

Timber Legality Risk Assessment People's Republic of China

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A. Introduction

This Timber Legality Risk Assessment for People's Republic of China (hereafter referred to as **China**) provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. Please note: this Risk Assessment relates to mainland China only.

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and Preferred by Nature (at the time, called Preferred by Nature). A detailed description of the methodology can be found [here](#) and on Preferred by Nature's [Sourcing Hub](#).

Version history

Version 1.0: published November 2017

Version 2.0: published April 22, 2021

Interviews with Experts

The list of experts is not included in the risk assessment. However, all experts are known to Preferred by nature.

Version 1.0: Discussions with different experts (conducted during the week 30th November to 4th December 2015 as well as by telephone/email before and after these dates) have helped the authors of this report to better understand the applicable laws and risks associated with each category of legislation.

Version 2.0: Discussions with varied experts (conducted between January and October 2020, by telephone/email) have contributed to the development of version 2-0 of the risk assessment for China.

Public Consultation

Online public consultation on the Sourcing Hub: 25 January – 26 March 2021

B. Overview of timber legality risks in China

B1. Timber Risk Score: 77 / 100 in 2021

This report contains an evaluation of the risk of illegality in China for five categories and 22 sub-categories of law.

For the Chinese forest sector, we found:

- **Specified risk for 6 sub-categories.**
- **Low risk for 8 sub-categories.**
- **No legal requirements for 8 sub-categories.**

For the wood-based import and supply chain transparency and traceability we found:

- **Specified risk for 3 sub-categories.**

The Timber Risk Score for China is 77 out of 100. The key legality risks identified in this report concern timber harvested in China and cover legal rights to harvest, taxes and fees, timber harvesting activities and trade and transport. Risks identified in indicator 1.22 was not included in the risk score calculation, and neither was the risks related to import or supply chain.

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

- Forest tenure certificate is not registered by the government to the land contracted/leased by forest management enterprises in the following provinces: Hainan, Guangxi, Yunnan, Guangdong and possibly Hunan, Jiangxi, Fujian (applicable only to Plantation) (1.1)
- Unlawful transfer of forest tenure of plantations between the forest management enterprise and local community in the following provinces: Hainan, Guangxi, Yunnan, Guangdong and possibly Hunan, Jiangxi, Fujian (applicable only to Plantation) (1.1).
- Forest management plans may not be appropriately implemented by state-own forest management enterprises (1.3)

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

- Value-added taxes (VAT) are not paid according to law (applicable to processors and traders) (1.6).

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

- Lack of training and awareness of personal protective equipment of the workers (applicable to Plantation and Natural forest) (1.11)
- Lack of appropriate personal protective equipment in forest activities (applicable to Plantation and Natural forest) (1.11)
- Lack of employment contracts and injury insurance for forest workers (1.12)

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

- Misreporting of tree species when exporting (only applicable to Natural forests) (1.19).

- False reporting (effectively smuggling) of imported CITES species (only applicable to imports) (1.19).
- Imported/re-exported CITES species is not accompanied by CITES permit (1.20)

For **Supply chain transparency and traceability**, there is a risk that:

- False declaration of origin, species, or transport route (not applicable to Bamboo) (1.22)
- Falsification of documentation by processors and traders (not applicable to Bamboo) (1.22)
- Mixing of declared species/origins with wood-supply from unknown sources or species in production and trade (not applicable to Bamboo) (1.22)
- Supply chain mapping is particularly difficult (not applicable to Bamboo) (1.22).

B2. Timber source types and risks

There are three timber source types found in China. Knowing the “source type” that timber or wood-based products originate from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation.

Plantation

Plantations are the main source of timber from China. These include timber from collectively, individually, or corporately owned commercial plantations, and state managed plantations. A harvesting permit is required.

Timber from forests planted for other purposes, i.e., fruit trees, are known as economic forests. When the forest has no yield, the trees may still be harvested as materials for forest products. A harvesting permit is required.

Note: a harvest permit is not required if the plantation grows on non-forest land, such as trees in private farm plots and surrounding houses.

Natural Forest

Natural forests are not a significant source of wood-supply because China has implemented the Natural Forest logging ban nationwide by law, except for wood from tending or sanitary cuttings to maintain and enhance the natural forest. In addition, there are strict limitations to the dimensions of the trees which may be harvested.

A Harvesting Permit for tending or sanitary cutting is required.

Bamboo Forest

Bamboo¹ forest refers to the forest community dominated by bamboo species.

A harvest permit is not required for the bamboo forest except those within nature reserves.

Main source areas for common commercially available plantation species

Eucalyptus (*Eucalyptus spp.*) plantations are commonly growing in southern provinces of China, such as Guangxi, Guangdong, Hainan, Fujian provinces.

Poplar (*Populus spp.*) plantations are common in east and north of China, such as Shandong, Jiangsu, Henan, Hebei, Anhui, Hubei and Liaoning.

Paulownia (*Paulownia tomentosa*) is common Shandong, Jiangsu, Henan and Hebei province.

¹ Evergreen perennial flowering plants in the subfamily *Bambusoideae* of the grass family *Poaceae*

Chinese fir (*Cunninghamia lanceolata*) is common in Fujian, Zhejiang, Jiangxi, Hunan, Anhui, Hubei, Sichuan, Guangxi.

The main sources for bamboo (mostly natural bamboo forests) are Zhejiang, Fujian, Jiangxi, Hunan, Hubei, Sichuan, Guizhou province and Chongqing city.

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

Legal Category	Sub-Category	Source Type		
		Plantations	Natural forests	Bamboo forest
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Low	Low
	1.2 Concession licenses	N/A	N/A	N/A
	1.3 Management and harvesting planning	Specified: State-owned forest enterprises	Specified: State-owned forest enterprises	Low
		N/A: Smallholders and private companies		
	1.4 Harvesting permits	Low	Low	Low
Taxes and fees	1.5 Payment of royalties and harvesting fees	N/A	N/A	N/A
	1.6 Value added taxes and other sales taxes	N/A: Forest level and export	N/A: Forest level and export	N/A: Forest level and export
		Specified: Supply chain	Specified: Supply chain	Specified: Supply chain
	1.7 Income and profit taxes	Low	Low	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Low	Low	Low
	1.9 Protected sites and species	Low	Low	Low
	1.10 Environmental requirements	Low	Low	Low
	1.11 Health and safety	Specified	Specified	Low
	1.12 Legal employment	Specified	Specified	Specified
Third parties' rights	1.13 Customary rights	N/A	N/A	N/A
	1.14 Free prior and informed consent	N/A	N/A	N/A
	1.15 Indigenous & Traditional Peoples' rights	N/A	N/A	N/A
Trade and transport	1.16 Classification of species, quantities, qualities	N/A	N/A	N/A
	1.17 Trade and transport	Low	Low	Low
	1.18 Offshore trading and transfer pricing	Low	Low	Low
	1.19 Custom regulations – Exports	Low	Specified	Low
	– Imports	Specified	Specified	Specified

Legal Category	Sub-Category	Source Type		
		Plantations	Natural forests	Bamboo forest
	1.20 CITES – China sourced CITES-listed trees species and their export	Low	Low	Low
	– imported/re-exported CITES species	Specified	Specified	Specified
Due Diligence / Due Care procedures	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A	N/A
Other	1.22 Supply chain transparency and traceability	Specified risk	Specified risk	Low

C. Overview of the forest sector in China

The ninth national forest resources inventory for the period 2014 to 2018 revealed that forest cover in China is 220.45 million ha, 22.96% of the national territory, with a growing stock volume of 17.56 billion m³. These figures include 6.41 million ha of bamboo forest.

Within the stated forest cover, natural forests make up 63.7% in area at 140.42 million ha and 14.11 billion m³ growing stock (80.3% in volume), while plantations make up 36.3% in area at 80.03 million ha and growing stock volume of 3.45 billion m³ (19.7% in volume). In relation to ownership of *forest land*, State forests (including natural forest and plantations) account for 38.66% and the collective forests 61.34%. These figures reflect five key trends within Chinese forests: (i) gross forest resources in China are growing; (ii) forest quality is steadily improving; (iii) natural forests are steadily growing in growing stock volume; (iv) both total plantation area and growing stock volume have increased rapidly; and (v) more timber is being produced from plantations.

In 2017, the volume of commercially harvested timber was 83.98 million m³ and bamboo (DBH > 5 cm) was 2.76 billion stems, 1.61 billion of which was moso bamboo (*Phyllostachys heterocycla cv. Pubescens*). Among the harvested timber, 82.72 million m³ was from plantations and only 1.26 million m³ was from natural forests.

In 2018, the commercial harvested timber was 88.11 million m³ and bamboo (DBH > 5 cm) was 3.16 billion stems, 1.7 billion of which was moso bamboo.

Ownership and use of the forest resources

According to China's Constitution (Article 9) and the Forest Law (Article 14), the forest resource is owned by the State, except those owned by the collectives as stipulated by law. No individuals or private companies can own land in China. Land can be owned only by the state/government or collectively owned (village committee or sub-village).

However, ownership can be separated from use rights, which are recognized and protected by law. Use-rights can be owned by individuals, entities or other organizations via renting agreements, transference agreements, or other mechanisms. As a result, there are effectively four types of forest ownership or use rights to forest (or timber) and forest land², including:

- i. Ownership of forest land
- ii. Ownership of forest (or timber)
- iii. Use right to forest land
- iv. Use right to forest (or timber)

These ownerships are legally protected and should not be infringed. Forest transfers, as well as forest land acquisitions and conversions, must be reviewed and approved by the forestry authorities at county level or above after going through legally required procedures.

The National Forestry and Grassland Administration (NFGA) – previously the National Forestry Administration (SFA) before its name change in April 2018 – is an administrative unit within

² Forest land is the land on which the forest or plantation grows. Forest is the standing trees within a natural forest or plantation. Timber is the felled trees.

the Ministry of Natural Resources of the People's Republic of China, in charge of national forestry and Grassland affairs. The NFGA uses the forest tenure certificate with a nationally standardized format and series number to register the owner of the four types of forest ownership, mentioned above.

As of 2019, for the forest resources which have not been registered and issued a Forest Tenure Certificate, an Immovable Property Certificate for forest land are being issued and all information on it will entered into National Immovable Property Database, according to the Interim Regulation of Immovable Property Registration and Interim Measures of Confirmation and Registration of Natural Resources.

In relation to ownership of *forest/timber* and *use rights*, according to the ninth national forest resources inventory for the period 2014 to 2018, state entities own 37.92%, collective organizations (mostly village committees) own 17.75%, with individuals own 44.33%. In fact, the private companies can obtain the use rights of forest land from the state entities, collective organisations, and individuals through various forms of contractual agreements.

Forest classification types

Forests are managed in line with the classification of management method. According to the Forest Law of China, by function, forests are classified as Ecological forest and Commercial forest. Ecological forest is strictly prohibited from commercial harvest. Furthermore, there are five main forest types by the management objective in China:

Forest categories by function	Forest types by function and coverage (2019)	Definition ³
1. Ecological forest	1) Protection forests (100.82 million ha)	Forest for the purpose of ecosystem protection
	2) Special-purpose forests (22.8 million ha)	Forest for conservation of species resources, environmental protection, national defence, forest tourism, science experiment, etc.
2. Commercial forest	3) Commercial timber forests (74.42 million ha approx.)	Forest for production of timber or bamboo
	4) Energy (fuelwood) forests (1.23 million ha approx.)	Forest for the supply of energy
	5) Economic use forests (20.94 million ha)	Forest for production of oil, dried and fresh fruit, industrial raw materials, medicinal materials, non-timber forest products, etc

³ National standard GB/T 26424-2010 Technical regulations for forest resource of planning, inventory and design.
<https://wenku.baidu.com/view/bc8c4e14f342336c1eb91a37f111f18582d00c5a.html>

Over 43% of forest cover is defined as Commercial forest, whilst 57% of forests are designated as Ecological forests. Ecological forest is managed as a public resource with funding deriving mostly from government with some private sector investment; while Commercial forest is managed as a primary industry using market resources. Use right owner or owners of forest that is classified and managed as Ecological forest will be reasonably compensated by government at various levels.

According to the Measure of national Ecological forest designation and classification, Ecological forest can be further classified into 2 levels:

1. National class I Ecological forest: Any harvest activities - including non-timber forest products (NTFPs) - are prohibited.
2. National class II Ecological forest: Commercial harvesting is prohibited but non-commercial cut is allowed with a harvesting permit, such as sanitary cut.

The management of natural forest within Ecological forest shall also comply with the natural forest protection regulation and policy, except as provided above.

Forest management permit or license types (legal sources of timber)

The harvesting of commercial forests - and non-commercial harvesting of natural forests - must be conducted with the harvesting permit issued by forestry authorities at or above the county level in accordance with the harvest quota.

Since 2014, the commercial harvesting of natural forests has been phased out in China. This policy has been incorporated into the latest version of Forest Law of China (amended on 28th December 2019) – the logging of natural forest is strictly prohibited (the competent authority of the State Council will stipulate the specific management measures). Tending or sanitary cuttings to maintain and enhance the natural forest can be allowed with a permit.

How timber harvesting is regulated

China has designed and implemented a system to govern the harvesting, transportation, and processing of wood. The system is composed of the following important elements:

- Harvest quota plan:

Harvest quota management is a basic practice adopted in China's forest governance system based on the principle that timber production volumes shall not be higher than the growth volume of the forest. To achieve the objective, every five years the provincial forest department submits annual timber harvest quota to the provincial government for final approval following the opinions from the Forest competent authority (NFGA) of the State Council, according to the Forest Law of China (2019).

- For **Key State-owned forests**, the NFGA develops the quota and submits them to the State Council for final approval.
- For **other State-owned forests**, the state forest management enterprises or forest farms submit the quota to the provincial government for final approval.
- For **collective forests**, forest authorities at county level will be responsible for preparing and submitting the quota, which will be pooled and balanced by provincial forestry

departments and approved by the provincial government and then submitted to State Council for final approval.

- Forest harvesting permitting system:

Article 56 of the Forest Law of China (2019) provides that a harvesting permit shall be obtained for the harvesting of forests or trees on forest land and that harvesting activities shall follow the terms and conditions on the permit. The harvest permit is not required for bamboo forest outside nature reserves but should follow relevant harvesting procedure. Individual farmers are exempted from this requirement when they cut their own forest on family land and around their houses. The harvesting of forest by State-owned forest management enterprises or other organisations must be approved by forestry authorities at county level or above; the harvesting of forests by rural collective economic organisations must be approved by county forestry authorities; and the harvesting of forests by farmers from their own forest land (called “family hill” in Forest Law) or contracted forest must be approved by country forest authorities or the township government with authorisation by country forest authorities. In all cases above, a harvesting permit is issued.

Note that the Timber transportation permit system (was phased out as of 1st July 2020 according to newly amended Forest Law (2019)):

- Harvesting inspection and oversight system:

National and local forestry authorities and township forestry stations are responsible for the inspection and oversight of the implementation of the harvesting system. County-level forestry authorities check harvesting permits relevant to their jurisdiction. Forestry authorities at different levels as well as business and commerce authorities check the number of processors and their size in combination with registration and business licence changes (these being permitted in line with the relevant laws and regulations, local forest resources and harvest quotas). The NFGA also sends task forces to check harvest volume, harvest area and sales volume) for State-owned forest areas.

Administrative divisions of China

The administrative divisions of the territory administered by China Central government as below, based on Constitution of People’s Republic of China, may be helpful to facilitate the understanding of legality context in China:

Level	Name	Type
1 st	Provincial level	<ul style="list-style-type: none"> • Province • Autonomous regions • Municipality
	Special administrative regions	<ul style="list-style-type: none"> • Special administrative regions (Hong Kong, Macao)
2 nd	Prefectural level	<ul style="list-style-type: none"> • Prefecture-level city • Autonomous prefecture
3 rd	County level	<ul style="list-style-type: none"> • County-level city • County • District

		<ul style="list-style-type: none"> Autonomous county
4 th	Township level	<ul style="list-style-type: none"> Town (or subdistrict) Township Ethnic township

Below the township level, the village or residential committee is the basic level autonomous organisation in which the director, deputy director and committee members are elected by villagers or residents. The village or residential committee is delegated a certain level of administration duties and reports to the government.

Sources relevant to the introduction

- National Forestry and Grassland Administration (NFGA). *China Forest Resources Report (2014-2018)* (Ninth National Forest Resource Inventory).
- NGFA. *China Forestry Statistics Yearbook 2018*.
- NFGA. China Forestry Statistics Summary Report 2018. Available at: <http://www.forestry.gov.cn/sites/main/main/lyzt/zht.html>
- Constitution of the People's Republic of China amended on 11th of March 2018 - Article 9–13 & 26. Available at: <http://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>. [Accessed 12 February 2020]
- Forest Law of P. R. China dated 29th December 2019. Available at: www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml. [Accessed 12 February 2020]
- National standard GB/T 26424-2010 Technical regulations for forest resource of planning, inventory and design. Available at: <https://wenku.baidu.com/view/bc8c4e14f342336c1eb91a37f111f18582d00c5a.html> [Accessed 12 February 2020]

D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses.

Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- 1) Constitution of the People's Republic of China amended on 11th of March 2018 Article 9–13 & 26. Available at: <http://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>
- 2) General Principle of Civil Law of the People's Republic of China dated 12th of April 1986 – Article 74, 75, 80 & 81. Available at: http://www.law-lib.com/law/law_view.asp?id=3633
- 3) Law of the People's Republic of China on the Contracting of Rural Land ("Rural Land Contracting Law") dated 29th of December 2018 – Article 2 & 24. Available at: <http://www.npc.gov.cn/npc/c30834/201901/cd063e4c0f19465e9d41946001fe839c.shtml>
- 4) Code Civil of the People's Republic of China ("Code Civil") dated 28th of May 2020 – Article Chapter 2. Available at: <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>
- 5) Forest Law of the People's Republic of China ("Forest Law") amended 28th of December 2019 – Chapter 2. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 6) Regulation on the Implementation of the Forest Law of the People's Republic of China [Revised], dated 19th March 2018 - Article 3, 4. Available at: <https://law.lawtime.cn/d708998714092.html>
- 7) Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership dated 14th October 1996 – Article 2. Available at: <http://www.forestry.gov.cn/main/3951/content-204759.html>
- 8) Interim Regulation of Immovable Property Registration dated 1st March 2015 – Article 2-9. Available at: http://www.gov.cn/zhengce/2014-12/22/content_2795318.htm

- 9) Interim Measures of Unified Identification and Registration of Natural Resources Ownership and Use Right dated 11th July 2019 – Article 3,4, 14 & 16. Available at: http://gi.mnr.gov.cn/201907/t20190722_2448602.html
- 10) Administration Measures for Forest and Forestland Tenure Registration [Revised], dated 25th January 2011 – Article 3-9. Available at: <http://www.forestry.gov.cn/main/3951/content-204744.html>
- 11) Measures for the administration of rural land contract management certificate, dated 1st January 2004. Available at: http://www.moa.gov.cn/gk/tzgg_1/bl/200312/t20031202_142285.htm
- 12) Law of the People's Republic of China on the Mediation and Arbitration of Rural Land Contract Disputes dated 1st January 2010 – Article 2-6. Available at: http://www.npc.gov.cn/zgrdw/npc/lftz/rlyw/2017-11/02/content_2031277.htm
- 13) Company Law of the People's Republic of China (2005 Revision) dated 26th October 2018 – Article 6 & 7. Available at: <https://www.shui5.cn/article/ce/134033.html>
- 14) Villager Committee Organisation Law of P.R. China dated 29th December 2018 – Chapter 4. Available at: <http://www.mca.gov.cn/article/gk/fg/jczqhsqjs/201911/20191100021350.shtml>
- 15) Regulations Governing Examination and Approval of Occupation and Requisition of Forest Land dated 4th January 2001. Available at: http://www.gov.cn/gongbao/content/2002/content_61894.htm
- 16) Land management law of P. R. China dated 26th of August 2019. Available at: <http://www.npc.gov.cn/npc/c30834/201909/d1e6c1a1eec345eba23796c6e8473347.shtml>

All provinces within China shall apply the laws listed above but may still take different approaches to ensure the right of land tenure and management.

1.1.2. Legal authority

- National Forestry and Grassland Administration and forest authority at different levels are responsible for laws regarding forest, forest trees and forest land.
- Ministry of Agriculture and Rural Affairs, for the agricultural land.
- State Administration for Industry and Commerce is responsible for Company Law.

1.1.3. Legally required documents or records

Numbers below refers to the numbers of the legislation in section 1.1.1.

- 10) Administration Measures for Forest and Forestland Tenure Registration Revised 25th January 2011 – Article 3-9:
 - Forest Tree and Forest Land Tenure Certificate (Forest Tenure Certificate), or
- 9) Interim Measures of Unified Identification and Registration of Natural Resources Ownership and Use right dated 11th July 2019 – Article 3,4 14 & 16:
 - Immovable Property Certificate (for forest land).

11) Measures for the administration of rural land contract management certificate, dated 1st January 2004:

- Rural land contract management certificate.

13) Company Law of the People's Republic of China (2018 Revision) dated 26th October 2018 – Article 6 & 7:

- For companies leasing forest land for forest management: updated Forest tenure certificate or Forest land leasing contract.
- Business License, only applicable for companies mentioned above.

1.1.4. Sources of information

Government sources

- 1) *China Forestry Development Report (2013, 2014, 2015 and 2017)*. State Forestry Administration, Available at: <http://124.205.185.8/lysjk/indexJump.do?url=view/moudle/searchData/firstStage&key=%E4%B8%AD%E5%9B%BD%E6%9E%97%E4%B8%9A%E5%8F%91%E5%B1%95%E6%8A%A5%E5%91%8A>.
- 2) *China Forestry Statistics Yearbook 2018* (page 176). National Forestry and Grassland Administration.
- 3) National Forestry and Grassland Administration Comments on Effectively Strengthening Management of Transfers of Collective Forest land Rights, Sec. 11 (issued on October 16, 2009).
- 4) fjlyzy.chinacourt.gov.cn. (2016). *Difficulties in judging disputes over Forest tenure in Longyan city, Fujian province*. Available at: <http://fjlyzy.chinacourt.gov.cn/article/detail/2016/08/id/2072141.shtml> [Accessed 13 November 2019]
- 5) www.forestry.org.cn (2015), *Four measures to settle the dispute over forest tenure in Dongying city of Shandong province*. Available at: <http://www.forestry.gov.cn/main/102/content-817391.html>. [Accessed 13 November 2019]

Non-Government sources

- 6) China.com.cn. (2009). *Collective Forest Tenure Reform and Forest Crisis*. [online]. China Web Report. Available at: http://www.china.com.cn/news/zhuanti/hblps/2009-05/08/content_17745715.htm [Accessed 13 November 2019]
- 7) Ping, L., and Yufang S. (2014). *Large-Scale Land Acquisition for APP Forest Plantations: Field Findings and Recommendations*. Washington, DC: Rights and Resources Initiative, pp. 3-37. Available at: https://rightsandresources.org/wp-content/uploads/RRIRReport_APP_web1.pdf [Accessed 13 November 2019]
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- [content/uploads/RRIRReport_Forestland_web-Final-w-Cover1.pdf](#) [Accessed 20 January 2021]
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1.1.5. Risk determination

Overview of legal requirements

The Constitution, General Principle of Civil Law, and the Forest Law of China provide that forest resources are owned by the State except for those owned by collectives.

In China, there are two types of ownership and two types of use right to the forest land, forest (or timber).

- 1) Ownership of forest land
- 2) Ownership of forest (or timber)
- 3) Use right to forest land
- 4) Use right to forest (or timber)

For forest land, there are two forms of ownership:

- State-owned forest land (such as government, state forest management enterprise/farm, other state-owned company).
- Collectively owned forest land (such as village committee, sub-village or other management bodies. Note: most of the use rights of collectively owned forest land are now assigned to individual households).

For the other three types of ownership and use right (ownership to forest or timber, use right to forest land and use right to forest or timber), these can be owned by the forest managers (households, individuals, entities or other organizations via renting agreements, transference agreements, or other mechanisms, according to Article 15 and 16 of the Forest Law.

For state-owned forest land, normally the state-owned organisations or governments have the ownership and use right of both forest land and forest or timber.

The Regulation of the Implementation of the Forest Law provides that the State implements the registration and certificate issuance system for forest, timber and forest land, with the format of the forest tenure certificate developed by the National Forestry and Grassland Administration (NFGA). Since 18 April 2000, the NFGA has used forest tenure certificates with a nationally integrated format and series number to register the owner of forest land, use right owner of forest land, owner of forest or timber, as well as the use right owner of forest or timber.

Subsequently, forest tenure is registered, and the forest tenure certificate (in the nationally standardised format) is issued in line with the Administration Measures for Forest and Forest land Tenure Registration. If there is a dispute regarding ownership, the forest tenure certificate will be issued after the disputes are settled, according to Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership.

As of 2019, forest resources that have not registered on forest tenure certificate will be uniformly registered on natural resource tenure certificate on which the information enters into national immovable property information database, according to the Interim Regulation of Immovable Property Registration and Interim Measures of Confirmation and Registration of Natural Resources.

In line with the principle of separation of forest land ownership from use rights, and on the condition that the collective ownership of land remains unchanged, the transfer of ownership of forest, use right of forest and land from collective to private persons, private or state-owned organizations is being encouraged to guide the reasonable

distribution of forest resources and to promote scaled and intensive forest management by realising the optimal configuration of forest resources. The transfer of forest, forest trees and forest land must be conducted under a contract, in which the name and address of both parties, the condition of the forest to be transferred, the period of transfer including start and finish date, transfer price, and method of payment shall be clearly indicated. Generally, the duration of the transfer contract can last 30–50 years and will be no more than 70 years. After the transfer, both parties must apply for a change in registration of tenure at the level of county forestry authority or above; and the county government or above must register the change in accordance with the law.

China implements a control system for forest land acquisition. According to Regulations Governing Examination and Approval of Occupation and Requisition of Forest Land, exploration and extraction by mines and other projects shall, where possible, avoid acquiring forest land. If necessary, the acquisition shall be reviewed and approved by forestry authorities and then go through an approval process in accordance with land management laws and regulations.

Developers wanting to acquire forest considered not to be significant at the national level must apply for the acquisition through county forestry authorities; those who want to acquire nationally important forests shall apply through State-owned forest bureaus. When applying for acquisition, developers must submit a certificate for the legal entity, approval files for the project, a forest tenure certificate, compensation agreement and feasibility report for forest land acquisition by the project, etc. Forestry authorities shall organise the development of forest vegetation restoration measures for the acquired forest land in the same or the following year, and also organise personnel for on-site checks of the forest land for which acquisition has been sought. After projects pass the check and developers pay the forest vegetation restoration fee, the forestry authorities issue a Forest Land Use Consent. Forest land acquisition units shall then go through the review and approval procedure in accordance with the law.

A regulation (Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership dated 14th October 1996) describing how to deal with forest tenure disputes has been issued and related procedures developed. In addition, other national laws enact related regulations relating to resolving forest tenure disputes, including: Forest Law of China, Land Reform Law, and Land Contract Law in Rural Areas. In Minority Autonomous Regions, some local unwritten laws regulate the detailed procedures governing resolution of conflicts on forest land borders.

The Company Law of China requires that an established company be issued a business license by the Market Regulation Bureau at the county level or above to carry out business activities. Forest entities shall hold a business license.

Description of risk

In China, land tenure and management rights are quite clearly defined following the collective forest tenure reforms that have been taking place since 2008.

- Collectively owned Forest tenure reform has been carried out in a stepwise fashion in China, with the core thrust of recent reforms being the decentralization of forest/forest land use rights and management rights. Since 2008, forest land tenure has been decentralized to farmers, with Forest tenure certificates issued to farmers,

forest management enterprises (FME's) and forest farms by the government at or above county level - or by the forestry authority authorized by the State Council. According to China Forestry Yearbook (2018), as of the end of 2017, there was a total of 180 million ha collectively owned forest land. 98.97% of collectively owned forest land has been demarcated and 97.65% allocated to individual farmers and FME's, and their rights and obligations are very clearly defined (see Government source 2). However, there is still some forest land that fails to be registered and issued with a certificate, which poses a potential risk in the context of tenure disputes. From the beginning of forest tenure reform to February 2012, more than 800,000 disputes over tenure have been identified, 97% of which has been resolved. This can be interpreted to mean that there are still some disputes which have not been resolved. This problem mainly occurs between plantations companies and local communities in the southern collective forest areas, including Hainan, Guangdong, Guangxi, Yunnan, Hunan, Jiangxi and Fujian (*Government source 3*).

- Most natural forest land is owned and managed by state or collective organization (i.e., village committee) with clear tenure.
- Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership is a regulation describing how to deal with forest tenure disputes, issued 14 October 1996 and for which related procedures have subsequently been developed. In addition, other national laws enact related regulations relating to resolution of forest tenure disputes (Forest Law 2019, Rural Land Contracting Law 2002 etc.). The Interim Measure for Unified Identification and Registration of Nature Resources Ownership and Tenure was issued on 23 July 2019 for further identification and registration of forest land ownership and tenure to better manage the forest resources based on the clear tenure.
- In the past, some civil society organizations (e.g., Rights and Resources Initiative), published articles and media reported conflicts in relation to land rent between private forest companies and local communities, occurring mainly in Hainan, Guangxi, Guangdong and Yunnan Provinces. These conflicts focused on insufficient transparency in land tenure lease procedures. There were also related reports for Fujian, Jiangxi and Hunan Provinces. The process of land contract signing did not comply with legal requirements (See Non-Government sources 2, 6, 7 - 10). For example, in some cases, the transfer of forest use rights did not comply with Village committee organization law- no evidence existed to show the transfer was agreed by the required percentage of villagers. Reports on non-Chinese forest companies (See Non-Government sources 2, 3 and 4) revealed the fact that foreign forest companies have in the past secured forest land tenure by inappropriate means, which often violated (or at least insufficiently protected) individual farmers' land rights. However, after the implementation of the tenure reform and forest land tenure transfer mechanism (2008 onwards), such reports relating to land tenure conflicts have appeared less often in recent years and arguably only relate to plantations. The National Forestry Grassland Administration has also issued a set of rules in 2009 requiring a comprehensive review of historical problems associated with large-scale transactions of collective forest land rights that occurred prior to the forest reform (Government Source 3).

- With the above in mind, Personal Communication various experts (1, 2, 4, 8) highlighted the case that forest tenure disputes still have the potential to occur. This is, in part, due to the history of land tenure in China including a significant number of policy changes over recent decades, as well as old practices to which local authorities have become accustomed. However, while issues may still arise today, existing law is clear on this matter.
- Previous investigations by the Chinese Academy of Forestry (CAF) have shown that timber from conflicted forest tenure constitutes a small proportion compared to the total amount produced.
- CAF also highlighted the fact that forest tenure certificates are not issued for the forests on 'non-forestry land', which refers to the land around villages, along roadsides and waterfronts, cultivated land and wasteland – not included in forestry land subject to planning. This could be considered a potential risk. However, these non-forestry lands are included within Rural land contract management certificates, which can serve as evidence that the certificate holder owns the use right of land and the right to use the resources on the land. At any rate, to safeguard the interests of farmers, China now allows the issuing of forest tenure certificates for forest on non-forestry land, and some cities or provinces have been implementing the policy.

Preferred by Natures' Legality Specialist staff in China has not experienced issues with companies operating without business license when conducting supply chain validation, or Forest and Chain of Custody certification. Further research through internet search did not reveal further information suggesting there is an issue related to lack of valid business license. According to stakeholder consultation, there is strict supervision from the government and without valid business license a company is not able to issue VAT invoice that customers need. Business licenses can be verified online.

Risk Conclusion

Based on the available information, the risk in this category has been generally assessed as Low at the country level. However, also based on the available information, risks in plantations in some southern provinces in China persist and can be assessed as Specified in the following provinces: Hainan, Guangxi, Yunnan, Guangdong, and possibly Fujian, Jiangxi and Hunan province.

1.1.6. Risk designation and specification

Natural forest, Bamboo: Low risk

Plantations: Specified Risk for the following two specific cases in relation to forest management enterprises which have contracted/leased collective forest plantations or land:

- 1) Risk that the Forest tenure certificate is not registered by the government, for land contracted/leased by forest management enterprises in the following provinces: Hainan, Guangxi, Yunnan, Guangdong and possibly Hunan, Jiangxi, Fujian.
- 2) Risk of illegitimate transfer of forest land use right still exists between the forest management enterprises and local communities in the following provinces: Hainan, Guangxi, Yunnan, Guangdong and possibly Hunan, Jiangxi, Fujian.

1.1.7. Control measures and verifiers.

Mitigating the risk of lack of tenure certificates (specified risk case)

Validity of tenure certificate can be checked through document review and verification:

- Forest tenure certificate
Contractors leasing forest land shall hold a forest tenure certificate with the tenure registration ID/number (Note: The certificate can carry different names, e.g., Immovable Property Certificate for forest land).
- Forest leasing or transfer contract
Contractors shall have a valid contract signed by all legal land tenure owners in the area of operation. If the area is owned by a village committee or sub-village, then 2/3 of the household representatives of the village should have signed the contract.
- Harvesting permits
A harvest permit can be helpful to confirm ownership or land tenure.

Mitigating the risk of Illegitimate transfer of forest tenure of plantations between the forest management enterprise and local community (specified risk case 2)

Legal tenure registration can be checked through relevant documents, internet search and consultation:

Document to review and verify:

- Forest tenure certificate
Contractors leasing forest land shall hold a forest tenure certificate with the tenure registration ID/number (Note: The certificate can carry different names, e.g., Immovable Property Certificate for forest land).
- Forest leasing or transfer contract
Contractors shall have a valid contract signed by all legal land tenure owners in the area of operation. If the area is owned by a village committee or sub-village, then 2/3 of the household representatives of the village should sign the contract.
- Harvesting permits
A harvest permit can be helpful to confirm ownership or land tenure.

Internet search:

Search for sources of information in the public domain (e.g., internet search via Baidu.com or other search engines) for evidence of community conflict relating to land tenure of the forest management enterprise. Suggested key words for internet search could be: forest management enterprise name + land dispute. Search should be conducted in Chinese. Stakeholder consultation should be conducted where there is evidence or indication of conflict.

Consultation:

In case that the internet search – or other research or consultations identify concerns – implement a stakeholder consultation process with local communities and other stakeholders to confirm that:

- There is no dispute over land tenure rights and – where applicable – lease of land has been agreed by a representative majority of the households in the village.
- The legal status of the enterprise conducting forestry operations is not subject to court orders or other pending legal proceedings to cease activities.

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means.

Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

Not applicable.

In China, there is no facility or legal instrument similar to a concession.

There are State-owned and collectively owned forest lands in China. The former is managed by State-owned forest management enterprises or State-owned forest farms. The latter are often managed by village committees.

Since forest tenure reforms began in 2008, collectively owned forests have been decentralized to individual farmers, who enjoy the forest management and disposal rights and can decide whether to manage the forests as individuals or transfer or lease forest land for others to manage. This transfer is different from a forest concession, which is characterized by conceding use rights of natural resources owned or possessed by government. In this sense, there are no practices or instruments similar to a concession.

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

- 1) Forest Law of People's Republic of China dated 28th December 2019 - Article, 53 & 72. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 2) Regulation on the Implementation of Forest Law of People's Republic of China [Revised] dated 19th March 2018 - Article 11, 12, 13, 14, 28 & 33. Available at: <https://law.lawtime.cn/d708998714092.html>
- 3) Outlines for Development and Implementation of Forest Management Plan (Pilot) dated 21st November 2006. Available at: <http://www.forestry.gov.cn/main/449/content-33162.html>

- 4) NFGA Opinion on Further Reform and Improved Harvesting Governance on Collective Forest dated 4th May 2014 - Article 3. Available at:
http://www.forestry.gov.cn/portal/main/govfile/13/govfile_2086.htm

1.3.2. Legal authority

- National Forestry and Grassland Administration

1.3.3. Legally required documents or records

Numbers below refers to the numbers in section 1.3.1.

- 1) Forest Law of People's Republic of China dated 28th December 2019 - Article 53 & 72

- Approved Forest Management Plan.

Note: this is only applicable to state-owned forest management enterprises and state-owned forest farms (forest management unit established by the government that are specialized in afforestation, forest cultivation, protection and utilization). The forest management plan, which shall be approved by the county forest authority while the large and important state-owned forest management enterprises shall have their management plan approved by NGFA.

- Annual Harvest Quota (only applicable to state forest management enterprises).
 Note: the quota is approved by the government every five years based on the forest management plan.

1.3.4. Sources of information

Government sources

- 1) NFGA, *Notice on Accelerating Forest Management Plan Development* (2018). Available at: <http://www.forestry.gov.cn/main/72/20180611/180103798907652.html> [Accessed 20 January 2021]
- 2) China State-owned Forest Farms Development Report (2017), page 24. NFGA
- 3) Jilin province department, *Notice on the Plan of State-owned forest management plan development*. Available at: <http://policy.wugu.com.cn/article/1267723.html>. [Accessed 12 November 2019]
- 4) Anhui province Forestry department, *Notice on the pilot development of State-owned forest management plan*. Available at: <http://lyj.ah.gov.cn/public/9913203/39124342.html>. [Accessed 20 January 2021]

Non-Government sources

- 1) Xinjie Z. and Gang J. (2016), China Institute of Forest Inventory and Planning. *Analysis and suggested actions of problem on implementation of Forest management plan*. Available at: <http://www.doc88.com/p-1148606834312.html>. [Accessed 12 November 2019]
- 2) Bingzhu Z. (2019), Institute of forest survey and planning of Inner Mongolian Great Khingan. *Develop and implement Forest management plan scientifically so as to improve the forest management*. Available at:

- <http://www.imfic.com.cn/forestnews/linqunews/2019-02-18/56639.html> [Accessed 12 November 2019]
- 3) Quanhui N., Xinglong Y. (2015), *Analysis and suggested actions of problem on implementation of Forest management plan*. Available at: <https://wenku.baidu.com/view/db3bbd409fc3d5bbfd0a79563c1ec5da50e2d695.html>. [Accessed 12 November 2019]
 - 4) Shaojun T., Qinghua D., Degen C., and Longqing G. (2019). *Urgently Need to Implement Forest Management Plan Comprehensively and Strictly*. Available at: [https://kns.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFQ&dbname=CJFDAUTO&filename=NJJY201911059&v=MTM1NTVuVzdySkt5ZkJKN0c0SDIqTnJvOUFiWVI4ZVgxTHV4WVM3RGgxVDNxVHJXTTFGckNVUjdxZlplZG9GaXI=](https://kns.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFQ&dbname=CJFDAUTO&filename=NJJY201911059&v=MTM1NTVuVzdySkt5ZkJKN0c0SDIqTnJvOUFiWVI4ZVgxTHV4WVM3RGgxVDNxVHJXTTFGckNVUjdxZlplZG9GaXI=.). [Accessed 12 November 2019]
 - 5) www.fx361.com. Discussing the Existing Issued with State-owned Forest Management Plan. Available at: <http://www.fx361.com/page/2017/0327/1438102.shtml>. [Accessed 12 November 2019]
 - 6) Guoyun X. (2016). Comments on Issues about Forest Management Plan in China. Available at: <https://www.ixueshu.com/document/e4859208ffe87b810f76e43533b21810318947a18e7f9386.html> [Accessed 12 November 2019]
 - 7) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
 - 8) The World Bank. (2019). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.3.5. Risk determination

Overview of Legal Requirements

According to the Forest Law (2019) and the Regulation of the Implementation of Forest Law, the State-owned forest management enterprises and state-owned forest farms shall develop forest management plans which shall be approved by the county forest authority. Key State-owned forest management enterprises shall have their management plan approved by NGFA, whatever the types of the forest they manage (including natural forest, plantation, or bamboo).

The forest management plan covers a ten-year period while the management plan of the industrial raw materials (such as rubber, pine gum, medicine, etc..) forest spans five years. When the time comes, new management plans must be prepared.

Harvest quota management is a basic practice adopted in China's forest governance system based on the principle that timber production volumes shall not be more than the growth volume of the forest. To achieve the objective, every five years the provincial forest department submits annual timber harvest quota to the provincial government for

final approval following asking the opinions from the Forest competent authority (NFGA) of the State Council, according to the Forest Law (2019).

- **For Key State-owned forests**, the NFGA develops the quota and submit to the State Council for final approval.
- **For other State-owned forests**, the state forest management enterprises or forest farms submit the quota to the provincial government for final approval.
- **For collective forests**, forest authorities at county level will be responsible for preparing and submitting the quota, which will be pooled and balanced by provincial forestry departments and approved by the provincial government and then submitted to State Council for final approval.

Description of Risk

- The Forest Law (2019) requires State-owned forest enterprises to develop forest management plans and also stipulates the liability of a Forest management plan not being developed nor implemented. In some provinces (Shanxi, Liaoning, Heilongjiang, Fujian, Henan, Chongqing, Xinjiang, etc.), all State-owned forest enterprises completed the FMPs (Government Source 2). In addition, in July 2018 NGFA required the state-owned forest enterprises must complete the development of Forest management plan (FMP) as soon as possible and for those which had not developed the FMP by the end of 2020, the harvest quota of the 14th five-year plan (2021-2025) would not be approved (Government Source 1). Furthermore, some provincial forest authorities required the State-owned forest enterprises to complete the development of FMP earlier. For example, Jilin province required all State-owned forest enterprises must complete FMP by the end of 2018 (Government Source 3). Anhui province required the FMP must be completed by the end of 2019 (Government Source 4). Based on the expert consultation, the state-owned forest enterprises should have a forest management plan.
- However, there is no strong administrative or monitoring system in place and, therefore, oversight of planning process and the implementation of forest management plan is not strongly regulated nor enforced (Non-government Source 1, 2, 3, 4 & 5).
- Requirements for collectively owned forests and company-managed forests to develop management plans are not mandatory. They are only encouraged to develop the simplified forest management plan.
- Personal Communication with various experts (1, 2, 4) highlighted that the state-owned forest enterprises should have forest management plan (FMP) in place and normally the defined harvest plan is followed (actual harvest volume is less than the harvest plan) but it is possible that the whole forest management plans are not appropriately implemented and do not meet the desired outcome. However, China is now making efforts to put more focus on science-based forest management planning and implementation. Future changes in policy and forest administration and management are likely to reflect this change of focus.
- For bamboo forest, the state-owned forest enterprises normally follow the management plan because the silviculture and harvesting system is very simple,

which only selective cut is applied without any other disturbing activities except fertilizing and weeding would be slightly used in some regions of China.

China has a score of 41/100, at position 80 (of 183 countries/regions assessed), according to Transparency International's 2019 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2019 perceptions ratings (on a scale of -2.5 to +2.5): Government Effectiveness: 0.52; Regulatory Quality: -0.24; Rule of Law: -0.27; Control of Corruption: -0.32.

Risk Conclusion

Based on the risk description, the risk in this category can at present be assessed as Specified for State-owned forest enterprises. While it is expected that Forest management plans will exist, they may not be appropriately implemented by state-owned forest enterprises.

1.3.6. Risk designation and specification

Natural forest and plantations:

- Specified risk: State-owned forest enterprises. While it is expected that Forest management plans will exist, they may not be appropriately implemented by state-own forest management enterprises.
- The risk is not applicable to Smallholders, private forest companies or collective organizations.

Bamboo forest: Low risk

1.3.7. Control measures and verifiers

Mitigating the risk of Lack of appropriate implementation of management plans

Implementation of management plan can be checked through document review and consultation with forest authorities.

Review documents and verify:

- Confirm the approval of Forest Management Plan, including:
 - If the plan has been approved by a relevant forest authority.
 - If the growth rate is estimated by reasonable inputs and the planned harvest volume does not surpass the estimated growth rate.
 - If it includes all legally required elements, such as forest resources status quo, growth rate, planned harvest volume, regeneration plan, biodiversity protection, forest fire prevention, pest and disease control.
- The Annual Harvest Quota has been approved by the regional forest authority and aligns with the Forest Management Plan.
 - Annual harvest quota document should be compared to the Forest Management Plan to confirm there is no significant discrepancy in harvest volume.
- Harvesting permits are aligned with the Forest Management Plans
 - A harvesting permit can indicate if the harvest activities follow the objectives set out by an existing Forest Management Plans.

Consult resources for relevant information:

- Forest authorities responsible for approving management plans for the State Forest. Visit their websites to check:
 - If the Forest Management Plan and Annual harvest quota have been approved by a legitimate forest authority.
 - If the state forest management enterprise in question is following the objectives of the approved Forest Management Plan.
 - Please note the relevant authority differ depending on administrative level of the State forest.

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

- 1) Forest Law of People's Republic of China dated 28th December 2019 - Articles 54-60. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 2) Regulation on the Implementation of the Forest Law of the People's Republic of China [Revised], dated 19th March 2018 - Article 30, 31 & 32. Available at: <https://law.lawtime.cn/d708998714092.html>
- 3) Measures for the Administration of Forest Logging and Regeneration dated 8th January 2011 - Article 5 & 6. Available at: http://www.gov.cn/gongbao/content/2011/content_1860813.htm
- 4) Technical Code for Forest Logging Operations dated 1st December 2005 - Article 5 (1). Available at: <https://wenku.baidu.com/view/bf9e94e90975f46527d3e114.html>
- 5) NFGA Opinion on Further Reforming and Improving harvest management of Collectively owned Forest dated 4th May 2014 - Article 6. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_2086.htm
- 6) Explanation of Several Issues of the Supreme People's Court on Specific Application of Laws for Hearing the Criminal Case in Forest Resources Damages dated 17th November 2000. Available at: http://www.law-lib.com/law/law_view.asp?id=517

1.4.2. Legal authority

- National Forestry and Grassland Administration

1.4.3. Legally required documents or records

- Forest Harvesting Permit issued by the relevant forestry authority at or above county level according to Forest Law and Regulation of the Implementation of Forest Law.

1.4.4. Sources of information

Government sources

- 1) China Forestry Statistics Yearbook 2016 (page 201), 2017 (page 192), 2018 (page 164), published by National Forestry and Grass Administration.
- 2) CPC Central Committee Office and NGFA (2019). *Natural Forest Protection and Rehabilitation System Plan of China* National Forestry and Grassland Administration of the People's Republic of China. Available at: <http://www.forestry.gov.cn/trlbh/1846/20190726/104407779910094.html>. [Accessed 12 February 2020]
- 3) NGFA (2016). Circular on Strengthening the 13th Five-year Annual Harvest Quota management. Available at: <http://www.forestry.gov.cn/main/4461/content-865524.html>. [Accessed 12 February 2020]
- 4) Chinadaily.com.cn. (2015). *Report: Logging hurts panda habitat*. [online]. China Daily. Available at: http://www.chinadaily.com.cn/china/2015-10/23/content_22262635.htm. [Accessed 12 February 2020]
- 5) Chinese Forestry Development Report 2007-2017. NGFA. Available at: <http://www.forestry.gov.cn/Common/index/62.html>. [Accessed 12 February 2020]

Non-Government sources

- 1) Greenpeace (2015). *Illegal logging is threatening China's Giant Pandas*. Available at: <https://www.greenpeace.org/eastasia/blog/1831/illegal-logging-is-threatening-chinas-giant-pandas/>. [Accessed 12 February 2020]
- 2) Chinadaily.com.cn (2015). *China to phase out commercial logging of natural forests by 2017*. [online]. China Daily. Available at: http://m.chinadaily.com.cn/en/2015-06/10/content_20962885.htm. [Accessed 12 February 2020]
- 3) Chinanew.com.cn. Baihuijiang protection bureau applies drones for forest patrolling (2019). Available at: <http://www.gs.chinanews.com.cn/news/2019/07-29/320326.shtml>. [Accessed 12 February 2020]
- 4) Xnnews.com.cn. Applying drones to patrol forests (2019). Available at: http://szb.xnnews.com.cn/xnrb/html/2019-06/17/content_333129.htm. [Accessed 12 February 2020]
- 5) Chatham House: <https://forestgovernance.chathamhouse.org/countries/china>. [Accessed 12 February 2020]

- 6) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china> .[Accessed 12 February 2020]
- 7) The World Bank. (2019). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019*. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators> .[Accessed 12 February 2020]

1.4.5. Risk determination

Overview of Legal Requirements

In China, harvesting permits are legally required before the harvesting operation.

China's harvest quota system is carried out with the intention of limiting harvests to volumes below annual incremental growth. To achieve the objective, every five years the provincial forest department submits annual timber harvest quota to the provincial government for final approval following the opinions from the Forest competent authority (NFGA) of the State Council, according to the Forest Law of China (2019).

- For **Key State-owned forests**, the NFGA develops the quota and submits this to the State Council for final approval.
- For **other State-owned forests**, the state-owned forest enterprises or forest farms submit the quota to the provincial government for final approval.
- For **collective forests**, forest authorities at county level will be responsible for preparing and submitting the quota, which will be pooled and balanced by provincial forestry departments and approved by the provincial government and then submitted to State Council for final approval.

Harvesting permitting system:

Article 56 of the Forest Law of China (2019) provides that a harvesting permit shall be obtained for the harvesting of forests or trees on the forest land. The harvest permit is not required for bamboo forest outside nature reserves but should follow relevant harvesting procedure. Individual farmers are exempted from this requirement when they cut their own forest or trees on private plots and surrounding their houses.

When applying for a harvesting permit, the applicant must submit the documents and/or information on the location, forest type, species, area, volume, mode of harvesting, renewal measures and forest ownership/use right relating to the harvesting. If the harvest area or volume exceeds the limit defined by the provincial forest authority, the documents on survey and design of the harvesting area shall be submitted.

Harvesting activity must also follow the conditions indicated on the permit relating to harvest area, plant species, harvesting method, etc.

Harvesting permits are issued by forest authorities at different levels (although all contain broadly the same information):

- Forest authority **at the county level**: State-owned forest enterprises administered by the county government, private forest companies and collective organisations.

- Forest authority **at county level or the township government** with authorisation by country forest authorities: individual farmers cut the forest or trees from their family hill or contracted collective forest.
- Forest authority **at province level**: provincially owned forest farms, prefecture-owned forest farms or enterprises, provincially managed nature reserves or forest parks, non-forestry units.
- National Forestry and Grassland Administration: Key State-owned forest farms or forest management bureaus, nature reserves or forest parks of key national importance, or other forests with important ecological values.

According to Forest Law, organisations and individuals holding harvesting permits must carry out forest operations in accordance with harvesting area operation rules, and authorities issuing harvesting permits are empowered to check the completed operation. If an offence is identified, the harvesting organisation may face seizure of the harvesting permit and termination of harvesting operations.

Management of harvesting areas is implemented in China to administer and monitor inventory and design, timber production, harvesting, regeneration of the harvested area and inspection of harvesting quality.

The Criminal Law provides a detailed description of penalties in terms of illegal timber harvesting, along with Forest Law and Regulation on the Implementation of Forest Law. The document, Explanation of Several Issues of the Supreme People's Court on Specific Application of Laws for Hearing the Criminal Case in Forest Resources Damages, specifically stipulates the basis for determining a penalty in terms of species, quantity of timber illegally harvested as well as corresponding charges and penalty.

Description of Risk

Overall, implementation and enforcement of the forest harvest quota system; the permitting mechanism for forest harvesting play a role in combating illegal harvesting and related trade in China.

To enhance the supervision over harvesting permit issuance, the National Forest Harvesting Management System has officially operated since 2015, which runs as an online national network for harvesting permit issuance and monitoring, as well as supporting the verification of the harvesting permit. It only provides an internal enquiry system, which is unavailable publicly up to now.

Since 2015, NGFA has applied satellite remote-sensing images to identify suspected illegal activities in forest land.

Based on the evaluation reports of IUCN/TNC, Greenpeace, WWF, Forest Trends and TFT, among others, the Chinese government is aware of the significance and importance of legally harvested and traded timber and forest products and has taken measures to improve domestic forest management and address illegal domestic harvesting.

In 2017, 83.98 billion m³ commercial timber was produced nationwide. 32,000 forestry criminal cases and 173,300 forestry administrative cases occurred. 193,000m³ illegal timber was confiscated via criminal cases and 163,700m³ via administrative cases. The total (356,700m³) of confiscated illegal timber accounts for 0.42% of the total harvested timber (Government Source 1). Compared to 2007, the number of forestry

administrative cases in 2017 decreased from 376,700 to 173,000 (by 54%). Again, comparing 2007 and 2017, the volume of illegal timber confiscated by criminal cases decreased by 78.7% from 905,200 m³ to 193,000 m³ (78.7%) while the produced commercial timber increased by 20.4% from 69.77 billion m³ to 83.98 billion m³.

According to NGFA advice on the phase-out of commercial logging in natural forests, commercial harvesting was prohibited in all-natural forests by the end of 2017. In China, there is State-owned natural forest and collective-owned natural forest. The calendar for the progression of this policy, which comes under the National Forest Protection Programme (NFPP), is as follows:

- **April 2014:** Trial of Natural Forest commercial logging ban in key State-owned forests in Heilongjiang. The logging ban already covered (since 1998) natural forest within mid- to upper watersheds of the Yellow and Yangtze Rivers.
- **April 2015:** Trial of natural forest commercial logging ban in Heilongjiang extended to include Jilin and Inner Mongolia Autonomous Regions.
- **2016:** Natural forest commercial logging ban was extended to all State-owned forest enterprises in China, within the 17 provinces of the NFPP.
- **Starting 2017:** Natural forest commercial logging ban was extended to collectively owned land (which can be managed by either individuals or entities).

In 2017 NGFA checked on 99 state-owned forest units in Northeast of China, including all 87 Key state-owned forest bureaus (a total of 32.66 million ha land) and 6 nature reserves and 6 state-owned forest enterprises. It was found that 2,648 m³ standing trees at 85 sites (a total of 210.72ha) were harvested without permits. In the context of the sampling methodology and checks made, this is considered to be a small volume, which also indicates that illegal harvesting has been curbed since the commercial logging ban of natural forests.

According to the revised Forest Law of China (2019), the commercial logging of natural forest is strictly prohibited across China. In addition, NGFA is prohibiting natural forest from clear-cutting in the name of "forest reconstruction" (in some regions, the natural forest was classified as "low-functioning forest" and allowed to be clear-cut for the establishment of more productive and profitable forest because of loopholes in regulations). It should be noted that the permitted tending cuts (for maintenance) in Key state-owned natural forests in Northeast and Inner Mongolia will not produce dimensional timber (Government Source 3). This is because, according to stakeholder consultation, the limit of log size is >2m in length and >8cm at the small end.

In this way, only plantations are permitted to be commercially harvested, and the problems of overcutting beyond quota are being more-or-less consigned to history. For collective plantation forests, since tenure has been identified and protected, managers can apply for harvesting permits with their forest tenure certificate using a simplified procedure.

For bamboo forest, a harvest permit is not required for the bamboo forests outside nature reserves. In China, the harvest of bamboo applies selective cutting only. The monitoring and governance of harvesting of bamboo forest is loose compared to that of

arboreal forest. Measures have been taken to provide farmers with greater freedom to manage bamboo forests.

Preferred by Nature's experience supporting organisations' due diligence on Chinese sources of wood-supply, also supports this view, with harvest permits being available (where applicable) in almost all supply chain legality assessments. Within our evaluations of such licences a very small fraction (significantly less than 1%) appear to be falsified.

During public stakeholder consultation, which took place during February and March 2021, stakeholder input was received regarding illegal harvesting of particular species. A specific case was raised, related to harvesting of native species *Acacia confusa* in the Hainan province using documentation for *Acacia mangium*, which is an introduced exotic species from plantations and therefore easier for the authorities to issue harvest permits. *Acacia confusa* is largely from natural forests with very limited supplies in Hainan province, and harvesting is restricted under the national ban of harvesting in natural forest. It is difficult to tell the difference between *Acacia mangium* and *Acacia confusa* if only based on species names indicated in harvest permits, because often only "Acacia" is indicated in these documents. Further investigation (including further stakeholder consultation 9, 10 & 11) was made to estimate the scale of this issue. It was concluded that there are indications that unlawful harvesting has occurred in the recent past, and some level of illegal activity may continue to take place. However, there was insufficient evidence to indicate that illegal logging of *Acacia confusa* is a widespread issue relevant to a large proportion of mainland China and that it remains an on-going issue of significant concern.

Risk Conclusion

Based on the above, the issue of harvesting without a permit - or with an unlawfully issued permit - can be considered to be low, with the forest authorities making efforts to combat this issue, including the application of IT systems for harvesting permit issuance, satellite remote sensing images and drones for forest monitoring.

According to the available information, the risk of this category is assessed as Low for plantations and bamboo forests also.

1.4.6. Risk designation and specification

All source types: Low risk

1.4.7. Control measures and verifiers

- N/A

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume-based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species.

Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

Not applicable. There are currently no royalties or harvesting fees applicable to harvesting.

1.5.1. Applicable laws and regulations

- 1) Law of People's Republic of China on the Administration of Tax Collection dated 24th February 2015 - Article 1, 2 & 4. Available at: http://www.npc.gov.cn/wxzl/gongbao/2015-07/03/content_1942889.htm
- 2) Measures for the Administration of Collection and Use of Afforestation dated 1st July 2009. Available at: http://www.chinaacc.com/new/63_64_/2009_6_9_wa84512154019690024692.shtml
- 3) Regulation on Plant Quarantine dated 13th May 1992 - Article 21. Available at: http://www.gov.cn/flfg/2005-08/06/content_21028.htm
- 4) Detailed rules for Forestry on Regulation on Plant Quarantine dated 25th January 2011- Article 21. Available at: <http://www.forestry.gov.cn/main/3951/content-204766.html>
- 5) Measures for Plant Quarantine Fee Collection of People's Republic of China dated 1992 - Article 2, 3 & 5. Available at: http://www.moa.gov.cn/ztlz/gjzwbhgy/flfg/201205/t20120507_2618504.htm
- 6) Notice on cancelling, exempting and discontinuing a batch of administrative business fees dated 1st January 2015 - Annex 2. Available at: http://www.gov.cn/zhengce/2016-05/25/content_5076596.htm
- 7) Notice on Abolishing and suspending a batch of administrative business fees dated 29th September 2015 - Annex. Available at: http://www.gov.cn/xinwen/2015-10/10/content_2944849.htm
- 8) Notice on Abolishing, Suspension and Combination of partial administrative fund project, date: 29th January 2016 – Article 2. Available at: <http://www.forestry.gov.cn/main/72/content-841837.html>

1.5.2. Legal authority

- National Forestry and Grassland Administration (NFGA)

1.5.3. Legally required documents or records

- Not applicable

- Payment receipt for afforestation funds (suspended since 1st February 2016)
- Payment receipt for plant quarantine fee (suspended since 1st September 2015)

1.5.4. Sources of information

Government sources

N/A

Non-Government sources

N/A

1.5.5. Risk determination

Overview of Legal Requirements

According to Measures for the Administration of Collection and Use of Afforestation and Regulation of Plant Quarantine, the following royalties or fees are required to be paid by forest managers or companies:

Afforestation fee: this special fee came into force in 1961 and is collected by government to restore, cultivate and protect forest resources as a supplement to national input for forest management. Buyers of timber, bamboo timber and other forest products – as primary products – are subject to the payment of this fee.

In 2016, the Ministry of Finance and State Taxation Administration issued Notice on Abolishing, suspension, and Combination of partial administrative fund project (date: 29th January 2016), all kinds of organisations or individuals are exempt from the afforestation fee.

Plant quarantine fee: collected by plant quarantine bodies for quarantine and relevant actions required for seeds and seedlings as well as other plant products.

In 2014, the Ministry of Finance and State Taxation Administration issued the Notice on Cancelling, Exempting and Discontinuing a Batch of Administration Business Fees (effective date: 1st January 2015), including provisions to exempt the plant quarantine fee for small and micro-sized companies.

In 2015, the Ministry of Finance and State Taxation Administration issued the Notice on Cancelling and Exempting a Batch of Administration Business Fees (effective date: 1st November 2015), including provisions to exempt the plant quarantine fee for all kinds of companies or individuals.

Currently China exempts all kinds of forest managers (including individual farmers) and companies from forestry-related royalties and fees to loosen their burden financially.

Description of Risk

This category is currently concluded as N/A. It is considered unlikely that the suspensions on the afforestation fee and quarantine fee will be lifted, considering the governmental trends to increasingly investment in, and subsidizing of, afforestation and forest protection.

Risk Conclusion

N/A
1.5.6. Risk designation and specification N/A
1.5.7. Control measures and verifiers N/A
1.6. Value added taxes and other sales taxes <i>Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales).</i> <i>Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.</i>
1.6.1. Applicable laws and regulations <ol style="list-style-type: none"> 1) Law of People's Republic of China on the Administration of Tax Collection dated 24th February 2015 - Article 1, 2 & 4. Available at: http://www.npc.gov.cn/wxzl/gongbao/2015-07/03/content_1942889.htm 2) Interim VAT Regulation of People's Republic of China dated 5th November 2008 - Article 15, 20 & 21. Available at: http://www.gov.cn/zxft/ft162/content_1171395.htm 3) Regulation Bylaw of Interim VAT Regulation of People's Republic of China dated 15th December 2008- Article 35. Available at: http://www.gov.cn/flfq/2008-12/18/content_1181744.htm 4) Invoice Management Measure of People's Republic of China dated 23rd December 1993, amended 20th December 2010. Available at: http://www.gov.cn/govweb/gongbao/content/2011/content_1778065.htm 5) Implementing Measures of Pilot Program of Replacing Sales Tax with VAT dated 23rd March 2016. Available at: http://shanghai.chinatax.gov.cn/zcfw/zcjd/201604/t422785.html 6) The State Council's Decision on Abolishing Interim Regulation of Sales Taxes and Amending Interim VAT Regulation of China dated 19th November 2017. Available at: http://www.gov.cn/zhengce/content/2017-12/01/content_5243734.htm 7) Notice of the Ministry of Finance and the State Taxation Administration on VAT abatement of Comprehensive Utilization Products dated 12th June 2015. Available at: http://zfs.mee.gov.cn/hjjj/gjfbdjzcx/lssfzc/201507/t20150706_304840.shtml
1.6.2. Legal authority <ul style="list-style-type: none"> • State Taxation Administration and taxation authorities at different levels
1.6.3. Legally required documents or records <ul style="list-style-type: none"> • VAT invoice (Fapiao) issued by companies (via invoicing IT system established and monitored by Taxation authorities:

- 17% VAT for manufacturing and trading of forest products.
- 3% VAT for small commercial businesses.
- VAT exempt for forest management organizations or individuals who sell their own products, such as roundwood, twigs, etc.

1.6.4. Sources of information

Government sources

- 1) State Taxation Administration, Publication of five false VAT invoice court cases, date: 30 June 2016.
<http://www.chinatax.gov.cn/n810219/n810724/c2256717/content.html>. [Accessed 12 February 2020]
- 2) State Taxation Administration, Publication of ten tax fraud court cases, date: 21 April 2017. Available at:
<http://www.chinatax.gov.cn/n810219/n810724/c2567615/content.html>. [Accessed 12 February 2020]
- 3) State Taxation Administration, Publication of seven false VAT invoice court cases, date: 21 November 2017.
<http://www.chinatax.gov.cn/n810219/n810724/c2921154/content.html>. [Accessed 12 February 2020]

Non-Government sources

- 1) Ziwen H. (2016). *Comments on VAT Evasion Problems in China Under the New Situation*. Available at:
http://www.wanfangdata.com.cn/details/detail.do?_type=perio&id=xdjxx201606138. [Accessed 12 February 2020]
- 2) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at:
<https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 3) The World Bank. (2019). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019*. [online]. Available at:
<https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.6.5. Risk determination

Overview of Legal Requirements – forest level & supply chain

Any invoice provides evidence of a goods transaction. In China, taxation is closely linked to an invoice (including VAT invoice or *Fapiao*) and is controlled such that an invoice demonstrates that a company pays tax and represents evidence for tax reimbursement.

According to the *Fapiao* Administration Measure of the People's Republic of China and relevant rules established by taxation authorities, VAT invoices used by value-added taxpayers are administered by the State Taxation Administration and must be purchased from local taxation authorities.

However, VAT is exempted in the following cases:

- Forest management companies or individuals who sell their own products, for example, sales of round-wood are exempt from VAT where the forest management unit sells the logs it produces.
- Individuals who do not register as a legal entity but are allowed to sell individual trees that are scattered or distributed on their land are not required to issue invoices. They are also not required to pay VAT according to the Interim VAT Regulation.
- According to Article 49 & 50 of Implementing Measures of Pilot Program of Replacing Sales Tax with VAT, individual business involved in Taxable activities (such as trading and processing) are exempt from VAT payment while the sales value does not reach the VAT exemption thresholds (ranging from a monthly sales value CNY 5,000-20,000, with the provincial departments of the Finance and Taxation bureaus defining the threshold at their discretion). If the sales value reaches this threshold, the individuals must pay VAT on the full sales value.
- VAT is zero for exported goods.

In addition, VAT can be reimbursed on different percentage:

- 70% VAT abatement for companies using residues from harvesting, primary processing and manufacturing. This will likely apply to companies such as manufacturers of MDF, particleboard, OBS, etc.
- 50% VAT abatement for pulp or paper manufacturers using recycled paper.

Fapiao have uniform requirements and format and are printed on special paper or in digital form (electronic VAT *Fapiao*). Booklets are printed by the designated tax authority, which monitors and supervises tax collection based on these documents.

To combat the nation-wide problem of false or falsified invoices (produced as a means to avoid tax payments), invoicing is connected with the taxation control system, through which every invoice can be visualised, traced or controlled by local tax authorities at or above county level. It is possible to check invoices online via a publicly available database (<https://inv-veri.chinatax.gov.cn/>). It is therefore possible for anyone to check if the invoice is legitimate or not, using the online checking facility.

Description of Risk – forest level

VAT is exempted for organisations or individuals operating at the forest level.

Description of Risk – supply chain

Based on a review of publicly available information on VAT issues, there is still some illegal activity with regard to the non-payment of VAT (*Government Source 1, 2 & 3 and Non-Government Source 1*). To avoid tax payments, some companies or individuals utilise different methods, such as:

- Providing receipts that indicate only the transaction amount and value. However, receipts do not have the same legal status as invoices in China and cannot be used as evidence of payment of tax.
- To avoid VAT taxes, companies (especially small sized companies) may refuse to issue invoices or indicate smaller volumes or values on invoices than the reality.

- Individual business involved in taxable activities (such as trading and processing) may refuse to issue invoices when the sales value is approaching the applicable VAT exemption threshold, otherwise the individuals must pay VAT on the full sales value.

However, according to Interim Regulation of VAT, VAT is exempt for exporters.

China has a score of 41/100, at position 80 (of 180 countries assessed), according to Transparency International's 2019 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2019 perceptions ratings (on a scale of -2.5 to +2.5): Government Effectiveness: 0.52; Regulatory Quality: -0.24; Rule of Law: -0.27; Control of Corruption: -0.32.

Risk Conclusion

Based on the risk description above, for all Source Types, the risk of this category has been assessed as:

Not Applicable: Forest level and exporting, because VAT is exempted.

Specified risk: Supply chain (processing and domestic market trading) level.

1.6.6. Risk designation and specification

For all Source types (Plantation, Natural Forests or Bamboo Forests):

- Forest level and exporting: Not Applicable.
- Supply chain (processing and domestic trading) level: Specified risk

1.6.7. Control measures and verifiers

Mitigation the risk that value added taxes (VAT) are not paid appropriately.

VAT payment can be verified through document review and database confirmation.

Review documents and verify:

- VAT invoices are valid.
 - Request copies of VAT invoices for products sold or traded along the relevant supply chain and check that they compare correctly against corresponding documents with regards to product descriptions, volumes, qualities, and species. Other relevant documents include delivery notes, contracts, bills of lading etc.
 - Sales prices shall be in line with market price.
 - Verify information through database confirmation (See below).

Database confirmation

- Verify VAT invoices on the Taxation authority's VAT database: www.inver.chinatax.gov.cn/.
 - If information is verified through the database this will indicate that VAT has been paid correctly by the companies.
 - All information included in the copy of VAT invoice must identical to information found in the database, including production descriptions, volumes, qualities, species, date, invoice number, etc.

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

- 1) Law of People's Republic of China on the Administration of Tax Collection dated 24th February 2015 - Article 1, 2 & 4. Available at: http://www.npc.gov.cn/wxzl/gongbao/2015-07/03/content_1942889.htm
- 2) Notice of Ministry of Finance and State Taxation Administration on Forestry Taxation Policy dated 1st January 2001 - Article 2. Available at: http://www.law-lib.com/law/law_view.asp?id=16689
- 3) Law of the People's Republic of China on Enterprise Income Tax, amended on 29 December 2018 - Article 1, 4 & 27. Available at: <http://www.npc.gov.cn/npc/c30834/201901/0c846c25aa80405fafc6f99247d0fe08.shtml>
- 4) Implementation of Law of the People's Republic of China on Enterprise Income Tax dated 23rd April 2019 – Article 86. Available at: <http://www.taxhu.com/index.php?m=article&f=view&t=mhtml&id=122924>
- 5) Invoice Management Measure of People's Republic of China dated 23rd December 1993, amended 20th December 2010. Available at: http://www.gov.cn/govweb/gongbao/content/2011/content_1778065.htm

1.7.2. Legal authority

- State Taxation Administration

1.7.3. Legally required documents or records

- Annual income tax declaration form
- Tax paid proof issued by Taxation authority.
- VAT Invoice and other evidence.

1.7.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Xia, L. (N.Y.). *Forestry-related tax and fee reform in China*. [online]. Rural Finance and Fiscal. Available at: <http://doc.mbalib.com/view/599fa18f96cd06d8e3e86c2ea7337403.html>. [Accessed 12 February 2020]
- 2) Docin.com. (N.Y.). *Forestry taxes and fees*. [online]. Docin Library. Available at: <http://www.docin.com/p-747196452.html>. [Accessed 12 February 2020]

- 3) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 4) The World Bank. (2019). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019*. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.7.5. Risk determination

Overview of Legal Requirements

In China, income and profit tax are controlled in the following way:

- According to Article 27 and 28 of the Law on Enterprise Income Tax, companies must pay income tax at 25% of their taxable income. The law also provides for income tax exemptions and reductions. There are some provisions related to forestry companies:
 - i) Forestry, agriculture, farming, and fishery business activities and primary processors (logs, bamboo, sawn timber) may be exempted from income tax requirements; and
 - ii) Small and micro-enterprises (annual taxable income no more than 300,000 CNY) pay the income tax at 20% of their income.
- Furthermore, according to Implementation of Law of the People's Republic of China on Enterprise Income Tax, income tax and profit tax exemptions may apply in two cases:
 - i) Enterprises engaged in forest management, seedling production, and primary timber processing are exempt from income tax and profit taxes.
 - ii) Secondary processing companies that use small-diameter logs, logging residues or materials processing residues to process wood-based panels, wood chips, fodders, pulp, charcoal, particles, etc. are also exempt from paying income tax.
- Additionally, income tax exemption is permitted in the case of some State-owned forest enterprises at the borders with other countries.

All other companies shall pay income tax.

If a company is also engaged in business activities other than forest management, seedling production and primary timber processing (i.e., activities that are exempt in the context of income tax, as above), the company shall manage the finances of the business separately from the tax-exempted business. If combined, all income tax shall be collected for the entire business.

Description of Risk

A thesis by Liu Xia (1) and Docin library (2), consider that according to laws and notices, zero income tax is effectively now implemented in China for forest management companies. These analyses highlight the fact that – after the issue by central government of a series of notices to lessen the tax burden on forestry companies – most

forest-related companies are exempt from paying income tax, particularly forest management units and primary processors.

The analyses also consider that income tax avoidance is not considered a risk of any significant proportion.

Risk Conclusion

Based on the available information, the risk associated with this criterion has been assessed as Low.

1.7.6. Risk designation and specification

Low risk for all Source Types.

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

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

1.8.1. Applicable laws and regulations

- 1) Measures for the Administration of Forest Logging and Regeneration dated 8th January 2011. Available at: http://www.gov.cn/gongbao/content/2011/content_1860813.htm
- 2) Technical Code for Forest Logging Operations dated 1st December 2005. Available at: www.forestry.gov.cn/lykj/1708/20200102/191123583860143.html
- 3) Forest Law of People's Republic of China dated 28th December 2019 - Article 31 & 32. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 4) Criminal Law dated 4th November 2017 - Article 344, 345 & 407. Available at: <https://www.66law.cn/tiaoli/9.aspx>
- 5) Explanation of Several Issues of the Supreme People's Court on Specific Application of Laws for Hearing the Criminal Case in Forest Resources Damages dated 17th November 2000. Available at: http://www.law-lib.com/law/law_view.asp?id=517
- 6) NFGA Opinion on Improvement of Harvesting Administration for Commercial Plantations dated 30th December 2003 - Article 2, 3 & 5. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_1130.html

1.8.2. Legal authority

- National Forestry and Grassland Administration (NFGA)

1.8.3. Legally required documents or records

- Harvest permit consistent with Logging Operation Design document

1.8.4. Sources of Information

Government sources

- 7) China Forestry Statistics Yearbook 2016 (page 201), 2017 (page 192), 2018 (page 164), published by National Forestry and Grass Administration.

- 8) NGFA website (2016). Strengthening the 13th Five-year Annual Harvest Quota management. Available at: <http://www.forestry.gov.cn/main/4461/content-865524.html>. [Accessed 12 February 2020]
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Non-Government sources

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- 2) Zhigao, W. (2013). *Working manner for forest resources supervision and governance*. [online]. China Forestry Press.
- 3) Chinese Academy of Forestry. (N.Y.). *FSC Controlled Wood field investigation report*. Internal use.
- 4) FSC website: info.fsc.org
- 5) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 6) The World Bank. (2019). Worldwide Governance Indicators for China. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.8.5. Risk determination

Overview of Legal Requirements

In China, Forest Law and a number of regulations act to regulate harvesting operations, via specific stipulations relating to timber harvesting.

The Forest Law provides that companies/ individuals must apply to the county-level forestry authority in the vicinity of the forest land to obtain a timber harvesting permit in accordance with annual harvest quotas. The operation must follow the requirements of operational design, harvesting operation practices, forest regeneration, health and safety, post-harvesting checks, etc.

State-owned forestry enterprises must submit the harvesting area inventory design plan to the National Forestry and Grassland Administration (NFGA) as part of the process of applying for the harvesting permit.

Other organisations, when applying for a harvesting permit, must submit documents indicating the harvesting objective, location, species, condition, area, volume and regeneration method.

If the harvesting operation does not meet the design plan, the authorities issuing the harvesting permit have the right to seize the harvesting permit and terminate the operation. The harvesters must achieve forest regeneration outcomes as per the details included on the harvesting permit including area, plant species and period; with the regenerated area not to be less than that harvested.

All harvesters must meet the relevant technical requirements. Five types of forest harvesting are adopted in China:

- (i) Mainstay cutting (final cutting).
- (ii) Tending (thinning) cutting.
- (iii) Regeneration cutting; and
- (iv) Low-efficiency forest cutting for improvement (not permitted for natural forest).
- (v) Others (e.g., expropriation by governments for infrastructure construction)

Mainstay and tending cutting are used for wood production in commercial forests, while regeneration cutting is used for improving the functions of protective forests and special-purpose forests. Low-efficiency forest cutting is intended to improve wood quality in stands for commercial use. Selective cutting, clear-cutting and gradual cutting are the major silvicultural methods used for forest harvesting. Forest companies must choose the right method based on the condition of the forest to be harvested.

Natural forest is not permitted to be clear-cut due to logging ban of natural forest nationwide that China has implemented by law. Only tending cutting (including sanitary cutting) is allowed to maintain and enhance the functions of natural forest. In this case, the harvest permit for tending cutting is required for which the harvest rate is usually lower than 20%. In addition, there are strict limitations to the dimensions of the trees which are to be harvested.

Before the harvesting operation, forest managers must prepare the cutting area inventory. They must identify and define boundary and area of harvesting sites; investigate stand factors including density, volume, species composition and age class etc.; investigate the volume to be harvested; and select the harvesting method. Based on the inventory results, the harvesting methods and harvesting preparation plan will be designed, which finally results in the creation of the harvesting plan. Following agreement on the plan by the various forest management agencies, the plan must be submitted to higher forestry authorities. The design plan is valid for two years.

The harvesting operation must strictly follow the design plan and the conditions on the harvesting permit, with these documents required to be available at the harvesting site. The harvesting area, volume and timber produced must not exceed the error levels assumed in the design plan. Additionally, harvesting must not cause significant damage to the remaining forest resource, and young trees must be well-protected. Large quantities of wood wastage are not permitted, and the operation must adhere to a

minimal waste principle. After the harvesting operation, residues must be removed from the harvesting area, with the primary objective of enhancing regeneration, with this activity also required to follow the Technical Code for Forest Logging Operations 2005.

Also, after harvesting, the harvesting operation shall be inspected. State-owned forest bureaus or forest management bureaus inspect harvesting operations carried out by forest farms, while operations by locally owned forest farms are inspected by higher forestry bureaus. Following successful inspection, a certificate (Inspection and Acceptance Certificate) will be issued to forest farms. Operations by collective committees and individuals (village committees and forest farmers) undertake a self-inspection process for their harvesting operations, with forestry authorities at county or province levels carrying out checks through sampling only.

Description of Risk

According to the CAF investigation on FSC Controlled Wood (3) in different counties nationwide, State- and locally owned forest enterprises broadly follow the legislative requirements relating to harvesting plan design, publicising of the harvesting operation, and technical requirements relating to harvesting. The CAF investigation also considers that local forest authorities properly implement their duty to inspect the quality of harvesting operation with the priority concerns being the protection of young trees and minimisation of waste during harvesting.

The forest managers (entities or individual) must apply for harvesting permits in line with the national and regional regulations, to harvest the trees on the forest land. The forest authorities at different levels conduct various harvesting inspection and are concerned about the compliance with legal requirements related to harvesting activities. An evaluation, made by Preferred by Nature, of a random sample of inspection results by different forest authorities across China on the public domains found no significant issues, though the inspection would apply sampling methods in many cases. These results also echo the FSC audit findings based on the analysis of FSC-FM audit reports of Chinese certificate holders.

Natural forest is not permitted to be clear-cut due to logging ban of natural forest nationwide that China has implemented by law. Only tending cutting (including sanitary cutting) is allowed to maintain and enhance the functions of natural forest. Albeit there are strict limitations to the dimensions of the trees which may be harvested, the harvested small size wood could have commercial value to make wood products, such as finger-jointed board, MDF, particleboard, etc. For the purpose of risk assessment, no evidence (public information and expert consultation) indicated there is a concern that the harvest permit for tending cutting could be misused (for example, the terms on harvest permit is not followed, like species, volume, size of trees to be harvested) which was also mirrored in the check result by NGFA (see below).

In 2017 NGFA checked on 99 state-owned forest units in Northeast of China found, including all 87 Key state-owned forest bureaus (a total of 32.66 million ha land) and 6 nature reserves and 6 state forest companies, 389 m³ standing trees at 3 sites (a total of 22.87ha) were over-harvested (beyond the permitted volumes as described within the harvest permit). The checks concluded, overall that illegal harvesting has been curbed since the commercial logging ban of natural forests. (Government Source 1, page 165).

Risk Conclusion

Based on the available information, the risk associated with this category has been assessed as Low.

1.8.6. Risk designation and specification

Low risk for all Source Types.

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats.

Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- 1) Forest Law of People's Republic of China dated 28th December 2019 - Article 31, 32 & 38. Available at:
<http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 2) Technical Code for Ecological Forest Establishment dated 15 March 2013- Article 5(1) B & C. Available at:
www.forestry.gov.cn/lykj/1708/20200102/191123583860143.html
- 3) Measures for Demarcating National-Level Ecological Forests dated 28th April 2017 - Article 7. Available at:
http://www.gov.cn/gongbao/content/2017/content_5230292.htm
- 4) Nature Reserve Regulation of P.R. China dated 7th October 2017 - Article 2, 3, 10, 11, 12, 14, 15, 18, 26, 27, 28, 29 & 32. Available at:
<http://law.yuqingqi.com/law/988512.html>
- 5) Measures for National-level Nature Reserve Monitoring and Check dated 26th October 2006 - Article 3, 7, 10, 13, 14, 18 & 19. Available at:
http://www.mee.gov.cn/gkml/zj/jl/200910/t20091022_171840.htm
- 6) Law on the Protection of Wildlife, revised on 26 October 2018- Section 2. Available at:
<http://www.npc.gov.cn/npc/c12435/201811/f4d2b7a3024b41ee8ea0ce54ac117daa.shtml>
- 7) Wild Plant Protection Regulation dated 7th October 2017 - Chapter 2. Available at:
<http://www.forestry.gov.cn/main/3950/20170314/459881.html>

- 8) Administration Measures for National-level Ecological Forestry dated 28th April 2017 . Available at: http://www.gov.cn/gongbao/content/2017/content_5230292.htm
- 9) Regulation of Endangered Wild Fauna and Flora Import and Export dated 19th March 2018 – Article 2 & 4. Available at: <http://www.forestry.gov.cn/main/3950/20170314/459876.html>
- 10) Administration Measures for Wild Fauna and Flora Import and Export Certificate dated 1st May 2014. Available at: <http://www.forestry.gov.cn/main/3951/content-956814.html>
- 11) China Biodiversity Protection Strategies and Action Plan (2011-2030) dated 17 September 2010. Available at: http://www.mee.gov.cn/gkml/hbb/bwj/201009/t20100921_194841.htm
- 12) Guidance on Establishment of National Park-led Nature Reserve System Dated 26 June 2019. Available at: http://www.gov.cn/zhengce/2019-06/26/content_5403497.htm

1.9.2. Legal authority

- National Forestry and Grassland Administration (NFGA)
- Ministry of Ecological Environment

1.9.3. Legally required documents or records

- Forest Harvesting Permit issued by the relevant forestry authority at or above county level (with description of species, location, logging method and logging prohibition area).
- Collection permit for protected species.

1.9.4. Sources of Information

Government sources

- 1) Ministry of Ecology and Environment (2017). China Biodiversity Conservation Priority Areas and Maps. Available at: http://www.mee.gov.cn/gkml/hbb/bqq/201601/t20160105_321061.htm. [Accessed 12 February 2020]
- 2) The State Council (2017). *Work Plan of Establishing National Park*. Available at: http://www.gov.cn/zhengce/2017-09/26/content_5227713.htm. [Accessed 12 February 2020]
- 3) NFGA (2018). *Nature Reserves Cover Almost 15% of Land Area*. Available at: <http://www.forestry.gov.cn/main/72/content-1093078.html>. [Accessed 12 February 2020]
- 4) NGFA (2017). *Illegal Trading of Wild Fauna and Flora is downswing*. Available at: <http://news.sina.com.cn/sf/news/fzrd/2017-02-27/doc-ifyavvsh6940981.shtml>. [Accessed 12 February 2020]
- 5) www.people.cn (2017). *Multi-Departments Collaborative mechanism for Combatting Illegal Trading of Wild Fauna and Flora*. Available at:

<http://env.people.com.cn/GB/n1/2017/0413/c1010-29207844.html>. [Accessed 12 February 2020]

- 6) forestry.gov.cn (2019). *What's National Park Pilot?* Available at: <http://www.forestry.gov.cn/main/4293/20190712/104801731850602.html>. [Accessed 12 February 2020]

Non-Government sources

- 1) lyen.org.cn. (2018). *SGFA Further Consolidate the Supervision and Inspection of Forest Nature Reserves*. Available at: <http://lyenc.org.cn/plus/view.php?aid=963>. [Accessed 12 February 2020]
- 2) cbd.int. (N.Y.) *National synthesis analysis on forest ecosystem to indicate the improved management of protected area networking*. [online]. Available at: <https://www.cbd.int/doc/world/cn/cn-nr-fe-en.pdf> [12 February 2020]
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- 4) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 5) The World Bank. (2019). *Worldwide Governance Indicators for China*. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.9.5. Risk determination

Overview of Legal Requirements

In China, forests located in protected areas and supporting protected species are mostly classified as ecological forests (protective forests and special-purpose forests) at different levels, including national, provincial, and local, thereby affording these maximum protections. These sites or species are well-protected and approval for harvesting in the protected area – or of protected trees – is possible only after review by various designated forestry authorities.

Forests are divided into commercial forests and ecological forests based on their principal function. The category 'ecological forest' is mainly reserved for the protective and special-purpose functions, in areas with significant ecological importance. Ecological forests are mainly established in areas of important or fragile ecological conditions or in areas with an important role in safeguarding ecological security, biodiversity conservation or sustainable and social development. The Technical Code for Ecological Forest Establishment 2013 defines the method, mode and species selection for establishing ecological forests of different types, as well as the management and tending of these forests.

The Wild Plant and Wildlife Protection Regulations require that the government shall enhance the protection of wild plant and wildlife resources and actively develop as well as responsibly encourage their utilisation. The governments at different levels shall take measures to rescue key threatened national or local wild plant and wildlife to protect and

restore their habitats and, when necessary, other measures such as establishing a propagation base, germplasm bank, etc. To protect wildlife and wild plant, the State Council approved the lists of National Key Protected Wildlife and Wild Plant List, while key local protected wildlife lists are approved and released by provinces.

- It is prohibited to collect wild plants that are under national Class I protection. If there is a need to collect these for scientific research or artificial cultivation, a collection permit must be acquired from national forestry authorities or their designated agencies, after obtaining consent from provincial forestry authorities.
- Wild plants under national Class II protection shall be collected only with a collection permit issued by provincial forestry authorities after a consent is obtained from county forestry authorities. The collection permit has a standardized format that shall be utilized by National Forestry and Grassland Administration.

China has a well-established system of natural reserves and has set up laws and a regulatory system to protect these. Besides this, there are well-established, administrative organisations in charge of natural reserve protection, including the Ministry of Ecology and Environment and National Forestry and Grassland Administration. These ensure a robust level of protection of protected areas and species.

The Nature Reserve Regulation requires that China adopts economic and technical policies and measures consistent with developing nature reserves, and also includes nature reserve development planning in conjunction with national and social development planning. In 2019, the Central government released Guidance on Establishment of National Park-led Nature Reserve System to enhance nature protection. Natural protected areas are classified into three levels by significance of conservation value and protection intensity:

- National park
- Nature reserve
- Nature park

The monitoring system of nature reserves and other protected areas are also being enhanced, including the use of big data and satellite remote-sensing images.

According to Article 26 of the Nature Reserve Regulation, harvesting, hunting, grazing of livestock, fishing, land reclamation, mining and quarrying are not permitted in nature reserves. In the core and buffer areas of nature reserves, no tourism or production activities are permitted; and the core area is not be accessed unless for scientific research with permission from nature reserve administration authorities.

In areas where key national- or local-level protected species occur, a nature reserve must be established to protect the species. Appropriate signage must be established, and it is prohibited to damage or destroy this. Wildlife population growth shall be monitored to protect the species and its habitat. If projects have negative impacts on wildlife habitat, an evaluation must be carried out by the project manager and be reviewed and approved by environment protection authorities after consultation with other relevant organisations.

Besides the natural reserve protection system, in general ecological forests (and associated conservation values) are unlikely to be subject to harvesting activities.

According to relevant laws and regulations relating to the establishment of non-commercial forests, commercial harvesting is not permitted in ecological forests: logging is solely for the purpose of forest management and to encourage natural regeneration. An integrated system has been established focussing on protection and management relating to wildlife, NTFP resource survey and utilisation, and construction of roads and other infrastructure.

Description of Risk

- There have been no recent reports of adverse impacts of forest management or harvesting activities on protected areas or species. In protected sites, only thinning and intermediate harvesting are permitted after review and approval by forest authorities at or above provincial level. Also, sufficiently robust protection and management systems have been adopted for wildlife, development and utilization of non-wood resources, roads and other infrastructure. Complete forest closure without harvesting is practiced in areas with fragile ecological environments, core and buffer areas of nature reserves, ecological forest that is difficult to regenerate after harvesting, etc.
- As a signatory country to the Framework Convention on the Conservation of Biological Diversity, China has developed a plan for biodiversity protection activities, and has submitted national reports on the implementation of the Convention. According to the Fifth China National Report (3), China has made significant achievements in establishing biodiversity protection and management systems.
- There are well-established administrative organizations in charge of natural reserve protection. The State Council environment administrative department is responsible for national reserve management. Forestry, agriculture, mining, water conservation, marine (and related administrative departments) manage natural reserves in their own areas of responsibility.
- The governments at different levels have been intensifying the supervision and management of forest nature reserves (Non-Government Source 1). By the end of 2017, a total of 2,750 nature reserves (including 469 national class nature reserves) covering 147 million ha were established, accounting for 14.88% of the national land area. Within the nature reserves, there are more than 35 million ha natural forests and 20 million ha natural wetland. The nature reserves protect the most important forests, rare and endangered species and typical nature landscapes, including 90.5% of land ecosystem representatives, 85% wild fauna and flora, 65% higher plant communities, more than 300 keys protected wild animals species and 130 key wild plants species (Government Source 3). Since 2015, a total 10 of national parks have been established covering 220,000 km² spanning 12 provinces and China is spending up the legislation and establishment of National parks (Government Source 6).
- The Chinese government have been combatting the illegal trading of wild fauna and flora through a well-established multi-departments mechanism. Cases of illegal trading are more common in relation to protected animals rather than protected tree species (Government source 4&5).

- There appears to be a well-established system and set of laws protecting natural reserves. No evidence, nor significant body of reports has been identified relating to the threat to these natural reserves by forest management or harvesting activities.

Risk Conclusion

Based on the available information, the risk in this category has been assessed as Low.

1.9.6. Risk designation and specification

Low risk for all Source Types.

1.9.7. Control measures and verifiers

N/A

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

- 1) Technical Code for Ecological Forest Establishment dated 15th March 2013 - Article 4(2). Available at: www.forestry.gov.cn/lykj/1708/20200102/191123583860143.html
- 2) Technical Code for Forest Logging Operations dated 2005 - Article 4 (2). Available at: <http://www.forestry.gov.cn/lykj/1708/20200102/191123583860143.html>
- 3) Law of the People's Republic of China on Environmental Impact Assessment dated 2nd July 2016 - Chapter 1 & 2. Available at: http://www.npc.gov.cn/wxzl/gongbao/2016-08/22/content_1995717.htm
- 4) Forest Law of People's Republic of China dated 28th December 2019 - Article 40 & 55. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 5) Forest Fire Prevention Regulation dated 1st January 2009. Available at: http://www.gov.cn/flfg/2008-12/05/content_1171407.htm
- 6) Forest Disease and Pest Control Regulation dated 18th December 1989. Available at: http://www.gov.cn/flfg/2005-09/27/content_70642.htm

- 7) Soil and Water Retention Law dated 25th December 2010 (Revised) - Article 18-23. Available at: http://www.gov.cn/flfg/2010-12/25/content_1773571.htm

1.10.2. Legal authority

- National Forestry and Grassland Administration
- Ministry of Ecological Environment for the Law on Environment Impact Assessment

1.10.3. Legally required documents or records

- Approved Forest Management Plan

1.10.4. Sources of information

Government sources

- 1) NGFA. (2016). *13th Five-year Plan of Forestry Development (2016-2020)*. Available at: <http://www.forestry.gov.cn/uploadfile/main/2016-5/file/2016-5-19-4e0699f79b4b4a2ab03843684dd32c76.pdf>. [Accessed 12 February 2020]
- 2) The State Council (2016). *13th Five-year Plan of Ecological Environment Protection (2016-2020)*. Available at: http://www.gov.cn/zhengce/content/2016-12/05/content_5143290.htm. [Accessed 12 February 2020]
- 3) Forestry.gov.cn (2019). *China Designates Red Lines of Forest Ecosystem Protection by Ecological Functions*. Available at: <http://www.forestry.gov.cn/main/72/20191105/092656063752552.html>. [Accessed 12 February 2020]
- 4) Ministry of Ecology and Environment (2017). *China Biodiversity Conservation Priority Areas and Maps*. Available at: http://www.mee.gov.cn/gkml/hbb/bgg/201601/t20160105_321061.htm. [Accessed 12 February 2020]
- 5) Forestry.gov.cn (2017). *Forest Water Conservation in China*. Available at: <http://www.forestry.gov.cn/main/72/content-965660.html>. [Accessed 12 February 2020]

Non-Government sources

- 6) www.sohu.com. (2018). *Guangdong Province Designates Four Red Lines of Forest Ecosystem Protection*. Available at: https://www.sohu.com/a/243185010_715654. [Accessed 12 February 2020]
- 7) Phoenix news (2019). *Ecological values increased in last 15 years in Zhejiang province*. Available at: http://zj.ifeng.com/a/20191211/7852047_0.shtml. [Accessed 12 February 2020]
- 8) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 9) The World Bank. (2019). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019*. [online]. Available at:

<http://info.worldbank.org/governance/wgi/index.aspx#countryReports>. [Accessed 12 February 2020]

1.10.5. Risk determination

Overview of Legal Requirements

In terms of China's environmental laws:

- It is legally required to protect environmental values during forest harvesting. For example, harvesting along riverbanks is not permitted and a buffer zone must be maintained for soil and water protection according to the Technical Code for Forest Logging Operations. In addition, clear cut area limits are defined based on the gradient of harvesting site as well as the considerations related to the impact on ecological values, as well as soil and water conservation.
- The Law on Environmental Impact Assessments applies to land use planning and architecture/infrastructure projects implemented by governments and relevant agencies. An Environmental Impact Assessment (EIA) is required during planning for construction, development and utilisation relating to land use, and the planning-related text shall also have a specific chapter or explanation relating to the EIA. Architecture/infrastructure projects implemented by governments and agencies relevant to industry, agriculture, forestry, energy, transportation, etc. shall have an EIA before the project plan is submitted for approval. According to law, land use planning for forest establishment also requires an EIA to be developed by government or designated agency.
- The Forest Law provides that efforts shall be taken by government at different levels to protect the areas of significance ecologically, such as representative areas of forest cover, ecologically fragile forest areas, habitats of rare species, tropical forests and others special conservation value forests and prohibits natural forest from commercial harvesting. Government, at different levels, shall establish the system to prevent and control forest fires. The Forest Fire Prevention Regulation states that local government shall define a forest fire responsibility zone, in which a system is established for regular checking of the potential factors relevant to forest fires and to prevent their potential occurrence. At the same time, government at or above county level shall define a forest fire prevention period based on forest conditions and fire occurrence rules. During this period, no forest access is permitted unless approved by government.
- The Soil and Water Retention Law provides that plants and vegetation be protected from soil and water loss in ecologically fragile areas. Harvesting operators/forest owners have the obligation to implement measures, while Environmental protection and forest authorities oversee implementation. Deforestation is prohibited within soil- and water-loss prone areas and forest harvesting must be conducted in a responsible manner, while clear-cutting is not permitted. Only thinning and regeneration cutting are allowed for water conservancy forests, windbreak forests or other protective forest types. Measures must be adopted to prevent soil and water loss in harvesting areas and skidding roads.

- Soil and water retention measures shall also be adopted by the forest owner for establishment activities and young forest thinning on slopes greater than 5 degrees, according to article 23 of Soil and Water Retention Law.
- Forest Disease and Pest Prevention Regulation requires that the governments above county level are responsible to prevent the occurrence of forest diseases and pests, prevent the introduction of overseas diseases and pests and to protect healthy specimens in the forest. Forest managers cannot use the seedlings with dangerous pest or disease for afforestation and are required to remove trees that are infected by pest or disease during tending operations. Severe forest disease and pest outbreaks must be reported to forestry authorities at different administrative levels (as appropriate depending on severity) for immediate control.

Description of Risk

According to advice relating to China's 13th Five-Year Plan (2016–2020) (Government sources 1) which includes new requirements on ecological and environmental forestry, the government has requested the enhancement of ecological values by implementing ecological restoration projects and strengthening the delivery of projects such as: natural forest protection; conversion of agricultural land to forest so as to conserve water; retention of water and soil; preventing sand loss; and establishment of wind breaks as well as protecting biodiversity. Thus, there is a clear indication that environmental requirements are increasingly valued and better implemented, even though some shortfalls may currently exist.

The information available on website (Government sources 3 & Non-Government Source 6) stated China designates ecological areas (called "The Red Lines of ecosystem protection") by functions covering the nature reserves, important water catchment, biodiversity hot areas, ecologically fragile areas, etc., which are protected strictly. It is reported that in Zhejiang province, ecological values of the ecological forests have improved after the government has taken measures to protect ecological forests and different management on the forest types and primary functions (Non-Government Source 5).

Since the flood disaster in Yangtze river occurred in 1998, China initiated Natural Forest Protection Program. In the upstream of Yangtze and Yellow River, natural forest is excluded from commercial harvesting. Since 2014, the natural forest logging ban has expanded in a stepwise fashion from northeast China to nationwide and is now enshrined in law. Forest water conservation has increased significantly, and soil erosion is reduced in the Yangtze and Yellow River basins (Government Source 5).

There appears to be a sufficiently well-established system related to the identification and/or protection of environmental values. No evidence, nor significant body of reports has been identified relating to the threat to these values nor to any systematic and/or large-scale non-compliance with legally required environmental protection measures.

Risk Conclusion

Based on the available information, the risk in this category has been assessed as Low.

1.10.6. Risk designation and specification

Low risk for all Source Types.

1.10.7. Control measures and verifiers

N/A

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations).

Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- 1) Law of People's Republic of China on Prevention and Control of Occupational Disease dated 29th December 2018 - Chapter 3. Available at: <http://www.nhc.gov.cn/zyjks/zcwj2/201905/23139e16d23c4ffdba281988ce52467e.shtml>
- 2) Labour Law of People's Republic of China dated 29th December 2018, Chapter 6-7. Available at: <http://www.npc.gov.cn/npc/c30834/201901/ffad2d4ae4da4585a041abf66e74753c.shtml>
- 3) Women's Labour Protection Law dated 18th April 2012. Available at: <http://www.66law.cn/tiaoli/465.aspx>
- 4) Work Safety Law of the People's Republic of China (amended) dated 31st August 2014 - Chapter 2–4. Available at: http://www.npc.gov.cn/wxzl/gongbao/2014-11/13/content_1892156.htm
- 5) Technical Code for Forest Logging Operations dated 2005 - Article 11.1.2, Appendix C. Available at: www.forestry.gov.cn/lykj/1708/20200102/191123583860143.html
- 6) Regulation on the Safety Administration of Hazardous Chemicals (2011). Available at: http://www.gov.cn/gongbao/content/2002/content_61929.htm
- 7) Regulation on Emergency Response to Production Safety Accidents dated 5th December 2018. Available at: http://www.mem.gov.cn/fw/flfgbz/201903/t20190301_231790.shtml

1.11.2. Legal authority

- Ministry of Human Resources and Social Security
- National Health Commission
- Ministry of Emergency Management

1.11.3. Legally required documents or records

- Health and safety procedures document, in line with national laws and regulations.
- Training Records for safe operation.
- Accident Insurance to cover all workers.
- Accident records

1.11.4. Sources of information

Government sources

- 1) The State Council (2015). State Forest Management Organization Reform Plan & State Forest Region Reform Guidance. Available at: http://www.gov.cn/gongbao/content/2015/content_2838162.htm. [Accessed 12 February 2020]
- 2) National Forestry and Grass Administration (2019). *4612 State Forest Farms Completed Reform*. Available at: <http://www.forestry.gov.cn/main/304/20190116/102222619104139.html>. [Accessed 12 February 2020]
- 3) NGFA. *China Forestry Yearbook 2016* (page 343), *China Forestry Yearbook 2017* (page 338), *China Forestry Yearbook 2018* (page 302).

Non-Government sources

- 1) Stakeholder consultations with forest experts from CAF, forest authorities, forest companies, third party certification body, etc.
- 2) Ilo.org. (2019). *World Social Protection Report 2017-19* [online]. Geneva: International Labour Organization, pp. 1-314. Available at: <https://www.ilo.org/global/research/global-reports/world-social-security-report/2017-19/lang--en/index.htm>. [Accessed 12 February 2020]
- 3) Sina.com.cn. (2019). China State Forest Regions Reform Made Important Progress. Available at: <https://finance.sina.com.cn/roll/2019-01-07/doc-ihqhqcis3957964.shtml>. [Accessed 12 February 2020]
- 4) FSC International. FSC Forest Management Audit Reports. Available at: www.fsc.org
- 5) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 6) The World Bank. (2019). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.11.5. Risk determination

Overview of Legal Requirements

China has formulated and implemented a legal system to ensure and protect the safety and health of workers employed within organisations, including the health and safety of forest management enterprise employees.

- Organizations are required to establish a worker health and safety system and comply with requirements in this regard against accidents in the workplace and in reducing occupational hazards. Organizations must ensure adequate health and safety conditions exist and the necessary materials and equipment for employees are provided in line with national requirements. Regular health checks must be provided to those who engage in dangerous work.
- According to Work Safety Law, the organizations shall establish and implement a training plan concerning work safety to ensure the worker acquire necessary knowledge and safety procedures. Employees engaging in special operations must be specially trained and qualified.
- Work Safety Law provides that employees of a business entity shall be safeguarded against unsafe work practices and be able to perform safe work practices. According to article 42, the organization that hires workers must provide the workers the appropriate personal protective equipment (PPE) which is in line with national or professional standards. Workers must be supervised and trained to use the PPE. Note: PPE requirements do not apply in the case of bamboo harvesting as there is no legal requirement nor standard on PPE use.
- According to Article 22 of Law of Prevention and Control of Occupational Disease, Organizations that hire workers must create an enabling working environment consistent with occupational sanitary requirements, including provision of PPE, to prevent the occupational diseases. At the national level, the labour authorities shall establish a treatment system for accidents and occupational diseases – and monitor/pool data on these to facilitate reporting on and addressing accidents, deaths and occupational diseases.
- China provides special labour protection to women by prohibiting (or not recommending) that women engage in jobs with a certain level of work intensity. Women enjoy no fewer than 90 days' maternal leave. Women who are breastfeeding shall not engage in work above a certain level of intensity; or which is incompatible with breastfeeding; or work overtime or night shifts.
- China has also issued regulations to protect female workers' work safety conditions and requires business entities to adopt measures to provide training to female workers and to improve their health and safety and working conditions.
- The legal requirement on health and safety is not applicable to the smallholders who manage their own forest land and perform forest activities themselves, which means there is no employer in this case, although they apply to the organization that hires workers.

Description of Risk

- 1) China has made progress in improving the health and safety of workers and has also worked with the Beijing Regional Office of ILO, which has carried out some programs in close cooperation with the Ministry of Human Resources and Social Security, such

as the Decent Work Program, Green Job Program and Sustainable Enterprise Development Program etc. According to related reports by ILO (Non-government source 2), significant progress has also been made with the social protection of workers.

- 2) According to expert consultation conducted during 2019-2020, forest management enterprises normally establish systems and procedures in terms of health and safety and provide some safety equipment, but there has been less progress with the compulsory requirements for workers to use safety equipment. Further, forest workers lack awareness of wearing appropriate personal protective equipment as the safety training provided by the employer is insufficient, especially in the small and medium-size FMUs. Some workers, especially older or skilled ones, are reluctant to use the safety equipment, such as helmet, protection trousers, gloves, boots for safety consideration.
- 3) According to *China Forestry Yearbook (2015, 2016 and 2017)*, it is reported in 2015 that 32 workers died, 16 workers were injured seriously, and 327 workers were slightly injured in various accidents in forest activities. In 2016 the number was 35, 34 and 365 respectively, and 34, 36 and 442 respectively in 2017. Personal Communication with experts (1, 2, 3, 4, 5, 8) highlighted that health and safety is an area in which some improvement is still required, while the situation has improved following improvements to health and safety law and regulations (Non-government source 1).
- 4) Based on Preferred by Nature local experts' experience and academic study on the audit findings of FSC forest management (FM) certification audits in China, cases where the health and safety issues are raised are still noticeable. Improvement of health and safety concerns is still required for certified forest management enterprises, let alone the non-certified ones. The main issues identified in FSC-FM audits in China include forest workers are not equipped with appropriate personal protective equipment.
- 5) Currently there is neither a regulation nor a national/forestry standard on personal protective equipment used in bamboo forest activities, but there are general H&S requirements for the entities managing bamboo. Based on experience by Preferred by Nature local experts' and interviews with local experts during 2019-2020, bamboo forest management activities generally do not involve harvesting machines such as chain saws, skidders, forwarders, etc. In addition, the intensity of bamboo forest activities is relatively low and a single bamboo stem is relatively light when compared to timber. For example, the average weight of moso bamboo (*Phyllostachys heterocycla cv. Pubescens*) which is commonly used in China and the main material for many bamboo products, is approximately 20kg/bamboo stem. Therefore, risks regarding health and safety in bamboo forest activities can be considered low.

Risk Conclusion

Based on the available information, the risk associated with this category is assessed as Specified for natural forests and plantations, as a precautionary measure while the situation is improving.

1.11.6. Risk designation and specification

Plantations and Natural forests: Specified risk, in relation to:

- 1) lack of training and awareness of personal protective equipment of the workers.
- 2) Lack of appropriate personal protective equipment in forest activities.

Low risk for other legal provisions, relating to health and safety.

Bamboo forest: Low risk.

1.11.7. Control measures and verifiers

Mitigating the risk of lack of availability of personal protective equipment (PPE) and training in the use of these.

To ensure PPE is in place and that training has been conducted onsite verification should be conducted with interviews, field observation and document review.

Onsite verification

Inspection of Forest Management Enterprise and harvesting sites shall verify that PPE, safety training and H&S procedures are in place:

- Interviews with relevant staff/workers shall provide confidence that they are aware of H&S procedures and have participated in training.
- Interviews with staff/workers engaged in special areas of work shall provide confidence that they have attended specific training applicable to their role and responsibilities, have obtained the relevant level of qualification for the task they perform, have access to required PPE and it is being used in all relevant situations;
- Field observations from visits harvesting sites shall verify:
 - PPE shall be available and worn as required by the law.
 - Health and safety procedures are implemented in accordance with requirements.

Review documents and verify during onsite verification:

- Health and safety procedures are in line with national laws and regulations.
- Training Records for Safe Operation
- Employees are covered by an accident insurance policy.
- An accident record system is in place. In addition it is recommended to review accidents records to identify root causes.

Purchase records for appropriate PPE (if applicable)

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

- 1) Labour Law of People's Republic of China dated 29th December 2018 - Chapters 3, 4, 5, 6, 7 and 9. Available at: <http://www.npc.gov.cn/npc/c30834/201901/ffad2d4ae4da4585a041abf66e74753c.shtml>
- 2) Labour Contract Law dated 28th December 2012 - Chapters 3-5, 8-9. Available at: <http://en.pkulaw.cn/display.aspx?cgid=199310&lib=law>
- 3) Interim rule of salary payment dated 1st January 1995- Article 6. Available at: http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/gz/201705/t20170522_271150.html
- 4) Work Safety Law of the People's Republic of China (amended) dated 31st August 2014 - Chapter 2–4. Available at: http://www.npc.gov.cn/wxzl/gongbao/2014-11/13/content_1892156.htm
- 5) Trade Union Law dated 27th of August 2009 - Article 9, 10, 12, 19, 20 and 21. Available at: <http://en.pkulaw.cn/display.aspx?cgid=37083&lib=law>
- 6) Women's Rights Protection Law updated 26th of October 2018 - Chapter 4. Available at: <http://www.npc.gov.cn/npc/c12435/201811/d28b0dc10bea4beaab8b3a6d956e07be.shtml>
- 7) Juveniles Protection Law updated 26th of October 2012 – Article 36. Available at: <https://www.66law.cn/tiaoli/2505.aspx>
- 8) Regulation of Labour Security Supervision dated 11th of January 2004. Available at: <http://en.pkulaw.cn/display.aspx?cgid=55940&lib=law>
- 9) Social Security Law of People's Republic of China updated on 29th of December 2018, available at: <http://www.npc.gov.cn/npc/c30834/201901/4a6c13e9f73541ffb2c1b5ee615174f5.shtml>
- 10) Regulation on Foreigner work in China (22 January 2017). Available at: https://www.sohu.com/a/129919613_467839

1.12.2. Legal authority

- Ministry of Human Resources and Social Security
- National Forestry and Grassland Administration

1.12.3. Legally required documents or records

- Name lists for staff and contractors.
- Salary payment records.
- Employment contracts for permanent and temporary staff.
- Social security card for full-time workers.
- Injury insurance for all workers
- Foreigner work permit

1.12.4. Sources of information

Government sources

- 1) The State Council (2015). State Forest Management Organization Reform Plan & State Forest Region Reform Guidance. Available at: http://www.gov.cn/gongbao/content/2015/content_2838162.htm. [Accessed 12 February 2020]
- 2) National Forestry and Grassland Administration (2019). *4612 State Forest Management Organisations Completed Reform*. Available at: <http://www.forestry.gov.cn/main/304/20190116/102222619104139.html>. [Accessed 12 February 2020]

Non-Government sources

- 3) FSC FM reports of the companies operating in China. Available at: www.fsc.org
- 4) Stakeholder consultations with forest experts from CAF, forest authorities, forest companies, third party certification body, etc.
- 5) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 6) The World Bank. (2019). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.12.5. Risk determination

Overview of Legal Requirements

China has paid significant attention to legal employment issues in recent years, and the revised Labour Law makes detailed provisions relating to many aspects of legal employment, including the following:

- Workers enjoy the right to be equally employed, choose their own occupations, receive payment, enjoy leave, get health and safety protection, receive professional and work-related training, have social security and other welfare, apply for settlement of labour disputes and other labour rights in line with laws and regulations. Those employing workers shall establish and improve the rules and procedures to protect the rights of workers.
- Workers enjoy the right to participate in, or organise, labour unions that can independently carry out activities and represent and safeguard the legal rights of workers. Workers can also participate in the management of an organisation or carry out negotiations with regards the protection of legal rights by participating in employer meetings, employer representative meeting and others.
- Workers' rights to be employed are protected from bias or discrimination based on nationality, ethnicity, gender, and religion. Women enjoy equal rights to men and

cannot be refused employment because of gender. Employment of juveniles (under 16 years old) is prohibited.

- Organizations are obliged to sign labour contracts with workers to establish the labour relationship and clarify the rights and obligations of both parties. Contracts include the duration of the work relationship, specific work requirements, issues relating to work protection or conditions, payment, working rules, contract cessation conditions, responsibilities for breach of contract, etc. In addition, employees are empowered to engage in collective bargaining with their employers for issues relating to payment, working hours, leave and rest arrangements, work-related health and safety, insurance, and welfare issues; and may sign a collective labour contract. The draft contract shall be discussed and approved in employer representative meetings or by all employers. The collective contract shall be signed by the labour union on behalf of employees and, if no labour union exists, representatives of employees will sign the contract with the organization.
- According to Labour Law of China, workers' daily working hours cannot exceed 8 hours and working time per week cannot exceed 44 hours. Organisations must guarantee that workers have one day of rest per week and must arrange for leave by workers during legally required holidays. The employer can request overtime work as necessary but must negotiate with the labour union and workers, and the overtime work cannot be more than one hour in principle and no more than 3 hours in special circumstances and overtime work per month cannot exceed 36 hours. If workers engage in overtime work, organisations shall compensate the overtime by paying no less than 150% of the normal day payment, or 200% of normal payment if working at weekends (although there is no compensation for rest) or 300% of the normal payment if working on a legally required holiday.
- China implements a minimum pay (minimum wage) system. Minimal pay is defined by provincial governments and documented by the State Council. Organisations shall pay their workers no less than the local minimum pay.
- China has established and is further developing its social security system to enable workers to receive assistance and compensation when retired, ill, unemployed or requiring maternity leave. According to article 10 of Social Security Law, the workers should be registered in basic social security system which is paid by both employer and workers by different percentage of salary. Non-full-time workers and those under a flexible working hour system are encouraged to pay the basic social security themselves.
- According to Work Safety Law of China, Organizations must pay employment injury insurance, which is required to be included in employment contract. The People's Government is required to ensure the oversight and governance of employment-related injuries to ensure employees receive compensation in accordance with laws.
- During any dispute between an employer and employee, the worker has the right to apply for mediation or arbitration or even take legal action. The employer may set up a labour dispute mediation committee, composed of an employee representative, a representative of the organisation and a labour union representative who also chairs the committee.

- The Labour Security Supervision Regulation requires that the national labour security supervision authorities are responsible for the overall supervision nationwide of labour laws while local supervision authorities are responsible for the work in their jurisdictions as well as supervising the implementation of labour laws. Labour unions safeguard the legal labour rights of workers, and supervise the organisations' compliance with relevant laws, regulations, and rules.
- Forest management enterprises, as legal entities, need to comply with all the above general laws and regulations, including signing labour contracts, paying social security and insurance on behalf of their staff, providing vocational training, respecting the right of staff to be employed, etc.
- According to Regulation on Foreigner work in China, the employer must apply for work permit for the worker to be employed. The foreigner worker can be employed only when having obtained the work permit.

Description of Risk

- Discussion with various experts found that normally the forest management enterprises have a rule and procedure to protect the rights of workers. Workers can participate in labour unions and carry out negotiations with regards the protection of legal rights by participating in employer representative meeting and others. Workers' are protected from bias or discrimination based on nationality, ethnicity, gender, and religion as long as they are willing and suitable to conduct the work.
- The Central government requires that the workers in state-owned forest enterprises are covered by national social security scheme (including accident insurance), according to State Forest Management Organization Reform Plan released in 2015. As of the end of 2018, 4,612 out of 4,855 (95%) state-owned forest enterprises have completed the State Forest Management Organization Reform, all of which became non-profit organizations financially supported by the government. 100% of the employees and workers have been registered in national social security scheme (including pension insurance, accident insurance, etc.). The average of annual salary exceeded the local minimum wage (Government Source 1&2). The social insurance registration indicated that the employment contract was in place which is a precondition of social insurance. In the case of private forest companies or other organizations, they normally sign contracts and pay social security for the full-time employees.
- However, Personal Communication with various experts (1, 4, 6, 8) found that in recent years it is common that forest management companies outsource forest operations for different reasons (e.g., for cost efficiency). The contractors employ the forest workers mostly under a flexible working hour system. Though there are contracts between these companies and contractors, there is often no contract between contractors (it may be a registered business) and workers. Further, there is a risk that the forest workers are not registered under injury insurance, though in recent years more employers are willing to pay the injury insurance because they realize that they would they have to pay high compensation for any accident if the injury insurance for workers is not paid. The academic research on the FSC-FM audit findings of Chinese certificate holders also support this view. However, according to

Social Security Law, the employer is not obligated to pay social security for the workers under a flexible working hour system (e.g., temporary, or seasonal workers).

- Discussion with various experts as part of the risk assessment development process during 2019-2020 found in China most forest operations are conducted by workers under a flexible working hour system. The average work time is unlikely to be more than the standard set by the regulations. The salary of forest workers is unlikely to be less than local legally required minimum pay.
- According to Personal Communication with experts (4, 5, 8), there is a very low risk of employment of child labour since forest operations are labour-intensive activities and physically demanding. Also, expert consultation concurred in that there is no enforced labour found in the forestry sector. No recent reports or news in the public domain were found that would indicate there is issues related to child or forced labour in the forestry sector in China.
- In addition, there is very few foreign forest workers in China. Chinese government is strictly supervising the implementation of the legal requirements and policies related to foreign workers. The risk of illegal foreign workers is low.
- China has a score of 41/100 in 2019, at position 80 (of 180 countries assessed), according to Transparency International's 2019 Corruption Perceptions Index. Regarding the Worldwide Governance Indicators, China scores as follows according to the 2019 perceptions ratings (on a scale of -2.5 to +2.5): Government Effectiveness: 0.52; Regulatory Quality: -0.24; Rule of Law: -0.27; Control of Corruption: -0.32.

Risk Conclusion

Based on the available information, the risk associated with this category has been assessed as Specified, as a precautionary measure, based on risks associated with the failure of employers to sign work contracts with forest workers and pay injury insurance for forest workers.

1.12.6. Risk designation and specification

Plantations, Natural forests and bamboo:

- Specified risk related to the lack of employment contracts and injury insurance for forest workers.
- Low risk for other legal provisions relating to labour laws.

1.12.7. Control measures and verifiers

Mitigating the risk of lack of employment contracts and payment of injury insurance of forest workers.

Employment contracts and payment of injury insurance can be verified through onsite verification with document review.

Onsite verification:

- Verify that employees are covered by an accident insurance policy by conducting interviews. Use this opportunity to inquire about unpaid and illegal overtime work, missing social security benefits, insurance coverage, contractual employment issues or other inappropriate working conditions.

Review documents and verify during onsite audits:

- Verify whether the forest workers onsite have signed labour contracts.
- Review the list of permanent and temporary employed workers and verify that employment contracts with the organisation is in place.
- That payslips represent the number of employees.
- Invoices relating to accident insurance coverage.

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.

Not applicable. There is no legislation in place that covered customary rights relevant to forest harvesting activities. Below (1.13.1) legislation relevant to ethnic minorities in general is listed.

1.13.1. Applicable laws and regulations

- 1) Villager Committee Organisation Law of P.R. China dated 29th December 2018 – Chapter 4. Available at:

<http://www.mca.gov.cn/article/gk/fg/jczqhsqjs/201911/20191100021350.shtml>

- 2) Law of the People's Republic of China on the Contracting of Rural Land ("Rural Land Contracting Law") dated 29th of December 2018. **Available at:**

<http://www.npc.gov.cn/npc/c30834/201901/cd063e4c0f19465e9d41946001fe839c.shtml>

- 3) People's Mediation Committee Organisation Regulation dated 5th of May 1989 - Article 3 and 6. Available at:

https://dunixiaofa.baidu.com/detail?cid=f4aa8869afe4eba2fad63f298b9e39f5_law&searchType=statute

1.13.2. Legal authority

- National Ethnic Affairs Commission
- National Forestry and Grassland Administration

1.13.3. Legally required documents or records

N/A

1.13.4. Sources of information

Government sources

- 1) Seac.gov.cn. (N.Y.). (General Source of Information). [online]. National Ethnic Affairs Commission. Available at: <http://www.seac.gov.cn>
- 2) Gov.cn. (2005). Regional Ethnic Autonomy Law of the People's Republic of China dated 28th February 2001. [online]. The Central People's Government of the People's Republic of China. Available at: www.gov.cn/test/2005-07/29/content_18338.htm and http://hrlibrary.umn.edu/research/china-autonomy_law.html in English.

Non-Government sources

- 1) China Rural Study Network. <http://www.ccrs.org.cn>

1.13.5. Risk determination

Overview of Legal Requirements

China has since ancient times been a multi-ethnic country. The rights and interests of ethnic minorities are addressed within Chinese law and society.

The State Ethnic Affairs Commission was established specifically to be responsible for dealing with minority affairs, including harmonising ethnic relationships, and ensuring the traditional rights of minorities. As mentioned in sub-category 1.1, a regulation on resolving forest tenure disputes has been issued and the related procedure developed.

In China there is no special regulations for customary rights related to forest harvesting and forest resources. All Chinese people including ethnic minorities enjoy the same rights to forest land and forest resources which are subject to the same forest-related regulation.

In some areas, especially in Minority Autonomous Regions, some local unwritten laws regulate the detailed procedure to resolve conflicts relating to forest land borders and forest resource use rights.

Conflicts in relation to community traditional rights are resolved according to the Organization Law of the Villagers Committees of the People's Republic of China and People's Mediation Committee Organisation Regulation. The villager committee, which is a rural self-governing organisation, is responsible for administering – according to mediation regulations – affairs concerning traditional rights disputes. If mediation fails, the parties concerned can apply to government for mediation, or apply to the People's Court for a judicial procedure.

Description of Risk

With recognized and equitable processes through the regional autonomous systems - the villagers' self-government system and the court system in China - there is a legal framework for protecting traditional rights, for which there is little evidence to suggest it is not working well with regards to conflicts related to community traditional law.

Risk Conclusion

Not applicable.

1.13.6. Risk designation and specification

Not applicable for all Source Types.

1.13.7. Control measures and verifiers

N/A

1.14. Free prior and informed consent

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

This principle is not applicable in China:

- There are no laws or regulations in China that contain the requirement of *Free Prior and Informed Consent*.
- All forest land and forest resources are owned by the State or collectives. However, farmers may have ownership of forest timber and use rights to forest land, and these are protected by property law.
- After the collective forest tenure reform of 2008, forest management and use rights were further identified and clarified. Farmers have the right to harvest their planted forest only if they meet the relevant legal requirements. Such requirements are also applicable in areas where ethnic groups are present.
- The establishment of forest concessions is not normal practice in China. State-owned forests are managed by State-owned forest enterprises, while collectively or individually managed forests are managed by the managers themselves.

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

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

Not applicable. There is no legislation in place that covered customary rights relevant to forest harvesting activities. Below (1.15.1) legislation relevant to ethnic minorities in general is listed.

1.15.1. Applicable laws and regulations

- 1) Villager Committee Organisation Law of P.R. China dated 29th December 2018 – Chapter 4. Available at:
<http://www.mca.gov.cn/article/gk/fq/jczqhsqjs/201911/20191100021350.shtml>
- 2) People's Mediation Committee Organisation Regulation dated 5th May 1989 - Articles 3 and 6. Available at:
https://duxiaofa.baidu.com/detail?cid=f4aa8869afe4eba2fad63f298b9e39f5_law&searchType=statute
- 3) Constitution of the People's Republic of China dated 11th March 2018. Available at:
<http://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>
- 4) Regional Ethnic Autonomy Law of P. R. China dated 31st of May 1984 and revised 28th of February 2001. Available at: http://www.gov.cn/ziliao/flfg/2005-09/12/content_31168.htm

1.15.2. Legal authority

- National Ethnic Affairs Commission
- National Forestry and Grassland Administration

1.15.3. Legally required documents or records

N/A

1.15.4. Sources of information

Government sources

- The People's Republic of China does not formally recognise the presence of Indigenous peoples within China.

Non-government sources

- FSC International. FSC Forest Management Certification Audit Reports, Available at: www.fsc.org
- Humanrights-china.org. *China Human Rights Report (2018)*. [online]. Available at: http://www.humanrights.cn/html/2018/8_1019/39920.html. [Accessed 12 February 2020]
- Humanrights-china.org. *How China Protects the Rights and Interests of Minority People*. Available at: http://www.humanrights.cn/html/2014/rqzs_0612/560.html. [Accessed 12 February 2020]
- Xinhua News (2018). *China's Progress on Protecting the Rights and Interests of Minority People*. Available at: http://www.xinhuanet.com/2018-08/11/c_1123254169.htm. [Accessed 12 February 2020]

1.15.5. Risk determination

Overview of Legal Requirements:

According to the definition of Indigenous peoples recognised by organisations such as the International Labour Organisation (ILO), there are no Indigenous/traditional people in China and, as a result China has not signed ILO Convention 169.

There are however, 56 nationalities in China. The 55 ethnic minorities (excluding Han people) in total account for 8.49% of the total population in China, according to Sixth Demographic Census in 2000, so they are termed minorities. Each has identifying characteristics, languages and customs of their own. At present there are five autonomous regions on a provincial level: Inner Mongolia, Guangxi Zhuang, Tibet, Ningxia Hui and Xinjiang. In addition, there are 30 autonomous prefectures and 117 autonomous counties in China. The Law of the People's Republic of China on Regional National Autonomy has been issued to ensure the minority nationalities can practice regional autonomy in areas where they live in concentrated communities and can set up agencies of self-government allowing them to exercise the power of autonomy. However, there is no special law formulated and implemented for the right to nature resources including forest for the minority nationalities in China. The Constitution provides that all land are owned by the state, and minority nationalities have the same right as Han People do for the forest land and forest growing.

Description of Risk

- A review in 2020 by Preferred by Nature of FSC FM audit reports of Chinese certificate holders identified that minority people have a more or less traditional culture, different languages, and religions, but have same rights to forest resources or land compared to the HAN people, which is also reflected in the laws and regulations, such as Forest Law, Property Protection Law, Regional Ethnic Autonomy Law, etc.
- The above-mentioned autonomous agencies of self-government have developed relevant policies and regulations to protect traditional culture and traditional rights, including the resolution mechanism on traditional rights conflicts.
- In some cases, ethnic minorities enjoy extra care compared to Han people (major nationality in China) because of the favourable policy for ethnic minorities. for example, access to NTFP in state forests, despite no such obligation are required by the FME. Therefore, if no access to NTFP is provided, this will not cause a legal violation.
- In China, many minority people live in the forest regions and are commonly owners of forest lands. No evidence has been identified to suggest that their forest resource-related rights, which is comparable with Han people, are not broadly guaranteed.

Risk Conclusion

Due to there is no specific regulations related to Indigenous/traditional people, it is not applicable for this category.

1.15.6. Risk designation and specification

Not applicable for all Source Types.

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees.

Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

This indicator is Not Applicable. There are no specific regulations related to Classification of species, quantities, qualities in China.

- **Note:** Regulation on the Implementation of the Forest Law of the People's Republic of China, Article 44 (*has been phased out since 1st July 2020 according to newly amended Forest Law*) required that transportation permits for raw materials requires details including species, quality and quantity, in addition to the essential information on transportation method, route, starting and end point. This information is retained here for the evaluation of shipments which has taken place before this date.

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

- 1) Forest Law of People's Republic of China dated 28th of December 2019. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 2) Regulation of the Implementation of Forest Law of People's Republic of China dated 19th of March 2018 - Article 35 & 36. Available at: <https://law.lawtime.cn/d708998714092.html>
- 3) Bylaw of the Implementation of Plant Quarantine Regulation (Forestry Part) dated 7th October 2017 - Article 8. Available at: <http://www.forestry.gov.cn/main/3951/content-204766.html>
- 4) Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine dated 1st January 1997 - Chapters 1-4. Available at: http://www.gov.cn/zlzt/gzqlg/content_104264.htm

- 5) Regulations on the Administration of Import and Export of Endangered Species of Wild Animals and Plants dated on 2nd March 2019. Available at: <http://www.forestry.gov.cn/main/3950/20170314/459876.html>
- 6) Administrative Measures of Wildlife Import and Export License dated 1st of May 2014. Available at: <http://www.forestry.gov.cn/main/3951/content-956814.html>

1.17.2. Legal authority

- National Forestry and Grassland Administration
- General Administration of Customs

1.17.3. Legally required documents or records

- Phytosanitary/Quarantine Certificate (according to the bylaw and regulation above)
- Import or Export certificate of Endangered Species.

1.17.4. Sources of information

Government Sources

- 1) China Forestry Yearbook 2016 (page 201), 2017 (page 192), 2018 (page 164) related to Transport permit, published by National Forestry and Grassland Administration
- 2) China Forestry Yearbook 2017 (page 164) and 2018 (page 124) related to plant quarantine, published by National Forestry and Grassland Administration.

Non-Government sources

- 3) Public sources search about illegal timber transportation (2016 to 2018)
- 4) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 5) The World Bank. (2019). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>. [Accessed 12 February 2020]

1.17.5. Risk determination

Overview of Legal Requirements

China has implemented a governance system for wood timber processing, trade and transport. However, note that the transportation permit was phased out, as of 1st July 2020 according to the revised Forest Law.

- **The requirements for timber transport described below are included for shipments which take place before this date:** Timber transported from one forest region to another has historically required a transportation permit. It was required that the permit (and phytosanitary permits if required) travel with timber goods from the starting to the end point of their journey. The total volume of timber that could be

transported out of the forest with the approval of the legally issued timber transportation permit could not exceed the total volume that the local annual timber production plan allowed for sales and transportation. Transportation permits were issued by different levels of forestry authority depending on the importance of the region in terms of forestry. The transportation permit for timber from key forest regions, such as Northeast China, was issued by the National Forestry and Grassland Administration (NGFA). However, for timber from other regions, the licence may have been issued by forest authorities at or above county level. To apply for a transportation permit, applicants must usually submit the harvesting permit, phytosanitary permit, as well as any other relevant documents required by provinces or cities. However, in terms of the process and requirements, these are in constant change and vary across China.

For primary forest products, transportation permits applied to both Chinese and imported materials. However, transportation directly from ports to mill/factory did not require a permit.

NGFA provided online checking of transportation permits to make their issue and traceability more transparent.

- According to Bylaw of the Implementation of Plant Quarantine Regulation (Forestry Part), quarantine certificate is required when the forest plant and products (including trees, wood, and bamboo) is transported out from the epidemic areas of forest pest and disease designated by government. Based on article 35 Forest Law (amended in 2019), the forest authority at province level and above is responsible to designate the epidemic areas and plant species/material types to be quarantine inspected. The forest authorities at county level are responsible for monitoring, quarantine inspection and prevention of forest pest and disease.

Description of Risk

- In 2017 The State Council issued a notice of enhancing the control of forest pest and disease. The legal requirements on forest pest and disease control is also integrated into the latest forest law (amended in December 2019). According to China Forestry Yearbook (Government source 2), there were only 4 illegal cases related to forest plant quarantine in 2016 and 4 in 2017 respectively. Additionally, no information in the public domain suggested that there is a significant problem with the compliance with legal requirements related to forest plant quarantine.

Note that the transportation permit has been phased out, as of 1st July 2020 according to the revised Forest Law. The risk description for timber transport described below is included for shipments which take place before this date.

- The Forest Governance Integrity Report China, 2011 (3), raised some issues in relation to the transport licence, including the risk of bribery of officials to ignore the lack necessary documents.
- However, based on government source (source 1), the number of illegal timber transportation cases has been decreasing. Cases in 2017 decreased by 40.28% to 29,649 compared to 2016. In 2016, 4.98 million transport permits were issued through national timber transportation certificate verification system. Even though illegal timber transportation - transportation without a transport permit or with a

fraudulent transport permit - were reported occasionally, the risk of illegal transport is relatively low, considering the transport permit is difficult to be forged because it can verify via public database and the check points are established in forest regions.

- Based on Preferred by Nature's local expert, there is significant variability across China in terms of how the timber transport licence is enforced; strictly in some areas (Fujian) while in other provinces less so. Summarising expert comments, broadly speaking there is little cause for concern with regard to compliance.

Risk Conclusion

Based on the available information – namely declining cases of illegality but also the phasing out of the transport permit, as of 1st July 2020 according to the revised Forest Law. In addition, there is no significant problem with the compliance with legal requirements related to forest plant quarantine. In conclusion, the risk associated with this category has been assessed as Low.

1.17.6. Risk designation and specification

Low risk for all Source Types.

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

- 1) State Taxation Administration Circular on Issues Dealing with Taxation on Foreign Investment Companies related to their Subsidiaries dated 28th September 2002. Available at: <http://www.chinatax.gov.cn/n810341/n810765/n812203/n813134/c1208183/content.html>
- 2) Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises dated 1st July 1991 - Article 13. Available at: <http://www.lawtime.cn/info/shuifa/ssfl/2011022825669.html>
- 3) Enforcement Code of Advanced Pricing Agreement between Affiliated Companies dated 3rd September 2004. Available at:

<http://www.chinatax.gov.cn/n810341/n810765/n812193/n812983/c1202231/content.html>

1.18.2. Legal authority

- State Taxation Administration

1.18.3. Legally required documents or records

- Contract between parent companies and their subsidiaries with the service content and payment for services indicated clearly

1.18.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) European Council. Taxation: EU list of non-cooperative jurisdiction. Available at: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>. [Accessed 12 February 2020]
- 2) Internationaltaxreview.com (3 December 2019). *China transfer pricing enforcement: Modernised approach matures*. [online]. Xiaoyue Wang and Choon Beng Teoh. Available at: <https://www.internationaltaxreview.com/article/b1j8xvh3y7f3pb/china-transfer-pricing-enforcement-modernised-approach-matures> [Accessed 22 September 2020]
- 3) Lawtime.cn. (2010). Discussions on China's laws on transfer pricing. [online]. Lawtime. Available at: <http://www.lawtime.cn/info/shuifa/sflw/2010122521158.html> [Accessed 12 February 2020]
- 4) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]
- 5) The World Bank. (2019). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>. [Accessed 12 February 2020]

1.18.5. Risk determination

Overview of Legal Requirements

- The State Taxation Administration Circular on Issues Dealing with Taxation on Foreign Invested Companies related to their Subsidiaries (2002) requires that foreign-invested companies that provide services to subsidiary companies shall sign a service contract to define the service to be provided, and payment criteria. The income from the service provision shall be included in the taxation base for income tax and operational tax. The investment cost and the loss shall not be deducted from the base for income taxation and shall also not be shared with its subsidiary companies. In other words, foreign-invested companies cannot collect fees from

their subsidiary companies, nor ask their subsidiary companies to share their operational costs. The companies must pay or collect fees from their subsidiary companies according to the arm's length principle - in a way similar to that which would occur between two separate independent companies for the same services or goods. If payment is considered by tax authorities to be less than what is considered a normal level, the authorities have the right to raise it for tax collection purposes.

- This is similar for the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (which refers to enterprises established with foreign investment and registered as foreign companies with some preferential policy) which requires that foreign-invested companies shall pay or collect fees from their subsidiary companies using a similar mechanism as between two separate independent companies for the same services or goods.

Description of Risk

- Chinese tax laws are minimal with regard to offshore trading. Furthermore, laws relating to transfer pricing and regulation of anti-tax avoidance are not extensively developed (in order to encourage foreign investment), but China has strengthened its international cooperation in this context.
- In China, the increasing sophistication of the STA and the local tax authorities, in terms of their TP knowledge and the enhanced tools at their disposal, means that taxpayers are constantly on the surveillance radar. As noted in this chapter, non-trade payments and equity transfers are key transactions that will constantly be reviewed by the Chinese tax authorities (Non-Government Source 2).
- According to European Council (Non-governmental Source 1), China is not an EU-listed non-cooperative jurisdiction which for tax purposes helps EU member states deal more robustly with countries that encourage abusive tax practices.
- In terms of enforcement, tax authorities have a poor record of tracking transfer pricing because of the tax authorities' relatively poor experience and poor foreign language skills. In addition, law enforcers have only very limited sources of information and have little opportunity to conduct transfer pricing investigations in other countries. It is very difficult for them to investigate transfer pricing.
- Expert consultations confirmed that there is minimal tax law on offshore trading in China and confirmed that the focus of Chinese companies (such as through the use of tax havens in China) can – in the main – be viewed in the light of avoidance of profit tax rather than tax evasion.

Risk Conclusion

Based on the available information, the risk associated with this category is assessed as Low.

1.18.6. Risk designation and specification

Low risk for all Source Types.

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

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

1.19.1. Applicable laws and regulations

- 1) Customs Law of People's Republic of China dated 4th of November 2017 – Article 9, 10, 11, 24 and 42. Available at: http://www.law-lib.com/law/law_view.asp?id=629440
- 2) Administration Provision of General Customs Administration on Classification of Import/Exported Goods dated 14th of February 2007 - Article 2, 11 and 12. Available at: http://www.gov.cn/ziliao/flfg/2007-03/08/content_545613.htm
- 3) Company Law of the People's Republic of China dated 26th October 2018- Articles 23, 24, 27. Available at: <https://www.66law.cn/tiaoli/6.aspx>
- 4) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) amended 30th April 1983. Available at: <http://www.fws.gov/le/pdf/CITESTreaty.pdf>
- 5) Regulation of Adminstrating Import and Export of Endangered Fauna and Flora of People's Republic of China dated 2nd March 2019 - Article 4, 7, 8, 12, 17 and 18. Available at: <https://www.cites.org/eng/disc/text.php> (中文) http://www.cites.org.cn/citesgy/wb/201911/t20191125_526736.html (English)
- 6) Law of People's Republic of China on the Entry and Exit Animal and Plant Quarantine dated 1992. Revised on 27 August 2009. Available at: http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004560.htm
- 7) Quarantine Measures of Exit Bamboo, Timber and Grass products dated 1 July 2003. Available at: <http://zwgk.tl.gov.cn/openness/detail/content/5cb04f787f8b9a33485faaa3.html>
- 8) Administrative Measures of Wildlife Import and Export Licence dated 1st of May 2014. Available at: http://www.law-lib.com/law/law_view.asp?id=445636

1.19.2. Legal authority

- General Administration of Customs
- National Entry and Exit Quarantine Bureau
- Endangered Species Import and Export Administration Office under the National Forestry and Grassland Administration

1.19.3. Legally required documents or records

Exports

- Registration form for companies with foreign trading activity

- Customs Declaration Registration Approval Certificate for Consigner and Consignee of Import/ Export Goods
- Export Customs Declarations
- Phytosanitary certificate
- Permit/certificate for Export or Re-export (for CITES and national protected species listed in the HS commodity appendix of import & export on wild species)
- Species certificate (Certificate for non-regulated species listed in the HS commodity appendix of import & export on wild species)

Imports

- Registration form for companies with foreign trading activity
- Customs Declaration Registration Approval Certificate for Consigner and Consignee of Import/ Export Goods
- Phytosanitary certificate
- Import Customs Declarations

1.19.4. Sources of information

Non-Government sources

- 1) www.sofreight.com (2019). Available at: http://www.sofreight.com/news_33669.html [Accessed 20 February 2020]
- 2) Sina news. (2019). China and Japan Consolidate Cooperation on the Enforcement of CITES. Available at: <http://news.sina.com.cn/o/2019-03-20/doc-ihxncvh3972052.shtml>. [Accessed 20 February 2020]
- 3) Phoenix news. (2019). 330m3 False Claimed Endangered (CITES) species *Guibourtia demeusei* seized in Zhangjiagang port. Available at: http://js.ifeng.com/a/20190322/7375888_0.shtml. [Accessed 20 February 2020]
- 4) www.people.com.cn. (2019). 160 tons Endangered Species *Pterocarpuserinaceus Poir* seized by Nanning customs office, 4th April 2019. Available at: <http://cq.people.com.cn/n2/2019/0402/c365405-32801418.html>. [Accessed 20 February 2020]
- 5) Sina news. (2014). 14,000tons rosewood (CITES species) seized by Guangzhou customs office. Available at: <http://collection.sina.com.cn/jjhm/yjzx/20140901/1352163265.shtml>. [Accessed 20 February 2020]
- 6) EIA. (2013). *Liquidating the Forests*. London and Washington DC: Environmental Investigation Agency (EIA). Available at: <https://eia-global.org/reports/liquidating-the-forests-report>. [Accessed 20 February 2020]
- 7) Transparency.org. (2019). *Corruption by Country/Territory: Corruption Perceptions Index 2019 for China*. [online]. Transparency International. Available at: <https://www.transparency.org/en/countries/china>. [Accessed 12 February 2020]

- 8) The World Bank. (2019). Worldwide Governance Indicators for China. [online]. Available at: <https://databank.worldbank.org/source/worldwide-governance-indicators>. [Accessed 12 February 2020]

1.19.5. Risk determination

Overview of Legal Requirements - Exports

In China, import or export licencing is a legal requirement for the import and export of all products, not only for timber or wood products.

- In China, only a person or company registered with the General Administration of Customs is qualified to make declarations regarding the import or export of goods. Customs Law of People's Republic of China 2017, Article 42 requires the correct goods classification. The Customs Law provides that the customs declaration must be submitted by registered companies or individuals as consigner or consignee, to ensure the correct declaration of import/ export goods. Companies that entrust customs declaration companies to declare or pay duties on their behalf must provide a true declaration related to commodity import/ export to its customs declaration company, which shall check the information for authenticity.
- Administration Provision of General Customs Administration on Classification of Import/Exported Goods 2007, Article 6 requires that importers shall correctly declare the name, specification, quantity, etc. of imported or exported goods. When exporting or importing commodities, the consigner or consignee must provide the correct species, specification and quantity for the duty or tariff payment. Customs Law also provides that Customs could require consigner and consignee of the imported/exported commodity to provide – as part of the declaration form – the document describing the commodity classification. If necessary, Customs could organise an inspection or testing, and use the results as the basis for commodity classification.
- Harmonized Commodity Description and Coding System (HS) codes must be correctly provided according to related Customs and Taxation regulations. Customs may ask the consignee and consigner to provide information that could help identify the classification. If the parties refuse to provide such information, Customs could identify the classification according to the declaration. If Customs finds the classification to be incorrect, Customs could re-identify the commodity classification and also revise the declaration.
- The Entry/ Exit Animal and Plant Quarantine Law requires that quarantine inspections are carried out for imported/exported timber or timber products to ensure they do not contain any bacteria or other harmful organisms when imported, transit exported or generally exported. Consignees shall make a quarantine declaration by submitting the phytosanitary certificate issued by exporting countries when importing or exporting timber or timber products. If the goods pass quarantine, a phytosanitary certificate will be issued. If found with bacteria or other harmful organisms, a note addressing quarantine issues will be issued, requiring the importer or exporter to take further action. Measure may include the refusal to accept - or the requirement to destroy - the infected commodity. When applying for quarantine at port, applicants shall submit the quarantine application form and the phytosanitary certificate,

certificate of origin, commercial invoice and other relevant documents. If no such certificate exists, the port quarantine bodies could require the commodities to be returned or destroyed.

- The Wildlife Import and Export Licensing system is implemented when importing or exporting wildlife and wildlife products, including CITES species; Only with the import/ export permission certificate and species certificate issued by National Endangered Species Import and Export Administration Offices can wildlife and their products be allowed to be imported or exported. These certificates are issued by the National Endangered Species Import and Export Administration Office and its affiliated offices. The format of these certificates is nationally standardized and printed by the National Endangered Species Import and Export Administration Office. When importing or exporting wildlife or wildlife products that are listed in the wildlife commodity catalogue, importers or exporters shall declare this to Customs, present the certificates and complete the import or export in accordance with the requirements of the certificate with respect to species, volume, port and timeframe. These offices also work closely with Customs providing training on wildlife to Customs officials to improve their enforcement capacity. If it is found that the imported or exported wildlife and products fail to be consistent with the information indicated on certificates, Customs has the right to address this. But if the declared volume is not higher than the allowed volume, and there are no other inconsistencies, the commodity will be cleared.

Overview of Legal Requirements – Imports.

- As per exports, in China, only a person or company registered with the General Administration of Customs is qualified to make declarations regarding the import or export of goods. The Customs Law provides that the customs declaration must be submitted by registered companies or individuals as consigner or consignee, to ensure the *correct* declaration of import/ export goods. Companies that entrust customs declaration companies to declare or pay duties on their behalf must provide a true declaration related to commodity import/ export to its customs declaration company, which shall check the information for authenticity.
- Harmonized Commodity Description and Coding System (HS) codes must be correctly provided according to related Customs and Taxation regulations. Customs may ask the consignee and consigner to provide information that could help identify the classification. If the parties refuse to provide such information, Customs could identify the classification according to the declaration. If Customs finds the classification to be incorrect, Customs could re-identify the commodity classification and also revise the declaration.

Description of Risk - Exports

- With the introduction of the Wildlife Import and Export Licensing system in 2014, China has been strengthening its administration over wildlife import and exports over the last 5 years. China actively implements the CITES Convention by designating ports specifically for import or export and carries out joint enforcement with other relevant authorities.

- China has a score of 41/100, at position 80 (of 180 countries assessed), according to Transparency International's 2019 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to 2019 perceptions ratings (on a scale of -2.5 to +2.5): Government Effectiveness: 0.52; Regulatory Quality: -0.24; Rule of Law: -0.27; Control of Corruption: -0.32.
- China has developed an online customs declaration system where all information is recorded. The value of products can be cross-checked by Foreign Exchange Control office and banks. In addition, many major ports in China have equipped advanced X-ray machines to verify the product type and quantity, assisting in checking if the product type and quantity is incorrectly declared.
- However, expert consultations and local expert experiences highlighted the potential risk of reporting species incorrectly when exporting forest-products made of natural species, because of people's limited knowledge on species scientific names or intention to avoid stricter checks of natural species by customs.
- In China, it is arguable that all bamboo products are made of bamboo materials derived from China, not other countries. There are a variety of bamboo species in China (as many as 500) but commercial solid bamboo products are usually derived from moso bamboo (*Phyllostachys heterocycla* (Carr.) Mitford cv. *Pubescens*). Bamboo pulp and paper products can be made from a number of bamboo species. Nevertheless, most commercialized bamboo species are low value, and none are CITES listed. There appears to be little incentive for the business community to misreport the bamboo species. It is a legal requirement that the bamboo species be declared as "bamboo" when exporting as many bamboo species are difficult to identify visually to non-experts.

Description of Risk - imports

- Public sources showed the false declaration for imported CITES species were occasionally detected by the customs. The traders declared the CITES species as non-CITES species intentionally to avoid regulatory and therefore the certificate for import CITES species (Non-government Source 3, 4 & 5).
- According to Biennial reports for total number of seizures and prosecutions for all CITES species (Non-government Source), 928 seizures and 60 prosecutions for CITES species imports in 2010, 1024 seizures and 114 prosecutions for CITES species imports in 2011.

Risk Conclusion

Exports

- Potential risk of reporting species incorrectly exists when exporting forest products, due to limited knowledge of species scientific names or intention to avoid stricter checks of natural species by customs.

Imports

- Risk of false reporting (effectively smuggling) of imported CITES species. These are difficult to quantify and occur to some extent in all countries, although may be viewed in the light of China's very significant role as a global wood-processing hub, and medium position in a number of key governance and corruption indicators.

Given the above considerations, risk is associated with this category requires it to be assessed as Specified.

1.19.6. Risk designation and specification

Exports

- Natural forests: Specified risk for mis-reporting of tree species when exporting, mostly unwittingly, because of people's limited knowledge on species scientific names.
- Plantations: Low risk
- Bamboo: Low risk

Imports

- Specified risk: Risk of false reporting (effectively smuggling) of imported CITES species.

1.19.7. Control measures and verifiers

Mitigating the risk of misreporting of tree species during export.

Accurate species can be verified through document review, and species testing.

Review documents and verify:

- That customs declarations correctly identify product descriptions, HS custom code, species, quantities, qualities, etc.
- Information (species, quantity, date, etc) on the customs declarations shall match the commercial invoice, packing list and phytosanitary certificate (if applicable).

Conduct targeted timber testing (on samples of purchased material to verify the species or origin of timber). See Preferred by Nature's [Thematic article No 1 on Timber Testing Techniques](#).

Mitigating the risk of false reporting of imported CITES species.

Verification of species can be verified through document review and species testing.

Obtain and review documents and verify:

- CITES export (from the country of harvest), import and re-export certificates relevant along the supply chain.
 - All cross border-trade of CITES-listed species shall be documented and accompanied by the certificates issued by competent authorities (CITES Management Authorities), as well as correctly classified (type, HS custom code, species, quantities, qualities, etc.).
- Information (species, quantity, date, etc) on the customs declarations shall match the commercial invoice, packing list and phytosanitary certificate (if applicable).

Conduct targeted timber testing (on samples of purchased material to verify the species or origin of timber). See Preferred by Nature's [Thematic article No 1 on Timber Testing Techniques](#).

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

- 1) Forest Law of People's Republic of China dated 28th December 2019 - Article 40. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>
- 2) Wild Plant Protection Regulation of People's Republic of China dated 7th October 2017 – Chapter 2. Available at: <http://www.forestry.gov.cn/main/3950/20170314/459881.html>
- 3) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) amended 30th April 1983. Available at: EN: <https://www.cites.org/eng/disc/text.php>. CN: http://www.cites.org.cn/citesgy/wb/201911/t20191125_526736.html
- 4) Regulations on the Administration of Import and Export of Endangered Species of Wild Animals and Plants dated on 2nd March 2019. Available at: <http://www.forestry.gov.cn/main/3950/content-459876.html>
- 5) Administration Measures of Wildlife Import and Export Certificate dated 1st of May 2014. Available at: http://www.law-lib.com/law/law_view.asp?id=445636

1.20.2. Legal authority

- The National Endangered Species Import and Export Administration Office under National Forestry and Grassland Administration

1.20.3. Legally required documents or records

- Collection permit for national or local key protected plants
- Certificate/Permit for import/export & re-export (for CITES or national protected species listed in the HS commodity appendix of import & export on wild species)

NOTE: Indicator 1.20 relates to legislation existing in regard to:

- CITES-listed trees species from China and their export (including the usual CITES Export Approval license).
- CITES imports/ re-exports.

1.20.4. Sources of information

Government sources

- 1) CITES (N.Y.). *Biennial reports for total number of seizures and prosecutions for all CITES species*. [online]. Convention on International Trade in Endangered Species of

Wild Fauna and Flora. Available at: <https://cites.org/sites/default/files/reports/11-12China.pdf> [Accessed 20 February 2020]

Non-Government sources

- 2) CITES (N.Y.). *Endangered Species Scientific Commission of PRC. China CITES Annexed Species Database going online*. Available at: <http://www.cites.org.cn/citesgy/fl/> [Accessed 20 February 2020]
- 3) Phoenix news. (2019). 330m3 False Claimed Endangered (CITES) species *Guibourtia demeusei* seized in Zhangjiagang port. Available at: http://js.ifeng.com/a/20190322/7375888_0.shtml. [Accessed 20 February 2020]
- 4) www.people.com.cn. (2019). 160 tons Endangered Species *Pterocarpuserinaceus Poir* seized by Nanning customs office, 4th April 2019. Available at: <http://cq.people.com.cn/n2/2019/0402/c365405-32801418.html>. [Accessed 20 February 2020]
- 5) Sina news. (2014). 14,000tons rosewood (CITES species) seized by Guangzhou customs office. Available at: <http://collection.sina.com.cn/jjhm/yjzx/20140901/1352163265.shtml>. [Accessed 20 February 2020]
- 6) The World Bank. (2019). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2019. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>. [Accessed 12 February 2020]
- 7) EIA (2020): Ban-Boozled. How corruption and collusion fuel illegal rosewood trade in Ghana. Environmental Investigation Agency. Available at: https://content.eia-global.org/posts/documents/000/000/906/original/BAN_Boozled_Rosewood_Ghana.pdf?1564513559 {Accessed January 2021}.

1.20.5. Risk determination

Overview of Legal Requirements –CITES-listed trees species from China and their export

The Forest Law, the Wild Plant Protection Regulation and Regulations on the Administration of Import and Export of Endangered Species of Wild Animals and Plants have provisions relating to the protection of rare and endangered wildlife species. As a party to the CITES Convention, China also applies these laws to CITES species protection.

- The Forest Law (2019) provides that protection shall be provided to rare species and plant resources with special values situated outside nature reserves. No cutting or collection of wildlife may be carried out without the permission of provincial forestry authorities.
- Wild Plant Protection Regulations require the protection of wild plants and their habitats. No organisation or individual is permitted to engage in illegal collection of wild plants or damage their habitat. Wildlife under national Class I protection shall not be traded. The trading of wildlife under national Class II protection shall be approved by provincial-level wildlife authorities or their designated bodies, while the

trading is also supervised and checked by provincial wildlife authorities. Article 20 provides that the export of national key protected wild plants, or of CITES species, shall be reviewed by provincial wildlife authorities and then submitted to national wildlife authorities for approval. Following approval, application shall be made for an export permission certificate from the Administration Office of Endangered Species Import and Export Customs shall clear the export against the certificate. Information about wild plant export shall be copied to the national Environment Protection Authority. In addition, it is prohibited to export unnamed or newly found species with important values.

- According to the Regulation on the Administration of Import and Export of Endangered Species of Wild Animals and Plants and the Administration Measures of Wildlife Import and Export Certificate, the import of CITES species shall be approved by national wildlife authorities. In case of re-export, following the approval, application shall be made for an export permission certificate from the Administration Office of Endangered Species Import and Export. Importers shall declare this to Customs, present the certificates and complete the import in accordance with the requirements of the certificate with respect to species, volume, port and timeframe. In applying for import certificate, the CITES export certificate issued by the country of origin shall be provided. In applying for re-export certificate, the import customs document and the former import certificate checked by the customs shall be provided. The format of the certificate is nationally standardised and printed by the National Endangered Species Import and Export Administration Office. Customs shall clear the import or re-export against the certificate. If it is found that the imported or exported wildlife and products fail to be consistent with the information indicated on certificates, Customs has the right to address this.
- CITES Appendix I species are prohibited from being imported or exported. If there is a need for scientific research, propagation or domestication, or cultural exchange, their import or export shall be approved by the National Endangered Species Import and Export Administration Office. If import or export approval is required by the State Council, this shall be obtained. Unnamed or newly found species with high value are prohibited from being exported, as are certain other wildlife and related products. Import or export of other CITES species shall be approved by the National Endangered Species Import and Export Administration Office.
- The Administration Office of Endangered Species Import and Export is set up as the enforcement authority of CITES under National Forestry and Grassland Administration (NFGA) in charge of the administration and governance of wild fauna and flora, including imports and exports of CITES-listed or national protected species. There is a total of 14 branches in the capital cities of major provinces.
- The main functions of the NFGA are to participate in the formulation of policies, laws, regulation and directives in terms of wildlife nationwide, represent the Chinese Government to be responsible for the management of CITES species and other CITES affairs, prepare the import/export quota plan based on the overall annual quota for wildlife hunting, collection and utilization approved by the State Council, review and approve the import/export allowance certificate, register the organization and individuals importing or exporting wildlife, etc.

Overview of Legal Requirements – imports and re-export

The Regulation on the Administration of Import and Export of Endangered Species of Wild Animals and Plants is the main legal provision to administer the import/export of CITES species and fulfil the obligations by China as a signatory to CITES, along with the Administration Measures of Wildlife Import and Export Certificate.

- The import and export of CITES species shall be approved by national wildlife authorities and, following the approval, application shall be made for an export permission certificate from the Administration Office of Endangered Species Import and Export.
- In applying for an import certificate, the CITES export certificate issued by the country of origin shall be provided. In applying for re-export certificate, the import customs document and the former import certificate checked by the customs shall be provided. Customs shall clear the import or re-export against the certificate.
- The Administration Office of Endangered Species Import and Export is the enforcement authority of CITES in charge of the administration of import and re-export of CITES-listed species.

Description of Risk –CITES-listed trees species from China and their export

China appears to carry out reasonably strict control over the export of endangered species, particularly CITES species:

- China is not a listing country for any CITES Appendix III tree species. However, the following agarwood and yew tree species included in Appendix II include at least part of China in their native ranges:
 - *Aquilaria spp.* (specifically *A. grandiflora*, *A. sinensis*, *A. yunnanensis*);
 - *Taxus chinensis*; *T. cuspidate*; *T. fauna*; *T. sumatrana*; *T. wallichiana*.
 - *Dalbergia spp.* including all species under this genus (approximately 26 *Dalbergia* species grow in China).
 - No bamboo species falls within the current CITES appendices.

However, none of CITES-listed species from China is commercially traded because they are strictly protected from harvesting.

- The volume of international trade of wildlife to/from China has been growing while protection and utilisation present more prominent challenges. In this sense, China is facing pressure to protect its own rare and endangered wildlife. As a result, China is placing significant focus on the protection of CITES species. In line with existing laws, key protected wildlife may not be cut or collected unless with permission by forestry authorities. Trading of CITES species is also not permitted unless this occurs with the certificate issued by the National Endangered Species Import and Export Administration Office.
- The CITES species growing in China is classified as national protected species and being protected strictly from harvesting. The National Endangered Species Import and Export Administration Office has sought to ensure strict supervision of the implementation of CITES-related laws and regulations.

- Additionally, data from the period 2009 to 2012 indicate that China is not complacent in enforcing CITES laws, given the number of CITES import seizures and prosecutions (928 seizures and 60 prosecutions in 2010, 1024 seizures and 114 prosecutions in 2011) while - perhaps as an indication of a functioning system - the number of seizures and prosecutions for species to be exported is minimal, amounting to less than 5, year on year. No evidence was found that these are related to tree species.

Description of Risk - imports and re-exports

- Public sources showed the false declaration for imported CITES species were occasionally detected by the customs. The traders declared the CITES species as non-CITES species intentionally to avoid regulatory and therefore the certificate for import CITES species (Non-government Source 3, 4 & 5).
- There are reports of Chinese demand is contributing to driving the demand of illegal logging CITES listed species in other countries. An example is Rosewood from Ghana, where Chinese traffickers have been pointed out as having a complicit role in the illegal harvest, transport, export from Ghana and CITES-licencing of the timber. This includes forging of documents and retrospective issuing of CITES permits, which is in contravention with the Convention (Non-government Source 7), and there is a risk of it being illegally introduced to the Chinese market.
- According to Biennial reports for total number of seizures and prosecutions for all CITES species (Government Source 1), 928 seizures and 60 prosecutions for CITES species imports in 2010, 1024 seizures and 114 prosecutions for CITES species imports in 2011.

Risk Conclusion

Based on the available information, the risk associated with this category is considered as Low for China sourced CITES-listed trees species and their export.

The risk for imported/re-exported CITES species is specified because of non-reporting or misreporting of imported CITES species as non-CITES species.

1.20.6. Risk designation and specification

All Source Types: Low risk for China sourced CITES-listed trees species and their export.

Imported/re-exported CITES species: Specified risk that the imported/re-exported CITES species is not accompanied by CITES permit because of non-reporting or misreporting of imported CITES species as non-CITES species, to avoid regulatory scrutiny or requirements.

1.20.7. Control measures and verifiers

Mitigating the risk of CITES species being declared as non-CITES

Species can be verified through document review and timber testing.

Obtain and review documents and verify:

- CITES export (from the country of harvest), import and re-export certificates relevant along the supply chain.

- All cross border-trade of CITES-listed species shall be documented and accompanied by the certificates issued by competent authorities (CITES Management Authorities), as well as correctly classified (type, HS custom code, species, quantities, qualities, etc.).
 - Information (species, quantity, date, etc) on the customs declarations shall match the commercial invoice, packing list and phytosanitary certificate (if applicable).
- Conduct targeted timber testing (on samples of purchased material to verify the species or origin of timber). See Preferred by Natures [Thematic article No 1 on Timber Testing Techniques](#):

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

- 1) Forest Law of the People's Republic of China ("Forest Law") amended 28th of December 2019 – Chapter 6. Available at: <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

- 1) SGFA. (2020). *New Forest Law Provides Legal Basis for Combating Illegal Timber*. Available at: <http://www.forestry.gov.cn/main/4045/20200122/153126522241074.html>. [Accessed 20 February 2020]
- 2) ClientEarth. China introduces new law to safeguard forests and improve governance (July 2020). Available at: <https://www.clientearth.org/china-introduces-new-law-to-safeguard-forests-and-improve-governance/>. [Accessed 21 September 2020]

1.21.5. Risk determination

Overview of Legal Requirements

Article 65 of amended forest law states that timber processing companies should establish incoming and outgoing accounting records of raw material and product. Any organization and individual cannot purchase, process and transport the known illegal timber/trees harvested unlawfully."

According to article 65 of the new Forest Law (amended December 2019), manufacturers of timber and timber products shall establish book-keeping records of material inputs

and product outputs, for their facilities. Any organization or individual shall not knowingly purchase, process, or transport timber or logs harvested unlawfully.

Description of Risk

While it is being widely interpreted that the Chinese companies will be obliged to verify the legality of both domestic imported timber and timber products (similarly to the requirement of timber legality due diligence regulations in other parts of the world, e.g., EUTR), according to article 65 of new Forest Law requires, this is yet to be confirmed. How article 65 will be implemented will depend on the coming implementing regulation of the new forest law – which is expected to provide more detailed requirements for some of the articles – and other and judicial interpretations. Also, there is some ambiguity about the definition of ‘illegal timber’ which needs to be clearly defined.

However, as of December 2020, the implementation regulation of the new forest law has not been published yet. Therefore, risk in relation to this category can be considered not applicable, at this point, but may be updated as necessary once the implementing regulation is published and comes into force.

1.21.6. Risk designation and specification

N/A

1.21.7. Control measures and verifiers

N/A

OTHER

1.22. Supply chain transparency and traceability

This category does not cover an area of legislation but seeks to ask key questions in relation to whether the Forest Sector is structured in a way which frequently inhibits transparency and traceability of wood products through supply chains. Key questions we have asked include if:

- *Supply chain mapping is particularly difficult in the country, due to transparency and frequently occurring traceability information-gaps.*
- *Cross border (national, sub-national) trade and transport adds risk that material has been traded illegally. There are well-known examples of material illegally harvested in one country and imported to the country under assessment, where the legal origin of the material is not verified or evaluated.*
- *Forest Sector supply-chain entities exist, and are a common feature of the forest sector, which frequently inhibit transparency and traceability of wood products through supply chains. Examples include some auctions, spot markets, etc...*
- *There is an elevated occurrence of false declarations of origin and/or species*
- *There is an elevated occurrence of falsification of documentation within the Forest Sector.*
- *Trade and administrative practices are inhibiting the availability of information on the traceability of forest products*

1.22.1. Applicable laws and regulations

N/A

1.22.2. Legal authority

N/A

1.22.3. Legally required documents or records

N/A

1.22.4. Sources of information

Government Source

- 1) SGFA. (2020). *New Forest Law Provides Legal Basis for Combating Illegal Timber*. Available at: <http://www.forestry.gov.cn/main/5116/20200122/153124209336897.html>. [Accessed 20 February 2020]
- 2) NGFA (2019). Overview of China Forestry Products Trade in 2018. Available at: <http://www.forestry.gov.cn/sites/main/main/lyzt/zht.html>. [Accessed 20 February 2020]

Non-Government Source

- 1) UK National Measurement Office (2015). EUTR: Plywood imported from China. Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attach>

[ment_data/file/402325/Chinese Plywood Research Report.pdf](#). [Accessed 20 February 2020]

- 2) Sixth Tone (2019), How Illegally Harvested Timber IS 'Greenwashed' in China. Available at: <https://www.sixthtone.com/news/1003369/how-illegally-harvested-timber-is-greenwashed-in-china>. [Accessed 20 February 2020]
- 3) WWF (2018). A Case Study on Responsible Sourcing of White Oak from the Russian Far East, 29 March 2018. Available at: <https://www.worldwildlife.org/publications/okay-oak-a-case-study-on-responsible-sourcing-of-white-oak-from-the-russian-far-east>. [Accessed 20 February 2020]
- 4) WWF (2013): Illegal Logging in the Russian Far East: global demand and taiga destruction. Smirnov, D.Y. (ed.) Kabanets, A.G., Milakovsky, B.J., Lepeshkin, E.A., Sychikov, D.V. 2013. WWF, Moscow. Available at: <https://www.worldwildlife.org/publications/illegal-logging-in-the-russian-far-east-global-demand-and-taiga-destruction>. [Accessed 20 February 2020]

1.22.5. Risk determination

As the world's manufacturing hub, China is the biggest importer and consumer of wood products. Over 60 percent of tropical logs on the global market are imported to China. Much tropical wood comes from species and origins which could be considered specified/high risk for illegal harvesting or trade. A large proportion of the wood China imports is processed and then re-exported (Non-government source 2). According to the most recent figures from NGFA, China imported \$ 83.72 billion and exported \$815.6 billion of wood products in 2018, including imports of 59.67 million m³ logs and 36.74 million m³ sawn timber.

It is noticeable that approximately 17.5% of total imported logs to China by volume and 45% of total imported sawn timber by volume were from Russia in 2019.

However:

- China had no regulations relating to timber legality Due Diligence in the past. <on 1st July 2020, the new forest law came into force in which the article 65 is being unofficially interpreted to require due diligence of companies, although it is yet to be seen how the amended law will be implemented. Detailed requirements for this article are expected in the coming implementing regulation of the new forest law and other judicial interpretations.
- As a result, at present time, China has only developed *non-mandatory* guidelines for Chinese enterprises to implement green supply chain management measures for overseas sourcing. This leaves a lot of Chinese companies in the middle of supply chains in a difficult situation, when supplying into regulated markets for timber legality. Some level of risk exists in relation to the forgery or manipulation of documents, in order to meet buyers demands, where companies struggle, or are unable to obtain information on the origin or legality of their timber sources.
- In 2015, the UK National Measurement and Regulation Office conducted tests into plywood coming from China. Results show that of the 13 samples tested, nine did not match the species of wood declared (*Non-Government Source 1*).
- In 2016 and 2017, ninety-eight percent of Russia's total exports of oak logs and eighty four percent of Russia's total exports of oak sawn wood lumber were destined

for China, which together represent almost exclusively the types of oak product that Russia exports. While there is a legal supply of oak exports from Russia to China, discerning legal from illegally harvested and traded oak can be challenging, especially once the wood from multiple Russian exporters is mixed in Chinese log yards. Commercially available Mongolian oak is endemic in, and available from four provinces in the Russian Far East. The species is potentially the most valuable hardwood in the region, which increases the risk of fraudulent activity. Even though Chinese-origin Mongolian oak (*Quercus mongolica*) is not listed CITES listed, Mongolian oak is CITES III listed by Russia. The potential risk exists that Chinese-origin oak is mixed or substituted by Russian-origin oak within a Chinese mill, either deliberately or accidentally. China has been implementing a commercial logging ban on natural forests nationwide - including those in North-eastern China - citing the need for the cessation of commercial harvesting from these forests to allow forest health and stock status regeneration. The resulting diminished supply of Chinese-origin Mongolian oak will likely have increased demand for Russian-origin Mongolian oak and may have generated incentives for some mills to substitute Russian oak for Chinese oak without proper due diligence measures and legality checks (*Non-Government Source3*).

- In recent years, China government and forestry business have been making good efforts to combat and reduce the illegal timber flowing to China. However, China's timber processing sector is characterised by many middle and small-sized companies. As a result, many companies have little or no-procedures in the areas of wood traceability, due diligence, or the identification of illegal timber. Additionally, supply chains are usually complex which adds to the difficulty of tracing the origin of timber and identifying potentially illegal timber sources. So, it is unsurprising that some proportion of timber-supplies into the Chinese market are of unknown or potentially illegal origin (Government Source 1).
- Local expert consultations indicate that a majority of Chinese companies – and particularly smaller-sized enterprises – have no traceability or segregation system in place. It is likely that timber from different sources is mixed within their facilities, as long as they have the same or similar qualities that can meet clients' needs and product standards. This includes the mixing of non-certified material with certified, in the production of certified products.

1.22.6. Risk designation and specification

Natural forest and plantations: Specified risk

- An elevated occurrence of false declarations of origin, species, and transport route
- An elevated occurrence of falsification of documentation within the Forest Sector.
- Mixing of declared species/origins with wood-supply from unknown sources or species in production and trade.
- Supply chain mapping is particularly difficult in the country, due to the number of sub-suppliers, complexity of supply chains, as well as challenges in relation to supply-chain transparency and frequently occurring traceability information-gaps within supply chains. Although this situation may be slowly improving over time.

Bamboo: Low Risk.

1.22.7. Control measures and verifiers

To verify origin, species and transport route supply chain mapping, document review, database confirmation, onsite verification can be applied. In some situation it can be beneficial to simply supply chains and avoid certain supply chain/sources.

Supply Chain Mapping:

- Conduct non-linear supply chain mapping.
- Request evidence of traceability and segregation measures to provide clarification on tracking and handling of the material within the facilities.

Review documents and verify:

- Collect supply chain information and verify information provided is consistent with previous records.
Relevant supply chain information is that which helps to confirm the supply chain, incl origin, species and volume of the material sourced. Examples are, but not limited to: Forest Tenure Certificate, Harvesting permit, VAT Invoices or Self-billing invoice/receipt for smallholders, custom declaration, delivery note/packing list, bill of lading, Quarantine (phytosanitary) documents.

Database confirmation to confirm:

- The authenticity of Business License (e.g <http://www.gsxt.gov.cn/index.html>, <https://www.tianyancha.com/>).
- The authenticity of VAT invoices (via <https://inv-veri.chinatax.gov.cn/>), which is a vital document to mapping the supply chain

Conduct targeted timber testing (on samples of purchased material to verify the species or origin of timber). See Preferred by Natures [Thematic article No 1 on Timber Testing Techniques](#).

Onsite verification of upstream suppliers:

- Review supply chain information,
- Volume reconciliation; check if the volume from the supply chain in question is sufficient to ensure the needed input for the volume of products manufactured.
- Interview staff to collect additional information and assurance of the origins of the wood used in wood-based products, e.g., country of origin, forest of harvest.
- Check if a functioning and effective traceability and segregation system is in place.

Simplify supply chains

- If possible, avoid purchasing material from complex supply chains which cause difficulty in mapping supply chain, gathering information and addressing the risk of mixing.

Avoid situations where wood material is sourced via spot markets or auctions, where traceability may be lost.

Annex I. Timber source types

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

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

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

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

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

TIMBER SOURCE TYPES IN CHINA

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forests	All provinces	Ecological forest or Commercial Timber (Natural) Forest	State or collectively owned	Mostly state, and collective organizations (village committee), a lower percentage from smallholders or corporations	Harvesting Permit for tending cuttings + logging permit application, logging design document, forest management plan, forest tenure certificate	<p>Natural forests are not a significant source of wood-supply because China has implemented the Natural Forest logging ban nationwide by law, except for wood from tending cuttings (pre-harvest thinning). In addition, there are strict limitations to the dimensions of the trees to be harvested.</p> <p>A Harvesting Permit for tending cutting is required.</p>
Plantation Forest	All provinces	Plantations (planted forest or trees).	State or collectively owned	Mostly state, collective, smallholders or corporations	<p>Harvesting permit + logging permit application logging design document, forest management plan, forest tenure certificate, land leasing contract.</p> <p>Note: a harvest permit is not required if the plantation grows on non-forest land, such as trees in private farm plots and surrounding houses.</p>	<p>Plantations are the main source of timber from China. These include timber from collectively, individually, or corporately owned commercial plantations, and state managed plantations. A harvesting permit is required.</p> <p>Timber from forests planted for other purposes, i.e., fruit trees, are known as economic forests. When the forest has no yield, the trees may still be harvested as materials for forest products. A harvesting permit is required.</p>
Bamboo Forests	South provinces	Bamboo forest	State or collectively owned	Mostly smallholders or corporations, a lower percentage from state and collective	Harvesting permit not applicable for selective cut (selective cutting is always applied for bamboo forest except where the bamboo grows in nature reserves).	<p>Bamboo</p> <p>Bamboo forest: Bamboo forest refers to the community dominated by bamboo species.</p>

Annex II. List of key terms in English and Chinese

AUTHORITIES

Ministry of Natural Resources 自然资源部

National Forestry and Grass Administration 国家林业与草原局

State Administration for Market Regulation 国家市场监督管理总局

State Taxation Administration 国家税务总局

Ministry of Human Resources and Social Security 人力资源和社会保障部

National Ethnic Affairs Commission 民族事务委员会

General Administration of Customs 海关总署

Ministry of Emergency Management 应急管理部

SUPPLY CHAIN DOCUMENTS AND RECORDS

Accident Insurance 工伤意外保险

Annual harvest quota 年度采伐限额

Business License 营业执照

Certificate/Permit for import/export & re-export (for CITES or national protected species)
CITES 树种允许进出口证明

Collection permit for protected species 保护植物采集许可证

Customs Declaration Registration Approval Certificate for Consigner and Consignee of
Import/ Export Goods 进出口货物收发货人报关注册登记证书

Forest Tenure Certificate 林权证

Forest Harvesting Permit 林木采伐许可证

Forest Management Plan 森林经营方案

Immovable Property Certificate (for forest land) 林地不动产登记证

Import/export Customs Declarations 海关进出口货物报关单

Import/export certificate of Endangered species 濒危物种进出口许可

Personal protection equipment 个人防护用品

Phytosanitary/Quarantine Certificate 植物检疫证书

Registration form for the company with foreign trading activity 对外贸易经营者备案登记表

Rural land contract management certificate 农村土地承包经营权证

Social security card 社保保障卡

Salary payment records 工资单

Self-billing VAT invoice for farmers 农民增值税收购发票

VAT invoice (Fapiao) 增值税发票

SPECIES

Acacia (*Acacia mangium*) 马占相思

Birch (*Betula spp.*) 桦木

Chinese fir (*Cunninghamia lanceolata*) 杉木

Eucalyptus (*Eucalyptus spp.*) 桉木

Larch (*Larix gemlini*) 落叶松

Mason pine (*Pinus massoniana*) 马尾松

Moso bamboo (*Phyllostachys heterocycla cv. Pubescens*) 毛竹

Paulownia (*Paulownia spp.*) 泡桐

Poplar (*Populus spp.*) 杨木

Schima (*Schima superba*) 木荷

Slash pine (*Pinus elliottii*) 湿地松

About

Supporting Legal Timber Trade

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



Preferred by Nature is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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