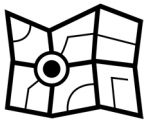


Version 1.0 | August 2017

Sarawak Malaysia Risk Mitigation Guide

Palm Oil



This tool has been developed by NEPCon under the project “Responsible Sourcing of Soy, Palm Oil and Cattle” with support from DANIDA, Ministry of Foreign Affairs of Denmark.



**COUNTRY SPECIFIC
TOOLS**



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Sarawak Malaysia Palm Oil Risk Mitigation Guide

NEPCo has evaluated the risks associated with the Sarawak Malaysia palm oil supply chains across five categories:



Business Issues



Social Issues



Environmental Issues



Conversion



GMOs

The CSR risks identified concern business issues, social issues and environmental issues. This Palm Oil Risk Mitigation Guide provides advice on how to mitigate the risks identified.

Palm Oil source types and risks

There are three Palm Oil source types found in Sarawak Malaysia. Knowing the “source type” that Palm Oil originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risks.

Government land development schemes

Palm oil from large state estates where smallholders are leased small plots (4.0 – 5.7 hectares (ha)) then awarded them after a 10-15 repayment period. The mono-crop plots are managed for subsistence and/or commercial purposes.

State mediated private development schemes

Palm oil from private commercial plantations (minimum size of 5,000 hectares). Native Customary Rights (NCR) participants lease land to a private company for a 60-year period through a Joint Venture Company. Though legally owned by smallholders, private companies hold a 60% majority in the JVC and thus exercise control of the plantation development.

Large-scale private plantation

Palm oil from large-scale private mono-crop commercial plantations from 40 ha to more than 100,000 ha on alienated land under:

- a country land title (CL) under a 99-year lease
- a freehold land title.

These plantations are often integrated with a production mill and processing facilities.

Small-scale private plantation

Palm oil from small-scale private commercial/subsistence plantations (less than 40 ha) on alienated land under:

- a country land title (CL) under a 99-year lease
- a freehold land title
- native title (NT) alienated for perpetuity

These scattered smallholdings are managed by farmers who work their own plantation with minimal government assistance. They sell their FFB directly to local mills and traders.

We have analysed the risks for all source types and found the risks do not differ between the four source types.

Map your supply chains

To effectively evaluate and mitigate risks in your supply chain, it is necessary for you to know where the source originates. This will allow you to determine your source type and mitigate the risks associated with that source type. As risks have been identified with all source types, supply chain mapping is necessary to further evaluate, specify and mitigate the risks.



The **Supply Chain Mapping Tool (DD-07)** can be used to record supply chain information at a detailed level.



The **Supplier Management Form (DD-04)** can be used to maintain a complete supply chain overview.



Business Issues

The following six risks have been identified related to business issues in Sarawak Malaysia:

1. Risk of land right violations primarily relates to disputes about land categorisation, particularly related to native customary laws and native rights over land those related to use by indigenous peoples are concerned, and a high level of corruption related to the granting of land concessions.
2. Risk that licenses are corruptly awarded because of possibilities of the political elite to exercise political patronage, cronyism and nepotism. In addition to the risk of preferential treatment, there have been cases in Sarawak of palm oil producers selling unlicensed Fresh Fruit Bunches and seedlings.
3. Risk of tax evasion due to corruption. There are several complaints from the palm oil industry about heavy taxation and this is considered a prime motivation for tax evasion which is commonly linked to businesses with family, government and foreign ownership.

Risk	Mitigation recommendations
Land right violations related to disputes about land categorisation.	<ol style="list-style-type: none"> 1. Obtain and verify the following documents: <ul style="list-style-type: none"> ○ Issue Document of Title and Register Document of Title - proof of land ownership (freehold (land held in perpetuity) or leasehold (leased land not exceeding a 99-year term) ○ If the proposed agricultural plantation is of more than 500 ha derived from secondary- or primary forests (or from modification of present land use) it requires project proponents to submit an Environmental Impact Assessment (EIA) and obtain approval from DOE (http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf). ○ MPOB License (MPOB L1) - All persons wanting to be involved in the palm oil business needs to be licensed the MPOB according to the MPOB Regulations of 2005. This includes the production, sale, purchase, movement, storage, commence construction of oil palm mill, milling, commence

construction of bulking facilities, survey, test, export and import of oil palm products (<http://161.142.157.2/pnp/bi/pelesenan.html>)

- Written Permission to Construct a Palm Oil Mill from the Director-General of Environmental Quality
 - License to occupy and operate a crude palm oil mill from the Department of Environment Malaysia (DOE)
 - Records Free Prior Informed Consent and/or a participatory social impact assessment and/or was conducted and copies of negotiated agreements are available
 - Evidence a dispute resolution mechanism is in place
2. Confirm land ownership with the State land registry.
 3. Review updated information and news on land tenure issues via:
 - NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, Friends of the Earth [foe.org](http://www.foe.org), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komang ([komas.org](http://www.komas.org)), Cultural Survival ([culturalsurvival.org](http://www.culturalsurvival.org)))
 - Media reports (Mongabay.com, [greenomics.org](http://www.greenomics.org), [red-monitor.org](http://www.red-monitor.org), [eyesontheforest.org](http://www.eyesontheforest.org), [sarawakreport.org](http://www.sarawakreport.org), [malaysiakini.com](http://www.malaysiakini.com))
 - Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations.
 - For land tenure issues check palm oil producers' 'Landbank' scores: <http://www.sustainablepalmoil.org/companies/>
 - This data can support SPOTT users in conducting further research to verify whether company commitments are being implemented on the ground.
 - Under Map of Concessions found here: <http://www.sustainablepalmoil.org/about/> use the map search bar to find specific company concessions or locations. Click the concession sites marked by pins to zoom in for more information, then go to the company pages of featured concessions to

	<p>view their assessments and for legality particularly pay attention to the layer called 'government allocated areas' to ensure the palm oil producer is operating in a legal area. For more on how to use the SPOTT map see the ZSL FAQs page.</p>
<p>Licenses are corruptly/improperly awarded.</p>	<ol style="list-style-type: none"> 1. Obtain the following document: <ul style="list-style-type: none"> ○ A business license and a completed a Business Registration Form (Form A) to the SSM (The Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia or SSM) - required for operating a palm oil plantation ○ Environmental Impact Assessment (EIA) ○ MPOB License (MPOB L 1) ○ Palm Oil Mills - all treatment and disposal facilities (e.g. crude palm oil mill) must obtain prior written permission from the Director-General of Environmental Quality (RSPO, 2014) 2. Research the supplier: <ul style="list-style-type: none"> ○ NGO investigations and reports (Forest Peoples Programme http://www.forestpeoples.org, , Rainforest Action Network www.ran.org, http://www.schusterinstituteinvestigations.org, greenpeace.org, Friends of the Earth foe.org, Forest-Trends http://www.forest-trends.org/, REDD-Monitor http://www.redd-monitor.org/) ○ Media reports (Mongabay.com, greenomics.org, red-monitor.org, , eyesontheforest.org, etc.) ○ Assess corporate risk – trace origins back to company and compare company ownership based on their policies, practices, initiatives, and goals (utilizing ZSL's Sustainable Palm Oil Transparency Toolkit (SPOTT) http://www.sustainablepalmoil.org/companies/)
<p>Tax evasion due to corruption.</p>	<ol style="list-style-type: none"> 1. Obtain records of payment of Windfall Tax (using form WPA No.3 – see: http://www.customs.gov.my/en/pg/Pages/pg_pwt.aspx) 2. Receipts shall exist for payments of related royalties, taxes and other required fees. 3. Volumes, and qualities given in sales and transport documents shall match the paid fees.

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4. Classification of volumes and qualities shall match the royalties and fees paid.
 5. Consultation with financial authority to verify that all required income and profit taxes have been paid



Social Issues

The following four risks have been identified related to social issues in Sarawak Malaysia:

1. Risk that producers are engaging illegal labour practices mainly linked to the employment and working conditions of migrant workers. Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage. Other common treatment of foreign workers includes passport retention, contract violations, restricted movement, wage fraud, poor housing conditions and lack of H&S training. These risks are especially pertinent in Sarawak as the state currently faces a significant shortage of labor in the palm oil industry.
2. International Labour Organization (ILO) Fundamental Conventions. Risk that Malaysian's legal employment laws do not cover what the ILO considers universal fundamental principles and rights at work as Malaysia currently has only ratified 5/8 ILO fundamental conventions. There also have been several reports of forced labour, workers under the minimum age, child labour and discrimination including of foreign and migrant labourers.
3. Risk that Malaysia's Occupational Health and Safety (OSH) requirements are breached by palm oil producers. There is evidence that shows several instances of alleged breaches of OSH requirements which is exposing workers to injuries from falling fruit bunches, tool usage, heavy lifting and health hazards connected oil palm pest bites, over exposure to the sun, herbicides etc.
4. Risk that the legal and customary rights of indigenous or traditional peoples are violated. In 2013, it was reported that over 200 cases of breaches of Native Customary Rights were pending in Sarawak and 70 cases were related to plantation development with a majority related to oil palm plantations. Apart from loss of land, many community witnesses have complained that the opening of plantations has resulted in destruction of graveyards and crops, and pollution of rivers and loss of livelihoods and traditional ways of life. .

Risk

Mitigation recommendations

Illegal labour practices mainly linked to the employment and working conditions of migrant workers.

1. Obtain a list of employees (e.g., request the employer's payroll list) and ask for a sample of Employment Contract(s) of those employees on the list. The contract must include the following information:
 - Names of both employer and employee
 - Job title
 - Date of commencement of work
 - Place of work as well as work address
 - Required notice period as well as retirement age
2. Request the employer's payment voucher and evidence that that required payments such as social security contributions are being paid.
3. Request from the employee or the employer pay stubs to verify it is in line within the relevant contract agreement
4. Interviewing employees and ask what activity performed, that amount paid by the employer for the activity, which method of payment have (daily / daily wage, monthly, performance / production), how long working hours, few days a week they work.
5. Ensure that employees are registered with EPF and SOCSO, one can cross check the record of salary payment slips with receipts from EPF and SOCSO and the corresponding payment forms (Form A for EPF and Form 8A for SOCSO). The employer is the one responsible to register employees with EPF and SOCSO, so the employer itself should be able to provide the list of workers registered. To ensure that all employees are registered, I think easiest is to cross check record of salary payment slips, and official receipts from EPF and SOCSO and the corresponding payment forms (Form A for EPF, Form 8A for SOCSO).

Malaysian legal employment laws do not cover what the ILO considers universal

1. Evidence of that the palm oil farm(s) have a clear policy and compliance system is in place that prohibits child labour and its worst forms and sets the minimum age for employment consistent with applicable law.

fundamental principles and rights at work.

2. At least the legally established minimum salaries shall be paid for personnel involved in farm management activities.
3. Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in farm management activities.
4. Minimum age shall be observed for all personnel involved in farm management activities.
5. Minimum age shall be observed for all personnel involved in hazardous work.
6. Stakeholders shall confirm that forced or compulsory labour is not involved in farm management activities.
7. There evidence and/or employees confirm the employer allows them the right to organize and collective bargain.

Malaysia's Occupational Health and Safety (OSH) requirements are breached by palm oil producers.

1. Company's occupational safety and health (OSH) management system reporting via published annual sustainability reports in combination with:
2. Verify that the company has an occupational safety and health (OSH) program, and that the program used in practice.
 - Verify that the employees of the company have been trained about work safety
 - Obtain records of reports of workplace deaths. Deaths in the workplace must be recorded.

For Large-scale private plantations [>40 - >100,000 ha]

3. Evidence of a H&S officer position and training, procedures and equipment are in place.

Indigenous and traditional peoples' rights are not upheld.

In addition to obtaining the legal land tenure ownership documents listed above (Issue Document of Title and Register Document of Title, MPOB License and approved EIA), we recommend obtaining the following:

1. Evidence of palm oil farms obtaining proof of ownership documents: And
2. Records from the farm that demonstrate active consultation and/or evidence of a participatory social impact assessment and/or conducting a Free Prior Informed Consent before developing farm activities.

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3. Evidence of maps of an appropriate scale showing the extent of recognised legal, customary or user rights developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities) are available.
 4. Copies of negotiated agreements detailing the process of free, prior and informed consent are available.
 5. Evidence of an absence of significant disputes on land use, tenure and access is provided and corroborated by local stakeholders and/or evidence of consent of indigenous and/or traditional communities has obtained.
 6. Evidence there is a mutually agreed and documented system for dealing with complaints and grievances and is accessible and agreed upon by all affected parties and that where conflicts have arisen the conflict resolution mechanism is being used and outcomes are considered mutually agreed including by affected parties.



Environmental Issues

The following two risks have been identified related to environmental issues for palm oil in Sarawak Malaysia:

1. Risk that palm oil plantations do not comply with the Environmental Impact Assessment (EIA) requirements, causing environmental problems such as deforestation, biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change and forest fires, and pesticide use. There is also a risk that the Environmental Impact Assessment requirements are not complied with due a poor vetting and monitoring process due to lack of personnel and/or sufficient expertise by the relevant authorities. Additionally, an environmental audit to monitor the implementation of the EIA control measures is not required. There is a loophole whereby an EIA can be avoided by dividing a project up into smaller lots that do not require such assessments. There is also a risk of low level of compliance with required practices aimed at minimising runoff and soil erosion caused by conversion of natural forests into palm oil plantations.
2. Risk that natural ecosystems along the boundaries of protected areas and high conservation value (HCV) areas are cleared to establish palm oil plantations. There is also a risk of lack of adequate identification and thus appropriate conservation measures applied for protected, rare, threatened and endangered species within and adjacent oil palm plantations. There is also a low level of compliance of required practices aimed at minimising runoff and soil erosion caused by conversion of natural forests into oil palm plantations.

Risk	Mitigation recommendations
Lack of compliance with an Environmental Impact Assessment (EIA) requirements.	<ol style="list-style-type: none"> 1. For palm oil plantations > 500 ha or palm oil plantations clearing more than >50 hectares of land seek a completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: http://www.doe.gov.my/eia/eia-reports/) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of the species or habitat are met.

	<ol style="list-style-type: none"> 2. Agricultural land title or lease to prove site location is on agricultural land. 3. Written Permission to Construct a Palm Oil Mill from the Director-General of Environmental Quality. 4. License to occupy and operate a crude palm oil mill from the Department of Environment Malaysia (DOE). 5. Verify the implementation of EIA through inspections of the plantations
<p>Lack of compliance with protected areas and species regulations .</p>	<ol style="list-style-type: none"> 1. Verify the supplier has documentation or a copy of a management plan that ensures required legally protected areas and species are safeguarded in accordance with the law including an Environmental Impact Assessment and/or; 2. Evidence that comprehensive biodiversity surveys and/or a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 1- 6 have been undertaken. [https://www.hcvnetwork.org/als/public-summaries]. 3. Evidence of management plans for rare, threatened or endangered species (RTE) include actions for their protection, survival, and prevention of poaching, are develop for the management area and surrounding landscape have been developed and are implemented. 4. The RTE management plan takes into consideration traditional hunting by communities outside the management area and includes specific activities to contribute to the protection and survival of RTE species affected by hunting. 5. Cross check with the location and information on protected areas and species in Malaysia including with knowledgeable NGOs on the issue. 6. Obtain information on location of the farm (e.g. from management plan) and compare with locations of protected areas in Malaysia <p><i>Information on protected areas and species in Malaysia:</i></p> <ol style="list-style-type: none"> 7. Protected Area Master List owned by the Ministry of Natural Resources and Environment (contact: http://www.nre.gov.my/en-my/ContactUs/Pages/default.aspx), which is not publicly available. Older

version of the list compiled by WWF-Malaysia can be found here:
http://awsassets.wwf.org.my/downloads/list_of_pa.pdf

Environmental NGOs knowledgeable on protected areas:

- Indigenous Peoples Network of Malaysia (JOAS) <http://orangasal.blogspot.my/>
- Malaysian Nature Society (MNS) <https://www.mns.my/>
- WWF Malaysia <http://www.wwf.org.my/>
- Forest Peoples Programme <http://www.forestpeoples.org>

Threats to high conservation value (HCV) areas.

Insufficient level of official protection of rare, threatened and endangered species and ecosystems and large intact landscapes (HCV 1 -3)

1. Verify the supplier has documentation or a copy of a management plan that ensures required legally protected areas and species are safeguarded in accordance with the law including an Environmental Impact Assessment and/or;
2. Evidence that comprehensive biodiversity surveys and/or a High Conservation Value (HCV) assessment
3. Identify if a farm has converted natural ecosystems – illegal and legally (compliance with an approved Environmental Impact Assessment).
4. Obtain the shape file of the palm oil plantation property’s boundaries and compare/overlay with mapping data that use satellite time series images to map the loss of natural ecosystems - **Land use change data:** satellite time series images to map the loss of natural ecosystems: www.globalforestwatch.org
5. Cross check with the location and information on protected areas and species in Malaysia including with knowledgeable NGOs on the issue.

Community needs and cultural values are not respected or upheld (HCV 5 and 6)

1. Review updated information and news on confirmed or potential land tenure issues in the palm oil supply area.

2. Research known risk and/or land use conflicts with indigenous peoples'

- a. Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. For land tenure issues check palm oil producers' 'Landbank' and 'Environmental' scores – the latter which covers FPIC and IP rights - <http://www.sustainablepalmoil.org/companies/>
- b. Conduct a search on latest news and NGO reports on disputes and developments on indigenous and traditional peoples' land claims and assurance of rights via websites and NGOs including:
 - i. NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, , Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, [greenpeace.org](http://www.greenpeace.org), Friends of the Earth [foe.org](http://www.foe.org), Center for Orang Asli Concerns (COAC) (<http://www.coac.org.my/>), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komang (komas.org), Cultural Survival ([culturalsurvival.org](http://www.culturalsurvival.org)))Media reports (Mongabay.com, [greenomics.org](http://www.greenomics.org), [red-monitor.org](http://www.red-monitor.org), , [eyesontheforest.org](http://www.eyesontheforest.org), [sarawakreport.org](http://www.sarawakreport.org), [malaysiakini.com](http://www.malaysiakini.com))
 - ii. Global Platform of Indigenous and Community lands - <http://www.landmarkmap.org/>

3. Consult with neighbours, local communities, landowners and other stakeholders to:

- a. confirm community has indigenous peoples' status
- b. land tenure rights are clear and – where applicable – lease of the land has been agreed by all the landowners;
- c. confirm that customary rights were/are respected during farm establishment and harvesting activities and/or Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs and

- d. if there are any court orders or outstanding disputes conflicts of land tenure with indigenous or traditional communities.
4. Records/minutes should be obtained:
- a. of consultation showing no land use conflicts exist;
 - b. from the farm that demonstrate active consultation and/or evidence of a participatory social impact assessment and/or conducting a Free Prior Informed Consent before developing farm activities;
 - c. Copies of negotiated agreements detailing the process of free, prior and informed consent are available or, alternatively, that conflicts of land tenure are managed through evidence that conflicting parties are engaged in, a mediated or arbitrated, conflict resolution process which is independently managed and agreed upon as the formal by conflicting parties.
 - d. Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs.



Conversion

The following risk has been identified related to conversion in Sarawak Malaysia:

1. Risk of natural forests or ecosystems being cleared for the establishment of palm oil plantations. It is not illegal to convert forest to palm oil in Malaysia and millions of hectares of forests have been cleared or designated as conversion forest for palm oil plantations.

Risk	Mitigation recommendations
<p>Natural forests or ecosystems being cleared for the establishment of palm oil plantations.</p>	<ol style="list-style-type: none"> 1. Obtain the shape file of the farm property's boundaries and compare/overlay with mapping data from the following initiative that are using satellite time series images to detect the land change cover:www.globalforestwatch.org 2. Evidence that a comprehensive HCV assessment, including stakeholder consultation, was conducted prior to any conversion or new planting before November 2005. Evidence should include historical remote sensing imagery which demonstrates that there has been no conversion of primary forest or any area required to maintain or enhance one or more HCV. 3. Evidence is provided of undeveloped areas of peat land (of any depth) are not developed or drained post November 2005. Evidence should include historical data which demonstrates that there has been no conversion of peatlands post November 2005. Evidence should include maps identifying marginal and fragile soils, including excessive gradients and peat soils and how the farm management plans has identified and protected peatlands. 4. Evidence of management plans that demonstrates fires and road-building on peat soils are prohibited. 5. Examine time series tree cover (deforestation trends) by region/province/district (http://commodities.globalforestwatch.org/)

6. Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations.
7. Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.
8. Where peat land has been cleared since November 2005, and without a prior and adequate HCV and HCS assessment, exclusion of the palm oil farm(s) palm oil supply should be considered from the upstream buyer's supply chain.

About

Responsible Sourcing of Soy, Cattle and Palm Oil

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



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

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