forestry Outlook Study, FAO) and;
- 2) Community plantations managed by villages, families or church communities throughout the Solomon Islands (on Customary land). Commonly planted species include: (primarily) *Tectona grandis*, as well as *Swetenia macrophylla*, *Eucalyptus deglupta* and *Gmelina arborea* (Solomon Islands Forestry Outlook Study, FAO)

It is unclear to what extent community-level plantations are being renewed or maintained, but large-scale plantations continue to experience some growth (MDPAC 2010)². In 2008 commercial plantations covered an area of 22,200 ha (4.2.2 in SI State of the Environment Report 2008). Since 2003, villagers have continued to establish significant areas of their own plantations with Government support. A joint FD-SIFMP II database (a Forest Management project of the Forests Division) indicates over 9,000 individual plantings have occurred by 2008. It is estimated that community-level plantations may cover around 6000ha³ and will begin to significantly contribute to the national wood flow in the early 2020's.

The main drivers of deforestation are commercial logging, agriculture (predominantly plantation expansion for palm oil), mining and infrastructure developments (GoSI, 2010). Over-exploitation of timber resources from the commercial logging industry is a well-known, and well-

² Solomon Islands Country Report for the 5-Year Review of the Mauritius Strategy for Further Implementation of the Barbados Programme of Action for Sustainable Development of SIDS (MSI+5). Ministry of Development Planning and Aid Coordination. Authors P. Roughan and S. Wara. Available: <https://sustainabledevelopment.un.org/content/documents/1310Solomon-Islands-MSI-NAR2010.pdf>, accessed 16 February 2017.

³ Personal Communication 3. See also: Small-Scale Forest Plantations are the Key to the Future of the Solomon Islands Forest (International Forestry Review 8(2):222-228. 2006) which estimated 4000ha in 2006.

documented, problem in Solomon Islands (Hughes et al., 2010; URS, 2003, UN-REDD, 2013). The predicted exhaustion of commercial harvesting (and associated collapse of the logging industry in its present form) is also well-documented, even within the Solomon Islands government administrations (CBSI, Ministry of Environment).

Since the 1990s, round logs have been the most valuable export commodity for Solomon Islands (Allen 2011), with logging revenue contributing around 70% of export income (compared with 50% in 1994) and more than 15% of government revenue (CNSI, 2012). In 2004, it was reported that around 1 million m³ of logs were exported, which is in sharp contrast to the sustainable annual harvest estimate at around 248,000 m³⁴ (URS, 2006 in Hughes et. al., 2010). In 2006 the volume of logs exported increased to 1.4 million m³, of which 93% were from natural forest, and in 2011 to 1.9 million m³ of which only 85,000 m³ came from plantations (CBSI, 2007; CBSI 2012). By 2016, total log exports (mostly from natural forest) had risen to 2.29 million m³ (CBSI 2016). This surge in logging exports appears to coincide with a strong international demand from Asia and record high international prices for logs (CBSI, 2012; UN-REDD, 2013).

The main law regulating forest use in Solomon Islands is the [Forest Resources and Timber Utilisation Act \[Cap. 40\]](#). Originally designed in the 1960s to facilitate logging on government land, the Act has been inadequate to regulate logging on customary land. Despite being amended extensively over the past 30 years, the Act is still incomplete and considered outdated⁵. Numerous attempts to repeal and replace it with legislation to enable the sustainable harvesting and management of forests, including a more open and transparent process for obtaining landowner consent, have failed. The Act has also been unpopular, triggering disputes and extensive litigation between customary landowners, administrators and logging companies.

The [Forest Resources and Timber Utilisation Act](#) itself contains limited enforcement provisions. It is an offence to remove forest produce in contravention of the Act (s. 30). Licences and permits may be cancelled or suspended where there is a breach of the Act or the licence or permit conditions (s. 39). Enforcement officers, forest officers and police officers all have power to search and arrest persons they suspect may have breached the Act (s. 32).

Despite these powers, poor enforcement of the Act generally has been identified as a key governance issue preventing sustainable management of forest resources in Solomon Islands (UN-REDD Programme 2011:6). Companies are rarely fined or suspended or face licence cancellations, despite generally poor (and sometimes illegal) logging practices. Communities have reported that police often fail to respond to complaints of illegal forest practices; and are sometimes considered to be partisan players (Allen et al., 2013:54).

The volume of licences issued (over 300 were issued in 2012) also places strain on the ability of the Ministry of Forestry & Research and the Ministry of Environment Climate Change, Disaster Management and Meteorology to effectively monitor forestry operations, as they have very limited resources (draft *National REDD+ Roadmap 2014*). In its review of corruption risks in forestry in the Asia Pacific, Transparency International recently noted that there is an urgent

⁴ Sustainable harvest rate is considered to be 320,000 m³ per annum, according to the Solomon Islands State of Environment Report 2008, by the Ministry of Environment Conservation and Meteorology (July 2008) available at: <http://www.sids2014.org/content/documents/180SOLOMONISLANDS-STATEofENVIRONMENT2008.pdf>

⁵ The Forest Act of 1999 was formulated to replace the Forest Resources and Utilisation Act 1969. It was passed by the Solomon Islands Parliament but never gazetted. It has therefore never been implemented, with the 1969 Act remaining in force (<http://theredddesk.org/countries/laws/forests-act-1999>).

need to increase human resources and operational budgets to monitor different stages of logging operations, including conducting timber inventories, monitoring the declaration of logging volumes and checking export permits, and ensuring sufficient resources (such as fuel and boats) to carry out enforcement and compliance operations (Transparency International 2013:13).

Since the 1980s, the forest sector in Solomon Islands has been characterised by collusion between foreign logging companies and local politicians, systemic corruption and poor monitoring and enforcement (Allen 2011). A key causal factor behind this problem is the lack of alternative revenue sources for national and provincial governments, as well as for local communities.

Numerous efforts to reform the flawed processes for allocating timber rights under the [Forest Resources and Timber Utilisation Act](#) in order to restrict the potential for local-level corruption in the grant of timber rights have all failed. Both the government and landowners have been deprived of revenues from the logging industry as a result of corruption and the inequitable distribution of revenues under logging contracts⁶.

According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), the Solomon Islands - as a developing small island state recovering from a period of political instability and civil unrest - faces several corruption challenges fuelled by: the size of the country and its geographic spread, low state penetration of the regions and weak central institutions. In addition, it faces specific governance challenges associated with the under-resourced management of natural resources including, for example, the influence and perpetration of large-scale corruption by international logging companies.

The report continues to describe how "...corruption among logging companies and local politicians has contributed to excessive logging, resulting in highly degraded forests that undermine the future sustainability of the sector. The logging industry is tightly imbricated with domestic politics, with successive governments infiltrated by logging money, and the benefits of logging largely captured by foreign companies and local politicians. These political allies of logging companies have little incentive to regulate the sector, weakening the state's ability to defend national interests as opposed to logging interests".

The Solomon Islands Government has recently joined two international initiatives which will require it to take steps to improve its anti-corruption framework. In 2012, Solomon Islands became a party to the 2003 United Nations Convention Against Corruption (UNCAC), which, among other things, obliges countries to create a preventive anti-corruption body, such as an Anti-Corruption Agency (Art. 6). In June 2012 Solomon Islands also joined the Extractive Industries Transparency Initiative (EITI), a voluntary initiative which requires resource companies to disclose what they pay to government; with this information reconciled against the revenues received by government with an explanation of any discrepancies. However, so far, the EITI applies only to the mining sector in Solomon Islands and does not extend to its forestry sector.

⁶ REDDdesk: <http://thereddesk.org/countries/solomon-islands/legal-frameworks>.

According to Wairiu and Nanau: “Logging primarily benefits logging companies because the government has not been successful in controlling logging activities due to systemic abuse by people in positions of authority. Moreover, there is a general laxity in the enforcement of existing laws and in most instances, the current laws and regulations are inadequate to monitor and control the negative effects of logging activities.”⁷

CONSULTATION DRAFT

⁷ Morgan Wairiu and Gordon Nanau, undated. Logging and Conflict in Birao Ward of Guadalcanal, Solomon Islands. Available: <http://www.islands-knowledge.org>, accessed 19 February 2017.

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E. Timber Source Types

The table **Timber Source Types in Solomon Islands** (shown below) identifies the different types of sources of timber it is possible to find in the Solomon Islands. '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:

- from which forest types timber can be legally sourced;
- 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 applying 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 has 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, for 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 SOLOMON ISLANDS

Forest type	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest	Alienated land	Public (National and Sub-national (regional))	Public Administration	Not applicable	State owned natural forest. <u>Not a legal source of timber.</u>
	Customary land	Private (Individuals and families; Local tribal and indigenous communities; and/or Private business entities and institutions)	Individuals, households & Communities (often harvesting on land for which they hold rights)	Milling Licence (Type b)	<p>SOURCE TYPE 1</p> <p>Natural forest harvesting on customary land with a Milling Licence (Type b)</p>
					<p>SOURCE TYPE 1b</p> <p>Natural forest harvesting on customary land with a Milling Licence (Type b). Milling Licence holder intends to use extraction machinery or harvest more than 1000 m³/year.</p>
		Private companies (harvesting on customary land for which they do not hold rights)	<p>Form 4 Standard Logging Agreement</p> <p>Felling licence from the Commissioner of Forests</p> <p>In case of processing, Milling Licence (Type a)</p>	<p>SOURCE TYPE 2</p> <p>Natural forest harvesting on customary land with a Felling Licence. Harvesting rights ('concession') obtained by private companies from customary land owners</p>	
Plantations Solomon Islands	Alienated land	Public (National and Sub-national (regional))	Public Administration	N/A	<p>SOURCE TYPE 3</p> <p>Large scale and corporately integrated operations conducted by two large companies,</p>
			Private companies		

					managing plantations or contiguous plots of thousands of hectares (on Alienated land).
	Customary land	Private (Individuals and families; Local tribal and indigenous communities; and/or Private business entities and institutions)	Private (Individuals and families; Local tribal and indigenous communities; and/or Private business entities and institutions)	N/A ⁸	<p>SOURCE TYPE 4</p> <p>Community-scale plantations managed by villages, families or church communities throughout the Solomon Islands (on Customary land).</p>

⁸ At the time of finalisation of this report, the Ministry of Forests and Research is conducting a review of legislation, with a view to considering appropriate mechanisms to govern the development and harvesting of community-scale plantations.

F. 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

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1.1.2. Legal authority

- Ministry of Forestry & Research

- Provincial Government. Many activities that involve the extraction or use of environmental resources will also require permissions from the relevant Provincial Government, such as the requirement to obtain a business licence.
- Registrar of Companies
- Inland Revenue Division Solomon Islands (Ministry of Finance and Treasury)

1.1.3. Legally required documents or records

- Felling license under the *Forest Resources and Timber Utilisation Act* (Cap. 40), Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005, Section 44 Regulation 4 [Act dated 1970 but modified 1996]
- Form 4 Standard Logging Agreement
- Form 3 Certificate Approval
- Provincial Business Licence
- Certificate of Business Name Registration
- Tax Identification Number (TIN)

1.1.4. Sources of information

Government sources

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1.1.5. Risk determination

Overview of legal requirements

The Constitution of the Solomon Islands provides that only a Solomon Islander or a limited class of people (e.g. companies registered and majority owned by Solomon Islanders) can permanently own land (Art. 110). The Land and Titles Act [Cap 133] is the governing law for the allocation, acquisition and registration of land tenure.

There are two main types of tenure: customary land and alienated land. The vast majority of land in the Solomon Islands (87%) is held under customary tenure, whilst the remaining 13% is alienated land (Corrin, 2012). Most forest area (about 90%) is found on customary land (Corrin, 2012; GoSI, 2010). Customary land tenure has central importance for the use of land resources under both subsistence and the cash economic model (Ministry of Development Planning and Aid Coordination 2010, p 7).

Alienated land

Alienated land was transferred from customary owners to the Crown (Solomon Islands was a British protectorate until 1978) during the colonial period. It consists of four subcategories: public land, perpetual estate, fixed term estate (not exceeding 75 years) and leasehold ([Land and Titles Act](#), s.112, 113, and Part XI). Land can only be converted from customary (tribal) land by selling or leasing it to the Commissioner of Lands or a Provincial Assembly (Part V).

Customary land

Customary laws in the Solomon Islands are diverse and vary from place to place, and are largely unwritten. Customary law is recognised as a source of law under the Constitution, although it can be overridden by the Constitution or an Act of Parliament (s. 144; Sch. 3). The details as to how customary law is to be recognised in practice are to be provided by Parliament, although to date there is no legislation in place (the Customs Recognition Act 2000 is not yet in force). The effect of this constitutional provision, together with the Land and Titles Act [Cap. 133], is that customary law forms the basis for land and forest ownership in the Solomon Islands and that it is the traditional decision-making systems and customary laws that govern customary land (REDD Desk, 2014).

The law provides that customary land is to be occupied, used and disposed of in accordance with current customary usage (s. 239(1), [Land and Titles Act](#)). Customary land in the Solomon Islands is held

communally, by a tribe, which includes a clan or line of descendants. There may often be no single landowner group. More often, there are multiple groups which hold multi-layered rights to ownership and use of land and forest (Corrin, 2012 p. 27–28). Where forest is found on customary land it is 'owned' in accordance with customary law (s. 239(1), [Land and Titles Act](#)).

There are legal restrictions under the land law which restrict how customary land can be dealt with and disposed of. Only a Solomon Islander can 'own' customary land and have interests in customary land ([Land and Titles Act](#), s. 241). Land (and interests in land) can only be transferred between Solomon Islanders according to custom, and any contract or agreement that purports to transfer land or affect an interest in customary land outside custom (e.g. to a non-Solomon Islander) can be declared void by the courts (ss. 240, 241).

Ordinarily, the granting of timber rights over customary land to a third party would also breach the prohibition on disposing of customary interest in land, but this is permitted because of a specific exemption under the [Forest Resources and Timber Utilisation Act](#) (s. 43) allowing persons other than a Solomon Islander to cut and remove any trees growing on customary land, or of any right of access to or over customary land for the purpose of cutting or removing trees growing on customary land.

The only way that land or interests in land can be transferred outside custom are through compulsory acquisition by the government for a public purpose (s. 71), or by leasing the land to the Commissioner of Lands or a Provincial Assembly (s. 60), after which it is then registered as a perpetual estate.

Disputes

Under the formal legal framework, disputes over customary land in Solomon Islands must first be referred to the local chiefs, who will determine the dispute according to *kastom*. The "kastom" system is typically equated with the "authority of chiefs" and serves as a traditional grievance and dispute resolution system (U4 Expert Answer, Transparency International). If the matter is not resolved using "traditional means", the matter can be appealed to the local court ([Local Courts Act \[Cap. 19\]](#), s. 12(1)), which can hear all civil matters "affecting or arising in connection with customary land" ([Land and Titles Act](#), s. 254). The most common grounds for appeal are allegations that the local leaders and chiefs were biased. Appeals from local courts in relation to land disputes are made to the Customary Land Appeal Court. A further avenue of appeal lies to the High Court on matters of law, but not custom.

The forestry legislation has, however, created a conflicting legal regime for determining which tribe or clan has the right to grant timber rights, and who are their authorised representatives. Under the [Forest Resources and Timber Utilisation Act](#), these issues are determined by the Customary Land Appeal Court rather than the Local Court.

Obtaining rights by private companies to harvest on Customary land

Under the Forest Resources and Timber Utilisation Act 1969 (FRTU Act), before a private company or developer can commence logging on customary land, it must enter into a logging agreement with the people who have the right to grant timber rights (usually the customary landowners) and obtain a felling licence from the Commissioner for Forests appointed by the Minister for Forests. (Hou et al 2013) - *See 1.4: Harvesting permits*. This means they must negotiate with the landowners, and make a **Standard Logging Agreement** with the landowners. The logging agreement must be in the form set out in the relevant regulations. The process involves a meeting, held by the Provincial Executive, where it is identified which of the landowners in a group holds the right to grant timber rights to the private company.

However, identifying who the owners are can be complex. The Customary Land Records Act (1994) provides for the recording of customary land boundaries and names of land-holding groups and their representatives. The purpose of this Act was to allow customary ownership of land to be recorded, so as to minimise land disputes or avoid them completely. Although this Act has not been implemented, draft regulations were developed (but were not approved by the Cabinet or gazetted) and it has been proposed that these should be trialled. As a result, a more coherent legal framework is considered necessary, to deal with how rights are established. At the moment, timber rights are established in a separate process

to land ownership, which can cause problems when rights established in one court conflicts rights established in another (REDD Desk ,2014).

The process for obtaining the Standard Logging Agreement (applicable for Customary land) can be summarised as follows:

- **Form 1 Application**

The Applicant (Licensee) must apply to the Commissioner of Forests for consent to negotiate with the Provincial Government and the customary landowners. This is the Form 1 Application.

- **Public Notice of Timber Rights Meeting**

The Provincial Government must set a date for a Timber Rights Meeting within one month of receiving the *Form 1 Application from the Applicant* (Licensee). The Provincial Government must give public notice of the Timber Rights Meeting at least one month before the meeting takes place. The Timber Rights Meeting is the only formal opportunity for the customary landowners to be consulted, so it is very important that public notice is given properly. Notice should be given effectively, so that all affected landowners are aware of the scheduling of the Timber Rights Meeting.

- **Timber Rights Meeting**

The Provincial Government must hold the Timber Rights Meeting within three months (and not earlier than two months) of receiving the Form 1 Application. It should include the following people:

- a Provincial Government member
- the Applicant (i.e. the future Licensee)
- the customary landowners
- any other community members who wish to object
- a provincial government forestry officer

At the meeting, the following issues must be discussed:

- whether the landowners wish to negotiate with the Applicant (Licensee) in the first place
- whether the people who say they can allow logging on the land are legally allowed to represent the landowners
- the types of timber rights the Applicant (Licensee) will be given
- what share of the profits the landowners will receive
- the role of the Provincial Government in the logging operation

Any agreement reached at the Timber Rights Meeting must be written down and given to the Commissioner of Forests. The agreement must include details of how the profit will be shared, and how much involvement the Provincial Government is going to have in the logging operation.

- **Form 2 Certificate of Determination**

After the meeting, the Provincial Government must make a determination and issue a *Form 2 Certificate* about what was agreed at the Timber Rights Meeting. The Form 2 Certificate will contain the names of the people who are legally allowed to represent the landowners. It must also attach a good quality map with the area to be logged clearly marked.

- **What if no agreement is reached at the Timber Rights Meeting?**

If no agreement has been reached at the Timber Rights Meeting, then the Provincial Government must recommend to the Commissioner of Forests that the application be rejected, and the application must be rejected.

- **Public Notice**

The Provincial Government must give public notice of its determination with regards to the outcomes of the Timber Rights Meeting. The notice should inform people that there is a right to appeal to the Customary Land Appeals Court and, if possible, include a map of the land to be logged.

- **Right of Appeal**

If landowners are not happy with the determination of the Provincial Government, they can appeal to the Court within one month of the date of the public notice of the determination.

- **Form 4 Standard Logging Agreement**

If there is no appeal, or the Licensee wins any appeal, the Licensee must make a *Form 4 Standard Logging Agreement* with the landowners and pay a stamp duty. The Form 4 Agreement must specify how the profits are to be shared, and how the Provincial Government is to be involved in the logging operation. The Form 4 Standard Logging Agreement must be signed by the landowners identified in Form 2.

- **Form 3 Certificate Approval**

If the Commissioner approves the Form 4 Standard Logging Agreement, he will recommend that the Provincial Government issue a *Form 3 Certificate Approval*. The Provincial Government can only issue a Form 3 Certificate Approval if it has checked that the Form 4 Standard Logging Agreement has been signed by everyone named in the Form 2 Certificate.

- **Felling licence**

Once the Applicant has gone through the proper process described above, they can apply for a Felling licence from the Commissioner of Forests. For more information on felling licence see 1.4 Harvesting permits.

Business and tax registration requirements

As per provincial laws, a company in the Solomon Islands must have a business license from each province, if it intends to operate from that province. Provincial business licenses (and associated requirements) differ from province to province.

As per the Business Name Registration Act (2014), Any person or collection of persons may conduct business for profit or otherwise under a business name, so long as the business name to be registered:

- a) is not misleading, deceptive or offensive on its face; or
- b) is not identical or almost identical to the name of another active local or foreign company, association, business group, or previously registered active business name or active reservation of name; or
- c) the business name does not seriously mislead the public about the nature of the business.

Companies or persons who intend to transact business in the Solomon Islands under a business name are required, before beginning to do business under that name, to register the name with the Registrar of Companies and obtain from the Registrar a certificate of business name registration.

All businesses and employers need to register with the Inland Revenue Division Solomon Islands (IRD). Whether the business is a for-profit or not-for-profit organisation or charitable trust, the entity may still have tax obligations and will need to register with IRD. To register a business, an IR1 Tax Registration Form is completed, after which the IRD will issue the business with a Tax Identification Number (TIN). Any organisation which employs staff – regardless of the nature of the organisation (for-profit, not-for-profit organisation) is also required to register with IRD.

Description of risk

All **alienated land** has been sold or transferred by customary land owners. In the process of land transfer, the borders have been well established. There are few current conflicts about the ownership of land (Personal communications 1).

Obtaining rights by private companies to harvest on Customary land

Disputes over 'ownership' of **customary land** and the exploitation of natural resources - such as timber - by private companies, appear to be common in Solomon Islands. It does not appear to be the case that the same issues occur with regards to individuals, households or communities harvesting on their own customary land, for which they already hold rights and for which a simple agreement with the clan, chief or tribal head may be sufficient. Note: exploitation (harvesting) of timber in these cases is, in all cases, conducted under a (Type b) Milling Licence. Personal communications 1.

In the case of private companies, issues include:

- 1: that the wrong, or not all, customary land owners are identified under the process of granting timber rights to companies
- 2: that the grievance system is inadequate to solve conflicts
- 3: the presence of corruption or conflict of interest when granting tenure rights to customary land

These are discussed in turn below:

1: Risk that the wrong, or not all, customary land owners are identified under the process of granting timber rights to companies

- A recent report by the World Bank into the main sources of grievance in Solomon Islands found that disputes over land and development-related issues are the second most common cause of disputes affecting rural communities (with the first being anti-social behaviour stemming from substance abuse). The Report also found that most existing dispute resolution mechanisms in Solomon Islands, whether customary or state-based, are struggling to deal effectively with disputes over land and natural resource, particularly where logging is involved (Allen et al, 2013).
- As there is no system which allows for customary land to be surveyed and registered, it is often very difficult for outsiders to identify land boundaries and to identify who 'owns' the customary land. Land disputes are common (REDD desk, 2014).
- Deficiencies in the FRTU Act and its administration have meant that many private companies have been granted the right to log on customary land by persons who do not lawfully represent all of the people who can [and should participate to] grant that right (Hou et al 2016).
- Customary land is communally held by groups of landowners, and the majority of landownership is unregistered (meaning that there has been no formal survey and registering of boundaries or other characteristics). Thus, it is the customary laws that distinguish the multiple levels of interests that may exist in that land (Corrin, 2012). These rights may be clear within the landowning unit and according to the customary laws, but to outsiders it may not be as clear and this often causes problems, especially when separate property rights are to be established on top of existing land ownership rights. For example, before a timber rights agreement between a logging company and customary landowners can be agreed, it needs to be established who the owners of the timber rights on customary land are, in order to transfer the use of these rights to the company during the contract period. This involves a meeting, held by the Provincial Executive, where it is identified which of the landowners in a group holds the right to grant timber rights to a company. This part of the Forest Resource and Utilisation Act [Cap 40] is widely seen as problematic. Not only has it been known to cause conflict amongst landowners and with companies, but it fundamentally undermines the collective right of customary landowners to both the land and the forest, as it allocates the customary right to control the forest resource to only a few (Corrin, 2012). Those who are identified as timber

rights owners, and therefore eligible to sign and transfer rights agreements, are also the ones likely to be paid timber royalties. In rural areas where income opportunities are scarce, timber royalties represent a significant cash income – often disproportionately to any other potential source of income. Unfair distribution of timber benefits, sometimes blamed on the unequal timber rights process, has been known to cause internal conflict and has led to increased inequality within rural landowner groups (Corrin, 2012; Wairu and Nanau, 2011).

- Land issues continue to be prominent in considerations of conflict, both at local and national levels. Because of continued strong links between people and their lands, issues of land use, migration and resettlement remain potent determinants of stability and conflict (Ministry of Development Planning and Aid Coordination 2010, p 7).
- Example from Bairo Ward (Guadalcanal province) - In 2002, very few individuals from four different tribes met and decided to grant Timber Rights (the right to extract commercial trees from the land) to a private company to log a large tract of forestland within Bairo Ward. This was done without consulting all members of their respective tribes and other tribes who own land within the proposed 'concession' area. Many communities and tribal members openly expressed opposition to the logging proposal (Wairu and Nanau, no date). "In most cases, no proper consultation processes were followed. Rather, several individual members of landowning tribes secure Timber Rights under their names and proceeded with logging to the dissatisfaction of the rest of the members of their tribes." (ibid.)
- In a report from Transparency International (2012), stakeholders in the Solomon Islands reported that vested interests by officials make it possible for some actors to influence officials into choosing a specific applicant. This can lead to allocation of logging rights to applicants who are not necessarily the best qualified [in terms of the applicant's ability to meet legal requirements, as well as their ability or willingness to consider the interests and rights of the customary holders].

2: Risk that the grievance system is inadequate to solve conflicts

- While the traditional kastom system, the first port of call to resolve land and other disputes, is generally regarded as having a legitimate mandate to resolve disputes, it is sometimes fragile and, in some places, appears to have broken down altogether, particularly if the chiefs and local leaders have themselves become entangled in logging operations. There are concerns with the proper functioning of the formal justice system also. Due to decades of neglect and under-funding since the mid-1990's, both the Local Courts and the Customary Land Appeal Courts have now almost virtually ceased to function. The Local Courts, which are supposed to deal with civil and criminal cases, are overwhelmed with the volume of customary land disputes and currently have a backlog of 350-400 land dispute cases (Allen et al, 2013: 47). The combined failure of traditional processes and the formal justice system is leaving affected citizens without remedy for grievances. In response to these problems, the Ministry of Justice and Legal Affairs has recently drafted legislation, the Tribal Dispute Resolution Panels Bill 2012, to replace the current system of dispute resolution over tribal customary land (Solomon Islands Law Reform Commission 2012:59).
- According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), "all existing institutional mechanisms, including the court system, are unable to deal effectively with logging disputation and the kastom system has been severely undermined by the entanglement of chiefs in logging activities...which undermines the legitimacy of this dispute resolution mechanism".
- Since the period of civil conflict known as the "tensions" ended in 2003, a multilateral effort delivered by the Regional Assistance Mission to Solomon Islands (RAMSI 2009) has worked to strengthen the court system and improve access to justice in an effort to restore law and order (RAMSI 2009). However, on the ground, these efforts have largely focused on supporting higher level courts in the capital, Honiara, and there has been little support for local level courts. Significant effort is still

required to ensure that effective grievance and redress mechanisms are in place at the community and local levels in order to create an effective grievance procedure and dispute resolution mechanism.

3: Risk of corruption or conflict of interest when granting tenure rights to customary land

- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.
- In the Solomon Islands, timber rights hearings have been organised by the government, but there have been cases where logging companies provide funds for these hearings because of the low financial capacity of the government. Such practices contain risk implications for the fairness of the process. The involvement of intermediaries makes it even more complicated, with some companies even hiring intermediaries to act as representatives of local communities. In such cases, vested interests may come into play, (defeating the purpose of representing communities' rights and ensuring that they receive compensation or benefits from the operations) leading to the risk of intermediaries bribing community leaders or landowners in order to accept logging operations on their land.
- Example from Temotu Province (Santa Cruz Islands) – Allegations have been raised of corruption, the bribery of public officials and the pressuring local landowners to gain harvesting access to land. Concerns have centred around alleged payments by timber companies to key officials and security personnel on Nende, other interested parties, as well as the Nende Resource Development Association (the landowners' group), "ostensibly in the hopes of galvanizing the support of officials and the permission of local landowners to log their parcels of land". A legal challenge has been submitted via the Customary Land Appeal Court (Mongabay 2017).
- According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), the Solomon Islands faces several specific governance challenges. For example, serious shortcomings in approval processes "due to geographical and resource constraints, the government cannot afford to send officials to maintain regular presence and oversight. The decision process is in the hands of modestly paid officials who are occasionally sent to remote [logging] areas and subject to little review or independent evaluation. Corruption risks are exacerbated by the fact that companies often pay public officials an "allowance" to cover travelling expenses in these areas". This can further facilitate the potential for corruption.
- REDD in Solomon Islands reports that while customary landownership should command a considerable level of bargaining power, the benefits of the logging industry has "not fallen on the majority but on a limited tribal elite, 'big men' and government officials". It describes how the current legal framework, weak enforcement and abuse of traditional governance structures have enabled logging companies to make deals with the tribal elite and 'big men' without the consent of, or subsequent benefit sharing with other rights holders or community members. This situation has contributed to a limited focus on enforcement, with limited prosecution of companies or individuals found guilty of gross misconduct.

Business and tax registration requirements

- In the case of forest-sector operators, it has been commented that many operators are not compliant with requirements to have a valid provisional business licence. Personal communications 2.
- The Solomon Islands Investment and Business Guide reports that a high proportion of business-sector operators to not possess a Tax Identification Number.
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.1.6. Risk designation and specification

Land tenure & management rights

Low risk:

- Harvesting plantations on Alienated land (Source Type 3) or on Customary land (Source Type 4), based on the consideration that the occurrence of land tenure conflicts in relation to Alienated land - or in the case of community plantations on customary land - is likely to be low.
- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (Source Type 1). These are cases where harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient.

Specified risk:

- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (Source Type 2).

Business and tax registration requirements

Specified Risk (all Source Types):

- All operators and company types for which a Provincial business licence, Business Name Registration and/or a Tax Identification Number, is a requirement.

1.1.7. Control measures and verifiers

Obtain and verify documents

- *Form 2 Certificate of Determination:* After the meeting, the Provincial Government must make a determination and issue a Form 2 Certificate about what was agreed at the Timber Rights Meeting. The Form 2 Certificate will contain the names of the people who are legally allowed to represent the landowners. It must also attach a good quality map with the area to be logged clearly marked.
- *Public Notice:* Verify that the public notice was given with the outcomes of the Timber Rights Meeting. Check if there is any appeal. If so, determine if the appeals process is concluded and the outcome (how it was resolved).
- *Form 4: Standard Logging Agreement.* The Form 4 Agreement should specify how the profits are to be shared, and how the Provincial Government is to be involved in the logging operation. The Form 4 Standard Logging Agreement must be signed by the landowners identified in Form 2.
- *Form 3 Certificate Approval:* If the Commissioner approves the Form 4 Standard Logging Agreement, he will recommend that the Provincial Government issue a Form 3 Certificate Approval. The Provincial Government can only issue a Form 3 Certificate Approval if it has checked that the Form 4 Standard Logging Agreement has been signed by everyone named in the Form 2 Certificate.
- Regarding the **business and tax registration requirements**, obtain copies of:
 - Provincial business licence.
 - Tax Identification Number
 - Certificate of Business Name Registration

Consult with stakeholders

- Consult with the Local Courts and/or Customary Land Appeal Courts any appeal. A dispute or case which has been raised in a court of law in relation to a Standard Logging Agreement (SLA) - and which is still outstanding – serves as a risk indicator of potential legal non-compliance with regards to the legal processes required to obtain a SLA and/or with regards to legal compliance in the actions of the parties involved.
- Conduct consultations with stakeholders (communities and customary owners) within the area of logging (map included in Form 2) to verify that the right customary owners (representing the community) have been included in the Standard Logging Agreement process. Questions for land owners:
 - Are the people who say they represent the customary owners really allowed to speak on your behalf?
 - Were the customary owners and other community members given proper notice of the Timber Rights Meeting before it happened?
 - Did the proper representatives of the customary owners attend the Timber Rights Meeting?
 - Was an agreement reached at the Timber Rights Meeting on all the issues?
 - Were the customary owners given proper notice of the Provincial Government's determination?

NOTE: Stakeholders which support and provide legal advice to landowners, such as Landowner's Advocacy and Legal Support Unit (LALSU) of the Public Solicitor's Office, may be valuable in supporting, or providing additional information relevant to, the consultation.

Avoid / do not buy:

- Timber from those Standard Logging Agreements (SLAs) for which an outstanding court case(s) exists, until it is resolved and the outcome has been evaluated.

1.2. Concession licenses

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

1.2.1. Applicable laws and regulations

Not applicable (N/A)

NOTE: Forest concession have been described as a contract between a forest owner and another party permitting the harvesting and/or managing of specified resources from a given forest area. Forest concessions can involve both types of contract, granting concessionaires harvesting or use rights, while requiring them to undertake forest management activities, reforestation and/or environmental protection (FAO 2011, 2001). However, when speaking of forest resource rights concessions, the usage has become somewhat more restricted so that it is more normal to talk of concessions between States (as owners of resource rights) and other actors (including individuals, communities and corporations) as users of these resources.

In the case of the Solomon Islands, the customary land owners hold the forest resource rights. For harvesting on customary land by a private company, a Form 4 Standard Logging Agreement must be in place with the customary land owners prior to issuing a felling licence.

While the term 'concession' is used in the context of the Solomon Islands and Standard Logging Agreements, this risk assessment considers that it is more appropriate to restrict the definition to States only. Standard Logging Agreements are correctly addressed in 1.1 (Land tenure and management rights).

1.2.2. Legal authority

N/A

1.2.3. Legally required documents or records

N/A

1.2.4. Sources of information

N/A

1.2.5. Risk determination

N/A

1.2.6. Risk designation and specification

N/A

1.2.7. Control measures and verifiers

N/A

1.3. Management and harvesting planning

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

1.3.1. Applicable laws and regulations

- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatulr2005987/
- Forest Resources and Timber Utilisation (Felling Licences) (Amendment) Regulations 2014. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol153638.pdf>
- The Environment Act 1998 (No. 8 of 1998). Available at: http://www.paclii.org/sb/legis/num_act/ea1998159/
- The Revised Solomon Islands Code of Logging Practice (May 2002) - <http://thereddesk.org/uuid/node/0d5ab960-8697-4d98-88d6-f4cf8baab73f>

1.3.2. Legal authority

- Ministry of Forestry & Research, Commissioner of Forests through the Operations Branch (Honiara) (to approve Annual plans)

- Provincial Forest Officers (Ministry of Forestry and Research)

1.3.3. Legally required documents or records

- Annual plans
- Written approval by Commissioner of Forests, Ministry of Forestry and Research (Honiara) for Annual plans.
- Coupe/Set-up plans (approved by Provincial Forest Officers).

NOTE: Provincial Forest Officer shall approve changes to both annual plans and coupe/set-up plans in writing.

1.3.4. Sources of information

Government sources

- Ministry of Forestry & Research: <http://mofr.gov.sb/main.do>

Non-Government sources

- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.
- www.reddplussolomonislands.gov.sb, 2015. Legal basis for the Environment Impact Assessment (EIA). Available at: <http://www.reddplussolomonislands.gov.sb/index.php/for-landowners/development-consent-process.html>.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>

1.3.5. Risk determination

Overview of Legal Requirements

As legal requirements (and conditions of the Felling Licence), two levels of harvest planning are required in the Solomon Islands:

Annual (Harvesting) Plans

These must cover at least a year of operations and are more general, in terms of their content than the Coupe/Set-up plans described below. They must be submitted annually to the Ministry of Forestry & Research in November, at the latest. Maps and land owner boundaries are required to prepare the Plan.

Included in the maps within the annual plan are: boundary of licence; land ownership boundaries; protected areas; Coupe locations and boundaries; broad road plan; major log landings; log ponds and areas previously cut.

The Annual Plans should include: an operational summary for previous years; inventory estimate of timber yields; machinery summary; staff summary, details with regards to how the needs of local villagers will be met, as well as port logging developments. Low intensity inspections are carried out (e.g. areal inspection, inspection of key points).

Coupe/Set-up Plans

These must cover a specific coupe or set-up and are required to be detailed. They must be submitted to the Provincial Forest Officer for approval, prior to the commencement of harvesting. No machinery may enter the site without such an approval. A detailed ground survey is conducted to locate excluded areas, road and log landing locations, and more detailed maps shall be developed. There shall be clear identification of coupe number and location against the Annual plan, inventory against actual ground survey and a description of how environmental requirements will be met, as well as site specific issues.

The [Revised Solomon Islands Code of Logging Practice](#) provides a helpful summary of content requirements in relation to both documents.

The requirement for an Annual plan and Coupe plan is **not applicable** for harvesting with a Milling Licence (Type b) unless the Milling licence holder intends to use extraction machinery or harvest more than 1000 m³/year. In such a case, both an Annual plan and Coupe plan would be required.

NOTE: The Licensee either needs to obtain a Development Consent from the Ministry of Environment before they can conduct any logging in the Solomon Islands (Section 19(1) of Environment Act 1998) or is exempted* from the requirement of PART III of the Environment Act 1998. An Environmental Impact Assessment is required to obtain the Development Consent (reddplussolomonislands.gov.sb, 2015). See 1.10: Environmental requirements. The EIS and Development Consent should also inform the development of the Annual and Coupe Plans.

*Harvesting with a Milling Licence (Type b) is generally considered to be exempt unless the Milling licence holder intends to use extraction machinery or harvest more than 1000 m³/year. In such a case, Development Consent would be required.

Description of Risk

- “There are many examples of logging companies and their contractors failing to comply with the relevant legislative requirements... Enforcement of the laws regulating forestry by the government is relatively limited. Consequently, landowners who want to ensure that logging companies operate legally must often seek to enforce the law themselves, either through the court system or by other means” (Hou et al 2013).
- Annual plans and Coupe plans are usually in place, although the quality of these plans may be lacking. Furthermore, control of the implementation of these plans by the responsible companies may be lacking (Personal communications 1). See also 1.8: Timber Harvesting Regulations.
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.3.6. Risk designation and specification

Not applicable:

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used and no extraction machinery is to be used and harvest volume is under 1000 m³/year (**Source Type 1**).
- Harvesting plantations on Customary land, based on the consideration that these plantations would probably be harvested with a (Type b) Milling licence (**Source Type 4**).

Specified risk:

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used and extraction machinery is to be used and/or harvest volume is 1000 m³/year or more (**Source Type 1b**).
- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (**Source Type 2**).
- Harvesting plantations on Alienated land based on consideration of the size and scale of these industrial-scale operations (**Source Type 3**).

1.3.7. Control measures and verifiers

Obtain and verify documents

- Valid and approved Annual and Coupe plans shall exist where harvesting is taking place. **NOTE: Changes to both annual plans and coupe/set-up plans shall have approved in writing by the Provincial Forest Officer.** Annual and Coupe plans shall include all legally required information, data and analysis, including:

Annual plans: maps with land owner boundaries, boundary of licence, land ownership boundaries, protected areas, coupe locations and other boundaries, road plan, log ponds and areas previously cut including an operational summary for previous years, inventory estimate of timber yields, machinery summary, staff summary, as well as including details with regards to how the needs of local villagers will be met.

Coupe plans: detailed ground survey conducted to locate excluded areas, road and log landing locations. There shall be clear identification of coupe number and location against the annual plan, inventory against actual ground survey and a description of how environmental requirements will be met, as well as site specific issues.

Carry out on-site verification

- Compare information related to, and contained within, the Annual/Coupe plans against other legally required documents and supply chain information – as well as via field-verification - to confirm their validity.
- **Harvesting inventories shall be conducted according to legal requirements** and may be verified via field-verification to confirm their validity.

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

- Forest Resources and Timber Utilisation Act 1970 [Rev. Edition 1996] [Cap 40]. Available at: http://thereddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf

- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatulr2005987/
- Forest Resources and Timber Utilisation (Felling Licences) (Amendment) Regulations 2014. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol153638.pdf>
- Forest Resources and Timber (Prescribed Forms) Regulations 1978. Available at: <https://www.ecolex.org/details/legislation/forest-resources-and-timber-utilisation-prescribed-forms-regulations-lex-faoc121261/>
- Forest Resources and Timber (Prescribed Forms) (Amendment) Regulations 2005. Available at: <https://www.ecolex.org/details/legislation/forest-resources-and-timber-utilisation-prescribed-forms-regulations-lex-faoc121261/>
- Forest Resources and Timber Utilisation (Fees) (Amendment) Regulations 2005. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol137587.pdf>
- Timber (Levy and Mill Licensing) Regulations 1970 (Cap 40). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-regulations-lex-faoc137486/?q=levy+and+mill>
- Timber (Levy and Mill Licensing) (Amendment) Regulations 2005 (L.N. No. 83 of 2005). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-amendment-regulations-ln-no-83-of-2005-lex-faoc137488/?q=levy+and+mill>
- Legal Notice 114 – Forest Resource and timber Utilisation (Timber Licensing and Tree Felling) regulation 2007. Available at: <https://www.ecolex.org/details/legislation/forest-resources-and-timber-utilisation-timber-licensing-and-tree-felling-regulations-si-no-21-of-2007-lex-faoc136340/>

1.4.2. Legal authority

- Commissioner of Forests
- Minister for Forestry, Environment and Conservation

1.4.3. Legally required documents or records

- Form 4 Standard Logging Agreement and Felling licence (from the Commissioner of Forests) with Milling Licence (Type a); or
- Milling Licence (Type b)

1.4.4. Sources of information

Non-Government sources

- AusAID (2013). Timber legality assurance in the Solomon Islands. Provisional guidelines to inform the development of timber legality assurance in the Solomon Islands. July 2013. <http://www.responsibleasia.org/wp-content/uploads/2018/01/Timber-legality-assurance-in-the-Solomon-Islands.pdf>
- Transparency International (2012). Tackling Forestry Corruption Risks in Asia Pacific.
- Wilson, C. (2013). Solomon Islanders battle illegal logging. 17. October 2013. Thomson Reuters Foundation News. Available at: <http://news.trust.org/item/20131017092907-ypt9m/>
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http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.

- PHAMA (2014). Markets Study for Solomon Islands Timber Exports. Pacific Horticultural Market Access Program (PHAMA) 20/10/2014. Available at: <http://phama.com.au/wp-content/uploads/2016/06/TR-60-SOLS18-Market-Study-for-Solomon-Islands-Timber-Exports-v1.0-FINAL.pdf>
- Pauku, R. L. (2009). *Solomon Islands Forestry Outlook Study*, FAO (Food and Agriculture Organization of the United Nations), Bangkok.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- Sasko, A. (2016). Is the forestry sector the next battleground? Solomon Star news article (30 June 2016). Available at: <http://www.solomonstarnews.com/index.php/viewpoint/private-view/item/10855-is-the-forestry-sector-the-next-battleground>
- SIBC (2017). Solomon Islands kills off new logging licenses. Solomon Islands Broadcasting Corporation (March 27, 2017). Available at: <http://www.sibconline.com.sb/solomon-islands-kills-off-new-logging-licenses/>

1.4.5. Risk determination

Overview of Legal Requirements

Under the Forest Resources and Timber Utilisation Act 1970 [Cap 40], part II, the Commissioner of Forests issues felling licences based on applications received. Licence (or permit) issue is applicable to both State-owned and Customary land.

Where the Commissioner of Forests accepts the application, terms and conditions for the harvesting will be specified in the Licence, such as provisions in case of the applicant being a foreign investor, that the Standard Logging Agreement is in place for Customary land (See 1.1: Land tenure and management rights), that harvesting will begin as specified and that the applicant has agreed to the harvesting terms in relation to (Forest Resources and Timber Utilisation Act 1970 [Cap 40] Part II, 5(2):

“(i) to comply with such logging methods, and post-logging land - use plans;

(ii) to provide such logging plans specifying such infra - structure facilities;

(iii) to undertake such re-forestation plans with respect to the growth of such forest plants, and such modes of their maintenance; and

(iv) to take such measures for the conservation of catchment areas of rivers and prevention of soil erosion and preservation of environment, Tambu places and sites of historical importance, as may be specified by the Commissioner of Forest Resources...”

For harvesting on customary land, a **Form 4 Standard Logging Agreement** with the customary land owners must be in place, prior to issuing a Felling Licence (See 1.1: Land tenure and management rights).

Timber harvesting can broadly be considered as either large (industrial scale operations) or small scale (community or village based operations) and can be conducted under a **Felling Licence** and/or a **Milling Licence** (AusAID 2013):

Felling licences

Felling Licences can be issued for harvesting (and export) of logs. However, if further processing is to be conducted an additional **Milling Licence (Type a)** shall be issued. The Felling Licence is typically obtained by commercial scale logging operations, which are required to submit Annual (harvest) plans and Coupe plans before harvesting can begin (See 1.3: Land tenure and management rights).

A felling licence is valid for a period of 5 years (FTRU (Licences) 2005. Part 4. 10(a)

Often, the Licensee will make a *Technology and Management Agreement* with a Logging Company. This means the Logging Company works for the Licensee. The Logging Company logs the trees and sells the timber for the Licensee.

Milling Licence (Type b)

A Milling Licence (Type b) permits both felling and further processing, as per (Clause 2(1) (b) of the timber (Levy and Mill Licensing) Regulations. This Licence type is typically issued to landowners who are harvesting and milling timber on their own customary land. If Milling licence holders intend to use extraction machinery or harvest more than 1000 m³/year, an Annual (harvest) plan and Coupe plan is required (See 1.3: Land tenure and management rights).

The Commissioner of Forests can at any time alter or amend a licence to include or exclude any land contiguous or island adjacent to any public land or land leased by or on behalf of the Government or land in respect of which the Government has a profit to fell and take away trees comprised in the licence.

Since 1 January 2017 only members of the Solomon Forest Association (SFA) are allowed to be issued with a Felling Licence. This requirement has been implemented under the Forest Resource and timber Utilisation (Timber Licensing and Tree Felling) regulations 2007, or 'Legal Notice 114' as it is also known.

Description of Risk

There is a risk of harvesting occurring without the necessary Felling/Milling Licenses:

- In the case of smallholders, it is common practice for (Type b) Milling licenses not to be applied for, or for logging to be conducted before obtaining licenses. This is due to various factors, including the lack of capacity in government authorities, corresponding delays in issuing licenses, as well as the financial and logistical barriers to applying for and obtaining the licenses (Personal Communications 1 & 2).
- A risk point exists with regards to felling without any licence on uninhabited islands (Personal Communications 1 & 2).
- A report by (PHAMA 2014) highlights a key challenge in the supply chain of Solomon Islands forest industry, as perceived by exporters, being that much timber (particularly deriving from small producers) does not have a Felling and/or Milling licence. This challenge is corroborated by other studies (FAO 2009).
- There is a risk of duplication of licences (whereby licences from one area are used to cover harvesting in another area) or use of invalid (out of date or cancelled) licences (AusAID 2013).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- Implementation has been slow with regards to the Forest Resource and timber Utilisation (Timber Licensing and Tree Felling) regulations 2007 - Legal Notice 114. In 2017, the Solomon Islands government has committed to the implementation of the regulation (Solomon Star, 2016 & Solomon Islands Broadcasting Corporation) that requires that all organisations with a felling licence are also members of the SFA. Until this point, felling licences were also being issued to non-members. It remains to be seen if the regulation will now be implemented in full.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.4.6. Risk designation and specification

Specified risk (all Source Types)

1.4.7. Control measures and verifiers

Felling licences & (Type a and b) Milling licences

Obtain and verify documents

- Valid Felling and/or Milling Licences (as applicable) shall exist, where harvesting is taking place.
- Licences shall include all legally required information and data, including but not limited to:
 - Dates of issue and expiry, within which harvesting may take place.
 - Valid maps describing the boundary (harvesting limits) of the licence, or area from which unmilled timber may be drawn (Milling licences),
 - Quantities permitted to be harvested and/or milled.
 - Land ownership boundaries, protected areas and other boundaries.

Consult with stakeholders

- Consultation with the Commissioner of Forests shall confirm:
 - that the License is valid and has not been cancelled or suspended.
 - that the Felling licence has been issued in compliance, and in conjunction, with the process for a Standard Logging Agreement.

Verify licence validity

- Compare information related to, and contained within, the Licences against other legally required documents and supply chain information - as well as via field-verification - to confirm their validity.

Solomon Forest Association membership (applicable to Felling Licences only)

Obtain and verify documents

- Obtain and verify a certificate (or other document) which confirms that the Licensee is a member of the Solomon Forest Association (SFA).

Consult with stakeholders

- Consultation with the SFA shall confirm that the Licensee is in good standing with SFA.

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

- Forest Resources and Timber Utilisation Act 1970 [Rev. Edition 1996] [Cap 40]. Available at: http://theredddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- Forest Resources and Timber Utilisation (Fees) (Amendment) Regulations 2005. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol137587.pdf>
- Forest Resources and Timber (Prescribed Forms) Regulations 1978. Available at: <https://www.ecolex.org/details/legislation/forest-resources-and-timber-utilisation-prescribed-forms-regulations-lex-faoc121261/>
- Forest Resources and Timber (Prescribed Forms) (Amendment) Regulations 2005. Available at: <https://www.ecolex.org/details/legislation/forest-resources-and-timber-utilisation-prescribed-forms-regulations-lex-faoc121261/>

1.5.2. Legal authority

- The Ministry of Forests and Research

1.5.3. Legally required documents or records

- Form 4 Standard Logging Agreement

1.5.4. Sources of information

Government sources

- Solomon Islands Government, 2005, Special audit report into the financial affairs of the Department of Forestry, Environment and Conservation, National Parliament Paper No. 8 of 2005, Office of the Auditor General, Honiara.
- MECM (2008). Solomon Islands State of Environment Report (2008). Ministry of Environment Conservation and Meteorology. Pacific Horizon Consultancy Group, Honiara, Solomon Islands. Available at: <http://www.sids2014.org/content/documents/180SOLOMONISLANDS-STATEofENVIRONMENT2008.pdf>

4.1.2 Natural Resource Extraction

Table 4.1 Solomon Islands production by major commodity 1997-2007

Non-Government sources

- Allen, M., Dinnen, S., Evans, D., and Monson, R. (2013). [Justice Delivered Locally: Systems, Challenges, and Innovations in Solomon Islands](#), Justice for the Poor Research Report, World Bank.

- Transparency International (2012). Tackling Forestry Corruption Risks in Asia Pacific, Forest Governance Integrity Programme, Berlin, Germany. Available: http://www.transparency.org/whatwedo/pub/tackling_forestry_corruption_risks_in_asia_pacific, accessed 16 February 2017.
- Allen, M., Dinnen, S., Evans, D., and Monson, R. (2013). [Justice Delivered Locally: Systems, Challenges, and Innovations in Solomon Islands](#), Justice for the Poor Research Report, World Bank.
- Transparency International Corruption Perceptions Index 2016 - Solomon Islands. Available: <http://www.transparency.org/country/SLB>, accessed 16 February 2017.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&qid=24278&Itemid=53

1.5.5. Risk determination

Overview of Legal Requirements

According to the Forest Resources and Timber Utilisation Act [Cap. 40], part V (19) The Minister may by order (b) impose different levies in respect of different licensees, species of trees, products, grades, places or other circumstances; and (c) provide for the levy to be assessed on the quantity or value of timber or milled timber or timber products, or otherwise howsoever.

However, the minister has not imposed such fees, and the only royalties to be paid by private companies harvesting on customary land is to the Customary land owners. Customary land owners are then responsible for the distribution and management of logging revenues at the local level (Allen et al, 2013: XI). Where harvesting is conducted by a private company, external to the resource owner, the amount to be paid in royalty to the owner is fixed in the Standard Logging Agreement signed between the resource owners and the company*. This figure is often around 50 Solomon dollars/m³ (Personal communications 1).

** In some case, agreements on royalties may be contained within a contractual requirement, rather than within the Standard Logging Agreement.*

Description of Risk

There is a risk that royalties are not paid, or are not paid to all landowners with claims to the land:

- The reality of customary land owners managing their logging revenues has its challenges. The World Bank has observed that communities where logging has occurred have a particularly high level of disputes, and that these can be frequently be traced back to the payment and distribution of royalties paid by the private company to customary owners, rents, or access fees. Benefits are often captured by a small number of elite individuals, typically senior males, who may assert tenuous claims to land and forest ownership (Allen et al, 2013: XI).
- Royalties are also an issue in the Solomon Islands, where their payment by the logging company is not always guaranteed. The Audit Report of 2005 pointed out that royalties had sometimes not been paid, and that problems in the accounting of royalty payments weakened the process (Solomon Islands Government 2005 in Transparency International 2012).
- Responsibilities for overseeing the revenues generated by the forest sector are somewhat unclear. In the Solomon Islands, there are four types of fees owed by logging operators:
 - Export duty*: see 1.19: Custom regulations. *Applies to logs and sawn-timber, but sawn-timber rate charged at a significantly lower rate.

- Royalties to landowners: see this indicator
- Provincial business fees: see 1.1: Land tenure and management rights
- Corporate taxes: see 1.7: Income & Profit taxes

These are collected at different points of the process, leading to a fragmentation of the system and a difficulty to hold institutions to account. Human resource shortages within the Ministry of Finance and Treasury and the low monitoring capacity further fuel the problem (Transparency International 2012).

- *Solomon Islands State of Environment Report (2008)*, section 4.1.2: "Whilst some land owners have received royalty incomes from forestry, corruption and mismanagement, coupled with the inability of successive governments to redistribute economic benefits through the provision of services to rural people, means that the majority of people have received little if any benefit".
- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- Without clear demarcation of boundaries or quotas, reports exist of companies cutting outside their allocated areas and harvesting beyond their quotas (as described within a harvesting licence or SLA) without communities being aware of these. Equally communities are often poorly informed of real levels of logging revenue with companies providing lower figures and thus distributing small royalties. This point is exacerbated by information discrepancies within landowner groups allowing for key individuals or groups to gain disproportionately to the majority (UN-REDD Programme, 2013).

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.5.6. Risk designation and specification

Low risk:

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (**Source Type 1**). These are cases where harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient.
- Harvesting plantations on Customary land (**Source Type 4**), based on the consideration that these plantations would probably be harvested with a (Type b) Milling licence.

Specified risk:

- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (**Source Type 2**).
- Harvesting plantations on Alienated land (**Source Type 3**), in the case of any fees paid based on the consideration that (if applicable) the payment of any royalties is likely to be better-regulated, given the size and scale of the industrial plantations.
-

1.5.7. Control measures and verifiers

Obtain and verify documents

- Receipts shall exist for payments of harvesting-related royalties (by private companies harvesting on customary land to the Customary land owners).
- Comparison of payment receipts with other sales, transport and export documents – including information such as volumes, species and qualities - shall confirm that the royalties paid to Customary owners are correct and in compliance with agreement between the parties, as per the Standard Logging Agreement.

Consult with stakeholders

- Consultation with Customary owners with whom the Standard Logging Agreement was signed shall confirm that the company is in good standing and that payments have been correctly and rightfully made as agreed.

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

Not Applicable.

Timber products are not eligible for VAT or other sales taxes. Timber and wood-products are not included in the 'Schedule' of prescribed goods and services eligible for VAT, as per the Sales Tax Act (2004) available at: http://www.pacii.org/sb/legis/consol_act/sta114/

1.6.2. Legal authority

N/A

1.6.3. Legally required documents or records

N/A

1.6.4. Sources of information

N/A

1.6.5. Risk determination

N/A

1.6.6. Risk designation and specification

N/A

1.6.7. Control measures and verifiers

N/A

1.7. Income and profit taxes

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

1.7.1. Applicable laws and regulations

- Income Tax Act (Cap 123). Available at: <http://www.ird.gov.sb/Resource.aspx?ID=107>

1.7.2. Legal authority

- Inland Revenue Division Solomon Islands (Ministry of Finance and Treasury)

1.7.3. Legally required documents or records

- Income tax return

1.7.4. Sources of information

Government sources

- Inland Revenue Division Solomon Islands website (2017). Available at: <http://www.ird.gov.sb/Article.aspx?ID=604>

Non-Government sources

- Deloitte (2017). International Tax. Solomon Islands Highlights 2017. Available at: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dtli-tax-solomonislandshighlights-2017.pdf>
- Transparency International (2012). Tackling Forestry Corruption Risks in Asia Pacific, Forest Governance Integrity Programme, Berlin, Germany.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>

1.7.5. Risk determination

Overview of Legal Requirements

Businesses operating within the Solomon Islands are liable to pay income tax under the Income Tax Act. A company or partnership must lodge an income tax return showing all the business profits or losses. In the case of a partnership it must also show how the profits or losses are distributed amongst the partners. In the case of a company it must also show any dividends paid. Resident companies pay tax at the rate of 30% on profits. Non-resident companies pay tax at the rate of 35% on profits (www.ird.gov.sb 2017).

A Sole Trader or Partner must lodge an income tax return showing the business profits or losses as well as any other income that the individual earned outside of the business (www.ird.gov.sb 2017).

Description of Risk

There is a risk that income taxes are not paid in accordance with the law.

- Responsibilities for overseeing the revenues generated by the forest sector are somewhat unclear. In the Solomon Islands, there are four types of fees owed by logging operators:
 - Export duty*: see 1.19: Custom regulations. *Applies to logs and sawn-timber, but sawn-timber rate charged at a significantly lower rate.

- Royalties to landowners: see 1.5: Payment of royalties and harvesting fees
- Provincial business fees: see 1.1: Land tenure and management rights
- Corporate taxes: see this indicator.

These are collected at different points of the process, leading to a fragmentation of the system and a difficulty to hold institutions to account. Human resources shortages within the Ministry of Finance and Treasury and the low monitoring capacity further fuel the problem (Transparency International 2012).

- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.7.6. Risk designation and specification

Specified risk (all Source Types)

1.7.7. Control measures and verifiers

Obtain and verify documents

- Where the entity (company, partnership or sole trader) conducting logging operations within the Solomon Islands is liable to pay income tax:
 - An income tax return shall have been submitted by the organisation for the last complete reporting period.
 - Receipts shall exist for payments of income tax.

Consult with stakeholders

- Consultation with the Inland Revenue Division (Solomon Islands) shall confirm that the entity is in good standing with the Inland Revenue Division and that all required income tax has been paid (or that an approved payment plan is in force and is being adhered to).

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

- Forest Resources and Timber Utilisation Act [Cap. 40]. Available at: http://theredddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- The Forest Resources And Timber Utilisation (Fees) (Amendment) Regulations 2005. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol137587.pdf>
- Timber (Levy and Mill Licensing) (Amendment) Regulations 2005 (L.N. No. 83 of 2005). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-amendment-regulations-in-no-83-of-2005-lex-faoc137488/?q=levy+and+mill>
- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatur2005987/
- The Revised Solomon Islands Code of Logging Practice (May 2002). Available at: http://theredddesk.org/sites/default/files/code_of_logging_practice.pdf

1.8.2. Legal authority

- The Ministry of Forests and Research (MoFR - formally known as the Ministry of Forestry Environment and Conservation)
- Commissioner of Forests

1.8.3. Legally required documents or records

- Felling License or Milling License

1.8.4. Sources of Information

Government sources

- MDPAC (2010). *Solomon Islands Country Report for the 5-Year Review of the Mauritius Strategy for Further Implementation of the Barbados Programme of Action for Sustainable Development of SIDS (MSI+5)*. Ministry of Development Planning and Aid Coordination. Authors P. Roughan and S. Wara. Available: <https://sustainabledevelopment.un.org/content/documents/1310Solomon-Islands-MSI-NAR2010.pdf>, accessed 16 February 2017
- Climate Change Division Ministry of Environment, Conservation and Meteorology (2009). *National Circumstances Report 2009*. Honiara.

Non-Government sources

- Transparency International (2012). *Tackling Forestry Corruption Risks in Asia Pacific, Forest Governance Integrity Programme*, Berlin, Germany. Available:

http://www.transparency.org/whatwedo/pub/tackling_forestry_corruption_risks_in_asia_pacific, accessed 16 February 2017.

- Wilson, C. 2013. Solomon Islanders battle illegal logging. 17. October 2013. Thomson Reuters Foundation News. Available at: <http://news.trust.org/item/20131017092907-ypt9m/>
- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.
- Transparency International Corruption Perceptions Index 2016 - Solomon Islands. Available: <http://www.transparency.org/country/SLB>, accessed 16 February 2017.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption. M. Chene, Transparency International (2017). Available at: https://www.transparency.org/files/content/corruptionqas/Country_profile_Solomon_Islands_2017.pdf
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=2427&Itemid=53

1.8.5. Risk determination

Overview of Legal Requirements

A primary focus of the national forest policy of the Solomon Islands is to protect the ecological and cultural functions of the forest, as well as productivity in terms of wood and water, by excluding high impact uses where these causes unacceptable long-term damage to the forests. This is envisioned to be implemented through enforcement of ecologically-based standards for commercial-scale logging operations and observation of the international, multilateral and bilateral treaties and commitments signed by the Solomon Island Government (Climate Change Division Ministry of Environment, Conservation and Meteorology 2009, p 19 in MDPAC 2010, p 35).

Provisions and conditions in relation to timber harvesting can be found in several regulations, and their associated documents (see summary below), and all can be considered legally enforceable.

The Solomon Islands has had a logging code of practice since 1996, revised in 2002: [The Revised Solomon Islands Code of Logging Practice \(May 2002\)](#) (Code). The code focuses on 13 key standards that have been identified as highest priority in relation to selective logging, including:

- Protected and Exclusion Areas,
- Location of roads and landings,
- Maximum width of roadline clearings 40 Meters,
- The three Rules of Roding (Drainage, drainage + drainage),
- Landing site and number,
- No felling or skidding within Buffers,
- temporary crossings,
- Blade Raised when Skidding,

- Skid Track Width Less than 5,5 Meters,
- Maximise Log Value and Avoid Wastage of Timber,
- Weather Restrictions Skid Tracks,
- Decommissioning Skid Trails,
- Decommissioning Landings and Log Ponds.

For small scale loggers harvesting under a Milling license (Type b), the provisions of the Code of Logging Practice are largely not applicable. Applicable requirements are restricted to limits on harvesting in protected areas, such as tambu places, conservation areas and in forests 400 m above sea level.

For entities harvesting under a Milling license (Type b), which fell 1000 m³/year or more or which intend to use extraction machinery, the Timber (Levy and Mill Licensing) (Amendment) Regulations 2005 applies. This regulation excludes areas where logging is not allowed, set requirements, e.g. for road building, skidding practices, log landing construction, operating a log pond, felling operations, and determines weather conditions for ceasing harvesting activities. The Code of Logging Practice therefore applies in this case.

Monitoring at forest level is required by the Code to be performed internally by companies, and it describes that auditing will be carried out regularly by Ministry of Forestry & Research officers, using the auditing form provided in the Code of Logging Practices itself.

Summary of legally enforceable provisions

The following presents a summary of the location of the legally enforceable provisions and conditions in relation to harvesting on Customary land, with which different licence holders would be expected to comply:

For **(Type b) Milling licenses**, harvesting conditions and requirements include those outlined in:

- Milling licence (Type b) only.

For **(Type b) Milling Licences**, where licence holders use extraction machinery or harvest more than 1000 m³/year, harvesting conditions and requirements include those outlined in:

- Milling licence (Type b)
- Approved Annual Plans & Coupe Plans
- Code of Logging Practice
- EIA (See 1.10: Environmental Requirements)

For **Felling licences, with or without (Type a) Milling Licences**, harvesting conditions and requirements include those outlined in:

- Standard Logging Agreement (conditions possibly imposed by the Customary owners, or excluded on "grounds of environmental or social values" as per FRTU Act, part III, section 8(5))
- Felling licence
- Milling licence (Type a)
- Approved Annual Plans & Coupe Plans
- Code of Logging Practice
- EIA (See 1.10: Environmental Requirements)

Description of Risk

There is a risk of non-compliance with the timber harvesting regulations, in large part due to poor monitoring and enforcement, and/or bribery where non-conformances are detected:

- Standards do exist, but bribery has been reported by stakeholders as a way of getting some officials to ignore the breaches of the Code of Logging Practice and other requirements. Transparency International, 2012 and Personal Communications 1 & 2.
- Annual plans and Coupe plans are usually in place, although the quality of these plans may be lacking. Furthermore, control of the implementation of these plans by the responsible companies may be lacking (Personal communications 1).
- Impacts from logging have largely taken local people by surprise, as they watch the companies ignore most of the legally required practices. In response to this, angry landowners have burnt company bulldozers in several cases (such as on Pavuvu Island in July 1995), seized company chainsaws, and in January 1997 burnt the offices of Golden Springs International.
- "Kelwin Roy, principal forester at the Ministry of Forestry in Munda, Western Province, recounted that even though companies have to submit detailed logging plans for approval, there are many cases of them breaching license conditions and felling trees beyond their entitlement. 'We do monitor and audit logging companies, but we have limited vehicles, resources and manpower' he said" (Wilson 2013).
- "...there is still limited government regulation of logging in Solomon Islands. The government's enforcement of forest laws continues to be hampered by a lack of resources and also, arguably, by a lack of political will." (Hou et al 2013).
- "There are many examples of logging companies and their contractors failing to comply with the relevant legislative requirements... Enforcement of the laws regulating forestry by the government is relatively limited. Consequently, landowners who want to ensure that logging companies operate legally must often seek to enforce the law themselves, either through the court system or by other means" (Hou et al 2013).
- According to Transparency International (2012), there is an urgent need to increase human resources and operational budgets as a means of effectively conducting monitoring of different stages of forestry operations in the Solomon Islands, including: conducting timber inventories, declaration of volumes and carrying out enforcement and compliance.
- According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), logging companies typically ignore the code of practice, with the Ministry of Forestry largely unable to enforce and penalise environmental crimes. Forest authorities lack the financial and human resources to conduct effective monitoring. Furthermore, remote areas are difficult to access due to a lack of transportation and are neglected by the monitoring authorities.
- Low capacity-levels to ensure effective monitoring and enforcement are frequently described in literature: "The current level of licenses means that there are more licenses in operation than staff within the [Ministry of Forests and Research]. Such discrepancies between the capacity of the ministry and the industry provides an indication of some of the base causes of weak enforcement". The challenge is not only limited to the MoFR but also to other key ministries" such as the Ministry of Environment Climate Change, Disaster Management and Meteorology (UN-REDD Programme, 2013).
- Without clear demarcation of boundaries or quotas, reports exist of companies cutting outside their allocated areas and harvesting beyond their quotas (as described within a harvesting licence or SLA) without communities being aware of these (UN-REDD Programme, 2013).
- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.

- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.8.6. Risk designation and specification

Specified risk (all Source Types)

1.8.7. Control measures and verifiers

Conduct field verification:

- For all **Milling Licences (Type b)**, field verification of the harvest area shall confirm:
 - harvesting takes place in accordance with the applicable provisions set out in the Milling (Type b) licence. This will include verifying that the permitted harvest quantity has not been exceeded and harvesting has only taken place within licensed areas, in addition to restrictions on harvesting in certain areas and in forests 400 m above sea level.
- For **Milling Licences (Type b)**, where licence holders use extraction machinery or harvest more than 1000 m³/year (**Source Type 1b**), field verification of the harvest area shall confirm:
 - harvesting takes place in accordance with the Code of Logging Practice.
 - the implementation of the approved Annual Plans & Coupe plans is as described. This will require the following to be obtained:
 - Annual Plan (approval by Forest Department, Honiara)
 - Coupe/Set-up plan (approved by Provincial Forest Officer)
 - Written approvals by Provincial FD Officer of any changes to either the Annual Plan or Coupe Plan.
- For **Felling licences** (with or without (Type a) Milling Licence), field verification of the harvest area shall confirm:
 - harvesting takes place in accordance with the applicable regulations and provisions set out in the Standard Logging Agreement and Felling/Milling (Type a) licences. This will include verifying that the permitted harvest quantity (number of stems/volume) has not been exceeded and harvesting has only taken place within licensed areas.
 - harvesting takes place in accordance with the Code of Logging Practice.
 - the implementation of the approved Annual Plans & Coupe plans is as described. This will require the following to be obtained:
 - Annual Plan (approval by Forest Department, Honiara)
 - Coupe/Set-up plan (approved by Provincial Forest Officer)
 - Written approvals by Provincial FD Officer of any changes to either the Annual Plan or Coupe Plan.

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

- Protected Areas Act 2010. Available at: <https://www.ecolex.org/details/legislation/protected-areas-act-2010-act-no-4-of-2010-lex-faoc094186/>
- Protected Areas Regulations 2012 (L.N. No. 12 of 2012). Available at: http://thereddesk.org/sites/default/files/protected_areas_regulations_2012.pdf
- Forest Resources and Timber Utilisation Act [Cap. 40]. Available at: http://thereddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- Forest Resources and Timber Utilisation (Protected Species) (Amendment) Regulations 2012. Legal Notice 133. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol148110.pdf>
- Forest Resources and Timber Utilisation (Protected Species) Regulations 2012. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol148111.pdf>
- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatulr2005987/
- Timber (Levy and Mill Licensing) (Amendment) Regulations 2005 (L.N. No. 83 of 2005). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-amendment-regulations-ln-no-83-of-2005-lex-faoc137488/?q=levy+and+mill>
- Wildlife Protection and Management Act 1998. Available at: <https://www.ecolex.org/details/legislation/wildlife-protection-and-management-act-1998-act-no-10-of-1998-lex-faoc060396/>
- Wildlife Protection and Management Regulations 2008 (L.N. No. 78 of 2008). Available at: <https://www.ecolex.org/details/legislation/wildlife-protection-and-management-regulations-2008-ln-no-78-of-2008-lex-faoc148447/>
- Wildlife Protection and Management (Amendment) Act 2017. Available at: [http://www.parliament.gov.sb/files/legislation/Acts/2017/Wildlife%20Protection%20and%20Management%20\(Amendment\)%20Act%202017.pdf](http://www.parliament.gov.sb/files/legislation/Acts/2017/Wildlife%20Protection%20and%20Management%20(Amendment)%20Act%202017.pdf)

1.9.2. Legal authority

- The Ministry of Environment, Conservation, Climate Change and Disaster Management

1.9.3. Legally required documents or records

- Permit to harvest in a protected area (such as an area above 400m) by the Commissioner of Forests.

1.9.4. Sources of Information

Non-Government sources

- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.

- World Bank Worldwide Governance Indicators:
<http://info.worldbank.org/governance/wgi/index.aspx#home>
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at:
http://www.unredd.net/index.php?option=com_docman&task=cat_view&qid=2427&Itemid=53
- The REDD Desk (2018). Solomon Islands. [Online]. Available at:
<http://theredddesk.org/countries/solomon-islands/legal-frameworks>

1.9.5. Risk determination

Overview of Legal Requirements

Solomon Islands' system of protected areas

Under the Protected Areas Act 2010, Protected Areas Regulation 2012 as well as the Forest Resources and Timber Utilisation Act, the Solomon Islands has a system of protected areas:

- Declaration of a protected area under the Protected Areas Act 2010: Note, the Act does not in all cases prohibit the grant of timber or mining rights over declared areas:
 - Nature reserves,
 - National Parks,
 - Natural monuments,
 - Resource management areas (harvesting or extraction of natural resources is subject to continued assessment of health and state of stocks or harvestable natural resources).
 - Closed areas (All form of human exploitation and access to natural resources should not be permitted while the area is undergoing or subject to natural process of regeneration and rehabilitation.
- Declaration of conservation areas at province level: Some provinces have passed ordinances which allow for areas to be set aside for conservation. However, this can be a complex process and the delineation of boundaries is often a contentious matter. An example of such an ordinance is the Moli Wards Chiefs Council Ordinance 2010 (see: The REDD Desk, 2018)
- Declaration of a sanctuary: The Minister can declare any land, including customary land, to be a sanctuary under the Forest Resources and Timber Utilisation Act, from which timber must not be removed (s. 44(1)(s); Sch. 2). The land must first be compulsorily acquired, from customary landowners.
- Declaration of a Forest Reserve: The Minister can declare a forest to be a forest reserve under the Forest Resource and Timber Utilisation Act, but only for the limited purpose of protecting water resources (ss. 24 - 28).
- Solomon Islands currently has a large number of small community-level protected areas, covering approximately 5% of the land area. However, the legal protection enjoyed by most of these areas is often weak as they are established under provincial ordinances, customary law or by conservation agreements (contract), and do not always give legal protection against incompatible land uses such as logging.

Protected Areas Act 2010

The Protected Areas Act 2010 came into force on 10 February 2012. It addresses the lack of a national legal mechanism capable of protecting land areas from incompatible uses. Under the Act, the Minister can declare an area to be a protected area if, among other things, it "possesses significant ... biological resources" which have "actual or potential use or value for humanity". (s. 2, 10; Protected Area

Regulations 2012, cll. 8 and 9). Landowners or a non-government organisation can request that an area be declared as a protected area (s. 10).

The consent of customary landowners and other groups or persons with rights or interests in the area is required before a declaration can be made (s. 10(6)). The Act requires that declared areas be managed by a management committee, which may include 'owners' of the protected areas, and also requires that areas be managed according to a management plan (s. 12(1)). The Minister can amend, vary or revoke a declaration, which can be done on the request of the landowner or management committee (s. 10(8)).

While land boundaries must be accurately mapped before an area can be declared protected, a declaration will not change the ownership or nature of customary land tenure unless the customary owners choose to convert their title to a registered title (Regulations cl. 45). Boundary disputes between different customary owners that share a common boundary with that of a protected area must be settled by open dialogue and negotiation according to the processes set out under the Customary Land Records Act (Regulations, cl. 17).

NOTE: A few applications for declarations of protected areas have now been lodged, but these cannot currently be processed as the Advisory Committee which is required to assess the applications and implement the Act has not yet been established (s. 6).

Logging and mining prohibited in protected areas

Commercial logging and mining are prohibited within a protected area and within one kilometre of the boundary of the area (Code of logging practices 2002). The penalty for contravening these provisions is 100,000 penalty units (i.e. Solomon Island \$100,000, or approximately US \$14,000).

World Heritage properties

Under the Protected Area Regulations 2012, any area within Solomon Islands that is listed under the World Heritage Convention as a world heritage site must be declared by the Minister to be a protected area (s. 10(c); Protected Areas Regulations 2012, cl. 10). To date, only one site in Solomon Islands, East Rennell in Renbel Province, has been declared as a World Heritage site, although it remains unprotected unless and until it is declared as a protected area under the Protected Areas Act 2010.

Revised Solomon Islands Code of Logging Practice (May 2002)

Requirements set for felling licences in the Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005, as well as the Timber (Levy and Mill Licensing) (Amendment) Regulations 2005, have been elaborated in the Revised Solomon Islands Code of Logging Practice (May 2002). The Code intends to protect environmentally sensitive areas by prohibiting logging in *Protected areas* (including areas that exceed 400 metres above sea level) and requiring a harvesting buffer-zone around *Excluded areas* (including cultural areas, villages and watercourses).

The Code allows the Commissioner of Forests to issue discretionary permits to allow logging above 400 metres (Code, Key Standard No. 1, p. 3).

Protected tree species

According to the Forest Resources and Timber Utilisation Act [Cap 40] (Schedule 1) [Section 44 (1) (r)] protected trees in Solomon Island are:

- Rosewood (*Pterocarpus indicus*),
- Ironwood, Kwila (*Intsia bijuga*);
- Ebony (*Diospyros spp.*);
- Kauri (*Agathis macrophylla*);
- Ngali Nut (*Canarium indicum*);
- all edible fruit trees; and

- any other timber tree as the Minister may, by order, declares to be a protected tree in this behalf, for the conservation of timber producing trees in Solomon Islands.

According to the Forest Resources and Timber Utilisation (Protected Species) Regulation 2012, the following species are protected and shall not be felled or removed from any land for purposes of sale of export, except for scientific research purposes as authorised under the Wildlife Protection and Management Act 1998:

- Mangrove (*Rhizophora* spp.) and all other mangrove species
- Ebony (*Diospyros* spp.)
- Ngali Nut (*Canarium indicum*).
- Tubi (*Xanthostemon*)

Since 1990, the felling and removal of mangroves from any land for commercial use without a licence has been prohibited under the Forest Resources and Timber Utilisation (Protected Species) Regulations 1990 (FAO 2010:18).

Description of Risk

The following references highlight a generalised compliance environment in which risks exist with regards to harvesting in protected areas or in relation to protected species:

- “Today, there is still limited government regulation of logging in Solomon Islands. The government’s enforcement of forest laws continues to be hampered by a lack of resources and also, arguably, by a lack of political will.” (Hou et al 2013).
- Low capacity-levels to ensure effective monitoring and enforcement are frequently described in literature: “The current level of licenses means that there are more licenses in operation than staff within the [Ministry of Forests and Research]. Such discrepancies between the capacity of the ministry and the industry provides an indication of some of the base causes of weak enforcement”. The challenge is not only limited to the MoFR but also to other key ministries” such as the Ministry of Environment Climate Change, Disaster Management and Meteorology (UN-REDD Programme, 2013).
- The lack of an approved EIA (see 1.10 Environmental requirements) and the lack of approvals from the Commissioner of Forests for logging operations above 400 m is common place among harvest operators. Personal Communications 1 & 2.
- “There are many examples of logging companies and their contractors failing to comply with the relevant legislative requirements... Enforcement of the laws regulating forestry by the government is relatively limited. Consequently, landowners who want to ensure that logging companies operate legally must often seek to enforce the law themselves, either through the court system or by other means” (Hou et al 2013).
- An example is the case of KIBCA v Success Company Limited in 2010 - Success had not conducted an EIA and had not obtained any Development Consent under the Environment Act. KIBCA also became aware that no approval had been granted by the Commissioner for Forests for logging above 400 metres ASL, as required by the FRTU Act. The court’s order restraining Success and its contractor Xiang Lin from logging above 400 metres above sea level without the approval of the Commissioner for Forests was also the first of its kind in Solomon Islands, as this issue had not been raised in court before (Hou et al 2013).
- Overharvesting of mangroves for firewood, housing construction and boats, as well as use of mangrove areas as loading areas or “log ponds” for logging activity is one of the threats to mangrove ecosystems in Solomon Islands (MESCAL 2013:13).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one

country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption

- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.9.6. Risk designation and specification

Specified risk (all Source Types)

1.9.7. Control measures and verifiers

Regarding the risks related to illegal harvesting in protected areas

Obtain and verify documents

- SLAs, Felling/Milling Licences, Annual Plans and Coupe plans, that properly include and demarcate relevant protected areas, as applicable, including: protected areas (under the Protected Areas Act 2019), conservation area, sanctuaries, forest reserves and community-level protected areas).
- Any permission for harvesting above 400m (where applicable) as provided by the Commissioner of Forests.

Consult with stakeholders

- The Ministry of Environment, Conservation, Climate Change and Disaster Management shall confirm permission for harvesting above 400m is valid and related to the forest management unit (FMU) in question.

On-site verification

- Where protected areas are present in the SLAs, Felling/Milling Licences, Annual Plans and Coupe plans, field verification shall confirm these are being respected during harvesting.
- Onsite verification of the harvesting site shall confirm that harvesting takes place in accordance with the Code of Logging Practice, especially with regards to the prohibition of logging in *Protected areas* (including areas that exceed 400 metres above sea level), and the requirement for harvesting buffer-zones around *Excluded areas* (including cultural areas, villages and watercourses).
- Onsite verification of the harvesting site shall confirm Any permission for harvesting above 400m (where applicable) as provided by the Commissioner of Forests.

Regarding the risks related to protected tree species

Obtain and verify documents

- Obtain and verify any permission for harvesting of protected species (e.g. for scientific or other purposes).
- Compare information related to, or contained within, the permission against other legally required documents and supply chain information – as well as via field-verification - to confirm their validity.

Consult with stakeholders

- Consultation with the Commissioner of Forests and/or Ministry of Environment, Conservation, Climate Change and Disaster Management shall confirm the authenticity and validity of the permission for harvesting of protected species.

Avoid / do not buy

- Exclude protected tree species from the scope of species you are sourcing.

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

- Environment Act 1998 - ss. 16 – 19, ss. 17(4) and 19(c)), s. 18, ss. 22 – 24, Sch. 2(8)(b), s. 15 - http://www.paclii.org/sb/legis/num_act/ea1998159/
- Environment Regulations 2008 - <http://theredddesk.org/uuid/node/507107c2-e1ee-4f2b-83bb-0f98a4409e98>
- River Waters Act (Cap 135). Available at: <https://www.ecolex.org/details/legislation/river-waters-act-cap-135-lex-faoc041484/>
- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatuir2005987/

1.10.2. Legal authority

- The Ministry of Environment, Conservation, Climate Change and Disaster Management
- Director of the Environment and Conservation Division (ECD)

1.10.3. Legally required documents or records

- Development Consent
- Public Environment Report (PER) or Environmental Impact Statement (EIS)

1.10.4. Sources of information

Government sources

- MDPAC (2010). Solomon Islands Country Report for the 5-Year Review of the Mauritius Strategy for Further Implementation of the Barbados Programme of Action for Sustainable Development of SIDS (MSI+5). Ministry of Development Planning and Aid Coordination. Authors P. Roughan and S. Wara. Available: <https://sustainabledevelopment.un.org/content/documents/1310Solomon-Islands-MSI-NAR2010.pdf>, accessed 16 February 2017.
- Solomon Islands State of Environment Report 2008. Ministry of Environment Conservation and Meteorology. Pacific Horizon Consultancy Group, Honiara, Solomon Islands. Available at:

<http://www.sids2014.org/content/documents/180SOLOMONISLANDS-STATEofENVIRONMENT2008.pdf>

Non-Government sources

- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&qid=2427&Itemid=53

1.10.5. Risk determination

Overview of Legal Requirements

Solomon Islands has a legislative framework for environmental impact assessment in the form of the [Environment Act 1998](#) (and [Environment Regulations 2008](#)),

Under the Environment Act 1998, logging operations are listed as a “prescribed development” and therefore require approval (Development Consent) from the Director of the Environment and Conservation Division (ECD) as well as some form of environmental impact assessment (EIA), either in the form of a public environment report (PER) or a more detailed environmental impact statement (EIS) (ss. 16–19).

The Applicant either needs to obtain a Development Consent from the Ministry of Environment before they can conduct any logging in the Solomon Islands (Section 19(1) of Environment Act 1998) or is exempted* from the requirement of PART III of the Environment Act 1998. An Environmental Impact Assessment is required to obtain the Development Consent (reddplussolomonislands.gov.sb, 2015).

The Director must decide if an EIS is required before the proposed operation can be granted a Development Consent, unless the Director has decided to grant the developer an exemption instead (ss. 17(4) and 19(c)). The Director can also require existing logging operations to prepare a PER or EIS (s. 18).

*In the case of larger and industrial-scale harvesting operations, it is expected that an EIA (PER or EIS) will be required. The Ministry of Environment considers that harvesting with a Milling Licence (Type b) is generally exempt unless the Milling licence holder intends to use extraction machinery or harvest more than 1000 m³/year. In such a case, Development Consent would be required. People whose interests are likely to be affected by a proposed development have the right to participate in the EIA process (ss. 22–24).

Land-based pollution, whether intentional or negligent, of a marine protected area, is also prohibited, which could apply to run-off from logging activities (cl. 54). The penalty for contravening either of these provisions is 100,000 penalty units (i.e. Solomon Island \$100,000, or approximately US \$14,000).

Felling Licences include a specific condition that licensees comply with the River Waters Act. This Act regulates various concerns including, among others: the felling of trees into a river or river bed; obstructions, diversions or other interferences caused or resulting from harvesting activities to rivers, as well as damage to river banks.

Description of Risk

Risks appear to exist in two ways: (i) risks of an operator failing to obtain an EIA and be provided with Development Consent; (ii) risk of failure of the operator to implement (and comply with) the relevant requirements, conditions and environmental monitoring required in the EIA.

- “There are many examples of logging companies and their contractors failing to comply with the relevant legislative requirements [of the Environment Act]. In particular, much logging in Solomon Islands is illegal because the companies have failed to do EIAs and obtain Development Consents... Enforcement of the laws regulating forestry by the government is relatively limited. Consequently, landowners who want to ensure that logging companies operate legally must often seek to enforce the law themselves, either through the court system or by other means” (Hou et al 2013).
- An example is the case of KIBCA v Success Company Limited in 2010 - Success had not conducted an EIA and had not obtained any Development Consent under the Environment Act. KIBCA also became aware that no approval had been granted by the Commissioner for Forests for logging above 400 metres ASL, as required by the FRTU Act. The court’s order restraining Success and its contractor Xiang Lin from logging above 400 metres above sea level without the approval of the Commissioner for Forests was also the first of its kind in Solomon Islands, as this issue had not been raised in court before (Hou et al 2013).
- Overharvesting of mangroves for firewood, housing construction and boats, as well as use of mangrove areas as loading areas or “log ponds” for logging activity is one of the threats to mangrove ecosystems in Solomon Islands (MESCAL 2013:13).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- Low capacity-levels to ensure effective monitoring and enforcement are frequently described in literature: “The current level of licenses means that there are more licenses in operation than staff within the [Ministry of Forests and Research]. Such discrepancies between the capacity of the ministry and the industry provides an indication of some of the base causes of weak enforcement”. The challenge is not only limited to the MoFR but also to other key ministries” such as the Ministry of Environment Climate Change, Disaster Management and Meteorology (UN-REDD Programme, 2013).

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.10.6. Risk designation and specification

Low risk (based on the understanding that the Ministry of Environment considers that harvesting with a Type b Milling Licence is exempt unless the Milling licence holder intends to use extraction machinery or harvest more than 1000 m³/year)

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used and no extraction machinery is to be used and harvest volume is under 1000 m³/year (**Source Type 1, but not 1b**).
- Harvesting plantations on Customary land (**Source Type 4**), based on the consideration that these plantations would probably be harvested with a (Type b) Milling licence.

Specified risk:

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used and extraction machinery is to be used and/or harvest volume is 1000 m³/year or more (**Source Type 1b**).
- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (**Source Type 2**).
- Harvesting plantations on Alienated land (**Source Type 3**), based on consideration of the size and scale of these industrial-scale operations.

1.10.7. Control measures and verifiers

Obtain and verify documents

- Verify that the harvesting operation is operating with a valid Development Consent.
- Verify that an EIA has been conducted and is in place. This may be a Public Environment Report (PER) or a more detailed Environmental Impact Statement (EIS), as applicable.

Consult with stakeholders

- The Ministry of Environment, Conservation, Climate Change and Disaster Management shall confirm that the Development Consent and PER or EIS is valid and related to the forest management unit (FMU) in question.
- The Ministry of Environment, Conservation, Climate Change and Disaster Management shall confirm that the harvesting operation is in good standing and no issues of non-compliance have been registered by the Ministry, which are not being actively addressed.

Conduct onsite verification

- Field verification of the harvesting site shall confirm the correct implementation of the EIA, as described, including:
 - adherence to any requirements, restrictions, conditions or safeguards to be adopted or applied, or other mitigating actions to be implemented.
 - observance of requirements for environmental monitoring (as applicable).
- For *mangrove areas*, field verification shall confirm that overharvesting in mangrove areas is not occurring and mangrove areas are not used for log ponds or otherwise negatively affected by logging activity **OR** obtain and verify the (felling and/or milling) license(s) to confirm that the removal of the Mangrove area forms part of a commercial development.

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

- Safety at Work Act 1982 (No. 3 of 1982) Revised 1996 edition. Available at: http://www.paclii.org/sb/legis/consol_act/sawa173/
- Forest Resources and Timber Utilisation Act (Cap. 40) - ss 3, 5–6. Available at: http://theredddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf

1.11.2. Legal authority

- Commissioner of Labour, Solomon Islands Labour Unit

1.11.3. Legally required documents or records

None

1.11.4. Sources of information

Government sources

- labour.gov.sb, N.Y.: Occupational Health and Safety (OSH). Available at:
<http://www.labour.gov.sb/our-work/occupational-health-and-safety/>

Non-Government sources

- - World Bank Worldwide Governance Indicators:
<http://info.worldbank.org/governance/wgi/index.aspx#home>

1.11.5. Risk determination

Overview of Legal Requirements

Under the Safety at Work Act (1982), it is the responsibility of an employer to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all employees.

NOTE: the definitions of 'employee' and 'workplace', mean that companies have some level of responsibility with regards to workplace safety of workers, whether they are full-time or part-time and whether they are in permanent, temporary or casual employment.

An employer has the duty to (www.labour.gov.sb, N.Y.):

- Ensure the health, safety and welfare of all your employees including part and full-time workers, temporary workers, and work experience people
- Inform, instruct and supply relevant information to all employees
- Ensure that all plant, machinery and systems of work are safe and without risk to health and safety
- Ensure that the premises are safe to use and that all hazardous processes are either eliminated or adequately controlled
- Provide personal protective equipment.
- Ensure that adequate training is supplied to staff where applicable. The necessary OSH competence requirements should be defined by the employer, and arrangements established and maintained to ensure that all persons are competent to carry out the safety and health aspects of their duties and responsibilities

There are various offences and penalties associated with the Act. These include a penalty of up to \$1,000 or imprisonment for one year or both for persons found guilty of breaches of the Act or the regulations.

The legally binding conditions of the Felling Licence cites directly the requirement for the licensee to comply with the Safety at Work Act. Both (Type a and b) Milling Licences reinforce the requirement for safe working with regards to the prevention of accidents and the securing of safe workplace conditions.

Description of Risk

There is a risk that companies are not complying with the legal requirements in regard to occupational health and safety:

- There is no government monitoring of employees, and according to Personal communications, there are cases of companies not complying with legal requirements for health and safety.
- There are problems with lack of personal equipment and equipment might not be up to date, and the issue is well known in the Solomon Islands (Personal communications 1).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.11.6. Risk designation and specification

Specified risk (all source types). No information was available that would indicate the risk can be distinguished between source types.

1.11.7. Control measures and verifiers

Consult with stakeholders

- Interviews with staff and contracted workers shall confirm that legally required protection equipment is required/provided by the organisation.

Conduct onsite verification

- Conduct capacity-building measures to encourage awareness and adoption of legal requirements for health and safety.
- Field verification shall confirm that all health and safety requirements are followed and that required safety equipment is used during logging operations.

NOTE: The above measures apply to all in-forest activities and workers, including in-forest processing.

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

- Labour Act: http://www.pacii.org/sb/legis/consol_act/la84/
- Employment Act 1996 edition (Cap 72). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179315.pdf

- Constitution of Solomon Islands - Art. 6; 110, s. 144; Sch. 3. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol132844.pdf>
- Workmen's Compensation Act – 1982 (Cap 78) 1996 Edition. Available at: <http://www.labour.gov.sb/labour-laws/>. Specifically: <http://www.labour.gov.sb/download/1260/>
- Immigration Act 2012, No.3 of 2012, enacted March 9, 2012. Available at: http://www.pacii.org/sb/legis/num_act/ia2012138/
- Penal Code – Art 141, 143, 144, 145, 251; 256. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68888/67465/F308930764/SLB68888.pdf> and [http://www.parliament.gov.sb/files/legislation/10th_Parliament/Acts/2016/Penal%20Code%20\(Amdt\)%20\(Sexual%20Offences\)%20Act%202016.pdf](http://www.parliament.gov.sb/files/legislation/10th_Parliament/Acts/2016/Penal%20Code%20(Amdt)%20(Sexual%20Offences)%20Act%202016.pdf)
- Solomon Islands National Provident Fund (Amendment) Act 1993 (Act No. 1 of 1993). Available at: <http://www.parliament.gov.sb/files/legislation/Acts/1993/The%20Solomon%20Islands%20National%20Provident%20Fund%20%28Amendment%29%20Act%201993.pdf> and Solomon Islands National Provident Fund Act (1973). http://www.pacii.org/sb/legis/consol_act/sinpf421.rtf
- Trade Union Act (Cap 76) 1998 Edition - Art 60 (Freedom of association of employees). Available at: http://www.pacii.org/sb/legis/consol_act/tua150/

1.12.2. Legal authority

- Commissioner of Labour, Solomon Islands Labour Unit
- Inland Revenue Division, Ministry of Finance and Treasury
- Solomon Islands National Provident Fund

1.12.3. Legally required documents or records

- Employment contract
- Work permit (for immigrant and non-indigenous workers)

1.12.4. Sources of information

Government sources

- labour.gov.sb, N.Y.: Employment Services Available at: <http://www.labour.gov.sb/our-work/employment-services/>
- PAYE. Inland Revenue Division Solomon Islands website, available at: <http://www.ird.gov.sb/Article.aspx?ID=602>
- Parliament passes the Penal Code (Amendment) (Sexual Offences) Bill 2016. National Parliament of Solomon Islands. Available at: <http://www.parliament.gov.sb/index.php?q=node/1022>
- Solomon Islands National Provident Fund website: www.sinpf.org.sb/

Non-Government sources

- Solomon Star, 2017: Solomon Island logging company men face charges harbouring illegal workers. Available at: <http://www.pireport.org/articles/2017/05/02/solomon-islands-logging-company-men-face-charges-harboring-illegal-workers>

- Social Security Programs Throughout the World: Asia and the Pacific, 2016 (released March 2017) United States Social Security Administration. Available at: <https://www.ssa.gov/policy/docs/progdesc/ssptw/2016-2017/asia/solomon-islands.html>
- Katovai, E., et. al., 2015.: Dynamics of logging in Solomon Islands: The need for restoration and conservation alternatives. Tropical Conservation Science Vol. 8 (3): 718-731. Available at: <http://ecologicalsolutions-si.com/files/114248052.pdf>
- Findings on the Worst Forms of Child Labor (United States Department of Labor, Bureau of International Labor Affairs), 2011: Solomon Islands. Available at: <https://www.dol.gov/ilab/reports/child-labor/findings/2011TDA/solomonislands.pdf>
- Findings on the Worst Forms of Child Labor (United States Department of Labor, Bureau of International Labor Affairs), 2015. Available at: <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA.pdf>
- Findings on the Worst Forms of Child Labor (United States Department of Labor, Bureau of International Labor Affairs), 2016: Solomon Islands. Available at: <https://www.dol.gov/sites/default/files/images/ilab/child-labor/2016SolomonIslands.pdf>
- United States Department of Labor, Bureau of International Labor Affairs, Child Labor and Forced Labor online report of the Solomon Islands. Available at: https://www.dol.gov/agencies/ilab/resources/reports/child-labor/solomon-islands#_ENREF_2
- Child Labour in Solomon Islands. International Labour Organisation. Available at: http://www.ilo.org/suva/projects/WCMS_360465/lang--en/index.htm
- Worst Forms of Child Labour: definition according to ILO convention 182. International Labour Organisation. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182 and <http://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm>
- Dynamics of Child Trafficking and Commercial Sexual Exploitation of Children in Solomon Islands. Save the Children. January 30, 2015. Available at: https://www.savethechildren.org.au/_data/assets/pdf_file/0004/236668/Child-Trafficking-and-CSEC-in-Solomon-Islands.pdf
- Personal communications 1
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&qid=2427&Itemid=53

1.12.5. Risk determination

Overview of Legal Requirements

The Labour Act regulates wages and hours of work, requirements for migrant or non-indigenous workers to have a work permit in place, work conditions for women and maternity leave. The Act requires employers to provide up to 12 weeks of maternity leave to female employees (including up to at least 6 weeks after childbirth).

It prohibits completely the employment of children under 12* years, limits the employment of children under 15 years in some areas of industrial work (including the processing, transport and handling of materials) – and prohibits children under 18 years from engaging in industrial work during the night. The

Act regulates the employment of all persons under 18 in other ways, placing additional requirements on employers.

*NOTE: According to the United States Department of Labor (Findings on the Worst Forms of Child Labor, 2016), the “minimum age for employment does not meet international standards [age 14] and the Solomon Islands Government has not comprehensively identified the hazardous occupations prohibited for children”. Perhaps as an indicator of the latter, harvesting or logging activities are not specifically included within the Labour Act definition of an “industrial” (or other) undertaking.

The Labour Act also requires care of workers, in such areas as supplying water, sanitary conditions, housing and medical care.

The Employment Act regulates redundancy payment, dismissal, periods of employment, the requirement for written contracts with the relevant particulars of the employment and every employer shall ensure liability insurance covering liability for bodily injury or disease of all employees.

PAYE: Income tax for employees is collected under the PAYE (Pay-as-you-earn) system. If you are an employer and pay salary and wages, you must register with the Inland Revenue Division and deduct PAYE tax from payments made to your employees. The following payments are subject to tax under the PAYE system: Wages; Salary; Overtime; Leave/sick pay; Directors fees; Commissions; Bonuses; Compensation; Allowances (such as living, subsistence, travelling and entertaining etc). PAYE must also be deducted from non-cash benefits provided to employees such as: housing, board, lodging or motor vehicles. Social Security deductions (National Provident Fund) must also be made.

The constitution provides for provisions for freedom of assembly and association (Art 13), and prohibits slavery and forced labour (17,18). The Trade Union Act 1998, also prohibits any employer from preventing an employee to become a member of any trade union, or subjecting him to any penalty by reason of his membership of such trade union.

The Environment Act 1998 requires that a gender impact assessment be undertaken as part of an Environmental Impact Statement (Environment Regulations 2008, cl. 5(g)).

There are poor employment conditions in the logging industry. When in operation, most logging companies employ their field workforces on a contract basis whereby workers are paid according to volume of wood harvested. Because salary rates are generally low and working benefits such as medical insurance and life-insurance policies, housing allowance, and risk allowance are almost non-existent, employees are obliged to maximize harvests to sustain their livelihoods (Katovai, 2015). However, this is not a legal violation.

Description of Risk

Legal Employment – General / Children / Gender

The following references highlight a generalised compliance environment in which risks exist with regards to illegal employment in Solomon Islands, and relating to non-compliance with the employment laws:

- In early 2017, a logging company was brought to court for having employed workers from PNG without a work permit (Solomon Star 2017). The risks of foreign workers without a work permit are not considered a widespread concern, as the forest sector is relatively small and people within the sector tend to be familiar with each other (Personal communications 1).
- Current levels of staffing within various ministries, indicate weak enforcement potential. The ignoring of labour laws in harvesting operations is a key area of illegality in the forest sector (UN-REDD Programme, 2013).
- It has been commented that gender impact assessments (GIA) are not being habitually conducted, as part of Environmental Impact Statements (Personal communications 2).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one

country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Worst Forms of Child Labour

It has been widely reported (International Labour Organisation, United States Department of Labor, Save the Children, UNICEF and others) that the logging industry in the Solomon Islands is associated with the Worst Forms of Child Labour (see ILO definition), particularly with regards to the commercial sexual exploitation of children (CSEC). Both boys and girls are victims of CSEC, which is prevalent within several industries in the Solomon Islands, but particularly logging (in and around logging camps, where harvesting is taking place in natural forests on Customary land, with a Felling Licence or under a Standard Logging Agreement, i.e. Source Type 2) and fishing. Well-referenced reports from the United States Department of Labor have highlighted in particular that girls are trafficked within the Solomon Islands to logging camps for sexual exploitation (Findings on the Worst Forms of Child Labor, 2011).

The 2015 version of the same U.S. Department of Labor report goes further to describe how children may be forced into domestic work or as cooks within logging camps, or commercial sexual exploitation. Also, that some "logging or fishing workers engage male children in a practice known as 'solair', in which boys work as intermediaries to procure young girls for commercial sexual exploitation". While some improvements have been made in recent years with regards to the Worst Forms of Child Labor, the report states that various factors – including inadequate resources - continue to hamper the capacity of enforcement officials to enforce child labor laws and mitigate these risks completely.

A report by Save the Children (2015), corroborates that "logging and fisheries are the two main industries that predominantly shape the child trafficking and CSEC in Solomon Islands". Also, that there is "limited government capacity for rigorous monitoring of logging activities, misconduct, corruption and ethical treatment of affected communities. Against this, it is a serious drawback that there is no overarching policy provision in place to protect the welfare of children or community affected by the logging industry".

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.12.6. Risk designation and specification

Legal Employment – General / Children / Gender

Specified risk (all Source Types).

Worst Forms of Child Labour

Specified risk:

- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (Source Type 2).

Low risk:

- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (Source Type 1). These are cases where harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient.
- Harvesting plantations on Customary land (Source Type 4), based on the consideration that these plantations would probably be harvested with a (Type b) Milling licence.

- Harvesting plantations on Alienated land (Source Type 3), based on the consideration that these industrial operations may be better-regulated, given their size and scale.

1.12.7. Control measures and verifiers

Obtain and verify documents

- Where applicable, obtain and verify work permits for any migrant and non-Solomon Island workers (whether directly employed or working on a contract/other basis) to confirm that work permits exist and that they are legally able to work in the Solomon Islands.
- Obtain and verify a sample of employment contracts, to confirm legal requirements are respected for redundancy payment, dismissal, periods of employment and liability insurance covering liability for bodily injury or disease of all employees (where applicable).
- Where an Environmental Impact Statement is in place, verify that a gender impact assessment (GIA) has been conducted.

Consult with stakeholders

- Interviews with staff and verification of payslips shall:
 - indicate that minimum wages are paid and maximum hours of work are adhered to.
 - ensure payments of PAYE and Social Security (National Provident Fund) are being made.
- Interviews with staff shall confirm requirements to care for workers, such as supplying water, sanitary conditions and housing and medical care, are respected.
- Interviews with staff shall confirm that work conditions for women, including statutory maternity leave requirements are adhered to.
- Interviews with staff shall indicate provisions for freedom of assembly, or to join a trade union, are not curtailed.
- Interviews with staff and other stakeholders (such as neighbouring communities, as applicable) shall confirm that children under the age of 12, 15 or 18 years (as applicable) are not employed - nor permitted under any working relationship, to take part in work activities, as per legal requirements.
- Where an Environmental Impact Statement is in place, interviews with staff shall confirm the correct implementation of the EIA of any mitigation measures described within the Gender Impact Assessment.
- Stakeholder consultation with neighbouring communities and villages, socially-oriented NGOs and/or other relevant stakeholders, shall confirm that no evidence – nor cause for concern - exists with regards to the commercial sexual exploitation of children and the logging company and/or logging camps under its control.

Conduct onsite verification

- On-site audits shall confirm that children under the age of 12, 15 or 18 years (as applicable) are not employed - nor permitted under any working relationship, to take part in work activities, as per legal requirements.
- Onsite audits shall confirm the correct implementation of the EIA of any mitigation measures described within the GIA.
- On-site audits shall confirm that children are not present at logging camps.

Training and capacity building

- Measures should be taken by logging companies, such as to:

- i. prohibit the presence of children at, or within the vicinity of, logging camps;
- ii. conduct awareness-raising via the adoption, dissemination and implementation of a code of conduct that will apply forest-workers in logging camps;
- iii. iii) circulate information within logging camps and neighbouring communities as to where/how concerns can be reported to authorities in confidence.

CONSULTATION DRAFT

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

- Land and Titles Act - s. 239(1), 241, 240 - <http://theredddesk.org/uuid/node/918c589a-5e93-43c2-834c-882401c4b975>
- Forest Resources and Timber Utilisation Act - s. 43, 71, 60 - <http://theredddesk.org/uuid/node/918c589a-5e93-43c2-834c-882401c4b975>

1.13.2. Legal authority

- Village chief
- The trustee for the village/local community

1.13.3. Legally required documents or records

None

1.13.4. Sources of information

Non-Government sources

- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.
- Pauku, R. L. (2009). [Solomon Islands Forestry Outlook Study](#), FAO (Food and Agriculture Organization of the United Nations), Bangkok.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=2427&Itemid=53

1.13.5. Risk determination

Overview of Legal Requirements

Customary land

The system of customary (tribal) land tenure in the Solomon Islands has been preserved since Independence in 1978.

The law provides that customary land is to be occupied, used and disposed of in accordance with current customary usage (s. 239(1), [Land and Titles Act](#)). As there is no system which allows for customary land to be surveyed and registered, it is often very difficult for outsiders to identify land boundaries and to identify who 'owns' the customary land. Land disputes are common.

Customary land in the Solomon Islands is held communally, by a tribe, which includes a clan or line of descendants. There may often be no single landowner group. More often, there are multiple groups which hold multi-layered rights to ownership and use of land and forest (Corrin, 2012 p. 27-28).

To emphasize the communal nature of land tenure under customary law, the Solomon Islands Law Reform Commission has recently recommended that all legislation dealing with land should be amended to use the term "tribal land" rather than "customary land", and that existing legislative frameworks be amended to formally recognise tribal ownership of tribal land (SICLRC, 2012 p. 18-20).

Restrictions on transfer and dealing in customary land

There are strong legal conditions under the land law which restrict how customary land can be dealt with and disposed of. Only a Solomon Islander can 'own' customary land and interests in customary land ([Land and Titles Act](#), s. 241). Land (and interests in land) can only be transferred between Solomon Islanders according to custom, and any contract or agreement that purports to transfer land or affect an interest in customary land outside custom (e.g. to a non-Solomon Islander) can be declared void by the courts (ss. 240, 241).

The only way that land or interests in land can be transferred outside custom are through compulsory acquisition by the government for a public purpose (s. 71), or by leasing the land to the Commissioner of Lands or a Provincial Assembly (s. 60), after which it is then registered as a perpetual estate.

Forest tenure

Where forest is found on customary land it is 'owned' in accordance with customary law (s. 239(1), [Land and Titles Act](#)). However, under customary law, ownership of land may be separated from the right to use land. This fragmentation of ownership and use rights has given rise to disputes and litigation in the forest sector where the legislative framework for timber use and extraction, the [Forest Resources and Timber Utilisation Act](#), allows a person (or group) to grant timber rights over land even though they are not the 'owner' of the land through Timber rights agreements (See 1.1 on the process of obtaining Standard Logging Agreements).

Solomon Islands has reported mangrove forests of about 37,700 hectares (FAO 2010:8), although this figure could be as high as 60,200 hectares (MESCAL 2013:10). Due to conflicting High Court decisions, it is unclear whether 'ownership' of the foreshore area below the high watermark belongs to the Crown (State) or remains under the control of customary landowners (Corrin 2012: 34).

Felling Licences include specific conditions (25 & 26) that Licensees shall: "have respect for and interfere as little as possible with the rights of the owner of the land and any other person who has an interest in or a right to carry out activities on, the land on which the licence has effect (which, if the land is customary land, includes hunting, fishing and collecting, felling and taking away trees on other materials for domestic or traditional purposes)" and shall "take all reasonable steps to ensure that his officers and employees are respectful to and observant of local customs and will not enter cultural areas, such as tambu areas and garden and village areas".

Description of Risk

- Deficiencies in the FRTU Act and its administration have meant that cases exist of companies having been granted the right to log on customary land by persons who do not necessarily lawfully represent – or fully represent – all of the people who can grant that right to log through Standard Logging Agreements (See 1.1: Land tenure and management rights).
- Enforcement of the laws regulating forestry by the government is relatively limited. Consequently, landowners who want to ensure that logging companies operate legally must often seek to enforce the law themselves, either through the court system or by other means (Hou et al 2013).
- According to Hou et al (2013), for many years, landowner groups in Solomon Islands have fought against illegal logging carried out by foreign-owned companies seeking to make a quick profit exploiting forests on customary land. Traditionally, these challenges have been brought under the

FRTU Act on the basis that the logging company failed to properly negotiate with the true representatives of landowners.

- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- Without clear demarcation of boundaries or quotas, reports exist of companies cutting outside their allocated areas and harvesting beyond their quotas (as described within a harvesting licence or SLA) without communities being aware of these (UN-REDD Programme, 2013).
- The occurrence of customary-rights conflicts in relation to Alienated land - or in the case of community plantations on customary land - is likely to be low. Also, harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (Source Type 1) is likely to be low based on the fact that harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient (Personal communications 1&2).

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, 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

Low risk:

- Harvesting plantations on Alienated land (**Source Type 3**) or on Customary land (**Source Type 4**), based on the consideration that the occurrence of customary-rights conflicts in relation to Alienated land - or in the case of community plantations on customary land - is likely to be low.
- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (**Source Type 1**). These are cases where harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient.

Specified risk:

- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (**Source Type 2**).

1.13.7. Control measures and verifiers

See 1.1 in relation to the observance of customary rights in the obtaining of timber harvesting rights by private companies to harvest on Customary land. The risk mitigation measures below extend to compliance in relation to the obligations of companies to respect customary rights during the execution of logging activities also.

Conduct stakeholder consultation

- Consult Local Courts and/or Customary Land Appeal Courts. Any appeal, dispute or case which has been raised in a court of law in relation to a Standard Logging Agreement (SLA) - and which is still outstanding – serves as a risk indicator of potential legal non-compliance with regards to:
 - actions the parties involved in the SLA, with regards to provisions agreed within the SLA during the execution of logging activities.

- obligations of companies to respect customary rights during the execution of logging activities.
- Conduct consultations with communities and customary owners within the area of logging (map included in Form 2) to confirm that the obligations of companies to respect customary rights during the execution of harvesting activities is being respected. Questions for Customary owners:
 - Have the parties involved in the SLA, complied with the provisions agreed within the SLA during the execution of logging activities.
 - Is the Licensee respecting (and interfering as little as possible) with the rights of customary owners (including hunting, fishing and collecting, felling and taking away trees or other materials for domestic or traditional purposes)?
 - Is the Licensee taking all reasonable steps to ensure that workers and employees are respectful to and observant of local customs and do not enter cultural areas, such as tambu areas and garden and village areas?

Avoid / do not buy

- Companies should avoid sourcing from those SLAs for which an outstanding court case(s) exists, until it is resolved, and the outcome has been evaluated.

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

- Forest Resources and Timber Utilisation Act (Cap. 40). Available at: http://theredddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- Customary Land Records Act, 1994 (Cap 132). Available at: http://theredddesk.org/sites/default/files/customary_land_records_act_1994.pdf

1.14.2. Legal authority

- Central Land Record Office (Customary Land Records Act)

1.14.3. Legally required documents or records

None

1.14.4. Sources of information

Government sources

- Forest Resources and Timber Utilisation Act (Cap. 40). Available at: http://theredddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- Customary Land Records Act, 1994 (Cap 132). Available at: http://theredddesk.org/sites/default/files/customary_land_records_act_1994.pdf

Non-Government sources

- Guidelines for Developing Stakeholder Engagement REDD+ within the Solomon Islands (draft, February 2014). UN-REDD Programme & the Solomon Islands Government

- 2007 United Nations Declaration on the Rights of Indigenous People. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> and http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

1.14.5. Risk determination

Overview of Legal Requirements

At the national level, there is no over-arching legislation which sets out a requirement for Free, Prior and Informed Consent (FPIC) in relation to the consultation and obtaining of consent of tribal groups for activities affecting their land.

The Forest Resources and Timber Utilisation (FRTU) Act, does not fully meet the international standards for FPIC (see the 2007 United Nations Declaration on the Rights of Indigenous People). However, under the FRTU Act, before a private company can commence logging on customary land, it must enter into a logging agreement with the people who have the right to grant timber rights (usually the customary landowners) and obtain a felling licence from the Commissioner for Forests appointed by the Minister for Forests. (Hou et al 2013). *See 1.1: Land tenure and management rights.* This means the private company must negotiate with the landowners, and make a Standard Logging Agreement with them. The logging agreement must be in the form set out in the relevant Regulations. The process involves a meeting, held by the Provincial Executive, where it is identified which of the landowners in a group holds the right to grant timber rights to the company.

Considering the above and that about 87% of land in Solomon Islands is held as Customary land, some level of FPIC – at least as far as these principles are enshrined within the FRTU Act - is effectively required in seeking consent for the majority of logging activities.

The [Customary Land Records Act](#), sets out a process for identifying and recording which tribes hold primary and secondary rights over customary land.

Description of Risk

Experience to date with the process for obtaining landowner consent for commercial logging under the [Forest Resources and Timber Utilisation Act](#), has been somewhat problematic. The [Customary Land Records Act](#), which sets out a process for identifying and recording which tribes hold primary and secondary rights over customary land, may provide a potential entry point for an improved FPIC processes.

According to Hou et al (2013), for many years, landowner groups in Solomon Islands have fought against illegal logging carried out by foreign-owned companies seeking to make a quick profit exploiting forests on customary land. Traditionally, these challenges have been brought under the *FRTU Act* on the basis that the logging company failed to properly negotiate with the true representatives of landowners.

There is no national federation of indigenous peoples in Solomon Islands. In some provinces, tribal groups have formed a Council of Chiefs, such as the Isabel Council of Chiefs, the Guadalcanal Council of Chiefs, and the Lauru Land Conference of Tribal Communities, a community-based landowner structure which represents all landholders in Choiseul Province.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.14.6. Risk designation and specification

Low risk:

- Harvesting plantations on Alienated land (Source Type 3) or on Customary land (Source Type 4), based on the consideration that the occurrence of conflicts around the FPIC-concept in relation to the transfer of customary rights on Alienated land - or in the case of community plantations on customary land - is likely to be low.
- Harvesting in natural forests on Customary land, where a (Type b) Milling licence is used (Source Type 1). These are cases where harvesting is conducted by individuals, households or communities – often on their own land, for which they already hold rights, or for which a simple agreement with the chief or tribal head may be sufficient.

Specified risk:

- Harvesting in natural forests on Customary land, with a Felling Licence and where a Standard Logging Agreement is in place between customary land owners and the Licensee (Source Type 2).

1.14.7. Control measures and verifiers

See 1.1: Land tenure and management rights, in relation to appropriate risk mitigation measures.

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

Within this Risk Assessment, Indigenous/traditional peoples' rights are considered to overlap with 1.1: Land tenure and management rights; 1.13 Customary rights and 1.14: Free prior and informed consent. Therefore, please refer to these indicators.

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

- Forest Resources and Timber Utilisation Act 1970 [Rev. Edition 1996] [Cap 40]. Available at: http://thereddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf
- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatulr2005987/
- Timber (Levy and Mill Licensing) Regulations 1970 (Cap 40). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-regulations-lex-faoc137486/?q=levy+and+mill>
- Timber (Levy and Mill Licensing) (Amendment) Regulations 2005 (L.N. No. 83 of 2005). Available at: <https://www.ecolex.org/details/legislation/timber-levy-and-mill-licensing-amendment-regulations-ln-no-83-of-2005-lex-faoc137488/?q=levy+and+mill>

1.16.2. Legal authority

- Commissioner of Forests
- Minister for Forestry, Environment and Conservation

1.16.3. Legally required documents or records

- Felling licence from the Commissioner of Forests
- Milling Licence (Type a)
- Milling Licence (Type b)

1.16.4. Sources of information

Government sources

- Ministry of Forestry & Research: <http://mofr.gov.sb/main.do>
- Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005. Available at: http://www.paclii.org/sb/legis/sub_leg/fratuafatulr2005987/

Non-Government sources

- AusAID (2013). Timber legality assurance in the Solomon Islands. Provisional guidelines to inform the development of timber legality assurance in the Solomon Islands. July 2013.

<http://www.responsibleasia.org/wp-content/uploads/2018/01/Timber-legality-assurance-in-the-Solomon-Islands.pdf>

- Transparency International, 2012. Tackling Forestry Corruption Risks in Asia Pacific.
- Wilson, C. 2013. Solomon Islanders battle illegal logging. 17. October 2013. Thomson Reuters Foundation News. Available at: <http://news.trust.org/item/20131017092907-ypt9m/>
- Hou, D., Johnson, E., and Price, S. (2013). Defending the Forest in the Clouds: Public Interest Law in Solomon Islands: Case Note, Asia Pacific Journal of Environmental Law, Vol. 15, pp. 167 - 175. Available: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/620/attachments/original/1381898033/130405_DefendingtheForestintheClouds.pdf?1381898033, accessed 16 February 2017.
- Transparency International Corruption Perceptions Index 2016 - Solomon Islands. Available: <http://www.transparency.org/country/SLB>, accessed 16 February 2017.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption. M. Chene, Transparency International (2017). Available at: https://www.transparency.org/files/content/corruptionqas/Country_profile_Solomon_Islands_2017.pdf

1.16.5. Risk determination

Overview of Legal Requirements

Timber harvesting can broadly be considered as either large (industrial scale operations) or small scale (community or village based operations) and can be conducted under a Felling licence and/or a Milling Licence (AusAID 2013):

Felling licences

Felling Licences can be issued for harvesting (and export) of logs. However, if further processing is to be conducted an additional **Milling Licence (Type a)** shall be issued. The Felling Licence is typically sought by commercial scale logging operations, which are required to submit Annual (harvest) plans and Coupe plans before harvesting can begin (See 1.3: Land tenure and management rights).

Conditions of the Felling Licence include requirements that a record is kept of the volume of felled timber under the licence. The Licensee is obliged to keep true and proper records, of the operations carried out under his felling licence, including among other things:

- (a) a record of the species of timber felled, sawn, sold or exported;
- (b) a record of the areas where timber is felled and a record showing which timber is taken from which area;
- (c) a record of the volume of timber felled, sawn, sold or exported;
- (d) a record of the value of timber sold or exported;
- (e) copies of all documentation for exporting of logs and sawn timber;
- (f) the royalties payable and paid to the owner of land;
- (g) the amount of duty payable on exported timber and, of that amount, the amount of duty paid and the amount of duty remitted.

Conditions of the felling licence usually also include the requirement to process 20 percent of timber harvested on a monthly basis (included within the 'other conditions' at the end of the Licence document).

Milling Licence (Type b)

A Milling Licence (Type b) permits both felling and further processing, as per (Clause 2(1) (b) of the timber (Levy and Mill Licensing) Regulations. This Licence type is typically issued to landowners who are harvesting and milling timber on their own customary land. If Milling licence holders intend to use extraction machinery or harvest more than 1000 m³/year, an Annual (harvest) plan and Coupe plan is required (See 1.3: Land tenure and management rights).

Conditions of the Milling Licences (both types) include requirement (5) that obliges the licensee to "have records of log timber acquired, log timber milled and milled timber produce, sold, supplied and exported and the value thereof in such manner and to such extent as the Commissioner of Forest Resources may require and shall render to the Commissioner of Forest Resources such *returns* of the same at such intervals and in such manner as the Commissioner of Forest Resources may require...".

Description of Risk

- Risks exist that the information and data required in the felling and milling licences is not maintained or is not accurate (Personal Communications 1 & 2). Maintenance of this information is not always monitored or enforced.
- It is not common practice that *Milling returns* are submitted to MoFR on a periodic (monthly) basis (Personal Communications 1 & 2). Compliance with this condition is not always enforced.
- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), logging companies have engaged in tax evasion and money laundering, and millions in logging revenues are evaded through underreporting. Logging companies have been exposed for under-reporting of export volume, altering species names (using species names with low market value) and bribery. The report comments that government officials are often implicated in such high-profile corruption activities.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.16.6. Risk designation and specification

Specified risk (all Source Types).

1.16.7. Control measures and verifiers

Obtain and verify documents

- Obtain and verify volume and species data maintained by the Licensee, to confirm that true and proper records are being kept of the volumes (as applicable) of timber felled, milled, purchased, sold and/or exported under the licence, as well as the duties paid. This approach can be taken to ensure that the licensee can demonstrate compliance with the 20% milling requirement (Felling Licences only).

- For Milling Licences only, obtain and verify that valid volume returns are being submitted regularly to the Commissioner of Forests. The dates, information and harvest data included within the returns shall be verified to ensure it is valid to the Licensee.

Consult with stakeholders

- Consultation with the Commissioner of Forests may confirm that that license conditions are being met.

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation.

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

1.17.1. Applicable laws and regulations

Not applicable. There is no legislation covering trade and transport of wood from forest operations.

1.17.2. Legal authority

N/A

1.17.3. Legally required documents or records

N/A

1.17.4. Sources of information

N/A

1.17.5. Risk determination

N/A

1.17.6. Risk designation and specification

N/A

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading.

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

1.18.1. Applicable laws and regulations

- Sales Tax Act 2004 (Cap 125). (No. 1 of 2004). Available at: http://www.pacii.org/sb/legis/consol_act/sta114/
- Exchange Control Act 1976. Available at: <http://www.cbsi.com.sb/wp-content/uploads/2016/06/exchange-control-act.pdf>

1.18.2. Legal authority

- Inland Revenue Division Solomon Islands (Ministry of Finance and Treasury)
- Ministry of Forestry & Research
- Central Bank of Solomon Islands

1.18.3. Legally required documents or records

Logs only

- Market Price Certificate (issued by the Ministry of Forestry & Research)
- Specific Authority to Export rounds logs (issued by the Central Bank of the Solomon Islands), on the basis of a Market Price Certificate.
- Customs Approval (C25 Form)

1.18.4. Sources of information

Government sources

- Solomon Islands Round Log Export System (Central Bank of Solomon Islands). Available at: <http://www.cbsi.com.sb/financial-stability/foreign-exchange-regulations/>

Non-Government sources

- Deloitte (2017). International Tax. Solomon Islands Highlights 2017. Available at: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dtl-tax-solomonislandshighlights-2017.pdf>
- Iroga, R., 2017. Logged Out For Just A Few Dollars. 26 Marts, 2017. Sbmonline.sb. [Online]. Available at: <http://sbmonline.sb/index.php/2017/03/26/logged-just-dollars/> (also Issue 22, November 2016).
- solomontimes.sb. 2008. Solomon Islands Logging One of the Worst in the World. 7 January 2008. [Online]. Available at: <http://www.solomontimes.com/news/solomon-islands-logging-one-of-the-worst-in-the-world/1175>
- wrm.org.uy, 2000. Solomon Islands: The plunder of paradise by Asian logging companies. World Rainforest Movement. Available at: <http://wrm.org.uy/oldsite/bulletin/34/Solomon.html>
- Transparency International Corruption Perceptions Index 2016 - Solomon Islands. Available: <http://www.transparency.org/country/SLB>, accessed 16 February 2017.
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
- U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption. M. Chene, Transparency International (2017). Available at:

https://www.transparency.org/files/content/corruptionqas/Country_profile_Solomon_Islands_2017.pdf

1.18.5. Risk determination

Overview of Legal Requirements

The Sales Tax Act requires that sales are made in accordance with the arm's length principle. Where the Commissioner believes, a transaction hasn't taken place "at arm's length" he can calculate the price/transaction and enforce that on the parties, including any associated tax obligations. This can only happen if the intention of the parties originally was to avoid tax, and they paid less than market price.

The applicability of this requirement is not fully clear, as timber products are not included in the 'Schedule' of prescribed goods and services eligible for VAT, as per the Sales Tax Act (2004), although the arms-length principle may be enshrined within other legislation.

There are no public safe harbour rules or values with respect to the pricing of transfer of goods (Deloitte 2017).

The Solomon Islands does employ a fixed minimum-price requirement for exported logs, but none for sawn wood and other wood products. This price is regulated via the Solomon Islands Round Log Export System, which has the stated objective to ensure that open market prices are obtained for log exports and that proceeds are remitted in full to the Solomon Islands.

Round log export is permitted only on the issue of a Specific Authority to Export rounds logs (issued by the Central Bank of Solomon Islands), on the basis of a Market Price Certificate from the Commissioner of Forests. Procedures are as follows:

1. The Ministry of Forestry & Research maintains and publishes fortnightly indicative market price guidelines.
2. Within one week of entering into a sales contract, and not less than four clear working days before the proposed sailing of log vessel from Solomon Islands, the exporter must submit an application for *Specific Authority to Export round logs* to the Commissioner of Forests. This requires the submission of the following documents:
 - a. Application for *Specific Authority to Export*
 - b. Consignment details and Request for Market Price Certificate
 - c. Sales contract
3. The Ministry of Forestry & Research checks declared prices against stated quality of consignment, and published market price guidelines for a date at or near sales contract date. On approval, a recommendation is made to the Central Bank of Solomon Islands (CBSI) to issue Specific Authority to Export by issuing a Market Price Certificate if price accords with published guidelines or is otherwise acceptable.
4. CBSI issues the *Specific Authority to Export* based on the Market Price Certificate and informs the exporter of the decision. CBSI also informs the Customs & Excise authority if the application for Specific Authority to Export is refused.
5. Exporter submits the signed copy of the *Specific Authority to Export* to Customs & Excise, as part of the export approval application. Customs & Excise compares the *Specific Authority to Export* details against a copy sent directly to Customs by CBSI.

Description of Risk

There is a risk of misclassification of timber to avoid payment of the export duty:

- Going back to at least 2000 there has been reporting of loss of government revenue due to undervaluation of logs in order to avoid payment of Export duty. This suggests that transfer pricing

and underreporting of volumes and log prices are common practices (wrm.org.uy 2000; solomontimbres.sb 2008) although this risk is difficult to quantify.

- In 2017 Iroga, R. refer to an un-named report which, according to Iroga, was carried out by a reputable national financial institution in the country, and presented to the government. According to the report there seems to be a great discrepancy between log receipts volumes and revenue from export duties in both 2014 and 2015. The report estimates that the government was losing about SBD445.70 million in potential tax (Export duty) revenues, which was equivalent to 13.1% of total fiscal budget for 2015 (Iroga 2017). The report further noted that the industry players are observed to have been manipulating the market through transfer pricing or shuffling of letter of credit through a third party or industry agent in Singapore or Hong Kong (Iroga 2017).
- According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), logging companies have engaged in tax evasion and money laundering, and millions in logging revenues are evaded through underreporting. Logging companies have been exposed for tax evasion, under-reporting of export volume, transfer pricing, altering species names (using species names with low market value) and bribery. The report comments that government officials are often implicated in such high-profile corruption activities.
- The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.
- With indications of high level of revenue loss and a high level of corruption, the risk for transfer pricing taking place is considered specified.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.18.6. Risk designation and specification

Specified risk (all Source Types).

1.18.7. Control measures and verifiers

Logs only: obtain and verify documents

- Obtain the supplier invoice; supply contract; Market Price Certificate (issued by the Ministry of Forestry & Research); Specific Authority to Export rounds logs (issued by the Central Bank of the Solomon Islands) and Customs Approval (C25 Form).
 - Verify that prices, volumes, species, product-type and grade are consistent between documents. Confirm the declared species, product-type and volumes are correctly described and consistent with other supply chain information.
 - Verify that prices meet or exceed the fixed minimum-price threshold for log exports. Consult with the Ministry of Forestry & Research, if minimum prices are not clear.

All wood products: obtain and verify documents

Verify that transfer pricing to avoid Export duty and other taxes has not occurred. Conduct a literature review of market reports/figures and consult with authorities, to establish average market prices for product types exported.

Obtain (as applicable to product) supplier invoice; supply contract; Market Price Certificate (logs only); Specific Authority to Export (logs only), Permit to Export and Customs Approval (C25 Form).

Verify that prices, volumes, species, product-type and grade are consistent between documents. Confirm the declared species, product-type and volumes are correctly described and consistent with other supply chain information.

Verify that prices are not significantly below average market prices for the exported product. If they are, seek an explanation. Check sales documentation to identify if exporter and buyer are linked companies/subsidiaries AND check if the buyer is located in a known Tax Haven, e.g. Hong Kong or Singapore. Where applicable, evaluate other potential indicators of transfer pricing risk:

Low profits compared with competitors.

No tax payment by exporter for an extended period of time.

Significant decline in profits after a tax holiday expires/business restructuring.

Profits in promoted business, but losses/lower profits in non-promoted business.

Drastic fluctuations in profits from year to year.

Varied profitability by product.

Payment of royalties/management fees.

Significant related-party (intra-group) transactions.

1.19. Custom regulations

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

1.19.1. Applicable laws and regulations

- Customs and Excise Act [Cap 121]. Available at: http://www.paclii.org/sb/legis/consol_act/caea199/
- Customs and Excise (Amendment) (No. 2) Act 2012 (No 8 of 2012): Available at: <http://www.ird.gov.sb/Resource.aspx?ID=175>
- Forest Resources and Timber Utilisation (Protected Species) (Amendment) Regulations 2012. Legal Notice 133. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol148110.pdf>
- Forest Resources and Timber Utilisation (Protected Species) Regulations 2012. Available at: <http://extwprlegs1.fao.org/docs/pdf/sol148111.pdf>
- Wildlife Protection and Management Act 1998: <https://www.ecolex.org/details/legislation/wildlife-protection-and-management-act-1998-act-no-10-of-1998-lex-faoc060396/>

- Wildlife Protection and Management Regulations 2008 (L.N. No. 78 of 2008):
<https://www.ecolex.org/details/legislation/wildlife-protection-and-management-regulations-2008-l-n-78-of-2008-lex-faoc148447/>

- Biosecurity Act, 2013 (No. 3 of 2013). Part 5. Available at:
<https://www.ecolex.org/details/legislation/biosecurity-act-2013-no-3-of-2013-lex-faoc147498/?q=phytosanitary&xcountry=Solomon+Islands&type=legislation>

1.19.2. Legal authority

- Ministry of Forestry & Research
- Customs & Excise Division
- Central Bank of Solomon Islands
- Biosecurity Solomon Islands (BSI), Department of the Solomon Islands Ministry of Agriculture and Livestock

1.19.3. Legally required documents or records

- Permit to Export (sawn timber)
- Specific Authority to Export (rounds logs).
- Customs Approval (C25 Form)
- Phytosanitary certificate

1.19.4. Sources of information

Government sources

- Solomon Islands Round Log Export System (Central Bank of Solomon Islands). Available at:
<http://www.cbsi.com.sb/financial-stability/foreign-exchange-regulations/>
- Biosecurity Solomon Islands website. Available at: <http://www.biosecurity.gov.sb/>

Non-Government sources

- Iroga, R., 2017. Logged Out For Just A Few Dollars. 26 Marts, 2017. Sbmonline.sb. [Online]. Available at: <http://sbmonline.sb/index.php/2017/03/26/logged-just-dollars/> (also Issue 22, November 2016).
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- Markets Study for Solomon Islands Timber Exports (PHAMA) 20/10/2014. Available at: <http://phama.com.au/wp-content/uploads/2016/06/TR-60-SOLS18-Market-Study-for-Solomon-Islands-Timber-Exports-v1.0-FINAL.pdf>
- Transparency International (2012). Tackling Forestry Corruption Risks in Asia Pacific, Forest Governance Integrity Programme, Berlin, Germany. Available: http://www.transparency.org/whatwedo/pub/tackling_forestry_corruption_risks_in_asia_pacific, accessed 16 February 2017.
- Personal Communications 1 & 2
- Transparency International Corruption Perceptions Index 2016 - Solomon Islands. Available: <http://www.transparency.org/country/SLB>, accessed 16 February 2017.

- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>
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- UN-REDD Programme (2013). Solomon Islands: REDD+ Background Document, Final draft, September 2013. Available at: http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=2427&Itemid=53
- Katovai, E., et. al., 2015.: Dynamics of logging in Solomon Islands: The need for restoration and conservation alternatives. Tropical Conservation Science Vol. 8 (3): 718-731. Available at: <http://ecologicalsolutions-si.com/files/114248052.pdf>
- WT/TPR/S/25 Trade Policy Review Solomon Islands (WTO) 2009. Available at: https://www.wto.org/english/tratop_e/tpr_e/s215-03_e.doc
- WT/TPR/S/349/Rev.1 TRADE POLICY REVIEW. REPORT BY THE SECRETARIAT. SOLOMON ISLANDS Revision (WTO) 2016. Available at: https://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm#bycountry

1.19.5. Risk determination

Overview of Legal Requirements

Export permissions and certificates

Round log export is permitted only on the issue of a **Specific Authority to Export** rounds logs (issued by the Central Bank of Solomon Islands), on the basis of a *Market Price Certificate* from the Commissioner of Forests. See 1.18: Offshore trading and transfer pricing for procedure to obtain this document.

For the export of sawn timber, a **Permit to Export** is required. The *Permit to Export* shall be approved by the Ministry of Forestry & Research. The application for the *Permit to Export* must detail the relevant Felling and/or Milling Licence numbers, volumes, species, and values of timber being exported, as well as documentation of the sale arrangements.

An exporter can apply for a **Certificate of Origin** wherever an associated Permit to Export has been approved. However, a Certificate of Origin is not legally required to export timber from the Solomon Islands.

If applicable in the import country, an exporter can obtain a **Phytosanitary Certificate**, which is issued by the Solomon Islands Agricultural Quarantine Service. This certificate describes any fumigation that has been conducted for the specified container or containers.

Export duty

In the case of logs or sawn timber, the *Permit to Export* or *Specific Authority to Export* is submitted by the exporter to the Customs & Excise Division, before export as part of the export approval application. Customs checks the contents of each consignment and determines the payable Export duty. Once Export duty is paid the Customs approval (*C25 Form*) is issued.

Export duty rates are set by the Comptroller of Customs on the recommendation of the Commissioner of Forests. In the case of round and roughly-squared logs (HS Code 4403), compound rates are set according to the determined value. Export duty rates begin at 25% of F.O.B. price up to SI\$673 per m³, with higher duty rates for price-brackets above SI\$673 per m³. Sawn-timber (HS Code 4407) is currently (as of 2018) charged at a flat 2.5% of F.O.B. price. (WTO Trade Policy Reviews, Personal communications 1).

Species export restrictions

The following species shall only be exported as milled timber, pursuant to a milling licence issued by the Commissioner of Forests (2(a) of the Forest Resources and Timber Utilisation (Protected Species) (Amendment) Regulations 2012):

- Rosewood (*Pterocarpus indicus*)
- Ironwood, Kwila (*Instia bijuga*)
- Kauri (*Agathiss macrophylla*)
- Walnut (*Dracontomelum vitiense*)
- Canoe Tree (*Gmelia moluccana*)
- *Canarium spp.* (Ngali)
- Vasa (*Vitex*)

NOTE: Rattan (*calamus spp.*) shall only be exported in a product form manufactured in the Solomon Islands.

According to the Forest Resources and Timber Utilisation (Protected Species) Regulation 2012, the following species shall only be felled and sold or exported with an authorisation under the Wildlife Protection and Management Act 1998:

- Mangrove (*Rhizophora spp.*) and all other mangrove species
- Ebony (*Diospyros spp.*)
- Ngali Nut (*Canarium indicum*)
- Tubi (*Xanthostemon*)

According to the Wildlife Protection and Management Act 1998 (Part III, section 11), as a listed Schedule I species (Prohibited or Restricted Export), the export of Tubi (*Xanthostemon*) is prohibited, unless the exporter "is an approved person and has a valid export permit issued for scientific research purposes". Additional requirements for the application for permit to export are described (Part III, section 14).

Additionally, according to the Wildlife Protection and Management Act 1998 (Part III, section 11), the following tree species are listed in addition to the ones described above as Schedule II (*Regulated and Controlled*) species, whereby their export is prohibited, unless the exporter "is an approved person and has a valid permit to export such specimen for commercial purposes". Additional requirements for the application for permit to export are described (Part III, section 14):

- *Cordia subcordata* (Kerosine wood)
- *Hernandia numphaeifolia* (Lantern tree)
- *Castanospermum australe* (Black bead)

Description of Risk

Research identified three main risks in relation to customs regulations:

- A risk that a valid *Permit to Export* or *Specific Authority to Export* is not in place
- A risk that the Export duty has not been correctly paid
- A risk that species export restrictions have been violated

The following references highlight a generalised compliance environment in which risks exist with regards to customs laws:

Concern has been expressed with regards to the loss of millions of dollars in income from export duties, because of under reporting of volume and species of logs exported from Solomon Islands. See Iroga, R (2017) and solomontimes.sb (2008).

Iroga, R refers to an un-named report which, according to the author, was carried out by a reputable national financial institution in the country and presented to the government. The report found that Solomon Islands had lost significant value (monetary) from its forestry resources due to both the government's decision to set the average determine price on round logs significantly below the average market price and the manipulation of transactions by forestry industry players or loggers. There seems to be a great discrepancy between log receipts volumes and revenue from export duties in both 2014 and 2015. The report estimates that the government was losing about SBD445.70 million in potential tax (export duty) revenues, which was equivalent to 13.1% of total fiscal budget for 2015 (Iroga, R (2017)).

A report by PHAMA comments that China continues to be the largest destination for exported logs, taking approximately 96% of the logs exported during 2013. Data within the report for 2011–2013 describes a log export volume (to all countries) between 1.4million and 1.6million m³/annum. However, China import statistics report receiving a greater volume than those reported in the Solomon Islands, with Chinese statistics indicating that Solomon Islands supplied 1.7–2 million m³/annum of round logs for the same period. This suggests that underreporting of volumes, and the use of false declarations (effectively smuggling) in relation of exported goods, are common practice.

According to Transparency International (2012), there is an urgent need to increase human resources and operational budgets as a means of effectively conducting monitoring of different stages of forestry operations in the Solomon Islands, including: conducting timber inventories, declaration of volumes, export permits and carrying out enforcement and compliance. The report advocates that, where possible, mechanisms should be introduced that engage independent monitoring officers to carry out monitoring tasks, such as inspections at the ports.

According to Transparency International (U4 Expert Answer, Solomon Islands: Overview of corruption and anti-corruption), millions in logging revenues are evaded through underreporting. Logging companies have been exposed for under-reporting of export volume, altering species names (using species names with low market value) and bribery. The report comments that government officials are often implicated in such high-profile corruption activities. According to Katovai et al (2015), the regularity of such fraud reveals the unprecedented levels of logging-driven corruption.

The challenges given limited staffing and funding within the Ministry of Forestry & Research and the Customs & Excise Division, combined with the highly geographically dispersed nature of logging, making verification of products being exported a significant challenge (UN-REDD Programme, 2013).

The 2016 Transparency International Corruption Perceptions Index scored Solomon Islands 42 out of 100, with 1 being a high level of perceived corruption and 100 being no perceived corruption. Solomon Islands was ranked 72 out of the 176 countries evaluated.

Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Based on reporting's of discrepancy between volume of timber export of the export duties paid, as well as the risk of corruption, the risk of violating requirements of export is considered to be specified.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.19.6. Risk designation and specification

Specified risk (all Source Types)

1.19.7. Control measures and verifiers

Obtain and verify documents

- Obtain and verify that a valid *Permit to Export* or *Specific Authority to Export* is in place.
 - Obtain (as applicable to product): Permit to Export (sawn timber) or Specific Authority to Export (logs).
 - Confirm the validity of the document and declared information, by ensuring that the information (prices, volumes, species, product-type, grade or quality, custom code, etc) is correctly described and consistent with and other supply chain information.
 - Verify that information in relation to the relevant Harvesting and/or Milling licences (where the timber was produced) has been included and that this information is feasible and correct.
- Obtain (as applicable to product): supplier invoice; supply contract; *Market Price Certificate* (logs only); *Specific Authority to Export* (logs only), *Permit to Export* and *Customs Approval* (C25 Form).
 - Confirm the validity of the documents and declared information, by ensuring that the information (prices, volumes, species, product-type, grade or quality, custom code, etc) is correctly described and consistent with each-other and other supply chain information.
 - Verify that Export duty has been paid based on correct product, volume, pricing and species information. There shall be no misreporting (species and product information) or under-reporting (prices and volumes).
- To mitigate risks in relation to species export restrictions:
 - Verify via on-site inspections (preferable conducted by independent 3rd parties) that the relevant species which shall only be exported as milled timber, are not being exported in log form. NOTE: Rattan (*calamus* spp.) shall only be exported in a product form manufactured in the Solomon Islands.
 - Verify that the relevant species are not sold or exported, without an authorisation or permit issued by the correct authority under the Wildlife Protection and Management Act 1998, for the correct purpose (Commissioner of Forests or Ministry of Environment, Conservation, Climate Change and Disaster Management).

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

- Wildlife Protection and Management Act 1998: <https://www.ecolex.org/details/legislation/wildlife-protection-and-management-act-1998-act-no-10-of-1998-lex-faoc060396/>
- Wildlife Protection and Management Regulations 2008 (L.N. No. 78 of 2008): <https://www.ecolex.org/details/legislation/wildlife-protection-and-management-regulations-2008-l-n-no-78-of-2008-lex-faoc148447/>
- Wildlife Protection and Management (Amendment) Act 2017. Available at: [http://www.parliament.gov.sb/files/legislation/Acts/2017/Wildlife%20Protection%20and%20Management%20\(Amendment\)%20Act%202017.pdf](http://www.parliament.gov.sb/files/legislation/Acts/2017/Wildlife%20Protection%20and%20Management%20(Amendment)%20Act%202017.pdf)

1.20.2. Legal authority

- Ministry of Environment, Climate Change, Disaster Management and Meteorology (Environment and Conservation Division (ECD)).

1.20.3. Legally required documents or records

- CITES permit

1.20.4. Sources of information

Government sources

- MECM (2008). Solomon Islands State of Environment Report 2008. Ministry of Environment Conservation and Meteorology. Pacific Horizon Consultancy Group, Honiara, Solomon Islands. Available at: <http://www.sids2014.org/content/documents/180SOLOMONISLANDS-STATEofENVIRONMENT2008.pdf>

Non-Government sources

- SPECIES+: <https://www.speciesplus.net>
- Markets Study for Solomon Islands Timber Exports (PHAMA) 20/10/2014. Available at: <http://phama.com.au/wp-content/uploads/2016/06/TR-60-SOLS18-Market-Study-for-Solomon-Islands-Timber-Exports-v1.0-FINAL.pdf>
- EIA report: <https://eia-international.org/wp-content/uploads/EIA-Appetite-for-Destruction-lo-res.pdf>
- World Bank Worldwide Governance Indicators: <http://info.worldbank.org/governance/wgi/index.aspx#home>

1.20.5. Risk determination

Overview of Legal Requirements

The objective of the Wildlife Protection and Management Act is to regulate the international trade in the country's wildlife resources including birds, reptiles, amphibians, mammals, insects, plants and marine organisms.

In order for anyone to be involved in the wildlife trade, that individual or organization needs to have an "approved management programme" and have its name entered into a specific "register". A special "permit" equivalent to CITES permit – to be issued by the Environment and Conservation Division (ECD) of the Ministry of Environment, Climate Change, Disaster Management and Meteorology – must accompany a particular consignment of wildlife intended for export. An application with information on the wildlife to be exported including the export value of the consignment must be submitted in a specified form for approval by ECD.

Solomon Islands became a party to CITES in 2007. Commercial wood species which are native to the Solomon Islands and in the CITES appendices (as of January 2018) include:

- *Dalbergia Spp.* (Appendix II. Various species are native to the Solomon Islands)
- *Gonystylus macrocarpus* (Appendix II)
- *Podocarpus neriifolius* (Appendix III Nepal only. However, native distribution includes the Solomon Islands)

Description of Risk

According to Personal communications 1, CITES species are not commonly traded in the Solomon Islands, and the risk of violation the legal requirements are not present.

Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Exports to China are understood to be seven times higher than the sustainable logging rate prescribed in the Solomon Islands and harvesting beyond sustainable levels is widely considered to be a problem.

A report by PHAMA comments that China continues to be the largest destination for exported logs, taking approximately 96% of the logs exported during 2013. Data within the report for 2011-2013 describes a log export volume (to all countries) between 1.4million and 1.6million m³/annum. However, China import statistics report receiving a greater volume than those reported in the Solomon Islands, with Chinese statistics indicating that Solomon Islands supplied 1.7–2 million m³/annum of round logs for the same period. This suggests that underreporting of volumes, and the use of false declarations (effectively smuggling) in relation of exported goods, are common practice.

Given the above, a precautionary approach is taken here with regards to CITES species, which are at increased risk due to their enhanced vulnerability.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.20.6. Risk designation and specification

Specified risk (all Source Types)

1.20.7. Control measures and verifiers

Obtain and verify documents

- Identify species of timber and determine if they are CITES-listed in Solomon Islands: <https://www.speciesplus.net>
- If listed, ensure all required CITES export licenses are issued by the CITES management authority: <https://cites.org/eng/cms/index.php/component/cp/country/SB>
- All cross border-trade of CITES-listed species shall be documented and accompanied by required export certificates issued by competent authorities (CITES Management Authorities).

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

- Forest Resources and Timber Utilisation Act 1970 [Rev. Edition 1996] [Cap 40]. Available at: http://thereddesk.org/sites/default/files/forest_resources_and_timber_utilisation_act_of_1969.pdf

1.21.2. Legal authority

- Commissioner of Forests

1.21.3. Legally required documents or records

None

1.21.4. Sources of information

Non-Government sources

- World Bank Worldwide Governance Indicators:
<http://info.worldbank.org/governance/wgi/index.aspx#home>

1.21.5. Risk determination

Overview of Legal Requirements

There is no legislation in the Solomon Islands covering due diligence/due care procedures.

However, section 30 of the Forest Resources and Timber Utilisavtion Act 1970 [Cap 40], part VIII, appears to have been included within the legislation with the intention of creating a deterrent effect – and requirement for due care - in relation to trade in illegally harvested timber and products derived from such timber:

"Any person who receives any forest produce knowing or having reasonable cause to believe it to have been obtained in contravention to this Act shall be guilty of an offence and liable to a fine of one thousand and five hundred dollars or to imprisonment for one year or to both such fine and such imprisonment."

Description of Risk

- It is not clear that this requirement is being actively enforced (Personal Communications 1 & 2).
- Solomon Islands has relatively low scores on many of the World Bank Worldwide Governance Indicators (2016 data). On a 0 to 100 scale (percentile ranking which indicates the rank of one country among all countries evaluated and where 0 corresponds to lowest rank and 100 corresponds to highest rank), Solomon Islands has scores of 15 for Government Effectiveness; 15 for Regulatory Quality; 40 for Rule of Law; and 44 for Control of Corruption.

Risk Conclusion

This indicator has been evaluated as specified risk. For at least one source type, identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.21.6. Risk designation and specification

Specified risk (all Source Types)

1.21.7. Control measures and verifiers

- Consult the Commissioner of Forests (and/or other stakeholders) to confirm that there are no open legal processes, nor sanctions issued by the MoFR or other ministries, in relation to illegal harvesting or trade of wood-products. This is particularly important in relation to suppliers acting in contravention of the FRTU Act. If an ongoing process or sanction exists, the following actions are advised:
 - Companies shall avoid sourcing wood-products related to the ongoing process or sanction.
 - Companies way wish to avoid all sourcing from the legal entity involved, until matters are fully resolved.

CONSULTATION DRAFT



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NEPCon | Skindergade 23, 3. | DK-1159 Copenhagen
FSC™ A000535 | PEFC/09-44-02 | info@nepcon.org |
www.nepcon.org
Phone: + 45 86 18 08 66 | Fax: + 45 86 18 10 12