

# Timber Legality Risk Assessment Chile

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COUNTRY RISK  
ASSESSMENTS



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## Contents

<b>A. Introduction .....</b>	<b>1</b>
<b>B. Overview of legality risks .....</b>	<b>2</b>
<b>C. Overview of the forest sector in Chile.....</b>	<b>5</b>
<b>D. Legality Risk Assessment.....</b>	<b>7</b>
LEGAL RIGHTS TO HARVEST .....	7
1.1. Land tenure and management rights	7
1.2. Concession licenses	11
1.3. Management and harvesting planning	12
1.4. Harvesting permits	17
TAXES AND FEES .....	24
1.5. Payment of royalties and harvesting fees	24
1.6. Value added taxes and other sales taxes	26
1.7. Income and profit taxes	29
TIMBER HARVESTING ACTIVITIES.....	33
1.8. Timber harvesting regulations	33
1.9. Protected sites and species	36
1.10. Environmental requirements	41
1.11. Health and safety	46
1.12. Legal employment	50
THIRD PARTIES' RIGHTS.....	54
1.13 Customary rights	54
1.14. Free prior and informed consent	56
1.15. Indigenous/traditional peoples' rights	60
TRADE AND TRANSPORT.....	63
1.16. Classification of species, quantities, qualities	63
1.17. Trade and transport	66
1.18. Offshore trading and transfer pricing	70
1.19. Custom regulations	72
1.20. CITES	77
1.21. Legislation requiring due diligence/due care procedures	80
<b>Annex I. Timber source types.....</b>	<b>81</b>

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## B. Overview of legality risks

**Timber Risk Score:** 31 / 100 in 2017

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

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

The Timber Risk Score for Chile is 31 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, and third parties' rights, and trade and transport.

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

- Requirement of management plans are not complied with (1.3, 1.4)

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

- There is a risk for lack of fee related to management plan (1.5)
- Value added taxes and other sales taxes are not paid (1.6)
- Income and profit taxes are not paid (1.7).

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

- Timber harvesting regulations are violated (1.8)
- Legislation on protected sites and species are violated (1.9)
- Protected areas are not respected (1.10)
- Legislation on environmental requirements are not respected (1.10)
- Health and safety requirements are violated for small forest producers (1.11)
- Regulation on breaks, working hours and overtime payment is not complied with for small forest producers (1.12).

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

- CITES species are illegally harvested (1.20).

### Timber source types and risks

There are two main timber source types found in Chile, and one limited source. Knowing the "source type" that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks these source types and found that risk differs between natural and plantation forest.

**Exotic Plantation**      Timber from exotic plantation. Extracting timber resources can

only be done with. Mainly pine and eucalyptur, as well at NTFP.

**Native forest**

Timber from native forests. CONAF-approved native forest management plan, or Environment Impact Assessment/Statement approved by the Ministry of the Environment (Ministerio de Medioambiente) is required.

An approved management plan, allows the user to begin harvesting or management of natural forests. Exceptionally, with the respective management plan, logs for pulpwood or saw-wood can be removed from reserves, in small quantities only.

This table summarises the findings of the timber legality risk assessment by source type. See the specific findings below for more information on the risk.

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



## C. Overview of the forest sector in Chile

Continental Chile has a surface area of 75.6 million hectares, 23% of which are forests. Native forests comprise 14.3 million hectares, while planted forests (FAO term) represent 2.45 million hectares. However, 98% of industrial supply comes from planted forests made up largely of *Pinus* and *Eucalyptus* plantations, says the Chile Forestry Institute (INFOR-Instituto Forestal Chile 2015). Native forests are grouped into 12 types, 70% of which are in the regions of Los Lagos, Aysén and Magallanes. Roughly 4.1 million hectares of native forests are protected in state nature reservations. Regarding land tenure almost all planted forests are in the hands of private companies, 60% being held by 3 big companies and the rest by more than 20,000 small and medium-sized producers. The state holds close to 20% of native forest tenure, while the rest is in the hands of producers of various sizes (INFOR Forest Statistics).

In general, the majority of forest land area is held through clear and undisputed property deeds. There are communes mainly in the regions of Biobío, Araucanía and Los Ríos, where there is overlapping ownership of land through rights called "land titles" belonging to the Mapuche people. In line with the interviews carried out by legal experts, in the majority of cases the agreement of customary rights is not recognised by Chilean legislation, thus there is no non-compliance per se with this overlapping. However, given the importance of the Mapuche with regard to the international FSC, certain precautions should be taken in cases where this overlap exists. This situation will be examined when the category 2 risk assessment is done. There are basically two pieces of legislation applicable to activities related to submitting management plans: Decree-Law 701 (Decreto Ley 701) on forest development and Act 20.283 on native forest recovery and forest development. Regarding forest management and use permits, a forest management plan must be submitted to the National Forestry Corporation (Corporación Nacional Forestal - CONAF), in order to carry out work in forests located on land suitable for forestry, pursuant to Section 21 of the Decree-Law 701 of 1974 (artículo 21 del Decreto Ley N° 701) and any felling as set out in Section 5 of Act 20.283.

The management plan includes namely the surface area to be managed and/or felled, forest parameters and guidelines of the plot and environmental specifications relating to the definition and care for protected areas, as well as practices for pest control and fire prevention. To harvest or manage a forest the producer must submit a management plan and pay a tax on the area to be worked on, and await approval by CONAF.

CONAF oversees compliance with the management plans based on potential environmental risk criteria, sampling approximately 5% of management plans submitted every year. Regarding forest product transport in native forests, CONAF provides a Timber Extraction Contract if approval is given to the management plan, in order to safeguard against any harvesting from these forests. Moreover, the internal tax service (servicio de impuestos internos – SII) requires that the transportation of any product, forestry or otherwise, be accompanied with a dispatch note stating the origin of the timber, including for forests where there are areas in quarantine for pest control, as defined by the Agriculture and Livestock Service (servicio agrícola y ganadero - SAG). A special management plan must be submitted to CONAF. Regarding the substitution of natural forests, according to the Ministry of the Environment (Ministerio del Medio Ambiente) figures around 122 thousand hectares

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were substitution between 1993 and 2009 (especially in the regions of Maule and Los Lagos). 80 thousand were for forestry plantations, 40 thousand for agricultural use and the rest for urbanisation.

This substitution surged in the 90s and slowed down gradually, thanks to forest certification and increasing state restrictions. According to CONAF, between 2009 and 2014 an annual average of 1,700 hectares were felled illegally, 80% of which were native forest.

NOTE: During the review, it was found that in several communes, mainly the Province of Arauco, caution has to be exercised, as the risks identified affect more than one indicator of those highlighted in this review. The precautionary approach is therefore recommended.

## 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

- Political constitution of the State of Chile (Constitución política de la República de Chile). Articles: 19 No. 24 incl. 1st- 5th (private property). Available at: [http://www.dt.gob.cl/legislacion/1611/articles-81837\\_recurso\\_1.pdf](http://www.dt.gob.cl/legislacion/1611/articles-81837_recurso_1.pdf)
- Law 1/2000. Civil code (fija texto refundido, coordinado y sistematizado del código civil; de la ley N°4.808, sobre registro civil, de la ley N°17.344, que autoriza cambio de nombres y apellidos, de la ley N° 16.618, ley de menores, de la ley N° 14.908, sobre abandono de familia y pago de pensiones alimenticias, y de la ley N°16.271, de impuesto a las herencias, asignaciones y donaciones). Articles: 568, 783, 1980 (property). Available at: <https://www.leychile.cl/Navegar?idNorma=172986>
- Law 18248/1983. Mining code (Codigo de mineria). Articles: 15,17. Available at: <https://www.leychile.cl/Navegar?idNorma=29668>
- Law 20283/2008 Native forest recovery and forest development (Ley sobre recuperación de Bosque Nativo y fomento forestal). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia): L 20,488, L 19,561, L 18,959, D.S 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294>
- Decree Law 1939/1977. Procurement and administration of state goods (Normas sobre adquisición y administración de Bienes del Estado). Available at: <http://www.leychile.cl/Navegar?idNorma=6778>
- Decree Law 2695/1979. Redistribution of small areas of property (Fija normas para regularizar la posesión de la pequeña propiedad raíz y para la constitución del dominio sobre ella). Available at: <http://www.leychile.cl/Navegar?idNorma=6982>
- Law 18362/1984 Creates a national system of protected areas - SNASPE (Crea un Sistema Nacional de Áreas Silvestres Protegidas del Estado). Available at: <http://www.leychile.cl/Navegar?idNorma=29777>
- Decree 28/2013 Approves Amendment to Decree N 96, 2008, which regulates the resources intended for the research of the native forest (aprueba modificación al decreto

Nº 96, de 2008, que reglamenta los recursos destinados a la investigación del bosque nativo). Available at:

[https://www.leychile.cl/Consulta/m/norma\\_plana?org=&idNorma=1055322&idVersion=2013-10-19](https://www.leychile.cl/Consulta/m/norma_plana?org=&idNorma=1055322&idVersion=2013-10-19)

- Decree 68/2009 Approves and formalises list of native tree and shrub species in the country (Establece, aprueba y oficializa nómina de especies arbóreas y arbustivas originarias del país). Available at: <http://www.leychile.cl/Navegar?idNorma=1008674>
- Decree 82/2008 Approves regulations on land, water and wetlands L20283 (aprueba reglamento de suelos, aguas y humedales L20283). Available at: [http://www.concursolbn.CONAF.cl/ayuda/Reglamento\\_Suelos\\_Agua\\_Humedales.pdf](http://www.concursolbn.CONAF.cl/ayuda/Reglamento_Suelos_Agua_Humedales.pdf)
- Decree 129/1971 Prohibits cutting and removal of lapageria rosea (Copihue)(prohíbe la corta, arranque, transporte, tenencia y comercio de copihues (Lapageria rosea) y otorga trámite de urgencia al presente decreto). Available at: [http://www.sag.cl/sites/default/files/d\\_s\\_129\\_copihue.pdf](http://www.sag.cl/sites/default/files/d_s_129_copihue.pdf)
- Decree 4363/1931 Approves definitive text of the law of forests (Aprueba texto definitivo de la Ley de bosques). Available at: <http://www.leychile.cl/Navegar?idNorma=19422>

#### 1.1.2. Legal authority

Note: The number included after the name of each authority refers to those laws in 1.1.1., which mainly come under that authority's jurisdiction. The same note applies to all other subcategories.

- Ministry of National Goods (Ministerio de Bienes Nacionales) 6,7
- The National Forestry Corporation (<http://www.conaf.cl/quienes-somos/>): 4, 5, 8, 9, 10, 11, 12, 13
- Municipality Plans regulating land use
- National Association of Municipalities (<http://www.achm.cl/>) applies to forests or plantations within the urban radius.

#### 1.1.3. Legally required documents or records

- Property deed
- Valid abstract of title
- Purchase agreement
- Unique tax number for physical, legal persons
- Article of association for legal persons

#### 1.1.4. Sources of information

##### *Government sources*

- Oyarzún Acosta, M. V., (2008). *Ownership data in Chile. Sector Planning Department* // CONAF (National Forestry Corporation/ Corporación Nacional Forestal - CONAF) [online]. Available at: <http://www.fao.org/forestry/download/17084-01936cb769f443ad4ee26d8871e12bd95.pdf> [Accessed 3 April 2017]
- ine.cl (2007). *Agricultural census*. [online]. Web page of INE Chile (National Statistics

Institute). Available at:

[http://www.ine.cl/canales/chile\\_estadistico/censos\\_agropecuarios/censos\\_agropecuarios.php](http://www.ine.cl/canales/chile_estadistico/censos_agropecuarios/censos_agropecuarios.php) [Accessed 30 March 2017]

- infor.cl (2016). *The chilean forest sector 2016*. [online]. Web page of INFOR Chile. Available at: [http://wef.infor.cl/sector\\_forestal/sectorforestal.php#/0](http://wef.infor.cl/sector_forestal/sectorforestal.php#/0) [Accessed 30 March]
- conadi.gob.cl (2016). *Indigenous Development Area*. [online]. Website of CONADI- Ministry for Social Development - Chilean Government. Available at: <http://www.conadi.gob.cl/index.php/nuestra-institucion/areas-de-desarrollo-indigena> [Accessed 30 March]

#### *Non-Government sources*

- Leyton Vásquez, J. (2007). *Forest ownership in Chile* (Tenencia forestal en Chile ).[online]. FAO.org. Available at: <http://www.fao.org/forestry/17192-0422df95bf58b971d853874bb7c5755f7.pdf> [Accessed 31 March 2017]
- Historical Truth and New Treaty Commission (2003). *Results of a study on current ownership of lands included in 413 land titles in the provinces of Malleco and Cautín*. [online]. Indigenous library. Available at: [http://biblioteca.serindigena.org/libros\\_digitales/cvhynt/volumen\\_ii/v2\\_informe\\_tierras-1\\_.html](http://biblioteca.serindigena.org/libros_digitales/cvhynt/volumen_ii/v2_informe_tierras-1_.html) [Accessed 31 March 2017]
- Donoso, P. J. and Otero, L. A. (2005). *Hacia una definición de país forestal: ¿Dónde se sitúa Chile? (Towards a definition of a forest country: Where is Chile located?)*. [online]. Forest, Vol 26, N3. Available at: [http://www.scielo.cl/scielo.php?pid=S0717-92002005000300002&script=sci\\_arttext](http://www.scielo.cl/scielo.php?pid=S0717-92002005000300002&script=sci_arttext) [Accessed 31 March].
- fsc.org. (2009). *Risk assessment Controlled Wood: plantations Chile*. [online]. Web page of FSC Chile. Available at: <https://cl.fsc.org/preview.chilecontrolledwoodriskassessmentapprovedes.a-57.pdf>
- Discussion with experts conducted in May, 2016. It helped the writers of this report better understand relevant legislation, associated risks and on-the-ground implementation. Regarding this indicator, interviews were carried out with different organisations, among which: National Forestry Corporation (Corporación Nacional Forestal), Internal tax service (Servicio de impuestos internos), logging companies, FSC Chile, SSC Américas, Mapuche professionals and legal experts.

#### **1.1.5. Risk determination**

##### *Overview of legal requirements*

Regarding land ownership, almost all planted forests are in private hands, 60% in the hands of three big companies, and the rest in the hands of more than 20,000 small and medium-sized producers and indigenous communities. Native forest land ownership is around 20% state property and the remainder made up of producers of various sizes.

The Political Constitution of the Republic of Chile safeguards the right to private property, Chilean civil code sets out property requirements on immovable assets (eg forests). Property goods law is guaranteed by, among others, Article 19, No. 24 of the 1980 Political Constitution of the Republic of Chile. It states that only the law can limit or restrict this, as long as the aim is to conserve environmental heritage. This guarantee and its limitations

apply to any type of property. Property law allows the owner to use, enjoy and have access to the property goods, when not contrary to the law or the rights of others, according to article 580 of the Civil Code.

Decree-Law No. 701 of 1974 on Forest Development (Fomento Forestal) modified by Act 19,561 of 2008 and Act 20,283 of 2008 on native forest recovery and forest development. Its provisions define owners of forests, with an aim to identify clearly the subjects who can benefit from actions to create or manage sustainable forests, as well as stating their rights and obligations. The company/landowner need to apply to the "conservador de bienes raíces de la comuna" (land registry of the commune) where the land (predio) is based, a Certificate of current domain ("certificado de dominio vigente") that proves the property of the land and links the "land" with the owner. This document is essential to prove the legality of the land before any forest activity.

### *Description of risk*

Chile is low-risk according to international risk ratings (World Bank Worldwide Governance Indicators, Forest Legality Alliance, among others).

There are also communes in the centre-south region of Chile with customary titles called 'land titles,' claimed by indigenous peoples. Here there are potential risks of overlap between Mapuche lands and those holding property rights with businesses or logging companies (see report on 'Historical Truth and New Treaty Commission' and Indigenous Development Areas on the CONADI website). It should be highlighted that a risk assessment study carried out by FSC Chile in 2010 defined communes as homogenous analysis units (district). The existence of overlaps in forest property with 'land titles' belonging to Mapuche communities was considered a risk factor for the controlled wood standard developed by FSC Chile in 2009.

Regarding the interviews conducted by legal specialists in May 2016, the majority of these concur in that customary rights are not recognised by Chilean legislation. Therefore, there is no legally defined non-compliance per se with this overlapping. In general, the majority of the forest surface area is subject to clear and undisputed property rights, as highlighted by the specialists interviewed. It is also a low-relevance issue in the FSC auditing reports. The land titles were awarded to the Mapuche once the Chilean state concluded its military occupation of Araucanía. These titles were given in accordance with the Act of the 4th of December 1886, by the Indigenous Peoples' Residency Commission (Comisión Radicadora de Indígenas), in the provinces of Biobío, Arauco, Malleco, Cautín, Valdivia and Osorno, between 1884 and 1929. Between regions eight, nine and ten, 2,918 land titles were awarded. Currently, a percentage of these lands is lost and/or seized and no longer under indigenous control, through a series of legal and illegal mechanisms.

According to baseline studies there are roughly 600,000 hectares of indigenous land titles, affecting around 52 communes. Those communes that have greatest forest surface area in relation to commune area, and which could be considered as areas of potential land conflicts, are Cholchol, Collipulli, Curarrehue, Ercilla, Galvarino, Loncoche, Lonquimay, Los Sauces, Lumaco, Nueva Imperial, Padre Las Casas, Panguipulli, Perquenco, Pitrufulquen, Pucón, Purén, Pto Saavedra, Temuco and Villarrica. These conflicts are however, not due to legal issues. (Source prepared by the author based on the map of land titles distribution in communes, on the Conadi website:

[http://biblioteca.serindigena.org/libros\\_digitales/cvhynt/mapas/t\\_i/mapa\\_documentos\\_cvhnt\\_24.htm](http://biblioteca.serindigena.org/libros_digitales/cvhynt/mapas/t_i/mapa_documentos_cvhnt_24.htm)).

### **Risk Conclusion**

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

#### **1.1.6. Risk designation and specification**

Low risk

#### **1.1.7. Control measures and verifiers**

N/A

### **1.2. Concession licenses**

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

#### **1.2.1. Applicable laws and regulations**

Not Applicable (N/A).

This indicator does not apply in Chile, as there are no concessions of forest property. Only a few calls for sale of forest land have been reported by CONAF or the ministry of national goods. Concessions are given in state-protected areas (SNAPSE) but not concessions associated with forest harvesting, rather low-impact tourism, conservation work or environmental research.

#### **1.2.2. Legal authority**

N/A

#### **1.2.3. Legally required documents or records**

N/A

#### **1.2.4. Sources of information**

N/A

#### **1.2.5. Risk determination**

N/A

#### **1.2.6. Risk designation and specification**

N/A

#### **1.2.7. Control measures and verifiers**



N/A

### 1.3. Management and harvesting planning

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

#### 1.3.1. Applicable laws and regulations

##### Native forests:

- Act 20.283/2008 Law on native forest recovery and forest development (*Ley sobre recuperación de Bosque Nativo (BN) y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Act 18.755/1988 Establishes rules on the agricultural and livestock service, Law N ° 16.640 and other provisions (*Establece normas sobre el servicio agrícola y ganadero, deroga la ley n° 16.640 y otras disposiciones*). Available at: <https://www.leychile.cl/Navegar?idNorma=30135>
- Law 18.362/1984 Act on Protected areas - SNASPE (*Crea un Sistema Nacional de Áreas Silvestres Protegidas del Estado-SNASPE*). Available at: <http://www.leychile.cl/Navegar?idNorma=29777>

NOTE: The Project to create the Biodiversity and Protected Areas Service is underway: ([http://www.senado.cl/servicio-de-biodiversidad-y-areas-protegidas-sala-dio-luz-verde/prontus\\_senado/2015-03-04/191234.html](http://www.senado.cl/servicio-de-biodiversidad-y-areas-protegidas-sala-dio-luz-verde/prontus_senado/2015-03-04/191234.html))

- Decree 93/2008. General regulations of the law on native forest recovery and forest fostering (*Reglamento general de la ley sobre recuperación del bosque nativo y fomento forestal*). Available at: <http://www.leychile.cl/Navegar?idNorma=1006865>)
- Decree 82/2010 Approves regulations on land, water and wetlands L20283 (aprueba reglamento de suelos, aguas y humedales L20283). Available at: [http://www.concursolbn.CONAF.cl/ayuda/Reglamento\\_Suelos\\_Agua\\_Humedales.pdf](http://www.concursolbn.CONAF.cl/ayuda/Reglamento_Suelos_Agua_Humedales.pdf)
- Decree 4363/1931 Approves definitive text of the law of forests (Aprueba texto definitivo de la Ley de bosques). Available at: <http://www.leychile.cl/Navegar?idNorma=19422>
- Decree 13/1995 Gives natural monument status to Queule, Pitao, South Belloto, Northern Belloto and Ruil (*Declara monumento natural las especies forestales queule, pitao, belloto del sur, belloto del norte y ruil*) (gives natural monument status to Quele, Belloto del Norte y Sur, Pitao, Ruil). Available at: [http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13\\_queule-pitao-belloto-ruil.pdf](http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13_queule-pitao-belloto-ruil.pdf)
- Decree 43/1990 Declares natural monument to the Araucana Araucana (*Declara monumento natural a la Araucaria araucana*). Available at: (<http://www.leychile.cl/Navegar?idNorma=8102&idParte=0>)
- Decree 490/1976 Declares natural monument to the forest species (*Declara monumento natural a la especie forestal Alerce*). Available at: <http://www.leychile.cl/Navegar?idNorma=147731&idVersion=2003-05-08>
- Decree 295/1974 Prohibits felling in the Andean region (*Prohíbe la corta de árboles en la*



zona de precordillera y cordillera andina que señala). Available at:

<http://www.leychile.cl/Navegar?idNorma=1027876>

- Decree 129/1971 Prohibits cutting and removal of Copihue (*Lapageria rosea*) (*Prohíbe la corta, arranque, transporte, tenencia y comercio de copihues (Lapageria rosea) y otorga trámite de urgencia al presente decreto*). Available at: [http://www.sag.cl/sites/default/files/d\\_s\\_129\\_copihue.pdf](http://www.sag.cl/sites/default/files/d_s_129_copihue.pdf)
- Decree 68/2009 Approves and formalises list of native tree and shrub species in the country (*Establece, aprueba y oficializa nómina de especies arbóreas y arbustivas originarias del país*). Available at: <http://www.leychile.cl/Navegar?idNorma=1008674>

#### Forest plantations:

- Decree Law 701/1974 Sets out legal regime for forest lands or those preferably suited to forestry, and states development regulations in this area (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561 and 18, 959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294>
- Decree 2374/1937 Approves the regulations for exploitation forests existing in watersheds (*Aprueba el reglamento para la explotación de bosques existentes en las cuencas hidrográficas*). Available at: <http://www.leychile.cl/Navegar?idNorma=262107&idVersion=1937-11-24>
- Decree 3/1982 Establishes Requirements for sampling and analysis of pesticides (*Establece requisitos para efectuar labores de muestreo y análisis de plaguicidas y fertilizantes bajo convenio*). Available at: <http://www.leychile.cl/Navegar?idNorma=7278>
- Resolution 1406/2012 Establishes Risk dispersion rating of *Sirex Noctilio* in areas under quarantine (*Establece calificación de riesgo de dispersión de la avispa de madera del pino Sirex noctilio en áreas bajo cuarentena*). Available at: <http://www.leychile.cl/Navegar?idNorma=1038246>
- Resolution 2177/1995. Rodent and lagomorph control (*Modifica resolución n° 223, de 1995 sobre control de roedores y lagomorfos*). Available at: <https://www.leychile.cl/Navegar?idNorma=40098>
- Resolution 3080/2003 Establishes regionalization criteria in relation to quarantenary pests for the territory of Chile (*Establece criterios de regionalización en relación a las plagas cuarentenarias para el territorio de*). Available at: <http://normativa.sag.gob.cl/Publico/Normas/DetalleNorma.aspx?id=216948>

#### Others:

- Law 19300/1994 Approves general bases of environment (*Aprueba ley sobre bases generales del medio ambiente*). Available at: [www.bcn.cl/leyes/pdf/actualizado/30667.pdf](http://www.bcn.cl/leyes/pdf/actualizado/30667.pdf)
- Decree 40/2012 Approves regulation of the environmental impact assessment system (*Aprueba reglamento del sistema de evaluación de impacto ambiental*). Available at: <https://www.leychile.cl/Navegar?idNorma=1053563>

#### **1.3.2. Legal authority**

- Ministry of Agriculture (Ministerio de Agricultura):
  - CONAF (National Forestry Corporation/ Corporación Nacional Forestal): 1, 3, 4, 5, 6,

7, 8, 9, 10, 11, 12, 13, 14

- SAG (Agriculture and Livestock Service /Servicio Agrícola y Ganadero): 2, 15, 16, 17, 18

- Ministry of the Environment: 19, 20
- Various relevant investment projects of the Ministry of the Environment (Ministerio de Medioambiente)

### 1.3.3. Legally required documents or records

- Plantation management plan
- Plantation standards of adherence
- Native forest management plan
- Management plan for quarantined areas (defined by SAG)
- Environmental risk assessment or statement with a civil works management plan if the regulations of Act 19,300 are applied.

### 1.3.4. Sources of information

#### *Government sources*

- De la Maza, J. (2012). *General analysis of the effects of non-compliance and damage in environmental forestry (Análisis general de los efectos del incumplimiento y daño en materia forestal ambiental)*. [online]. IV Chilean Congress about Environmental law and forestry law (presentation).  
[http://www.conaf.cl/cms/editorweb/institucional/congresodfa/Presentacion-Jorge\\_De\\_La\\_Maza.pdf](http://www.conaf.cl/cms/editorweb/institucional/congresodfa/Presentacion-Jorge_De_La_Maza.pdf) [Accessed 31 March 2017]
- sma.gob.cl (2013-2014) *Guide to oversee environmental compliance (Guía para control de cumplimiento ambiental)*. [online]. Web page the SMA (Superintendencia del Medio Ambiente) Available at:  
[http://www.sma.gob.cl/index.php/documentos/publicacion/doc\\_download/155-guia-para-la-presentacion-de-programas-de-cumplimiento](http://www.sma.gob.cl/index.php/documentos/publicacion/doc_download/155-guia-para-la-presentacion-de-programas-de-cumplimiento) [Accessed 31 March 2017]
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[http://www.concesiones.cl/quienes\\_somos/funcionamientodelsistema/Documents/manual\\_planes\\_manejo\\_ambiental.pdf](http://www.concesiones.cl/quienes_somos/funcionamientodelsistema/Documents/manual_planes_manejo_ambiental.pdf) [Accessed 31 March 2017]
- National Forestry Corporation/ Corporación Nacional Forestal - CONAF (2015). *Criteria and indicators for the conservation and sustainable management of temperate and boreal forests*. [online]. 2015 Montreal Report on Chile. Available at: <http://www.lignum.cl/wp-content/uploads/sites/6/2015/07/INFORME-FINAL-P.MONTREAL.pdf> [Accessed 31 March 2017]

#### *Non-Government sources*

- Native Forest Engineers Association/ Agrupación de ingenieros forestales por el bosque nativo -AIFBN (2008). *Report of Monitoring Los Ríos region (Región de los Ríos)*. [online]. Web page of AIFBN. Available at: <http://bosquenativo.cl/wp/wp->

[content/uploads/2015/07/2008\\_informe\\_monitoreo\\_forestal\\_losrios.pdf](#) [Accessed 31 March 2017]

- Prado, J. (2015). *Chilean Forest Plantations– beyond trees (Plantaciones Forestales Chile-más allá de los árboles)*. [online]. Chilean Logging Corporation (Corporación Chilena de la madera). Available at: <http://www.corma.cl/file/material/libroplantforestales.pdf> [Accessed 3 April 2017]
- FSC Chile (2010). *Chile native forest risk assessment (Evaluación de Riesgos Madera Controlada: bosque nativo en Chile)*. [online]. Web page FSC Chile. Available at: <https://cl.fsc.org/preview.chilecwrnatural-forestapprovedes.a-59.pdf> [Accessed 4 April 2017].
- Cerda, I. (2004). *National report of Chile: Study of trends and perspectives of the Forestry Sector in Latin America (Informe Nacional de Chile: Estudio de tendencias y perspectivas del Sector Forestal en América Latina)*. Web page FAO. Available at: <http://www.fao.org/docrep/007/j2576s/j2576s07.htm>
- Montoya, L. R. (2004). *Description and analysis of incentive-based policies to promote reforestation in Chile (Descripción y análisis de la política de incentivos para promover la reforestación en Chile)*. [online]. Kurú- Forestry journal. Available at: <https://dialnet.unirioja.es/descarga/articulo/5123196.pdf> [Accessed 4 April 2017]
- Conversations with various experts in May, 2016. It helped the writers of this report better understand relevant legislation, and associated risks of on-the-ground implementation. Regarding this indicator, representatives from different organisations were interviewed: National Forestry Corporation (Corporación Nacional Forestal), FSC Chile, SSC Americas and legal experts.

### 1.3.5. Risk determination

#### *Overview of Legal Requirements*

In Chile, there is no differentiated legislation regarding management plans and harvesting permits. Approving a management plan constitutes approving a harvesting permit. Thus, the applicable legislation and risks are similar for subcategories 1.3 and 1.4. CONAF assesses the management plans submitted by interested parties who wish to develop exotic plantations or native forests located on land preferably suited to forestry, in compliance with what is set out in article 21 of Decree-Law No 701 of 1974 on Forest Development (artículo 21 del Decreto Ley N° 701, de 1974, sobre Fomento Forestal), in addition to any felling as set out in article 5 of Act 20,283 on Native Forest Recovery and Forest Development (el artículo 5° de la Ley 20.283 sobre Recuperación del Bosque Nativo y Fomento Forestal). Submitting the management plan is also one of the requirements to qualify for bonus payments on first plantation pruning and thinning operations undertaken by small-scale forest owners, as well as for the bonus awarded in the Competition for the Conservation, Recovery and Sustainable Management of Native Forest Fund (Concurso del Fondo de Conservación, Recuperación y Manejo Sustentable del Bosque Nativo). The two main activities undertaken in the area of forest inspections are detecting illegal felling and assessing compliance with management plans.

Additionally, if it concerns non-forestry projects that involve developing native forests, an environmental impact assessment or declaration must be submitted, approved by the Ministry of the Environment impact service. The conditions of those projects requiring an

environmental impact assessment are stipulated in Act 19,300 and its regulations. If it is processed under Act 19,300, a sectorial permit must be submitted to CONAF, called the Management Plan of Civil Works (Plan de manejo de obras civiles). This will contain information about the area of native forest to be managed as well as an in situ or ex situ restoration plan. In the case of timber extraction from quarantined areas for pest control, an ad hoc management plan must be submitted to the SAG – Agriculture and Livestock Service (Servicio Agrícola y Ganadero).

### *Description of Risk*

Chile is a low-risk country in terms of international risk assessments in forest areas (see chapter on Summary of legal timber in Chile). It must be noted that the risk assessment carried out by FSC Chile in 2010 (Controlled Wood Risk Assessment: Native forest in Chile FSC-CWRA-004-CHI) for native forests, defined the commune as a homogenous analysis unit (district). It identified 42 communes with Specified risks concerning legality. In addition, the FSC Chile's 2009 risk assessment (Controlled Wood Risk Assessment: plantations in Chile FSC-CWRA-002-CHI) identified 6 communes with unspecified risks.

In the case of plantations, the risk threshold that FSC Chile used was the following: non-authorized felling on an area equal to or above 5% of the commune's total surface area. In the case of native forest, the risk threshold that FSC Chile used was the following: communes in which there is a forest area which is equal to or above 25% of the commune total surface area, and in which there is no recorded information regarding non-compliance with forest legislation, or; communes in which the surface area of native forest is under 5% of the total surface area of the commune, and where there has been at least one registered violation of forest legislation, or there is non-compliance over more than 5% of the area subject to the commune's management plan.

More than six years have elapsed since the study by FSC Chile and the communes should be updated. The Montreal country report from 2015 indicated that, on average for the 2004-2014 period, there was a 3.7% rate of non-compliance with approved instruments, which corresponds to 7,378.5 hectares or 738 ha/year. Based on information provided by CONAF, in consultations for the 2013-2015 period, a total of 9,257 management plans were submitted and approved, of which 327 showed non-compliance, i.e. 3.5% (under FSC Chile's threshold risk), or an area of 3,374.6 ha. However, it was not possible to obtain disaggregated data at the level of the commune, province or region, in order to ascertain whether or not there are areas with higher rates of non-compliance. According to figures given by CONAF, from 2013, 28% of all management plans submitted were subject to inspection, which shows a high level of statistical sampling.

Chilean forest law states that all harvesting in native forests must have a management plan which regulates it, approved by CONAF. In the case of exotic forest plantations, this obligation is only for land preferably suited to forestry. The law does not apply to other forest plantations on land that is not defined as preferably suited to forestry, thus the owner does not have any obligation to submit a management plan and is therefore not liable to forest legislation. According to those interviewed, there is no clear figure regarding forest plantations under this definition, but it is thought to represent 10% of the country's forest plantation surface area.

### *Risk Conclusion*

Low risk at national level.

Specified risk for certain communes: Collipulli, Cañete, Tirua, Nueva Imperial, among others in the 8th and 9th regions.

Despite low national levels of non-compliance, it was not possible to obtain disaggregated information about non-compliance with province or commune-level management plans. Therefore, it is not possible to state that there are no regions with high levels of non-compliance.

Note: More detailed information has been requested from CONAF, to be added to the FSC Chile initiative. The principle of precaution is recommended in those provinces where there are areas that have no management plans from the owners of the plots of land taken.

#### 1.3.6. Risk designation and specification

Specified risk for certain communes: Collipulli, Cañete, Tirua, Nueva Imperial, among others in the 8th and 9th regions.

#### 1.3.7. Control measures and verifiers

- Maps showing harvesting areas (in compliance with the harvesting plan indicating UTM coordinates of the area).
- Document review: approved harvesting plan and comprehensive management plan if applicable.
- Field visits to verify that the contractors have a Timber Extraction Contract for standing or sawn timber.
- There must be forest management plans approved by the authorities where the harvesting is taking place (<http://www.conaf.cl/centro-de-documentacion/>).
- Forest management plans must include all legally required information and procedures.
- Good harvesting practices must be verified on agricultural land.
- Certificates indicating compliance with forest obligations can be requested from CONAF.
- Verify information in the inventory with the harvest underway, to validate what has been authorised against what has been harvested.
- Certificate of delivery upon completion of harvesting work.

### 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

##### Native forests:

- Act 20.283/2008. Law on native forest recovery and forest development (*Ley sobre recuperación de Bosque Nativo (BN) y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Act 18.755/1988 Sets out rules on the Agriculture and Livestock Service (SAG), law No. 16.640 and other provisions (*Establece normas sobre el servicio agrícola y ganadero, deroga la ley n° 16.640 y otras disposiciones*). Available at: <https://www.leychile.cl/Navegar?idNorma=30135>
- Act 18.362/1984 Creates a national system of protected areas of state, SNASPE (*Crea un sistema nacional de áreas silvestres protegidas del estado (SNASPE)*). Available at: <http://www.leychile.cl/Navegar?idNorma=29777>

NOTE: The Project to create the Biodiversity and Protected Areas Service is underway: ([http://www.senado.cl/servicio-de-biodiversidad-y-areas-protegidas-sala-dio-luz-verde/prontus\\_senado/2015-03-04/191234.html](http://www.senado.cl/servicio-de-biodiversidad-y-areas-protegidas-sala-dio-luz-verde/prontus_senado/2015-03-04/191234.html))

- Decree 93/2008 Approves general regulations on native forest recovery and forest development (*Reglamento general de la ley sobre recuperación del bosque nativo y fomento forestal*). Available at: <http://www.leychile.cl/Navegar?idNorma=1006865>
- Decree 82/2010 Approves regulations on land, water and wetlands L20283 (aprueba reglamento de suelos, aguas y humedales L20283). Available at: [http://www.concursolbn.conaf.cl/ayuda/Reglamento\\_Suelos\\_Agua\\_Humedales.pdf](http://www.concursolbn.conaf.cl/ayuda/Reglamento_Suelos_Agua_Humedales.pdf)
- Decree 4363/1931. Approves definitive text of the law of forests (Aprueba texto definitivo de la Ley de bosques). Available at: <http://www.leychile.cl/Navegar?idNorma=19422>
- Decree 13/1995 Gives natural monument status to Queule, Pitao, South Belloto, Northern Belloto and Ruil (*Declara monumento natural las especies forestales queule, pitao, belloto del sur, belloto del norte y ruil*) (gives natural monument status to Quele, Belloto del Norte y Sur, Pitao, Ruil). Available at: [http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13\\_queule-pitao-belloto-ruil.pdf](http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13_queule-pitao-belloto-ruil.pdf)
- Decree 43/1990 Declares natural monument to the Araucana Araucana (*Declara monumento natural a la Araucaria araucana*). Available at: <http://www.leychile.cl/Navegar?idNorma=8102&idParte=0>
- Decree 490/1976 Declares natural monument to the forest species (*Declara monumento natural a la especie forestal Alerce*). Available at: <http://www.leychile.cl/Navegar?idNorma=147731&idVersion=2003-05-08>
- Decree 295/1974 Prohibits felling in the Andean region (*Prohíbe la corta de árboles en la zona de precordillera y cordillera andina que señala*). Available at: <http://www.leychile.cl/Navegar?idNorma=1027876>
- Decree 129/1971 Prohibits cutting and removal of Copihue (*Lapageria rosea*) (*Prohíbe la corta, arranque, transporte, tenencia y comercio de copihues (Lapageria rosea) y otorga trámite de urgencia al presente decreto*). Available at: [http://www.sag.cl/sites/default/files/d\\_s\\_129\\_copihue.pdf](http://www.sag.cl/sites/default/files/d_s_129_copihue.pdf)
- Decree 68/2009 Approves and formalises list of native tree and shrub species in the



country (*Establece, aprueba y oficializa nómina de especies arbóreas y arbustivas originarias del país*). Available at: <http://www.leychile.cl/Navegar?idNorma=1008674>

#### Forest plantations:

- Decree Law 701/1974 Sets out legal regime for forest lands or those preferably suited to forestry, and states development regulations in this area (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561 and 18, 959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294>
- Decree 2374/1937 Approves the regulations for exploitation forests existing in watersheds (*Aprueba el reglamento para la explotación de bosques existentes en las cuencas hidrográficas*). Available at: <http://www.leychile.cl/Navegar?idNorma=262107&idVersion=1937-11-24>
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- Resolution 1406/2012 Establishes Risk dispersion rating of Sirex Noctilio in areas under quarantine (*Establece calificación de riesgo de dispersión de la avispa de madera del pino Sirex noctilio en áreas bajo cuarentena*). Available at: <http://www.leychile.cl/Navegar?idNorma=1038246>
- Resolution 2177/1995. Rodent and lagomorph control (*Modifica resolución n° 223, de 1995 sobre control de roedores y lagomorfos*). Available at: <https://www.leychile.cl/Navegar?idNorma=40098>
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#### **1.4.2. Legal authority**

- Ministry of Agriculture (Ministerio de Agricultura):
  - CONAF (National Forestry Corporation/ Corporación Nacional Forestal): 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14
  - SAG (Agriculture and Livestock Service /Servicio Agrícola y Ganadero): 2, 15, 16, 17, 18
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#### 1.4.3. Legally required documents or records

- Plantation management plan
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- Environmental risk assessment or statement with a civil works management plan if the regulations of Act 19,300 apply.

#### 1.4.4. Sources of information

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### *Description of Risk*

Chile is a low-risk country in terms of international risk assessments in forest areas (see chapter on Summary of legal timber in Chile). It must be noted that the risk assessment carried out by FSC Chile in 2010 (Controlled Wood Risk Assessment: Native forest in Chile FSC-CWRA-004-CHI) for native forests, defined the commune as a homogenous analysis unit (district). It identified 42 communes with Specified risk for the indicator concerning legality. In addition, the FSC Chile's 2009 risk assessment (Controlled Wood Risk Assessment: plantations in Chile FSC-CWRA-002-CHI) identified 6 communes with non-specified risks.

In the case of plantations, the risk threshold that FSC Chile used was the following: non-authorised felling on an area equal to or above 5% of the commune's total surface area. In the case of native forest, the risk threshold that FSC Chile used was the following: communes in which there is a forest area which is equal to or above 25% of the commune total surface area, and in which there is no recorded information regarding non-compliance with forest legislation, or; communes in which the surface area of native forest is under 5% of the total surface area of the commune, and where there has been at least one registered violation of forest legislation, or there is non-compliance over more than 5% of the area subject to the commune's management plan.

More than six years have elapsed since the study by FSC Chile and the communes should update this. The Montreal country report from 2015 indicated that, on average for the 2004-2014 period, there was a 3.7% rate of non-compliance with approved instruments, which corresponds to 7,378.5 hectares or 738 ha/year. Based on information provided by CONAF, in the consultation for the 2013-2015 period, there was a total of 9,257 submitted and approved management plans, of which 327 showed non-compliance, i.e. 3.5% (under FSC Chile's threshold risk), or an area of 3,374.6 ha. However, it was not possible to obtain disaggregated data at the level of the commune, province or region, in order to ascertain whether or not there are areas with higher rates of non-compliance. According to figures given by CONAF, from 2013, 28% of all management plans submitted were subject to inspection, which shows a high level of statistical sampling.

Chilean forest law states that all harvesting in native forests must have a management plan which regulates it, approved by CONAF. In the case of exotic forest plantations, this obligation is only for land preferably suited to forestry. The law does not apply to other forest plantations on land that is not defined as preferably suited to forestry, thus the owner does not have any obligation to submit a management plan and is therefore not liable to forest legislation. According to those interviewed, there is no clear figure regarding forest plantations under this definition, but it is thought to represent 10% of the country's forest plantation surface.

### *Risk Conclusion*

Low risk at national level.

Specified risk for certain communes.

Despite low national levels of non-compliance, it was not possible to obtain disaggregated information about non-compliance with province or commune-level management plans. Therefore, it is not possible to state that there are no regions with high levels of non-compliance.

Note: More detailed information has been requested from CONAF, to be added to the FSC Chile initiative. The principle of precaution is recommended in those provinces where there

are areas that have no management plans from the owners of the plots of land taken. The communes identified are: Collipulli, Cañete, Tirua, Nueva Imperial, among others in the 9th and 8th regions.

#### **1.4.6. Risk designation and specification**

Specified risk for certain communes: Collipulli, Cañete, Tirua, Nueva Imperial, among others in the 8th and 9th regions.

#### **1.4.7. Control measures and verifiers**

- Maps showing harvesting areas (in compliance with the harvesting plan indicating UTM coordinates of the area).
- Document review: approved harvesting plan and comprehensive management plan if applicable.
- Field visits to verify that the contractors have a Timber Extraction Contract for standing or sawn timber
- There must be forest management plans approved by the authorities where the harvesting is taking place (<http://www.conaf.cl/centro-de-documentacion/>).
- Forest management plans must include all legally required information and procedures.
- Good harvesting practices must be verified on agricultural land.
- Certificates indicating compliance with forest obligations can be requested from CONAF.
- Verify information in the inventory with the harvest underway, to validate what has been authorised against what has been harvested.

## TAXES AND FEES

### 1.5. Payment of royalties and harvesting fees

*Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.5.1. Applicable laws and regulations

- Act 19.118/1992 Authorises CONAF to charge fees (*Otorga beneficios a los adquirentes de predios derivados de la reforma agraria y modifica diversos cuerpos legales*). Available at: <http://www.leychile.cl/Navegar?idNorma=30485&idVersion=1992-09-03>
- Act 20.283/2008. Native forest recovery and forest development (*Ley sobre recuperación del Bosque Nativo y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561, 18,959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294>
- DFL1/1998. Based on Act 17.235 on land tax (*Ley 17.235 Impuesto territorial*). Available at: <https://www.leychile.cl/Navegar?idNorma=128563>

#### 1.5.2. Legal authority

- CONAF (National Forestry Corporation/ Corporación Nacional Forestal): 1,2,3
- Internal tax service (servicio de impuestos internos - SII): 4

#### 1.5.3. Legally required documents or records

- Proof of payment of management plan
- Land rated as preferably suitable for forestry (if pertaining to Decree-Law 701)

#### 1.5.4. Sources of information

##### *Government sources*

- Alvarez, A. L. (2011). *Sustainable tourism licensing within the National System of Protected Wilderness Areas (Concesiones de turismo sustentable en el sistema nacional de áreas silvestres protegidas del estado)* // CONAF (National Forestry Corporation/ Corporación Nacional Forestal) [online]. Web page of the Environmental Ministry. Available at: [http://www.mma.gob.cl/correosvirtuales/present/Martes5\\_Sep\\_2011/Tarde/SintesishistoricaConcesionesSNASPE\\_ALazo.pdf](http://www.mma.gob.cl/correosvirtuales/present/Martes5_Sep_2011/Tarde/SintesishistoricaConcesionesSNASPE_ALazo.pdf) [Accessed 3 April 2017]

##### *Non-Government sources*

- Lapinell Vázquez, R. (2011). *Tax evasion in the modern world (El delito de evasión fiscal*

*y tributaria en el mundo moderno*). [online]. Office of the Prosecutor of the Republic-Municipality of Bayamo. Available at: <http://www.monografias.com/trabajos84/evasion-fiscal-mundo-moderno/evasion-fiscal-mundo-moderno.shtml#ixzz43r6AXKd5> [Accessed 4 April 2017]

- Jiménez, J.P et al., (2010). *Tax evasion and equity in Latin America (Evasión Fiscal y equidad en Latinoamérica)*. [online]. CEPAL (Comisión Económica para América latina y el Caribe) and GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit). Available at: [http://www.cepal.org/ilpes/noticias/paginas/5/38375/Evasi%C3%B3n\\_y\\_equidad\\_final\\_02-02-2010.pdf](http://www.cepal.org/ilpes/noticias/paginas/5/38375/Evasi%C3%B3n_y_equidad_final_02-02-2010.pdf) [Accessed 4 April 2017]
- Abello Ross, C. (2015). *Prosecutor formalized forest entrepreneur for tax evasion (Fiscalía formalizó a empresario forestal por millonaria evasión de impuestos)*. Press article from Diario Concepción web page.
- Conversations with various experts in May, 2016 helped the writers of this report better understand relevant legislation, and associated risks of on-the-ground implementation. Regarding this indicator, representatives from different organisations were interviewed: National Forestry Corporation (Corporación Nacional Forestal), FSC Chile, SSC Americas and legal experts.

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

The harvesting licence is obtained once the management plan is approved, and a specific tax must be paid on submission of the management plan, the fees for which are regulated by CONAF under the auspices of the regulations in Decree-Law 701 and Act 20,283. Small-scale producers are exempt from this tax.

There is also a land tax on land property which is determined through a valuation and collections of this tax go entirely to municipalities, which is one of their main sources of income and financing. Property that is preferably suitable for forestry is exempt from this land tax.

##### *Description of Risk*

In interviews and consultations with relevant stakeholders, no significant breaches were identified in terms of felling without due payment of taxes, given that this would mean that the management plan was not presented, which in turn implies fines that could reach 15 monthly tax units (MTUs), approximately 1000 USD per ha. This is clearly a strong deterrent. In addition, tax oversight is comprehensive and national levels of non-compliance with management plans are below 5% (see 1.3 and 1.4). Regarding land tax evasion, based on the study *Tax Evasion in the Modern World 2011 (La evasión fiscal en el mundo moderno 2011)*, Chile is regarded as low in terms of tax evasion (10-20% - Category 2), on a par with Canada and USA, and above other Latin America countries which are in Category 3. However, ECLAC and GTZ's 2010 study on *Tax Evasion and Equity in Latin America (Evasión Fiscal y equidad en Latinoamérica)* notes a 40% increase in tax evasion in Chile. According to information in the press (Diario Concepción 2016), one ruling has been passed for tax evasion. The Public Prosecutor was asked to provide information, but to date none has been given.

In the interview with the Internal Tax Service (SII), it was noted that one case of tax evasion was uncovered, concerning falsifying contracts in the province of Arauco, in the communes of

Cañete and Tirúa. According to the data passed on by this body to the Public Prosecutor, an estimated 3000 ha of land is affected, in a region where the annual harvesting rate reaches some 60.00 ha. A similar situation was said to have been detected in Malleco and Cautín, although to date no supporting evidence has been provided.

### *Risk Conclusion*

For the communes of Tirúa and Cañete (Provincia of Arauco) in the case of plantations: This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

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

### **1.5.6. Risk designation and specification**

Low risk at national level

Specified risk for the communes Tirúa and Cañete (Provincia of Arauco) in the case of forest plantations.

### **1.5.7. Control measures and verifiers**

- Receipts shall exist for payments of harvesting-related royalties, taxes, harvesting fees and other charges.
- Volumes, species and qualities given in sales and transport documents shall match the paid fees.
- Classification of species, volumes and qualities shall match the royalties and fees paid.
- Proof of payment for management plan (for land preferably suited to forestry)
- Proof of payment of land tax for forest property (for land not preferably suited to forestry)
- Consulting CONAF's website is recommended ([www.CONAF.cl](http://www.CONAF.cl)) as well as that of the Internal Tax Service ([www.sii.cl](http://www.sii.cl))

## **1.6. Value added taxes and other sales taxes**

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

### **1.6.1. Applicable laws and regulations**

- Act 19.118/1992 Authorises CONAF to charge fees (*Otorga beneficios a los adquirentes de predios derivados de la reforma agraria y modifica diversos cuerpos legales*). Available at: <http://www.leychile.cl/Navegar?idNorma=30485&idVersion=1992-09-03>
- Act 20.283/2008. Native forest recovery and forest development (*Ley sobre recuperación del Bosque Nativo y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (*Fija régimen legal de los terrenos*



*forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561, 18,959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294> Income tax law 20780 (*Reforma tributaria que modifica el sistema de tributación de la renta e introduce diversos ajustes en el sistema tributario*) (<http://www.leychile.cl/Navegar?idNorma=1067194>)

- Decree 830/1974. Tax Code Law (*Código tributario ley 830*). Available at: <http://www.sii.cl/pagina/actualizada/noticias/2002/dl830.htm>
- Law 17.235/1998. Land tax (*Impuesto territorial*). Available at: <http://www.leychile.cl/Navegar?idNorma=128563>

#### 1.6.2. Legal authority

- CONAF (National Forestry Corporation/ Corporación Nacional Forestal) 1, 2, 3.
- Internal Tax Services (Servicio de impuestos internos -SII) 4,5,6

#### 1.6.3. Legally required documents or records

- Proof of tax payment in SII
- Tax debt certificate from State Treasury ([www.tesoreria.cl](http://www.tesoreria.cl))

#### 1.6.4. Sources of information

##### *Non-Government sources*

- Lapinell Vázquez, R. (2011). *Tax evasion in the modern world (El delito de evasión fiscal y tributaria en el mundo moderno)*. [online]. Office of the Prosecutor of the Republic-Municipality of Bayamo. Available at: <http://www.monografias.com/trabajos84/evasion-fiscal-mundo-moderno/evasion-fiscal-mundo-moderno.shtml#ixzz43r6AXKd5> [Accessed 3 April 2017]
- Araya, N. and Burgos, C. (2015). *The networks after the theft of wood: Public Prosecutor already sum 92 causes and 55 imputed (Las redes tras el robo de madera: Ministerio Público ya suma 92 causas y 55 imputados)*. [online]. La Tercera press article. Available at: <http://www.latercera.com/noticia/las-redes-tras-el-robo-de-madera-ministerio-publico-ya-suma-92-causas-y-55-imputados/> [Accessed 3 April 2017]
- Corma.cl (2015). *Protocol to guarantee legal provenance of wood (Protocolo para asegurar procedencia legal de la madera)*. [online]. Web page of CORMA (Corporación Chilena de la Madera- Chilean Forestry Industry Association's). Available at: <http://www.corma.cl/corma-al-dia/biobio/empresas-corma-firman-protocolo-para-asegurar-procedencia-legal-de-la-madera> [Accessed 3 April 2017]
- Discussions with various experts during May 2016 helped the writers of this report better understand relevant legislation, associated risks and on-the-ground implementation. Regarding this indicator, interviews were carried out with different organisations, among which: National Forestry Corporation (Corporación Nacional Forestal), Internal tax service (Servicio de impuestos internos), logging companies, FSC Chile, and legal experts.

#### 1.6.5. Risk determination

##### *Overview of Legal Requirements*

Forestry activity is defined by the SII (Internal Tax Service – servicio de impuestos internos)

as that which includes all activities necessary to regenerate, develop and protect forests, as well as harvest its products: that is to say all forest-related activities (sowing, resowing, transplanting, thinning and conservation of forests and forest zones) and the development and harvesting of plantations or native forests.

All general rules regarding agricultural taxation apply to two taxpayer categories: those who are taxed based on actual income and those based on presumed income. Special tax rules stipulated in article 20, number 1, letter a, of the Income Tax Law are also applied (Impuesto a la Renta, artículo 20 N° 1, letra a).

Regarding sales, value added tax (VAT) should be paid on product sales including forest products. The codes for initiation of activities to trade in the forestry sector are:

12101 Forest exploitation

12102 Forest services

12103 Forestation

12109 Other related activities (including harvesting forest products)

12201 Logging, roughing, logged forest product, firewood, wood charcoal (includes timber extraction contractors).

### *Description of Risk*

According to tax evasion studies (based on the World Bank Worldwide Governance Indicators: <http://www.worldbank.org/en/country/chile/overview#2>), countries can be grouped into four categories. Chile is in the second category of countries with tax evasion between 10 and 20%, alongside Canada, USA and Western European countries.

The Public Prosecutor found a forest businessman guilty of issuing false invoices and contracts in the communes of Cañete and Tirúa. In interviews with SII in the Biobío region, it was indicated that investigations are underway, thus it is difficult to ascertain whether the evasion affects other communes. The area affected is thought to be 3000 ha. It was also highlighted that a similar case had been brought before the authorities in the region of Araucanía, but that to date no supporting evidence had been given. Moreover, a lack of adequate coordination with CONAF was also underlined. In the interviews with logging companies however, it was highlighted that when the Public Prosecutor was made aware of the situation, the Chilean Forestry Industry Association, CORMA, put in place a purchasing procedure/protocol, signed by all stakeholders, and which according to the companies proves the legal provenance of the timber.

The CNRA Chile draft document was sent to companies and CORMA requesting evidence, but no information has been received. Interviews held with Mapuche professionals who work in the area indicate that the problem is ongoing, but the extent to which is difficult to ascertain. Based on the study Tax Evasion in the Modern World 2011 (La evasión fiscal en el mundo moderno 2011), Chile is regarded as low in terms of tax evasion (10-20% - Category 2), on a par with Canada and USA, and above other Latin America countries which are in Category 3. However, ECLAC and GTZ's 2010 study on Tax Evasion and Equity in Latin America (Evasión Fiscal y equidad en Latinoamérica) notes a 40% increase in tax evasion in Chile. According to information in the press (Diario Concepción 2016), one ruling has been passed for tax evasion. The Public Prosecutor was asked to provide information, but to date none has been given.

Based on the evidence available, it can be concluded that, notwithstanding the area where



there are issues with tax evasion, the indicator is low risk. This should be regarded as a specified risk for those communes in the province of Arauco, where control measures should be considered.

### *Risk Conclusion*

For the communes of Tirúa and Cañete's (Province of Arauco) plantations: This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

For the rest of the country: This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

### **1.6.6. Risk designation and specification**

Specified risk for the communes Tirúa and Cañete (Province of Arauco) in the case of forest plantations.

Low risk for the remaining country

### **1.6.7. Control measures and verifiers**

- VAT declaration statement (Certificado de declaración de IVA)
- Proof of payment of land tax for forest property (for land not preferably suited to forestry) (Comprobante de pago de impuesto territorial en caso de predios forestales no calificados como de APF)
- To initiate activities the following must be verified:
- Income tax certificate (Certificado de renta)
- Consulting CONAF's website is recommended ([www.CONAF.cl](http://www.CONAF.cl)) as well as that of the Internal Tax Service ([www.sii.cl](http://www.sii.cl)) and the State Treasury (<https://www.tesoreria.cl/>) regarding tax rules.
- Consult open cases in the Tax and Customs Courts <http://www.tta.cl/default.aspx>
- Certificates and/or receipts stated must make reference to, insofar as is possible, the forest management unit that is being assessed.

## **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**

- Act 19.118/1992 Authorises CONAF to charge fees (*Otorga beneficios a los adquirentes de predios derivados de la reforma agraria y modifica diversos cuerpos legales*). Available at: <http://www.leychile.cl/Navegar?idNorma=30485&idVersion=1992-09-03>
- Act 20.283/2008. Native forest recovery and forest development (*Ley sobre recuperación del Bosque Nativo y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>

- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561, 18,959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294> Income tax law 20780 (*Reforma tributaria que modifica el sistema de tributación de la renta e introduce diversos ajustes en el sistema tributario*). Available at: <http://www.leychile.cl/Navegar?idNorma=1067194>
- Law 20.780/2014. Tax reform (*Reforma tributaria que modifica el sistema de tributación de la renta e introduce diversos ajustes en el sistema tributario*). Available at: <http://www.leychile.cl/Navegar?idNorma=1067194>
- Decree 830/1974. Tax Code Law (*Código tributario ley 830*). Available at: <http://www.sii.cl/pagina/actualizada/noticias/2002/dl830.htm>
- Law 17.235/1998. Land tax (*Impuesto territorial*). Available at: <http://www.leychile.cl/Navegar?idNorma=128563>

#### 1.7.2. Legal authority

- CONAF (National Forestry Corporation/ Corporación Nacional Forestal) 1,2,3
- Internal Tax Service (Servicio de impuestos internos - SII) ,5,6
- State Treasury 6

#### 1.7.3. Legally required documents or records

- Balance sheet and statement of income in the case of businesses
- Simplified balance sheet or expenditure and income records for SMEs who pay tax on presumed income
- Income tax statement and tax payments at the SII

#### 1.7.4. Sources of information

##### *Government sources*

- Sii.cl (2016). *List of codes and economic activities agriculture, agricultural services, hunting, forestry and fishing agricultural production*. [online]. Web page of SII (Internal Revenue Service/ Servicio de Impuestos Internos). Available at: [http://www.sii.cl/pagina/renta/suplemento/Listado\\_codigos.htm](http://www.sii.cl/pagina/renta/suplemento/Listado_codigos.htm) [Accessed 3 April 2017]
- Sii.cl (2016). *Resolutions are interpretations of the adequate application of laws or regulations*. [online]. Web page of SII (Internal Revenue Service/ Servicio de Impuestos Internos). Available at: <http://www.sii.cl/pagina/jurisprudencia/adminis/2004/renta/ja788.htm> [Accessed 3 April 2017]

##### *Non-Government sources*

- Araya, N. and Burgos, C. (2015). *The networks after the theft of wood: Public Prosecutor already sum 92 causes and 55 imputed (Las redes tras el robo de madera: Ministerio Público ya suma 92 causas y 55 imputados)*. [online]. La Tercera press article. Available at: <http://www.latercera.com/noticia/las-redes-tras-el-robo-de-madera-ministerio-publico-ya-suma-92-causas-y-55-imputados/> [Accessed 3 April 2017]

- Corma.cl (2015). *Protocol to guarantee legal provenance of wood (Protocolo para asegurar procedencia legal de la madera)*. [online]. Web page of CORMA (Corporación Chilena de la Madera- Chilean Forestry Industry Association's). Available at: <http://www.corma.cl/corma-al-dia/biobio/empresas-corma-firman-protocolo-para-asegurar-procedencia-legal-de-la-madera> [Accessed 3 April 2017]
- Rivas Coronado, N and Paillacar Silva, C. (2007). *Characterization of the tax evasion in the tax to the revenue of Chile (Caracterización de la Elusión fiscal en el impuesto a la renta de Chile)*. [online]. CAPIV Review Vol 5 2007. Available at: <https://dialnet.unirioja.es/descarga/articulo/2881494.pdf> [Accessed 3 April 2017]
- Discussions with various experts during May 2016 helped the writers of this report better understand relevant legislation, associated risks and on-the-ground implementation. Regarding this indicator, interviews were carried out with different organisations, among which: National Forestry Corporation (Corporación Nacional Forestal), Internal tax service (Servicio de impuestos internos), logging companies, FSC Chile, and legal experts.

#### 1.7.5. Risk determination

##### *Overview of Legal Requirements*

There are general taxes that all business must pay regarding earnings, the main ones being those directly regulated by income tax law. Of these, the main taxes are either first or second category. The first category taxes income from capital for, among others, trade, industrial, mining or service businesses. This tax category is applied to the taxable base of profits or accrued earnings for businesses who declare their actual, agreed income through complete or simplified accounting, spreadsheets or contracts. The exception to this concerns taxpayers from the agricultural, mining or transport sectors, who can pay on the taxable base of presumed income, when they meet the requirements stipulated in article 34 of Income Tax Law, in force since 1st January 2016. Businesses or people who are under the Presumed Income regime pay taxes according to what the law dictates for that activity and not in accordance with the actual results obtained.

The second category's Single Tax levies taxes on dependent employment work income, like wages, pensions and any extra or complementary income to these. This tax is applied on a progressive sliding tax scale and is declared and paid monthly on accrued income from dependent employment activities, from an amount exceeding 13.5 MTU. The tax must be held and declared in state coffers by the respective employer, who is authorised to pay or pays the income. All general rules regarding agricultural taxation apply to two taxpayer categories: those who are taxed based on actual income and those based on presumed income. Special tax rules stipulated in article 20, number 1, letter a, of the Income Tax Law are also applied (Impuesto a la Renta, artículo 20 N° 1, letra a). Forest plantations and forests included in the provisions of Decree-Law 201 of 1974 (Act Ley 19.561 of 16-05-1998), pay taxes on the actual income base, but those who fall under the presumed income system, and benefit from the Law, must pay on the actual income base, to be counted from the tax year following the year when accumulated forest product sales in a three-year moving year period exceeded 24,000 MTU.

Small-scale Forest Owners always pay tax on the base of presumed income: plantations undertaken before 16-05-98 can deduct 50% of the global complementary tax (Impuesto Global Complementario) which proportionally affects actual or agreed incomes from forest exploitation. Under special conditions they are exempt from the Land Tax – Government

Circular No 78, 2001, Internal Tax System (Impuesto Territorial) (circular N°78 del año 2001 SII).

### *Description of Risk*

The Public Prosecutor found a forest businessman guilty of issuing false invoices and contracts in the communes of Cañete and Tirúa. In interviews with SII in the Biobio region), it was indicated that investigations are underway, thus it is difficult to ascertain whether the evasion affects other communes. The area affected is thought to be 3000 ha. It was also highlighted that a similar case had been brought to the authorities in the Region of Araucanía, but that to date no supporting evidence had been given. Moreover, a lack of adequate coordination with CONAF was also underlined. In the interviews with logging companies however, it was highlighted that when the Public Prosecutor was made aware of the situation, the Chilean Forestry Industry Association, CORMA, put in place a purchasing procedure/protocol in 2015, signed by all stakeholders, and which according to the companies proves the legal provenance of the timber.

The CNRA Chile draft document was sent to companies and CORMA requesting evidence, but no information has been received. Interviews held with Mapuche professionals who work in the area indicate that the problem is ongoing, but the extent to which is difficult to ascertain.

Based on the evidence available, it can be concluded that, notwithstanding the area where there are issues with tax evasion, the indicator is low risk. This should be regarded as a specified risk for those communes in the province of Arauco, where control measures should be considered.

### *Risk Conclusion*

For the communes of Tirúa and Cañete (Arauco Province) in the case of plantations: This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

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

#### **1.7.6. Risk designation and specification**

Low risk at national level

Specified risk for the communes of Tirúa and Cañete (Province de Arauco) in the case of forest plantations

#### **1.7.7. Control measures and verifiers**

To initiate activities the following must be verified:

- Income tax certificate or tax certificate (Certificado de renta o tributario)
- Consulting CONAF's website is recommended ([www.CONAF.cl](http://www.CONAF.cl)) as well as that of the Internal Tax Service ([www.sii.cl](http://www.sii.cl)) and the State Treasury (<https://www.tesoreria.cl/>) regarding tax rules.
- Consult open cases in the Tax and Customs Courts <http://www.tta.cl/default.aspx>

## 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

- Act 20.283/2008. Native forest recovery and forest development (*Ley sobre recuperación del Bosque Nativo y fomento forestal*). Available at: <https://www.leychile.cl/Navegar?idNorma=274894>
- Act 20.600/2012 Creates Environmental Courts (*Crea los Tribunales Ambientales*). Available at: <http://www.leychile.cl/Navegar?idNorma=1041361>
- Act 11.402/1953. Regulations to protect lakes, riverbanks and riverways (*Dispone que las obras de defensa y regularización de las riberas y cauces de los ríos, lagunas y esteros que se realicen con participación fiscal, solamente podrán ser ejecutadas y proyectadas por la dirección de obras sanitarias del ministerio de obras públicas*). Available at: <http://www.leychile.cl/Navegar?idNorma=26654&idVersion=1984-12-30>
- Decree 93/2008 Approves general regulations on native forest recovery and forest development (*Reglamento general de la ley sobre recuperación del bosque nativo y fomento forestal*). Available at: <http://www.leychile.cl/Navegar?idNorma=1006865>
- Decree 68/2009 Approves and formalises list of native tree and shrub species in the country (Establece, aprueba y oficializa nómina de especies arbóreas y arbustivas originarias del país). Available at: <http://www.leychile.cl/Navegar?idNorma=1008674>
- Decree 82/2010 Approves regulations on land, water and wetlands L20283 (aprueba reglamento de suelos, aguas y humedales L20283). Available at: [http://www.concursosolbn.CONAF.cl/ayuda/Reglamento\\_Suelos\\_Agua\\_Humedales.pdf](http://www.concursosolbn.CONAF.cl/ayuda/Reglamento_Suelos_Agua_Humedales.pdf)
- Decree 276/1980. Regulations on burning (*Reglamento sobre roce a fuego*). Available at: <https://www.leychile.cl/Navegar?idNorma=147733&idParte>
- Decree 2374/1937. Exploitation of forests and watersheds (*Aprueba el reglamento para la explotación de bosques existentes en las cuencas hidrográficas*). Available at: <http://www.leychile.cl/Navegar?idNorma=262107&idVersion=1937-11-24>
- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561, 18,959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294> Income tax law 20780 (*Reforma tributaria que modifica el sistema de tributación de la renta e introduce diversos ajustes en el sistema tributario*). Available at:

<http://www.leychile.cl/Navegar?idNorma=1067194>

#### 1.8.2. Legal authority

- CONAF (National Forestry Corporation/ Corporación Nacional Forestal) 1, 4, 5, 6, 7, 9
- Ministry of the Environment 2, 3, 8

#### 1.8.3. Legally required documents or records

- Management plan

#### 1.8.4. Sources of Information

##### *Government sources*

- sea.gob.cl (2016). *Types of environmental licences (Tipos de Permisos ambientales)*. [online]. Web page SEA (Environmental Assessment Service/ Servicio de Evaluación Ambiental). Available at: <http://sea.gob.cl/documentacion/permisos-autorizaciones-ambientales/permisos-pronunciamientos-ambientales-sectoriales> [Accessed 3 April 2017]
- chileatiende.gob.cl (2013). *Authorization of Forest Management Plan (Autorización de Plan de Manejo Forestal)* //CONAF (National Forest Corporation/ Corporación Nacional Forestal). [online]. Web page of Chile attends/ Chile Atiende. Available at: <https://www.chileatiende.gob.cl/fichas/ver/727> [Accessed 3 April 2017]
- conaf.cl (2013). *Basic guide to good practice for small and medium-sized forest plantations (Guía básica de buenas prácticas para plantaciones forestales de pequeños y medianos propietarios)*. [online]. Ministry of Agriculture (Government of Chile). Available at: [http://www.conaf.cl/wp-content/files\\_mf/1386687876guiabuenaspracticas\\_ppf.pdf](http://www.conaf.cl/wp-content/files_mf/1386687876guiabuenaspracticas_ppf.pdf) [Accessed 3 April 2017]
- National Commission of Good Agricultural Practices (2006). *Technical specifications of best practices for forest plantations (Especificaciones técnicas de buenas prácticas para plantaciones forestales)*. [online]. Ministry of Agriculture (Government of Chile). Available at: [http://www.larotunda.cl/images/pdf/BPA\\_forestales.pdf](http://www.larotunda.cl/images/pdf/BPA_forestales.pdf)
- National Commission of Good Agricultural Practices (2008). *Natural Resources best practices guide (Guía de buenas prácticas de recursos naturales)*. [online]. Ministry of Agriculture (Government of Chile). Available at: [http://www.conaf.cl/cms/editorweb/GEF-BM/Apendice-7\\_04-Guia\\_Buenas\\_Practicas\\_Recurso\\_Naturales.pdf](http://www.conaf.cl/cms/editorweb/GEF-BM/Apendice-7_04-Guia_Buenas_Practicas_Recurso_Naturales.pdf) [Accessed 3 April 2017]
- Aguilera Fernández, M. (2000). *Expert guides on best practices for the sustainable management of Nothofagus renewal (Guías expertas de mejores prácticas de manejo sustentable para renovales de Nothofagus)*. [online]. INFOR (Forest Institute/ Instituto Forestal). Available at: <http://biblioteca.infor.cl/index.asp?param=o%AD%88%92bi%94%90vc&Op=12> [Accessed 3 April 2017]

##### *Non-Government sources*

- Donoso, P. and Soto, D. (2010) *Plantations with native species in central-southern Chile: experiences, challenges and opportunities (Plantaciones con especies nativas en el Centro-sur de Chile: experiencias, desafíos y oportunidades)*. [online]. Journal



Bosque Nativo 47.10-17, 2010. Available at:

<http://www.gestionforestal.cl/pfnm/paqtecnologicos/ulmo/plantaciones.pdf>

[Accessed 3 April 2017]

- Gayoso, J. and Acuña, M. (1999). *Best practices in forest management (Buenas prácticas del manejo forestal)*. [online]. Austral University of Chile (Universidad Austral de Chile). Available at: <http://www.uach.cl/proforma/gcampo/gbmps.pdf> [Accessed 3 April 2017]
- WWF (2015). *Promoting FSC Certification for small-scale owners who supply the timber, pulp and paper industry in Chile (Promoción de la Certificación FSC para piques propietarios que abastecen a la Industria de la madera, pulpa y papel en Chile)*. WWF report emailed, 2015.
- Discussions with various experts during May 2016 helped the writers of this report better understand relevant legislation, associated risks and on-the-ground implementation. Regarding this indicator, interviews were carried out with different organisations, among which: National Forestry Corporation) Corporación Nacional Forestal, logging companies, FSC Chile, SSC Américas and legal experts.

#### 1.8.5. Risk determination

##### *Overview of Legal Requirements*

For forest regulations, the management plan must be adhered to as is laid out therein, ie map indicating protected zones, riverways and wetlands, current land use, paths, fire prevention measures, pest and disease control. This regulatory framework applies to all types of forest and owners, excluding land classed as not preferably suited to forestry. For harvesting areas, less than 500 ha, is not required to have an evaluation of environmental impact. The management plan prepared and registered and approved by the CONAF is enough to start the harvesting. The harvesting techniques and technology used on the harvesting activity need to be included on the management plan, that need to be registered and approved before any activity on the field.

CONAF assesses the management plans submitted by interested parties who wish to develop exotic plantations or native forests located on land preferably suited to forestry, in compliance with what is set out in Section 21 of Decree-Law No 701 of 1974 on Forest Development (artículo 21 del Decreto Ley N° 701, de 1974, sobre Fomento Forestal), in addition to any felling as set out in Section 5 of Act 20,283 on Native Forest Recovery and Forest Development (el artículo 5° de la Ley 20.283 sobre Recuperación del Bosque Nativo y Fomento Forestal). Submitting the management plan is also one of the requirements to qualify for bonus payments on the first plantation pruning and thinning operations undertaken by small-scale forest owners, as well as for the bonus awarded in the Competition for the Conservation, Recovery and Sustainable Management of Native Forest Fund (Concurso del Fondo de Conservación, Recuperación y Manejo Sustentable del Bosque Nativo). The two main activities undertaken in the area of forest inspections are detecting illegal felling and assessing compliance with management plans.

##### *Description of Risk*

The Montreal country report from 2015 indicated that, on average for the 2004-2014 period, there was a 3.7% rate of non-compliance with approved instruments, which corresponds to 7,378.5 hectares or 738 ha/year. However, the number of inspection decreased from 1400 to 800 over the same period. Despite this, remote sensing technology via satellite imaging

has been used more, as have reconnaissance flights, aerial photos, drones, etc. However, it has not been possible to obtain detailed information regarding compliance in forest harvesting activities.

State services and businesses have developed best practice manuals or guides for forestry, where harvesting instructions are given - however these are done on a voluntary basis. From interviews with experts (May 2016), it seems these are done by certified businesses as opposed to small and medium-scale producers, who often have lower levels of technical support to deal with these issues (Promoting FC Certification for small-scale owners who supply the timber, pulp and paper industry in Chile 2015 - Promoción de la Certificación FSC para pequeños propietarios que abastecen a la Industria de la madera, pulpa y papel en Chile, 2015). Despite low national levels of non-compliance reported by CONAF (below 5%) at commune or provincial level there is no detailed information.

### *Risk Conclusion*

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

#### **1.8.6. Risk designation and specification**

Specified risk

#### **1.8.7. Control measures and verifiers**

- Harvesting must be conducted within the authorised boundaries of the plantations and/or native forest management plan (planes de manejo de plantaciones y/o bosque nativo).
- Harvesting must not affect protected areas.
- Tree species or selected trees found within the forest areas and plantations must comply with the technical requirements in the management plan.
- Harvesting restrictions shall be observed in the field.
- Approved plans have the necessary technical requirements.
- Forest administrators have their own auditing system to ensure compliance with legal and technical requirements during the harvesting.
- Volumes harvested are checked against approved areas.
- Certificate of delivery upon completion of harvesting work (Acta de entrega tras la finalización del trabajo de aprovechamiento).

### **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**

- Act 20.283/2008. Native forest recovery and forest development (*Ley sobre recuperación del Bosque Nativo y fomento forestal*). Available at:



<https://www.leychile.cl/Navegar?idNorma=274894>

- Act 11.402/1953. Regulations to protect lakes, riverbanks and riverways (*Dispone que las obras de defensa y regularización de las riberas y cauces de los ríos, lagunas y esteros que se realicen con participación fiscal, solamente podrán ser ejecutadas y proyectadas por la dirección de obras sanitarias del ministerio de obras públicas*). Available at: <http://www.leychile.cl/Navegar?idNorma=26654&idVersion=1984-12-30>
- Decree Law 701/1974 Sets out legal regime on forest land or land preferably suited to forestry, and defines development rules in this sector (*Fija régimen legal de los terrenos forestales o preferentemente aptos para la forestación, y establece normas de fomento sobre la materia*). Acts: 20,488, 19,561, 18,959, Decree 193. Available at: <http://www.leychile.cl/Navegar?idNorma=6294> Income tax law 20780 (*Reforma tributaria que modifica el sistema de tributación de la renta e introduce diversos ajustes en el sistema tributario*). Available at: <http://www.leychile.cl/Navegar?idNorma=1067194>
- Decree 13/1995 Gives natural monument status to Queule, Pitao, South Belloto, Northern Belloto and Ruil (*Declara monumento natural las especies forestales queule, pitao, belloto del sur, belloto del norte y ruil*) (gives natural monument status to Queule, Belloto del Norte y Sur, Pitao, Ruil). Available at: [http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13\\_queule-pitao-belloto-ruil.pdf](http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13_queule-pitao-belloto-ruil.pdf) 5 D.S 43 gives natural monument status to Araucaria (*Declara monumento natural a la Araucaria araucana*) (<http://www.leychile.cl/Navegar?idNorma=8102&idParte=0>)
- Decree 490/1976 Declares natural monument to the forest species (*Declara monumento natural a la especie forestal Alerce*). Available at: <http://www.leychile.cl/Navegar?idNorma=147731&idVersion=2003-05-08>
- Decree 295/1974 Prohibits felling in the Andean region (*Prohíbe la corta de árboles en la zona de precordillera y cordillera andina que señala*). Available at: <http://www.leychile.cl/Navegar?idNorma=1027876>
- Decree 129/1971 Prohibits cutting and removal of Copihue (*Lapageria rosea*) (*Prohíbe la corta, arranque, transporte, tenencia y comercio de copihues (Lapageria rosea) y otorga trámite de urgencia al presente decreto*). Available at: [http://www.sag.cl/sites/default/files/d\\_s\\_129\\_copihue.pdf](http://www.sag.cl/sites/default/files/d_s_129_copihue.pdf)
- Decree 843/1986 Approves amendment to the International Convention on Plant Protection (Convención internacional de protección fitosanitaria). Available at: <http://www.bcn.cl/leychile/Navegar?idNorma=146002>
- Decree 531/1967. Convention for the Protection of flora, fauna and scenic beauty in America (Protección de Flora, Fauna y Bellezas Escénicas de América). Available at: <http://www.leychile.cl/Navegar/?idNorma=125338&idParte=0>
- Decree 771/ 1981 Concludes the Convention on Wetlands of international importance (Zonas Húmedas de Importancia Internacional). Available at: <http://www.leychile.cl/Navegar?idNorma=15511&idVersion=1981-11-11>
- Decree 1963/1994 Promulgates the Convention on Biological Diversity (Promulga Convenio sobre Diversidad Biológica). Available at: <http://www.leychile.cl/Navegar?idNorma=18766&idVersion=1995-05-06>
- Decree 868/1981 Promulgates the Conserving on migratory species (Sobre conservación

de especies migratorias). Available at: <http://www.leychile.cl/Navegar?idNorma=16008>

- Decree 685/1989 Promulgates the Convention on Cross-border movements of dangerous substances (Sobre movimiento transfronterizo de sustancias Peligrosas). Available at: [http://www.ingeachile.cl/descargas/documentos/tratados\\_internacionales/convenio\\_basilea.pdf](http://www.ingeachile.cl/descargas/documentos/tratados_internacionales/convenio_basilea.pdf)
- Decree 67/1992 Promulgates Coordinated action on environmental issues (Sobre acciones coordinadas en temas medioambientales). Available at: <http://www.leychile.cl/Navegar?idNorma=8593>
- Decree 38/2005 Promulgates the Stockholm Convention on Persistent organic pollutants (Sobre contaminantes orgánicos persistentes). Available at: <http://www.leychile.cl/Navegar?idNorma=238174>
- Decree 3056/1979 Approves Convention on the Protection of World Cultural and Natural Heritage, subscribed to in UNESCO (Protección del Patrimonio Mundial, Cultural y Natural, suscrita en UNESCO). Available at: <https://www.leychile.cl/Navegar?idNorma=166877>
- Act 18755/1988 Establishes rules for SAG-Agricultural and Livestock Service (Establece normas sobre el SAG -Servicio Agrícola ganadero). Available at: <https://www.leychile.cl/Navegar?idNorma=30135>
- Decree 29. Regulations on species under conservation status (Reglamento especies en estado de conservación). Available at: <http://www.leychile.cl/Navegar?idNorma=1039460>

#### 1.9.2. Legal authority

- Ministry of the Environment 10 to 13, 15, 19
- CONAF (National Forestry Corporation/ Corporación Nacional Forestal) 1 to 8
- Agricultural and Livestock Service (Servicio Agrícola ganadero -SAG) 9, 18
- Ministry of Health 14,16

#### 1.9.3. Legally required documents or records

- Registry of Protected Varieties
- Management Plan
- Approval of environmental impact study if applicable under Decree 40 of the Ministry of the Environment.

#### 1.9.4. Sources of Information

##### *Government sources*

Ministry of the Environment Chile (2011) Protected Areas of Chile

([http://www.mma.gob.cl/1304/articles-50613\\_pdf.pdf](http://www.mma.gob.cl/1304/articles-50613_pdf.pdf))

##### *Non-Government sources*

- Aranda Ortega, J. (2015). *Historic-juridical analysis of Chile's regulations on native forest: orientation and purposes under Act 20.283 (Análisis histórico-jurídico de la regulación del bosque nativo en Chile: orientación y finalidades en la ley 20.283)*. [online]. Chile University (Law Department). Available at: <http://repositorio.uchile.cl/bitstream/handle/2250/130039/An%Elisis-hist%F3rico->

[jur%EDdico-de-la-regulaci%F3n-del-bosque-nativo-en-Chile.pdf?sequence=1](http://jur%EDdico-de-la-regulaci%F3n-del-bosque-nativo-en-Chile.pdf?sequence=1)

[Accessed 3 April 2017]

- fao.org (2013). *Public policies and applicable legislation on protected areas of Latin America and the Caribbean (Políticas públicas y legislación aplicable a las áreas protegidas de América Latina y el Caribe)*. [online]. Website FAO. Available at: <http://revistaparques.net/uploads/media/Holmberg.pdf>
- fao.org (2015). *State of the World's Forests (SOFO) 2015*. [online]. Website FAO. Available at: <http://www.fao.org/3/a-az185s.pdf>
- Venegas (2013). *Review study of corrective actions (Estudio de revisión de acciones correctivas)*. FSC Chile.
- Discussions with various experts during May 2016 helped the writers of this report better understand relevant legislation, associated risks and on-the-ground implementation. Regarding this indicator, interviews were carried out with different organisations, among which: National Forestry Corporation (Corporación Nacional Forestal), logging companies, FSC Chile, Ministry of Environment, Agricultural and Livestock Service (Servicio Agrícola ganadero -SAG) and legal experts.

#### 1.9.5. Risk determination

##### *Overview of Legal Requirements*

The signing and ratification of the Convention on Biological Diversity, CITES (trade in endangered species) and the passing of the General Basis Law on the Environment are the cornerstone of legislation concerning protected areas and endangered species. These species may not be removed and their presence and control measures must be stated in the management plan. In plantation and native forest management plans, protection measures for endangered flora and fauna must be stipulated for each plot to be harvested in the section 'Restrictions due to natural environment variables,' (on the Plantations form) (Restricciones por variables del medio natural) or 'Protective Restrictions,' (on the Native Forest form) (Restricciones de protección). The species of flora and fauna in question must be indicated. Updated lists of endangered species (on a scale) are published periodically on the website of the Ministry of Environment. Controls are carried out based on inventories in the case of flora, or sightings in the case of fauna.

In Chile there are ten Biosphere Reserves (UNESCO), and three of them are in sectors where there is forest production: Nevados de Chillán-Laguna del Laja, Araucarias, and Temperate Rainforests of the Southern Andes.

Chile has 13 wetlands (RAMSAR sites) of international importance, of which 2 are located in areas where there are forest activities. (Site: El Yal Wetlands /Region V) and Carlos Andwanter Nature Sanctuary (Region XIV). Most of the Ramsar sites are protected sites and are under government administration.

SNASPE Sites (National System of State-Owned Protected Wilderness Areas (Sistema Nacional de Áreas Silvestres Protegidas del Estado), where the following are identified:

- a. National Parks (IUCN Category II), 36 Sites, with a total area of 9.181.758 ha.
- b. National Reserve (IUCN Category IV, 26 Sites, with a total area of 751.304,7 ha.
- c. Forest Reserve (IUCN Category IV), 23 Sites, with an area of 4.663.040, 73 ha.

- d. Nature Monument (IUCN Category III) 16 Sites, with a total area of 34.429 ha.
- e. Nature Sanctuary (IUCN Category III and IV) 46 Sites, with an area of 478.712,6 ha...

Bird Life International has identified 176 IBA's in Chile (Important Bird and Biodiversity Area Search). The environmental NGO, CODEFF, is responsible in Chile for implementing Bird Life International's IBA program for conservation of birds. In the case of Chile, the biggest concentration of IBA's is found in the northern part of the country in zones where there is no forest production. There are Priority Sites for Conservation of Biodiversity. These priority sites were derived from work done from 2001 to 2002 in each of Chile's regions under the Regional Biodiversity Committees, coordinated by what at that time was the National Environmental Commission (Comisión Nacional del Medio Ambiente--CONAMA); there are now 266 units throughout the country. At the time of the assessment was made, it was indicated that the Ministry of the Environment was working to define "priority Ecosystems", based on the National Biodiversity Strategy, Regional Biodiversity Strategy and National System of Protected Wilderness Areas (SNASPE) but this information is not yet available.

#### *Description of Risk*

According to CONAF, inspections are done at random of around 25% of total management plans. This was done for priority areas marked as high, medium or low, or some 27,836 ha. Biodiversity is cited as the main reason for inspections, as management plans already underway in native forest areas are a priority. According to CONAF, inspections are done at random of around 25% of total management plans. It was found in conversations with CONAF that the level of non-compliance with management plans is below 5%.

Moreover, 70% of the surface area of plantations is certified, as there is a special inspection service in Areas of High Conservation Value, AAVC (Áreas de alto valor de conservación - AAVC). However, according to the review study of corrective actions undertaken with the support of FSC Chile (Venegas, 2013) a high percentage of minor corrective actions was linked to weaknesses in the managing the protection of endangered species. There is no information available on habitat management or endangered species among non-certified small and medium-scale producers, but it is thought, on the basis of the interviews, that these breaches of management plans are due to weaknesses related to the management plan section on conservation.

In the interview with CONAF, it was highlighted that in accordance with the law, each owner or company's management plan must describe aspects pertaining to protecting endangered species, waterways, land, special habitats, etc. Annexes to management plans are allowed when the stakeholder wishes to give precise technical details. Any native forest intervention must have a management plan under the native forest law, which in addition to the usual requirements forest plantations, must also include protection of special habitats, base extraction rate. Clear felling is not permitted. There is not sufficient information about small-scale producers to give a low-risk conclusion, and weaknesses have been identified in the FSC audits and through conversation with experts. Therefore, specified risk is recommended.

#### *Risk Conclusion*

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

#### **1.9.6. Risk designation and specification**

## Specified risk

### 1.9.7. Control measures and verifiers

- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.
- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed.
- Nature protection regulations such as protected areas, set-aside areas, protected species and hunting
- Ensure that all legal protected areas are not affected, that no harvesting is done in protected areas like SNASPE- National State System of Protected Areas (Sistema Nacional de Áreas Protegidas del estado), and AAVC.
- The appropriate legal procedures must be followed to identify protected areas and species, in accordance with current regulations.
- Management plans must comply with protection regulations.
- Information from geo-positioning and management plan map ensures that forest operations do not take place in conservations areas.
- In the forest management unit or forest plantations unit, measures are applied so that specific protected areas are not affected, such as water sources, vulnerable species habitats, etc. Compliance with these protections is checked both for natural forests and plantations.
- The appropriate legal procedures must be followed to manage and protect endangered or at-risk species within the management unit.
- Consult updated lists of protected endangered species for producers (Webpage of "Inventario nacional de especies de Chile"):  
<http://especies.mma.gob.cl/CNMWeb/Web/WebCiudadana/pagina.aspx?id=87>
- Ensure that actions are undertaken to protect rare and endangered species, in their habitats and in the management unit, through conservation zones, protection areas or other direct measures to ensure their survival and viability. There measures must be appropriate according to the scale, intensity and risk posed by management activities and the conservation status and ecological needs of the rare or endangered species in question.

### 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

- L 19.300/1994 Approves the general bases of the environment (*Bases Generales del Medio Ambiente*). Available at: <http://www.leychile.cl/Navegar?idNorma=30667>
- L 20.417/2010 Creates MMA, SEA and the Superintendence (*Crea el ministerio (MMA), el servicio de evaluación ambiental (SEA) y la superintendencia del medio ambiente*). Available at: <http://www.leychile.cl/Navegar?idNorma=1010459>
- Decree 13/1995 Gives natural monument status to Queule, Pitao, South Belloto, Northern Belloto and Ruil (*Declara monumento natural las especies forestales queule, pitao, belloto del sur, belloto del norte y ruil*) (gives natural monument status to Queule, Belloto del Norte y Sur, Pitao, Ruil). Available at: [http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13\\_queule-pitao-belloto-ruil.pdf](http://www.CONAF.cl/cms/editorweb/transparencia/potestades/Dto-13_queule-pitao-belloto-ruil.pdf)
- Decree 43/1990 Declares natural monument to the Araucaria Araucana (*Declara monumento natural a la Araucaria araucana*). Available at: <http://www.leychile.cl/Navegar?idNorma=8102&idParte=0>
- Decree 490/1976 Declares natural monument to the forest species (*Declara monumento natural a la especie forestal Alerce*). Available at: <http://www.leychile.cl/Navegar?idNorma=147731&idVersion=2003-05-08>
- Decree 295/1974 Prohibits felling in the Andean region (*Prohíbe la corta de árboles en la zona de precordillera y cordillera andina que señala*). Available at: <http://www.leychile.cl/Navegar?idNorma=1027876>
- Decree 129/1971 Prohibits cutting and removal of Copihue (*Lapageria rosea*) (*Prohíbe la corta, arranque, transporte, tenencia y comercio de copihues (Lapageria rosea) y otorga trámite de urgencia al presente decreto*). Available at: [http://www.sag.cl/sites/default/files/d\\_s\\_129\\_copihue.pdf](http://www.sag.cl/sites/default/files/d_s_129_copihue.pdf)
- Law 20.600/2012 Creates the Environmental Courts (*Crea los Tribunales Ambientales*). Available at: <http://www.leychile.cl/Navegar?idNorma=1041361>
- Decree 531/1967. Convention on the Protection of flora, fauna and scenery beauty in America (*Protección de Flora, Fauna y Bellezas Escénicas de América*). Available at: <http://www.leychile.cl/Navegar?idNorma=125338&idParte=0>
- Decree 771/1981 Concludes the Convention on Wetlands of international importance (*Zonas Húmedas de Importancia Internacional*). Available at: <http://www.leychile.cl/Navegar?idNorma=15511&idVersion=1981-11-11>
- Decree 1.963/1994 Promulgates the Convention on Biological Diversity (*Promulga Convenio sobre Diversidad Biológica*). Available at: <http://www.leychile.cl/Navegar?idNorma=18766&idVersion=1995-05-06>
- Decree 868/1981 Promulgates the Conservation of migratory species (*Sobre conservación de especies migratorias*). Available at: <http://www.leychile.cl/Navegar?idNorma=16008>
- Decree 685/1989 Promulgates the Convention on Cross-border movements of dangerous substances (*Sobre movimiento transfronterizo de sustancias Peligrosas*). Available at: [http://www.ingeachile.cl/descargas/documentos/tratados\\_internacionales/convenio\\_ba](http://www.ingeachile.cl/descargas/documentos/tratados_internacionales/convenio_ba)



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- Decree 67/1992 Promulgates Coordinated action on environmental issues (Sobre acciones coordinadas en temas medioambientales). Available at: <http://www.leychile.cl/Navegar?idNorma=8593>
- Decree 38/2005 Promulgates the Stockholm Convention on Persistent organic pollutants (Sobre contaminantes orgánicos persistentes). Available at: <http://www.leychile.cl/Navegar?idNorma=238174>
- Decree 40/2012 Approves regulation on the Environmental Impact Assessment System (*Reglamento del Sistema de Evaluación de Impacto Ambiental*). Available at: <http://www.leychile.cl/Navegar?idNorma=1053563>
- Decree 38/2011 Establishes regulations on noise (*Establece Norma de Emisión de Ruidos*). Available at: <http://www.leychile.cl/Navegar/index.html?idNorma=1040928>
- Decree 144/1961 Pollutant emissions of any kind (*Emanaciones contaminantes atmosféricos cualquier naturaleza*). Available at: [http://www.leyesambientales.cl/emisiones\\_atmosfera\\_en/ds\\_144\\_61\\_contrl\\_conta\\_en.pdf](http://www.leyesambientales.cl/emisiones_atmosfera_en/ds_144_61_contrl_conta_en.pdf)
- Decree 160/2008 Approves safety regulations for the use of liquid fuels (*Reglamento sobre combustibles líquidos*). Available at: <http://www.leychile.cl/Navegar?idNorma=1004120>
- Decree 14/2013 Approves regulation on the Minimum Environmental Water Level (*Aprueba Reglamento para determinación del Caudal Ecológico Mínimo*). Available at: [http://www.mma.gob.cl/transparencia/mma/doc/DS\\_14\\_CaudalEcologicoMinimo.pdf](http://www.mma.gob.cl/transparencia/mma/doc/DS_14_CaudalEcologicoMinimo.pdf)
- Decree 38 Approves regulation on the creation of rules for environmental quality and emissions (*Aprueba Reglamento para la Dictación de Normas de Calidad Ambiental y de Emisión*). Available at: [http://www.mma.gob.cl/transparencia/mma/doc/DS\\_38\\_2012MMA\\_ReglamentoNormasPublicado.pdf](http://www.mma.gob.cl/transparencia/mma/doc/DS_38_2012MMA_ReglamentoNormasPublicado.pdf)

#### 1.10.2. Legal authority

- Ministry of the Environment 1, 2, 8
- Ministry of Health 13, 15, 17, 18, 19
- CONAF (National Forestry Corporation/ Corporación Nacional Forestal) 3 to 7, 9 to 12, 16, 20, 21

#### 1.10.3. Legally required documents or records

- Management plan
- Register of plant stores and nurseries
- Approval of environmental impact assessment

#### 1.10.4. Sources of information

##### *Government sources*

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*Chile (El nuevo marco institucional ambiental en Chile)*. Journal Catalana de DRET Environmental, Vol I, Num. 1. [online]. Available at : <http://revistes.publicacionsurv.cat/index.php/rcda/article/view/1039> [Accessed 3 April 2017]

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#### *Non-Government sources*

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- Guiloff, M. (2011). *New environmental institutions: towards deliberative regulation (Nueva institucionalidad ambiental: hacia una regulación deliberativa)*. [online]. Yearbook of Public Law/ Anuario de derecho público (UDP). Available at: [http://www.udp.cl/descargas/facultades\\_carreras/derecho/pdf/anuario/2011/11\\_Guiloff.pdf](http://www.udp.cl/descargas/facultades_carreras/derecho/pdf/anuario/2011/11_Guiloff.pdf) [Accessed 3 April 2017]
- Conversations with various experts in May 2016 helped the writers of this report better understand relevant legislation, and associated risks of on-the-ground implementation. Regarding this indicator, representatives from different organisations were interviewed: National Forestry Corporation (Corporación Nacional Forestal), FSC Chile, logging companies, Ministry of the Environment, Agricultural and Livestock Service (Servicio agrícola y ganadero) and legal experts.

#### **1.10.5. Risk determination**

##### *Overview of Legal Requirements*

Any project or activity likely to cause an environmental impact, including any modifications to it, can only be undertaken or modified after evaluation of its environmental impact, through the presentation of an Environmental Impact Statement (EIS) or an Environmental Impact Assessment (EIA).

Measures to be taken depend on the type of project (reservoirs, building, forest exploitation etc), according to the law that approves the regulation of the environmental impact system.

Act 19.300 and its regulation amendments in 2012 specify the variables to be considered in order to define a project as requiring EIS or EIA. It applies to forest development or logging projects covering a single or continuous final harvesting area or area for regeneration felling, though the clear felling of more than 20 hectares a year from the regions of Arica and Parinacota to the region of Coquimbo. In the case of the region of Valparaíso and the Metropolitan region of Santiago, 200 hectares per year. In the case of the region of

Libertador General Bernardo O'Higgins to the region of Aysén, 500 hectares per year. In the case of the regions of Magallanes and Antártica Chilena, 1000 hectares per year. It also applies to forest development or exploitation projects on fragile soils and native forest land.

Environmental aspects are required and included on the management plans, both for plantations and native forest, in accordance with the laws D.L. 701 and Law No. 20,283, respectively.

### *Description of Risk*

The lands subject to forestry activities with forest plantations do not come under EIS or EIA environmental impact assessment systems since their annual development area is less than the area indicated in the national environmental impact regulation (500 ha). However, these lands must be subject to management plans with elements aimed at preventing environmental impacts, although these plans have limited requirements in environmental terms in relation to the aspects covered by this risk indicator. They mainly require protection of waterways and native areas, threatened species, protection from fires, pests and diseases. However, the control of these issues is done by CONAF, and in the opinion of stakeholders the control on environmental requirements conducted is weak, and is common to exclude protected areas from the scope of the control done by the government on the field (there is a lack of technical resources and lack of specific knowledge about environmental issues). It was not possible to obtain objective evidence that would allow assessment of the levels of non-compliance in these areas.

In the interview with CONAF, it was highlighted that in accordance with the law, each owner or company's management plan must describe aspects pertaining to protecting endangered species, waterways, land, special habitats, etc. However, information is not always fulfilled correctly or completed. For example, the SAG (Agricultural and Livestock Service) defines authorized chemicals in Chile, but there is a risk that the management plan does not stipulate which chemicals are to be used or not leading to a risk of using banned chemicals. The format of management plans does not always allow for everything to be written down (limited space for writing).

Any non-forest project (e.g. conversion) affecting native forests must have an EIS or EIA. In the case of interventions in native forests on fragile soil, these must have an EIS or EIA. No such projects have been submitted in Chile in the last five years. Stakeholder interviews indicate that enforcement is stricter for native forest, but there is no objective evidence from CONAF to support this assertion.

### *Risk Conclusion*

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

#### **1.10.6. Risk designation and specification**

Specified risk

#### **1.10.7. Control measures and verifiers**

- Harvesting must be conducted within the boundaries authorised by the Ministry of the Environment and CONAF.
- Harvesting must not be done in areas where it is forbidden.

- All selected trees found within the forest areas and plantations must comply with the technical requirements in the management plan.
- Harvesting restrictions shall be observed in the field.
- Established control and corrective measures shall be complied with in accordance with EIA and EIS.
- Authorities are consulted to check if forest administrators have any sanctions or non-compliance against their name

### 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

- Decree 725/1967. Health Code (*Código Sanitario*). Available at: <http://www.leychile.cl/Navegar?idNorma=5595>
- Act 16.744/1968 Establishes rules on work accidents and professional diseases (*Establece normas sobre accidentes de trabajo y enfermedades profesionales*). Available at: <http://www.leychile.cl/Navegar?idNorma=28650>
- Decree 38/2011 Establishes regulations on noise (*Establece Norma de Emisión de Ruidos*). Available at: <http://www.leychile.cl/Navegar/index.html?idNorma=1040928>
- Decree 977/1996 Approves Food Health Regulations (*Reglamento Sanitario de los alimentos*). Available at: <https://www.leychile.cl/Navegar?idNorma=71271>
- Decree 157/2005. Regulation on pesticides for health and domestic purposes (*Reglamento de pesticidas de uso sanitario y doméstico*). Available at: <http://www.leychile.cl/Navegar?idNorma=262263>
- Decree 78/2009 Approves hazardous substances storage regulations (*Reglamento de Almacenamiento de Sustancias Peligrosas*). Available at: <http://www.leychile.cl/Navegar?idNorma=1016975>
- Decree 148/2003 Approves Health regulation on dealing with hazardous waste (*Reglamento Sanitario sobre Manejo de Residuos Peligrosos*). Available at: <http://www.leychile.cl/Navegar?idNorma=226458>
- Resolution 964/2001 Establishes measures to be followed by companies with forest and agricultural camps (*Establece medidas que deberán cumplir las empresas que cuenten con campamentos forestales y agrícolas*). Available at: <http://www.leychile.cl/Navegar?idNorma=192123>
- Decree 144/1961 Pollutant emissions of any kind (*Emanaciones contaminantes atmosféricas cualquier naturaleza*). Available at: [http://www.leyesambientales.cl/emisiones\\_atmosfera\\_en/ds\\_144\\_61\\_contrl\\_conta\\_en.pdf](http://www.leyesambientales.cl/emisiones_atmosfera_en/ds_144_61_contrl_conta_en.pdf)

- Decree 160/2008 Approves safety Regulations on liquid fossils (*Reglamento sobre combustibles líquidos*). Available at: <http://www.leychile.cl/Navegar?idNorma=1004120>
- Decree 594/1999 Regulation on basic health and environmental conditions at the workplace (*Reglamento sobre condiciones sanitarias y ambientales básicas en los lugares de trabajo*). Available at: <https://www.leychile.cl/Navegar?idNorma=167766>
- Act 20308/2008 On the protection of employees for usage of plant health products (*Sobre protección a los trabajadores en el uso de productos fitosanitarios*). Available at: <http://www.leychile.cl/Navegar?idNorma=284009&buscar=20308>
- Decree 5/2010. Approves Regulation on spraying pesticides (*Reglamento sobre Aplicación aérea de plaguicidas*). Available at: <http://www.leychile.cl/Navegar?idNorma=1017349>
- Resolution 290/2000. Regulation on terrestrial application of agrochemicals (*Regula aplicación terrestre de agroquímicos*) ARAUCO. Available at: <http://www.leychile.cl/Navegar?idNorma=168172>
- Resolution 3283/2002. Establishes compulsory notification of terrestrial application of pesticides (*Establece notificación de aplicación terrestre de plaguicidas*). Available at: <http://www.leychile.cl/Navegar?idNorma=206101>

#### 1.11.2. Legal authority

- Ministry of Health 1, 3 to 15
- Ministry of Labour 2
- Health Insurance Schemes (specific internal rules)

#### 1.11.3. Legally required documents or records

- Payment of health and social security contributions
- Insurance against accidents at work
- Approved competency in health matters (Habilitación de salud compatible)
- Certificate of labour and Social Security records (Certificado de Antecedentes Laborales y Previsionales)
- Internal regulations on occupational health and safety
- Registered emergency plans

#### 1.11.4. Sources of information

##### *Government sources*

- Labour Directorate (2014). *Compendium of statistical series 1990-2014* ( *Compendio de series estadísticas 1990-2014*). [online]. Website Labour Directorate (Dirección del trabajo). <http://www.dt.gob.cl/documentacion/1612/w3-propertyvalue-22777.html>
- isl.gob.cl (N.Y). [online]. Web page of ISL (Occupational Safety Institute/ Instituto de Seguridad Laboral). Available at: [www.isl.gob.cl](http://www.isl.gob.cl) [Accessed 3 April 2017]

##### *Non-Government sources*

- Information on SSO Joint Committees (Información sobre comités paritarios de SSO).

<http://www.paritarios.cl/descargas.htm>

- Rozas, M. (2010). *Chile report on pesticides-Current situation and legislation (Plaguicidas en Chile Situación Actual y legislación en curso)*. [online]. Partnership for better quality of life (Alianza por una mejor Calidad de Vida). Available at: <http://sitios.upla.cl/contenidos/wp-content/uploads/2010/08/Mar%C3%ADA-Elena-Rozas.pdf> [Accessed 3 April 2017]
- Ackerknecht, C. (2015). *Occupational safety indicators for forestry operations, sawmills and manufacture of wood-based boards (Indicadores de seguridad ocupacional para operaciones forestales, aserraderos y fabricación de tableros en base a madera)*. [online]. Ciencia & Trabajo, Vol 17, n53, 89-98. Available at: [http://www.scielo.cl/scielo.php?pid=S0718-24492015000200001&script=sci\\_abstract](http://www.scielo.cl/scielo.php?pid=S0718-24492015000200001&script=sci_abstract) [Accessed 3 April 2017]
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- Lagos Padilla, S. et al. (2009). *Physical evaluation of candidates to forestry brigade officers as an occupational health and safety precautionary process (Evaluación fisiológica de postulantes a brigadistas forestales como proceso preventivo en seguridad y salud ocupacional)*. [online]. Ciencia y enfermería XV (1), 89-97. Available at: [http://www.scielo.cl/scielo.php?pid=S0717-95532009000100010&script=sci\\_arttext&tlng=e](http://www.scielo.cl/scielo.php?pid=S0717-95532009000100010&script=sci_arttext&tlng=e) [Accessed 3 April 2017]
- Conversations with various experts in May 2016 helped the writers of this report better understand relevant legislation, and associated risks of on-the-ground implementation. Regarding this indicator, representatives from different organisations were interviewed: FSC Chile, Biobio Health Service, logging companies, Confederation of Forest Workers and legal experts.

#### 1.11.5. Risk determination

##### *Overview of Legal Requirements*

The main requirements of Compulsory Social Security are:

"Compulsory Social Security against Accidents of Work and Professional Illnesses", recognising the existence of three worker insurance companies that are still in operation today.

In 2006, Law 20,123 was passed, which established regulations for the main companies that use labour in subcontracting regimes, and incorporated the obligation to monitor health and safety regulations by these contractors or subcontractors. A system of health and safety management at work must be implemented, for all workers involved, whatever their dependency, when there are more than 50 workers.

In 2011 Chile ratified ILO Convention 187, the Committee of Ministers and the Occupational Health and Safety Advisory Council was created and a bill was introduced to create a Superintendence of Mining Safety and Health and Safety at Work Office in the Superintendence of Social Security. In 2012 a draft was submitted to amend the Organic Law of employers' insurance companies and in 2013 to amend Law 16,744 on Social

## Security against Work Accidents and Occupational Illnesses.

Companies seek to minimise the impact during work in the forest, ensuring compliance with current safety standards, compliance with hygiene standards and workers' rights to access health care in case of illness. For the surrounding communities, care must be taken to minimise the impacts of the work and the inconvenience that this entails. The health and safety regulations are managed by the Ministry of Health.

### *Description of Risk*

According to international studies, Chile ranked well globally in 2010-12, reaching tenth place, surpassing countries like the United States and UK for Fatality and Production rates versus Fatalities in Forest Harvesting. (Work in the forestry sector 'issues that arise for a changing workforce 2010' Ackerneck) (El trabajo en el sector forestal "cuestiones que se plantean para una fuerza de trabajo cambiante 2010" Ackerneck).

According to the opinion of the interviewees from the Regional Health Service (SEREMI) in Biobio and the Confederation of Forest Workers, Chilean law is strict in labour and occupational safety, with high fines imposed. Moreover, forest certification has improved the relationship of forestry companies with their trade unions, according to the Confederation of Forest Workers. In addition, to be noted is the Zero Accidents campaign with CORMA, companies and government, which has reduced accidents, but not deaths. The Social Security Regional Commission was also created, under the government of President Piñera to meet ILO requirements.

Based on the interview with the Department of Sanitary and Environmental Action, there is an adequate set of regulations for appropriate access to drinking water and waste control, among others. This involves the main contractor, contractors and subcontractor. There are also support programmes such as guidelines for psychosocial factors, musculoskeletal problems, Occupational Exposure to Noise Protocol (PREXOR) and other voluntary guides through the insurance company together with the company. Based on their statistics and experience, overall risk is not significant.

The interviewees said that there are still shortcomings with small producers. However, there is no updated information on compliance studies that clearly show these gaps. This is because the statistical information shared by the Confederation and the SEREMI Health have no specific information on this segment. It was mentioned in the interview with the Biobio clean production Council, that they had detected gaps in SMEs in relation to waste management and personal protection.

### *Risk Conclusion*

For large forest operations (above 50.000 ha): This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

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

### **1.11.6. Risk designation and specification**

Low risk: For big businesses

Specified risk: For small forest producers



#### 1.11.7. Control measures and verifiers

- Insurance company safety reports
- Labour inspection reports.
- Certificate of labour and Social Security records (Certificado de Antecedentes Laborales y Previsionales)
- All health and safety regulations must be complied with and the required safety equipment must be used. Check with the authority what the requirements are ([www.minsal.cl](http://www.minsal.cl)). Especially for small producers. Ministry of Health [www.minsal.cl/salud-ocupacional/](http://www.minsal.cl/salud-ocupacional/)
- All personnel involved in harvesting activities must comply with occupational health and safety requirements in accordance with Chilean regulations.
- Interviews with staff and contractors should confirm that the legally required protective equipment is provided by the organisation.
- Official audit reports on occupational health and safety are available, based on national standards. [www.minsal.cl](http://www.minsal.cl) (transparency portal).
- There are reports on the implementation of actions required by the authority, if applicable.
- All those involved in forestry operations are covered by the social security and work risk system and work, according to what the law stipulates.
- Training personnel on occupational safety and health is confirmed.
- On the ground checking of compliance regarding security in the workplace.

#### 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

- DF L 1/2002 in the Code of Labour (Código del trabajo). Available at: <http://www.leychile.cl/Navegar?idNorma=207436>
- RES 611/1999. Requirements and procedures for establishing a compulsory attendance control system and determination of hours of work, rest and remuneration for drivers of long-distance land cargo vehicles (Requisitos y procedimientos para establecer un sistema obligatorio de control de asistencia y determinación de las horas de trabajo, de descanso y de las remuneraciones para los trabajadores choferes de vehículos de carga terrestre interurbana). Available at: <http://www.leychile.cl/Navegar?idNorma=137604>

##### 1.12.2. Legal authority



- Ministry of Labour

### 1.12.3. Legally required documents or records

- Certificate of compliance with labor and social security obligations
- Membership of the Pension Fund Association (AFP) or Instituto de Normalización Previsional (INP)

### 1.12.4. Sources of information

#### *Government sources*

- Dt.gob.cl (2016). *Certification of compliance with labour & Social Security obligations (Certificado de cumplimiento de obligaciones laborales y previsionales)*. [online]. Website of Labour Directorate (Dirección del Trabajo), Government of Chile. Available at: <http://www.dt.gob.cl/tramites/1617/w3-article-100359.html> [Accessed 3 April 2017]
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#### *Non-Government sources*

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- fundacionsol.cl (2007). *Report on working conditions in forestry (Informe situación laboral sector forestal)*. [online]. Website of Sol foundation (Fundación Sol). Available at: <http://www.fundacionsol.cl/wp-content/uploads/2010/09/Cuaderno-4-Industria-Forestal.pdf> [Accessed 3 April 2017]
- Conversations with various experts in May 2016 helped the writers of this report better understand relevant legislation, and associated risks of on-the-ground implementation. Regarding this indicator, representatives from different organisations were interviewed: National Forestry Corporation (Corporación Nacional Forestal), FSC Chile, Confederation of Forest Workers and legal experts.

### 1.12.5. Risk determination

#### *Overview of Legal Requirements*

Worker and employer relations are regulated by the Labour Code and various complementary regulations. A new Labour Code was issued in January 1994 which included

reforms approved by all political sectors and was aimed at better protecting collective bargaining, individual work contracts and the exercise of freedom of association, as well as streamlining procedures in Employment Courts. In addition, the National Trade Union Training Fund was created, an autonomous government entity, which began its work in July of the same year. A key element of labour law refers to the individual contract defined by management as an agreement between a worker and an employer, in which both parties have contractual obligations: the worker, to provide personal services under subordination and dependency; the employer, to pay remuneration for those services. The minimum working age for personnel involved in hazardous work is 15 years old,

The contract must be signed by both parties, with two copies: one for the worker and the other for the employer. This must be notarised within 15 days of the worker commencing work. For one-off contracts, fixed-term contracts or those under 30 days, this must be done in 5 days.

### *Description of Risk*

According to the International Trade Union Confederation's international ranking of labour conditions, Chile occupies an intermediate position in terms of labour compliance with a mark of 3, alongside countries like Canada, Brazil and Costa Rica (5+ is the worst and 1 is the best).

According to the interviewees, in particular the SEREMI health service in Biobio, the Confederation of Forest Workers and a legal specialist, Chile has strict laws regarding labour and occupational safety with high fines and periodic inspections. The results of these inspections, show that large producers and companies follow the requirements to a larger extent than small/medium companies that not always have the capacity to invest on this area. Moreover, forest certification has improved the relations of logging companies with their unions, according to the Confederation of Forestry Workers. It also mentions that the issue of contracts has advanced, and now an external company, OVAL, is contracted to certify that contracts are properly enforced. This is used mainly by large companies. Small companies do not have such certification and, though conversation with stakeholders and government, as well as by reviewing statistics, is where they non-compliance has been detected according to the labor inspection

In the Labour Department there is an inspection plan which has detected problems associated with breaktimes, working hours and overtime payment, especially for company personnel. The risk however, differs between industry and small producers, especially those involved in native forests, where informal and precarious work is found. Information was requested from the Directorate of Labour, as were interviews, but there was no response, so it was not possible to obtain documented evidence of this situation. Other interviewees also highlighted this gap.

### *Risk Conclusion*

For large forest operations: This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

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

#### **1.12.6. Risk designation and specification**

Low risk for large forest operations.

Specified risk for small producers

#### **1.12.7. Control measures and verifiers**

- Certificate of compliance with labor and Social Security obligations: <http://www.dt.gob.cl/1601/w3-article-59889.html>
- Interviews with personnel and contractors must confirm that protective, legally required equipment is provided by the organisation.
- Consultations with Forest Workers Confederation: <http://ctf-chile.blogspot.cl/>
- All those involved in forest operations are covered by a social security and risks at work system, according to what the law stipulates.

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

- Act 19.253/1993 Establishes Standards on Protection, Development and Indigenous Development CONADI (*Sobre Protección, Fomento y Desarrollo indígena CONADI*). Available at: <http://www.leychile.cl/Navegar?idNorma=30620>
- Decree 236/2008. Promulgates the agreement N° 169 on indigenous and tribal peoples in independent countries of the international labor organization (*Promulga el Convenio N° 169 sobre pueblos indígenas y tribales en países independientes de la organización internacional del trabajo*). Available at: <http://www.leychile.cl/Navegar?idNorma=279441>
- Decree 40/2012 Approves regulation of the environmental impact assessment system (*Aprueba reglamento del sistema de evaluación de impacto ambiental*). Available at: <https://www.leychile.cl/Navegar?idNorma=1053563>
- Decree 396/1993 Approves rules for the operation of the indigenous development fund (*Aprueba reglamento para la operación del fondo de desarrollo indígena*). Available at: <https://www.leychile.cl/Navegar?idNorma=13002>
- Decree 636/1990 Creates commission on education and indigenous culture (*Crea comisión de educación y cultura indígena*). Available at: <https://www.leychile.cl/Navegar?idNorma=14781>
- DFL 1122/1981 Fixed text of the water code Water Code (*Fija texto del código de aguas*). Available at: <http://www.leychile.cl/Navegar?idNorma=5605>
- Law 20.249/2008 Creates the marine coastal space of the originating peoples (*Crea el espacio costero marino de los pueblos originarios*). Available at: <http://www.leychile.cl/Navegar?idNorma=269291&buscar=Ley+20249>

#### 1.13.2. Legal authority

- Ministry of Social Development (Ministerio de desarrollo social) 2, 4
- Conadi 1, 5, 6
- Ministry of the Environment (Ministerio de medio ambiente) 3, 7

#### 1.13.3. Legally required documents or records

- CONADI plan of land titles (Plano CONADI títulos de merced)

#### 1.13.4. Sources of information

##### *Government sources*

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Indígena) - Ministry of Economy, Development and Tourism . Available at:  
<http://www.conadi.gob.cl/Guia-Applicacion-Ley%2020.249.pdf> [Accessed 3 April 2017]

#### *Non-Government sources*

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- Acevedo Vicencio, K. (2010). *Recognition of indigenous customary law (Reconocimiento del derecho propio indígena)*. [online]. University of Chile (Universidad de Chile). Available at: [http://repositorio.uchile.cl/tesis/uchile/2010/de-acevedo\\_k/pdfAmont/de-acevedo\\_k.pdf](http://repositorio.uchile.cl/tesis/uchile/2010/de-acevedo_k/pdfAmont/de-acevedo_k.pdf) [Accessed 3 April 2017]
- Inter-American Commission on Human Rights (2010). *Tribal and indigenous people's rights to their customary land and natural resources (Derechos de los pueblos indígenas y tribales sobre sus tierras ancestrales y recursos naturales)*. [online]. Website of Organization of American States (Organización de los Estados Americanos). Available at: <http://www.oas.org/es/cidh/indigenas/docs/pdf/tierras-ancestrales.esp.pdf>
- Conversations with different experts during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organizations were interviewed including: Forest Companies, FSC Chile, Profesional Mapuche, SSC Americas and legal expert

#### **1.13.5. Risk determination**

##### *Overview of Legal Requirements*

Even though Chile is signatory of ILO Convention 169, which has been ratified in the country and is part of Chilean legal framework, there are application insufficiencies as regards customary law, particularly in the case of native peoples. The Constitutional Court of Chile has pointed out on two occasions that ILO Convention 169 is non-executing, which increases the chances for non-application in the country.

In view of the aforementioned circumstances, it can be concluded that indigenous people's customary law has not been clearly recognised in Chilean legal framework and thus, this sub-indicator is not applicable. 1.13. Since this issue is one of great relevance for the country on the national and international level, it shall be analysed under Category 2 on Controlled Wood.

According to Chilean common law (Civil Code), "custom does not constitute a right except in cases where the law refers to it", meaning that legal rights (registered ownership deeds or water rights), prevail over the customary. It is resolved in a similar way in the Commercial Code, according to which commercial customs "take the place of the silence of the law", but with a series of requirements and a specific form of proof, which is not consistent with the speed of changes in modern commercial traffic.

On the other hand, in civil law, reference is made to situations based on custom in articles referring, for example, to leasing and mandate contracts, but, more importantly, there are rules in the general interpretation of contracts which indicate that "clauses of common use

are presumed even if they are not expressed" (Section 1563); and that "the contracts must be executed in good faith" and, therefore, they oblige that what emanates from the nature of the obligation, or that which by law or custom belongs to them (Section 1546).

Therefore, despite the fact that Chile is a signatory of the ILO Convention 169 and it has been ratified under Chilean law, there are shortcomings in the enforcement of customary law, especially regarding the right of indigenous people, as can be seen in the enforcement of the Supreme Decree 40 which makes explicit the indigenous consultation on projects impacting indigenous peoples. The Chilean constitutional court has stated on two occasions that the ILO Convention 169 is non-executing, which reaffirms its non-applicability in the country.

### *Description of Risk*

There is a much deeper historical conflict between the state of Chile and the indigenous people which is affecting the coexistence of territories that goes beyond the respect for customary rights and that has resulted in a climate of belligerence affecting the Mapuche territories of the regions of the Biobio, Araucania, the Rivers and the Lakes. In these regions, there are communes where there are potential overlaps between registered property titles of forest lands and (customary) land titles (<http://www.conadi-siti.cl/>).

According to interviews with Mapuche consultants and specialized lawyers, although there are laws that make explicit the recognition of customary law, there are shortcomings in its enforcement, which generates potential conflicts regarding the customary land rights of indigenous people.

Accordingly, the customary law of indigenous people is not clearly recognized by Chilean legislation, and has not been implemented, therefore, this sub-indicator 1.13. is not applicable.

### *Risk Conclusion*

N/A

#### **1.13.6. Risk designation and specification**

N/A

#### **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.*

#### **1.14.1. Applicable laws and regulations**

- Decree 236/2008. Promulgates the agreement N° 169 on indigenous and tribal peoples in independent countries of the international labor organization (*Promulga el Convenio N° 169 sobre pueblos indígenas y tribales en países independientes de la organización internacional del trabajo*). Available at: <http://www.leychile.cl/Navegar?idNorma=279441>
- Decree 40/2012 Approves regulation of the environmental impact assessment system

(Aprueba reglamento del sistema de evaluación de impacto ambiental). Available at: <https://www.leychile.cl/Navegar?idNorma=1053563>

- conadi.gob.cl (2014). *Chile is a signatory country to the Convention 169 of the International Labour Organization (Indigenous and Tribal Peoples Convention, 1989), ratified in 2008*. [online]. Website of CONADI (National Corporation of Indigenous Development /Corporación Nacional de Desarrollo Indígena). Available at: <http://www.conadi.gob.cl/index.php/noticias-conadi/1360-a-6-anos-de-la-ratificacion-del-convenio-169-de-la-oit-conadi-destaca-actual-proceso-de-consulta-indigena> [Accessed 3 April 2017]

#### 1.14.2. Legal authority

- Ministry of Social Development (Ministerio de desarrollo social) 1
- CONADI 3
- Ministry of the Environment (Ministerio de medio ambiente) 2

#### 1.14.3. Legally required documents or records

N/A

#### 1.14.4. Sources of information

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- Nash, C. et al. (2014). *Human rights and indigenous peoples in Chile. Case-law analysis for consultation processes within the framework of ILO Convention 169 (Derechos Humanos y pueblos indígenas en Chile. Análisis jurisprudencial para procesos de consulta en el marco del Convenio 169 de la OIT)* // Center for Human Rights (Centro de Derechos Humanos). [online]. Available at: [http://www.academia.edu/15612214/Derechos\\_Humanos\\_y\\_pueblos\\_ind%C3%ADgenas\\_en\\_Chile.\\_An%C3%A1lisis\\_jurisprudencial\\_para\\_procesos\\_de\\_consulta\\_en\\_el\\_marco\\_del\\_Convenio\\_169\\_de\\_la\\_OIT](http://www.academia.edu/15612214/Derechos_Humanos_y_pueblos_ind%C3%ADgenas_en_Chile._An%C3%A1lisis_jurisprudencial_para_procesos_de_consulta_en_el_marco_del_Convenio_169_de_la_OIT) [Accessed 3 April 2017]
- Ilo.org (2013). *Understanding the Convention on indigenous and tribal peoples - Handbook for ILO Tripartite Constituents (Comprender el Convenio sobre pueblos indígenas y tribales - Manual para los mandantes tripartitos de la OIT)*. [online]. International Labor Office (ILO)/ Oficina Internacional del Trabajo (OIT). Available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_205230.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_205230.pdf) [Accessed 3 April 2017]
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[Accessed 3 April 2017]

- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organizations were interviewed including: Forest Companies, FSC Chile, Profesional Mapuche, SSC Americas and legal expert.

#### **1.14.5. Risk determination**

##### *Overview of Legal Requirements*

The implementation of the indigenous consultation in Chile is still experiencing problems in order to meet the standards demanded by the ILO. Although numerous indigenous organizations were consulted regarding this regulation, it is currently receiving strong criticism, a situation which has been ratified by the International Working Group on Indigenous Issues. On the one hand, indigenous communities do not feel represented by the system that regulates the consultation and, on the other hand, the processes tend to be judicialised.

As noted, the FPIC of indigenous peoples is not clearly recognized by Chilean legislation, therefore, this sub-indicator 1.14. is not applicable. Since this subject is relevant both on a national and international level for the country, it will be analysed in Category 2. The ILO Convention 169 was ratified by the Chilean State in 2008, becoming fully effective in September 2009, however, the Chilean constitutional court has considered it to be non-executable. On December 25, 2013, the Supreme Decree No. 40 of the Ministry of the Environment, (Decreto Supremo No 40, del Ministerio del Medio Ambiente) came into force, which "approved the Regulation of the Environmental Impact Assessment System" (SEIA), containing rules on "consultation" of indigenous people in Investment projects submitted to SEIA.

In March 2014 the Supreme Decree No. 66 of the Ministry of Social Development (Decreto Supremo No. 66 del Ministerio de Desarrollos Social) came into force, which regulates the procedure for indigenous consultation. This regulation, according to the opinion of lawyers of the citizen observatory and other interested Mapuche and non-Mapuche Chilean stakeholders who were consulted, reduces the standards of the ILO Convention 169 by limiting the consultation to legislative projects which have a direct and significant impact on indigenous people.

##### *Description of Risk*

The implementation of the indigenous consultation in Chile is still experiencing problems in order to meet the standards demanded by the ILO. Although numerous indigenous organizations were consulted regarding this regulation, this situation which has been ratified by the International Working Group on Indigenous Issues it is currently receiving strong criticism. On the one hand, indigenous communities do not feel represented by the system that regulates the consultation and, on the other hand, the processes tend to be judicialised.

As noted, the FPIC of indigenous peoples is not clearly recognized by Chilean legislation, therefore, this sub-indicator 1.14. is not applicable.

##### *Risk Conclusion*

N/A

#### 1.14.6. Risk designation and specification

N/A

#### 1.14.7. Control measures and verifiers

N/A

### 1.15. Indigenous/traditional peoples' rights

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

#### 1.15.1. Applicable laws and regulations

- Act 19.253/1993. Indigenous Act (*Ley Indígena*). Available at: <http://www.leychile.cl/Navegar?idNorma=30620>
- Decree 236/2008. Promulgates the agreement no. 169 on indigenous and tribal peoples in independent countries of the international labor organization (*Promulga el convenio N° 169 sobre pueblos indigenas y tribales en paises independientes de la organizacion Internacional del trabajo*). Available at: <https://www.leychile.cl/Navegar?idNorma=279441>
- un.org (2007). UN Declaration on the Rights of Indigenous Peoples (*Declaración ONU sobre Derecho de los Pueblos Indígenas*) [online]. Available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_es.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf) Note: it is not binding.
- Act 20.249/2008 Creates the marine coastal space of the originating people (Crea el espacio costero marino de los pueblos originarios). Available at: <https://www.leychile.cl/Navegar?idNorma=269291>
- Decree 40/2012 Approves regulation of the environmental impact assessment system (Aprueba reglamento del sistema de evaluación de impacto ambiental). Available at: <https://www.leychile.cl/Navegar?idNorma=1053563>
- Decree 66/2013. Indigenous Consultation Regulation (*Reglamento de Consulta Indígena*). Available at: <https://www.leychile.cl/Navegar?idNorma=1059961>

#### 1.15.2. Legal authority

- Ministry of Social Development (Ministerio de Desarrollo Social) 6
- Ministry of the Environment (Ministerio de Medio Ambiente) 4, 5,
- CONADI 1, 2
- Ministry of Foreign Affairs (Ministerio de Relaciones Exteriores) 3

#### 1.15.3. Legally required documents or records

There are none.

#### 1.15.4. Sources of information

*Government sources*

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#### *Non-Government sources*

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- Inter-American Commission on Human Rights (2010). *Tribal and indigenous people's rights to their customary land and natural resources (Derechos de los pueblos indígenas y tribales sobre sus tierras ancestrales y recursos naturales)*. [online]. Website of Organization of American States (Organización de los Estados Americanos). Available at: <http://www.oas.org/es/cidh/indigenas/docs/pdf/tierras-ancestrales.esp.pdf> [Accessed 3 April 2017]
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- Conversations with different experts during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organizations were interviewed including: Forest Companies, FSC Chile, Profesional Mapuche, SSC Americas and legal expert.

#### **1.15.5. Risk determination**

##### *Overview of Legal Requirements*

According to estimates by the National Institute of Statistics, the rural population in Chile reaches 13% on a national level, with rurality levels close to 30% in the southern central part of the country. The population that identifies itself as belonging to or descended from one of the nine indigenous peoples recognized by law in Chile reaches 1,369,563 people, representing 8% of the total population of the country, comprising the following communities: Aymara (0.59%); Lickanantay (0.14%); Quechua (0.07%); Colla (0.06%) and Diaguita (0.06%), inhabitants of the Andean valleys and plateaus in the North; rapanui of

Polynesian Te Pito or Te Henua (Easter Island) (0.03%); Mapuches (6.97%) of the temperate and rainy Wallmapu of the South; In addition to kawashkar (0.01%) and yamana (0.01%), from the southern Patagonian channels.

The Chilean Political Constitution of 1980 still does not recognize indigenous peoples and their rights. The draft constitutional reform referring to these peoples presented to the National Congress in 2007-2008 did not have any progress for this recognition (Indigenous Consultation 2014). Indigenous communities are regulated by Act N° 19.253 (Ley N° 19.253) of 1993 on "promotion, protection and development of indigenous communities." Another regulation that recognises and regulates the exercise of the rights of Chilean indigenous communities is Law N° 20,249 (Ley N° 20.249), promulgated in 2008, which "creates the coastal marine spaces of the native peoples". ILO Convention 169 (Convenio 169 de la OIT) was ratified by the Chilean State in 2008 and became fully effective in September 2009. However, its implementation has been limited by constitutional court rulings indicating that the agreement is non-enforceable.

#### *Description of Risk*

Chile it is far behind in terms of the recognition of indigenous rights, which has been ratified in interviews with various stakeholders.

In an interview with a Mapuche professional, he indicates that the indigenous law only partially recognizes customary rights, especially regarding land, areas of ancestral land conflict and cultural and archaeological values, however, non-ratification of the convention 169 (convenio 169) has prevented further progress. In relation to customary peasant rights as stated by the stakeholders, they are generally not very protected by national legislation, especially regarding the use of plant species, sites of special interest and rights of use of water in this last point, it is emphasized that forest certification has helped to safeguard water intakes in rural communities.

There is a legislation, however, the development of the law and the organism CONADI has never been recognized by the indigenous people the legislation and the legislation has not been implemented.

#### *Risk Conclusion*

N/A

#### **1.15.6. Risk designation and specification**

N/A

#### **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).*

#### 1.16.1. Applicable laws and regulations

- Decree 193/1998 Approves general regulations of the decree law no. 701 Regulation DL 701 (*Aprueba reglamento general del decreto Ley Nº 701*). Available at: <https://www.leychile.cl/Navegar?idNorma=125009&idParte=0>
- Decree 93/2008. Regulation of Native Forest Law (*Reglamento Ley de Bosque Nativo*) <https://www.leychile.cl/Navegar?idNorma=1006865&idParte=0>
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- NCh1969/1:2010 Timber - Broad-leaved species - Visual classification by cutting or harvesting - Part 1: Sawn or planed timber from native secondary forests of coigue, rauli and oak species (*Maderas - Especies latifoliadas - Clasificación visual por despiece o aprovechamiento - Parte 1: Madera aserrada o cepillada proveniente de bosques secundarios nativos de las especies coigüe, raulí y roble*)
- NCh 3222: 2010 Timber - Broad-leaved species - Visual classification of standing trees from native secondary forests of coigue, rauli and oak species (*Madera - Especies latifoliadas - Clasificación visual de árboles en pie de bosques secundarios nativos de las especies coigüe, raulí y roble*)
- NCh173:2008 Timber - General terminology (*Madera - Terminología general*)
- NCh2957/0:2006 Timber - Comercialización Propagation material for forest use - Part 0: Production and marketing (*Madera - Material de propagación de uso forestal - Parte 0: Producción y comercialización*)
- NCh2957/1:2006 Timber- Propagation material for forest use - Part 1: General requirements for *Pinus radiata* (*Madera - Material de propagación de uso forestal - Parte 1: Requisitos generales para Pinus radiata*)
- NCh2957/2:2006 Timber – Propagation material for forest use - Part 2: General requirements for *Eucalyptus globulus* and *Eucalyptus nitens* (*Madera - Material de propagación de uso forestal - Parte 2: Requisitos generales para Eucalyptus globulus y Eucalyptus nitens*)
- NCh2957/4:2006 Timber – Propagation material for forest use- Part 4: General requirements for Oregon pine (*Madera - Material de propagación de uso forestal - Parte 4: Requisitos generales para pino oregón*)



- NCh2957/5:2006 Timber –Propagation material for forest use - Part 5: General requirements for rauli (*Madera - Material de propagación de uso forestal - Parte 5: Requisitos generales para Raulí*)
- NCh178:2005 Radiata Pine Sawn Timber - Classification by aspect (*Madera aserrada de pino radiata - Clasificación por aspecto*)

#### 1.16.2. Legal authority

- CONAF 1,2
- INN 3 to 11

#### 1.16.3. Legally required documents or records

- Dispatch Guide (Guía de despacho) Management plan (Plan de manejo)
- Free-transit guide in the case of native forests (Guía de libre tránsito en caso de bosque nativo)

#### 1.16.4. Sources of information

##### *Government sources*

- conaf.cl (N.Y.). *Management plan forms (Formularios Plan de manejo)*. [online]. Webpage of CONAF (National Forestry Corporation/ Corporación Nacional Forestal). Available at: <http://www.conaf.cl/nuestros-bosques/bosque-nativo/formularios-para-plan-de-manejo/> [Accessed 3 April 2017]
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- infor.cl (2016). *The chilean forest sector 2016*. [online]. Web page of INFOR Chile. Available at: [http://wef.infor.cl/sector\\_forestal/sectorforestal.php#/0](http://wef.infor.cl/sector_forestal/sectorforestal.php#/0) [Accessed 3 April 2017]

##### *Non-Government sources*

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- Anaya, H. and Christiansen, P. (1987). *Forests harvesting, transport and tools (Aprovechamiento forestal aseo y transporte)*// Editorial Service IICA. [online]. Available at: <http://orton.catie.ac.cr/reprodoc/A9825e/A9825e.pdf> [Accessed 3 April 2017]
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- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different



organizations were interviewed including: Forest Companies, FSC Chile, Profesional Mapuche, SSC Americas and legal expert.

#### **1.16.5. Risk determination**

##### *Overview of Legal Requirements*

Decrees 193 and 93 categorise the native and exotic forest management present in the country. For aspects of classification and quality of forest products reference is made to INN standards. Transported forest products must be clearly specified indicating origin, volume or weight, type and transaction unit in addition to the data.

As indicated by CONAF, the control of Free Transit Guides in native forest is carried out specifically through two control activities, commonly known as Road Control and Control of Collection Centers. In the first, the carrier must carry the guide at all times during the transport and in the second the owner and/or administrator of the Collection Center should always have it in the place where the products are collected. The above, is in order to prove the legal origin of the wood.

##### *Description of Risk*

Figures provided by the institution indicate that in the period 2013 to 2015 only 279 infractions have occurred during the Road Control and Control of Collection Centers (for native forest), which is considered to be low.

However, recently, the Public Ministry has prosecuted a forest entrepreneur for issuing false bills and guides in the commune of Cañete and Tirúa, with incorrect classification of species and category of the timber. In interviews with the Internal Tax Service of the BioBio Region, it was indicated that the situation was verified by the service through its special cases unit, this investigation is under development so it is difficult to determine if the evasion affects other communes, furthermore, it was pointed out in the interview that a similar case had occurred in the Region of Araucanía but to date the entity has not sent supporting evidence, it is also pointed out that there is adequate coordination with CONAF.

On the other hand, in an interview with forestry companies, it is pointed out that, once the situation was made known to the Public Ministry, CORMA (Chilean Timber Corporation) in 2015, it generated a protocol/purchase procedure that was signed by all of its associates and that according to the companies assures the legal origin of the timber. The Draft paper CNRA Chile was sent to companies and to Corma requesting evidence, but no information was received on the subject. Interviews with Mapuche professionals working in the area indicate that the problem remains, but that it is difficult to determine the extent of it. On the basis of available evidence, it is concluded that, except in forest plantation areas (on the communes indicated) where there are problems of forgery, the indicator is considered to be low risk.

In view of all of the circumstances mentioned above, it is generally considered to be low risk, except in the municipalities of Cañete and neighboring areas where the Public Ministry has detected a timber fraud and in the vicinity of landings and those declared in dispute in the FSC public reports.

##### *Risk Conclusion*

For the case of forest plantations in the municipalities of Cañete and Tirúa (Arauco Province) This indicator has been evaluated as specified risk. Identified laws are not upheld

consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

And

For the rest of the country (case of native forest and forest plantations): This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### 1.16.6. Risk designation and specification

Low Risk on a national level in the case of native forest and forest plantations

Specified risk for the municipalities of Tirúa and Cañete (in the Province of Arauco) in the case of forest plantations

#### 1.16.7. Control measures and verifiers

- The products must be correctly classified (species, quantities, qualities, etc.) in the shipping guides.
- UTM coordinate origin (Coordenada UTM de predio origen).
- The physical control must be verified in such a way that the material present is equal to the one that has been invoiced and marked.
- Verification of the status of guides, invoices and contracts. The control applies to marketing centers such as forest transport.
- In the case of native forest verification of the free transit guide (guía de libre transito).

### 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

- Act 19.171/1992 Modifying the Supreme Decree 294 /84 Max. Vehicle and load weight (*Modifica DS 294 /84 Peso máximo vehículos y carga*). Available at: <http://www.bcn.cl/leychile/Navegar?idNorma=30538>
- Act 18.290/1984. Transit act (*ley de tránsito*). Available at: <http://www.leychile.cl/Navegar?idNorma=29708>
- Supreme Decree 55/1994 Sets the emission standards for heavy motor vehicles (*Establece normas emisión vehículos motorizados pesados*). Available at: <http://www.leychile.cl/Navegar?idNorma=8364>
- Supreme Decree 94/1991 Conditions for transporting forest products (*Condiciones para el transporte de productos forestales*). Available at: <http://www.leychile.cl/Navegar?idNorma=9104>

- Supreme Decree 75/1987 Conditions for carrying loads (*Condiciones para transporte de cargas*). Available at: <http://www.leychile.cl/Navegar?idNorma=76048>
- Supreme Decree 158/1980 Maximum vehicle weight public roads (*Peso máximo vehículos caminos públicos*). Available at: <http://www.leychile.cl/Navegar?idNorma=10212>
- Supreme Decree 19.474/1996 Road construction and conservation law (*Ley de construcción y conservación de caminos*). Available at: <http://www.leychile.cl/Navegar?idNorma=30841>
- Supreme Decree 200/1993 Establishes maximum weights to vehicles for circulation on the urban ways of the country (*Establece pesos maximos a los vehiculos para circular en las vias urbanas del pais*). Available at: <http://www.leychile.cl/Navegar?idNorma=10874>
- Supreme Decree 298/1994 Regulates the transport of hazardous substances (*Reglamenta el transporte de sustancias peligrosas*). Available at: <https://www.leychile.cl/Navegar?idNorma=12087>
- Resolution 412/1996 Labels on pesticides. Complements Res 1179/84 21 (*Etiquetas plaguicidas. Complementa Res 1179/84 21*). Available at: <http://www.leychile.cl/Navegar?idNorma=34684>
- NCh 2190/2003 On dangerous substances (*Sobre sustancias Peligrosas*). Available at: <http://www.upla.cl/sustentable/wp-content/uploads/2014/07/85844248-NCh-N%C2%BA-2190-Transporte-de-sustancias-peligrosas-Distintivos-para-identificacion-de-riesgos.pdf>

#### 1.17.2. Legal authority

- Ministry of Transport (Ministerio de Transportes) 1 to 8
- Ministry of Health (Ministerio de Salud) 1 to 10
- CONAF and Internal Tax Service Free transit guides and shipping guides (SII Guías de libre tránsito y guías de despacho)

#### 1.17.3. Legally required documents or records

- Free-transit guide in native forest (Guía de libre tránsito en bosque nativo)
- Shipping Guide (Guía de Despacho)
- Management plan (Plan de manejo)
- Weight certificate (Certificado de pesaje)

#### 1.17.4. Sources of information

##### *Government sources*

- subtrans.gob.cl (N.Y.). *Regulations for transport (Normativa de transporte)*. [online]. Website of Government of Chile. Available at: [http://www.subtrans.gob.cl/transparencia/normativa\\_a7c.html](http://www.subtrans.gob.cl/transparencia/normativa_a7c.html) [Accessed 3 April 2017]

##### *Non-Government sources*

- Salgado Cabrera, H. (2016). *Study Characterization Forest Sector: Structure, Agents and Practices (Estudio Caracterización Sector Forestal: Estructura, Agentes y Prácticas)*.

*Centro de Investigación en Economía Aplicada (Center for Research in Applied Economics)*// Power Point presentation. [online]. Available at: <https://www.camara.cl/pdf.aspx?prmID=44911&prmTIPO=DOCUMENTOCOMISION> [Accessed 3 April 2017]

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- Andalaft Ch., A. et al. (2005). *Characterisation of the forests transports services industry in Chile and companies' competition strategies (Caracterización de la industria de servicios de transporte forestal en Chile y estrategias competitivas de las firmas)*. *Forests*, Vol. 26, Nº 3, , pp. 137-148. [online]. Available at: [http://www.scielo.cl/scielo.php?pid=S0717-92002005000300016&script=sci\\_arttext](http://www.scielo.cl/scielo.php?pid=S0717-92002005000300016&script=sci_arttext) [Accessed 3 April 2017]
- Araya, N. and Burgos, C. (2015). *The networks after the theft of wood: Public Prosecutor already sum 92 causes and 55 imputed (Las redes tras el robo de madera: Ministerio Público ya suma 92 causas y 55 imputados)*. [online]. La Tercera press article. Available at: <http://www.latercera.com/noticia/nacional/2015/10/680-651982-9-las-redes-tras-el-robo-de-madera-ministerio-publico-ya-suma-92-causas-y-55.shtml> [Accessed 3 April 2017]
- fao.org (2002). *Summary of the report on socioeconomic information of the Latin American forestry industry (Resumen del Informe síntesis sobre la Información Socioeconómica del Sector Forestal de América Latina)*. [online]. Website FAO. Available at: <http://www.fao.org/docrep/007/ad410s/AD410s06.htm> [Accessed 3 April 2017]
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- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organisations were interviewed including: Forest Companies, FSC Chile, Internal Revenue Services, SSC Americas, National Customs Service and legal expert.

#### 1.17.5. Risk determination

##### *Overview of Legal Requirements*

In Chile the timber classification and the transportation and marketing is based on the

dispatch guide that is required for the trade and transportation of forest products, therefore, the risk treatment between 1.16 and 1.17 is similar

The legal requirement regarding forest transport is mainly focused on the following aspects:

- The maximum tonnage in roads cannot exceed a total 45 of tons with a distribution by specific axis in load law
- The means of transport must consider special stowage requirements according to the type of forest product which is being transported
- The transport in areas of quarantine protection with pests must have a certificate from the SAG and the corresponding specific plan from CONAF
- Customs guards are in charge of the control of the timber transport
- Act 20.283 requires the transporter or the owner of collection center of native wood, which certifies the legal origin of the primary products of the native forest which is transported, through free transit guides given by CONAF. This means that whoever carries timber without the document risks a fine of around 3 UTM (approximately \$130,000).
- All cargo (e.g. primary, secondary or tertiary forest products or NTFP) must have a dispatch guide, tax document required by the Internal Tax Service which is jointly supervised by the customs guards.

#### *Description of Risk*

As indicated by CONAF, the control of Free Transit Guides in native forests is specifically made through two control activities, commonly known as Road Controls and Control of Collection Centers. In the first case the carrier must carry the guide at all times during transportation and in the second case the owner and/or administrator of the Collection Center must always have it in the place where the products are collected. The above, is in order to prove the legal origin of the wood. Figures provided by the institution indicate that in the period 2013 to 2015 only 279 infractions have occurred for this concept, which is considered to be low.

In the case of transportation of native forest woods in addition to the transportation guide for freight transportation, the free transit guide issued by CONAF is also obligatory. This allows for a greater certainty regarding the origin since Conaf's delivery of free-transit guides is conditioned by the approval of the native forest management plan.

However, recently the Public Ministry has prosecuted a forestry entrepreneur for issuing false invoices and transportation guides in the municipality of Cañete and Tirúa. In interviews with the Internal Tax Service of the BioBio Region, it was indicated that this research is underway so It is difficult to determine if the evasion affects other municipalities, it was also pointed out in the interviews that a similar case occurred in the Araucanía Region but to date the entity has not sent supporting evidence, it is also noted that there is no adequate coordination with CONAF.

Futhermore, in an interview with forestry companies, it is pointed out that when the situation was made known to the public ministry CORMA (Chilean Timber Corporation) in the year 2015, it generated a protocol/purchase procedure that was signed by all of its associates and that according to the companies assures the legal origin of the wood.

A CNRA Chile draft document was sent to companies and Corma requesting evidence, but no

information was received on this issue. Interviews with a Mapuche professional working in the area indicate that the problem remains, but that its extent is difficult to define.

Based on the available evidence, it is concluded that, except for areas where there are falsification problems of transport guides (Cañete and Tirua), the indicator is considered to be low risk, and control measures should be considered for the province of Arauco.

#### *Risk Conclusion*

For the case of forest plantations in the municipalities of Cañete and Tirua (province of Arauco): This indicator has been evaluated as specified risk. Identified laws are not consistently upheld by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

AND

For the rest of the country (case of native forest and forest plantations): This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.17.6. Risk designation and specification**

Low Risk on a national level for the case of native forest and forest plantations

Specified risk for the municipalities of Tirúa and Cañete (in the Province of Arauco) in the case of forest plantations

#### **1.17.7. Control measures and verifiers**

- Absence of fines from the Internal Tax Service, Customs guards or CONAF ([www.sii.cl](http://www.sii.cl)) (Ausencia de multa por parte del SII, Carabineros o CONAF).
- Review the information included in guidelines for loading and dispatching freight (guías de despacho y calce) with a weight certificate (certificado de pesaje).
- All transport documents must exist and be documented.
- The volume, species and quantities should be classified according to legal requirements and in accordance with the Shipping Guide, Invoices and Associated Contracts (Guía de despacho, facturas y contratos asociados).
- Documents related to transport, trade or export must be clearly linked to the material specified in the commercial process.

### **1.18. Offshore trading and transfer pricing**

*Legislation regulating offshore trading. 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**

- Act 20780/2014 Reform Income Act (*Reforma Ley de renta*). Available at:



<http://www.leychile.cl/Navegar?idNorma=1067194>

- Act 20630/2012 Tax Reform (*Reforma tributaria*). Available at: <http://www.leychile.cl/Navegar?idNorma=1043598>
- Circular 1/2015 of Act N° 20,780 Internal Tax Service Clarification of tax reform (*Circular 1/2015 de la Ley N° 20.780 SII Aclaración reforma tributaria*). Available at: <http://www.sii.cl/documentos/circulares/2015/circu1.pdf>
- Circular 62/2014 Internal Tax Service (*Circular 62/2014 SII-Servicio de Impuestos Internos*). Available at: <http://reformatributaria2014.carey.cl/wp-content/uploads/2014/12/Circular-62-SII.pdf>

#### 1.18.2. Legal authority

- Internal Tax Service (SII)
- Customs service

#### 1.18.3. Legally required documents or records

- Income tax return (Declaración de renta)
- Affidavit of transactions to the Internal Tax Service (Declaración jurada de transacciones ante el SII)

#### 1.18.4. Sources of information

##### *Government sources*

- sii.cl (2014). *Transfer pricing (Precios de transferencias)*. [online]. Website SII (Internal Revenue Service/ Servicio de Impuestos Internos). Available at: <http://www.sii.cl/pagina/jurisprudencia/adminis/2014/renta/ja2396.htm> [Accessed 3 April 2017]
- infor.cl (2015). *Forest products prices (Precios productos forestales)*. Website of INFOR (Forest Institute /Instituto Forestal). Available at: <http://wef.infor.cl/precios/precios.php> [Accessed 3 April 2017]

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- Crespillo, R. and Paredes, A. (2012). *Transfer pricing, new rules, new challenges (Precios de Transferencia, nuevas reglas, nuevos desafíos)*. [online]. Website of Deloitte. Available at: <http://www2.deloitte.com/cl/es/pages/tax/articles/transfer-pricing-chile.html> [Accessed 3 April 2017]
- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organizations were interviewed including: Forest Companies, FSC Chile, Internal Revenue Service, SSC Americas, National Customs Service and legal expert.

#### 1.18.5. Risk determination

##### *Overview of Legal Requirements*

Since September 2012, it is the taxpayer who must prove that the prices are market prices, with the sworn declaration 1907, which must be submitted annually to the Internal Tax

Service on the last business day of June. Subsequently, the Internal Tax Service reviews this statement and, if it finds that it is not correct, it may charge fines.

This statement is mandatory for medium and large companies that have carried out transactions with related parties from abroad that have carried out transactions with tax havens or those that, not classified under the previous premises, have carried out transactions with related parties abroad for more than 500 million *pesos*.

#### *Description of Risk*

For Chilean companies, this is a new and complex issue that requires in-depth economic analysis. People in the accounting and finance departments of companies do not usually have the time and expertise to carry out this level of analysis, nor do they have the appropriate databases.

However, for Deloitte International, "Chile is one of the last countries to start to regulate the transfer price, in order to comply with OECD guidelines, but it is one of the best regulations and has a fiscal authority with extensive national and international experience".

#### *Risk Conclusion*

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

#### **1.18.6. Risk designation and specification**

Low risk

#### **1.18.7. Control measures and verifiers**

- If illegal in the country of the supplier or sub-supplier, the products shall not have been traded through countries known as "tax havens".
- There shall be no illegal manipulation in relation to transfer pricing.

### **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**

- DFL 30/2004 Customs Ordinance (Ordenanza aduanera). Available at: <https://www.aduana.cl/ordenanza-de-aduanas/aduana/2013-03-19/120415.html> and <http://www.leychile.cl/Navegar?idNorma=238919&idParte>
- DFL 239/1979 Organic Customs Act (Ley orgánica de aduanas) <https://www.aduana.cl/ley-organica-de-aduanas/aduana/2007-02-14/101941.html> and <http://www.leychile.cl/Navegar?idNorma=5441&idParte=0> [Accessed 3 April 2017]
- Decree 1148/2011 Customs Tariffs (Hacienda Aranceles Aduaneros). Available at: <https://www.aduana.cl/arancel-aduanero-vigente/aduana/2011-12-22/114144.html>
- Law 18,480/1985 Reimbursement of levies affecting the cost of non-traditional minor export inputs (Reintegro de gravámenes que incidan en costo de insumos de exportaciones menores no tradicionales). Available at: <https://www.aduana.cl/leyes-de->

[fomento-a-las-exportaciones/aduana/2007-02-14/173208.html](https://www.leychile.cl/Navegar?idNorma=29883) and <http://www.leychile.cl/Navegar?idNorma=29883>

- Law 18.634/1987 Deferred payment of customs duties, tax credit and other benefits of a fiscal character (Pago diferido de derechos de aduana, crédito fiscal y otros beneficios de carácter tributario). Available at: <https://www.aduana.cl/leyes-de-fomento-a-las-exportaciones/aduana/2007-02-14/173208.html> and <http://www.leychile.cl/Navegar?idNorma=30024>
- Act 18.708/1988 Reimbursement of duties and other customs duties for exporters (Reintegro de derechos y demás gravámenes aduaneros para exportadores). Available at: <https://www.aduana.cl/leyes-de-fomento-a-las-exportaciones/aduana/2007-02-14/173208.html> and <http://www.leychile.cl/Navegar?idNorma=30090>
- Act 20322/2009 Tax and Customs Jurisdiction (Jurisdicción tributaria y aduanera). Available at: <https://www.leychile.cl/Navegar?idNorma=286151&idParte=0>
- Decree 1114/1997 Treasury Regulation of customs warehousing (Hacienda Reglamento depósito de mercancías). Available at: <https://www.leychile.cl/Navegar?idNorma=122431&idParte=0>
- Decree 766/2012 Fix tariffs for inspection and certification of export forest products (Fija tarifas por la inspección y certificación de productos forestales de exportación). Available at: [http://www.sag.gob.cl/sites/default/files/dto-766\\_exento\\_07-ene-2013.pdf](http://www.sag.gob.cl/sites/default/files/dto-766_exento_07-ene-2013.pdf)
- Resolution 8098/2011 Shipment verification for the issuance of phytosanitary certificates (Sobre la verificación de embarques vía marítima para la emisión de los certificados fitosanitarios). Available at: [http://www.sag.gob.cl/sites/default/files/res\\_exenta\\_8098\\_modifica\\_916\\_verificacion\\_embarques.pdf](http://www.sag.gob.cl/sites/default/files/res_exenta_8098_modifica_916_verificacion_embarques.pdf)
- Resolution 6651/2010 Phytosanitary inspection requirements (Requisitos de inspección fitosanitaria). Available at: [http://www.sag.gob.cl/sites/default/files/res\\_exenta\\_6651.pdf](http://www.sag.gob.cl/sites/default/files/res_exenta_6651.pdf)
- Supreme Decree 685/1989 Transboundary Movement of Hazardous Substances (Sobre movimiento transfronterizo de sustancias Peligrosas). Available at: [http://www.ingeachile.cl/descargas/documentos/tratados\\_internacionales/convenio\\_basilea.pdf](http://www.ingeachile.cl/descargas/documentos/tratados_internacionales/convenio_basilea.pdf)
- Decree-Law 873/ Approves the CITES agreement (Aprueba acuerdo CITES). Available at: [http://www.conaf.cl/cms/editorweb/transparencia/marco\\_normativo/DL-873\\_28-ENE-1975.pdf](http://www.conaf.cl/cms/editorweb/transparencia/marco_normativo/DL-873_28-ENE-1975.pdf)
- Decree-Law 3.056/1979 Protection of the World Cultural and Natural Heritage, subscribed in UNESCO (Protección del Patrimonio Mundial, Cultural y Natural, suscrita en UNESCO). Available at: <https://www.leychile.cl/Navegar?idNorma=166877>

#### 1.19.2. Legal authority

- National Customs Service 1 to 3, 8 (Servicio Nacional de Aduanas 1 al 3, 8)
- Internal Tax Service 4 to 7 (SII 4 al 7)
- Agricultural Livestock Service (9,10,11 13,14) Servicio Agrícola Ganadero 9,10,11 13,14
- Ministry of Health (Ministerio de Salud) 12

### 1.19.3. Legally required documents or records

- Free transit guide
- Customs Tariff Certificate
- Agricultural and forestry exports Certificate
- Phytosanitary Certificate
- Certificación fitosanitaria
- Proforma invoice
- Shipping Manifest
- Letter of credit according to modality
- Single output declaration
- Certificate of origin
- Exporter mandate
- In Spanish:
- Guía de libre tránsito
- Certificado de Destinación Aduanera
- Certificación de exportaciones agrícolas y forestales
- Certificación fitosanitaria
- Factura proforma
- Manifiesto de embarque
- Carta de crédito según modalidad
- Declaración única de salida
- Certificado de origen
- Mandato del exportador

### 1.19.4. Sources of information

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- infor.cl (2016). *Chilean forest exports (Exportaciones forestales chilenas)*. [online]. Website of INFOR (Forest Institute-Instituto Forestal) - Ministry of Agriculture. Available at: [http://wef.infor.cl/publicaciones/publicaciones.php\\_#P1](http://wef.infor.cl/publicaciones/publicaciones.php_#P1) [Accessed 3 April 2017]

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- fao.org (2006). *Latin American and Caribbean Forestry Sector Outlook and Trends (Tendencias y perspectivas del sector forestal en América Latina y el Caribe)*. [online]. FAO Forestry Study: 148. Available at: <http://www.fao.org/docrep/009/a0470s/a0470s00.htm> [Accessed 3 April 2017]
- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organizations were interviewed including: Forest Companies, FSC Chile, Profesional Mapuche, SSC Americas and legal expert

#### **1.19.5. Risk determination**

##### *Overview of Legal Requirements*

In Chile, any natural or juridical person or foreigners residing in the country, can become an exporter, they only have to be up to date with payments of their taxes with the Tax Authorities and initiate activities as exporter (or extension of turnover) with the Internal Revenue Service.

As a general rule, the legal export procedure of goods or services out of the country, must comply with the following requirements at different stages:

- Presentation of goods to the Service:

With the Single Export Form Processing Acceptance or first message, which must be issued before requesting the entry of the goods to the primary zone.

- Entry of goods to primary zone and dispatch permit:

With the acceptance to process of a single export form, the entry of the goods to primary zone and their shipment or export is authorized.

- Shipment or export of goods:

The Customs Dispatcher will inform about the shipment or export of goods, in the case of maritime and air traffic, and it will be verified by the Customs Service in case of land-based traffic.

- Legalisation:

The Legalisation will be requested with a second message with the single export form, once all of the legal and regulatory procedures allowing the legal export of the goods out of the country have been carried out. Once authorised by Customs, the customs destination is formalized and the Single Export Form-Legalisation or second message constitutes the Customs Declaration.

- Final value of the export operation:

In the case of export operations whose sale method is not "firm", the final result of the export operation must be accredited to the National Customs Service, which will be done through the Single Export Form Value Variation Report.

The legislation related to the export of forest products is complex and of varying competence, at least 86 legal bodies associated with the export and import of goods and services can be distinguished. However, in summary for the forestry sector, it is possible to distinguish between customs rules, rules associated with the import of foreign exchange, export taxation, tax exemptions and phytosanitary regulations. The currency received for this concept must be paid in a national currency in any banking company, which issues a Visible Trade Income Form, and in turn the bank entity must send these documents to the Exports Department of the Central Bank of Chile. The exporters and importers must declare the income received to the Internal Tax Service.

According to the country of destination, the exporter/importer must comply with the phytosanitary restrictions of Chile and the countries of destination. A relevant document is the "Certificate of Origin" whose main objective is to prove the national origin of a product that is destined for export, in accordance with the Rules of Origin agreed in the respective Commercial Agreements.

*Description of Risk*

The customs interview indicates that the institution is governed under the structure of the European standard and there are triangulations with international customs addresses, the control is conducted on a computer control platform which generates, based on a risk algorithm, samples for the Physical capacity of containers where the goods are checked, any smuggling leading to fines up to 5 times the value of the merchandise. The control of forest



products is conducted in coordination with CONAF and Customs Guards.

The state's current control system over international commercial processes and business and triangulated accountability to the Internal Tax Service, central bank, and customs makes the risk of deviations low. The interviewed experts point out that the risks are low, however, they are always latent so cross-checks are carried out with other services and their employees are trained for the recognition of forest goods.

### *Risk Conclusion*

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

#### **1.19.6. Risk designation and specification**

Low risk

#### **1.19.7. Control measures and verifiers**

- Products shall be correctly classified (type, custom code, species, quantities, qualities, etc.).
- All required import and exports permits shall be in place.

### **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**

- Decree Law 873/1975 Approves the CITES agreement (Aprueba acuerdo CITES). Available at: [http://www.conaf.cl/cms/editorweb/transparencia/marco\\_normativo/DL-873\\_28-ENE-1975.pdf](http://www.conaf.cl/cms/editorweb/transparencia/marco_normativo/DL-873_28-ENE-1975.pdf)
- Decree-Law 3.056/1979 Protection of the World Cultural and Natural Heritage, subscribed in UNESCO (Protección del Patrimonio Mundial, Cultural y Natural, suscrita en UNESCO). Available at: <https://www.leychile.cl/Navegar?idNorma=166877>
- Supreme Decree 531/1967 (Protection of Flora, Fauna and Scenic Beauties of America) (Protección de Flora, Fauna y Bellezas Escénicas de América). Available at: <http://www.leychile.cl/Navegar/?idNorma=125338&idParte=0>
- Supreme Decree 1.963/1994 Promulgates the Convention on Biological Diversity (Promulga Convenio sobre Diversidad Biológica). Available at: <http://www.leychile.cl/Navegar?idNorma=18766&idVersion=1995-05-06>
- Supreme Decree 18/2010 Application CITES agreement (Aplicación convenio CITES). Available at: [http://www.leychile.cl/Navegar/index\\_html?idNorma=1023235](http://www.leychile.cl/Navegar/index_html?idNorma=1023235)
- Supreme Decree 868/1981 Conservation of Migratory Species of Wild Fauna (Sobre conservación de especies migratorias). Available at: <http://www.leychile.cl/Navegar?idNorma=16008>

### 1.20.2. Legal authority

Administration Authorities (Autoridades Administrativas) 1 al 6

*They grant permits or certificates which are necessary for the import and export of species included in CITES, as well as to assess the legality of the specimens to be exported.*

- SAG: Non-forest fauna and flora.
- CONAF: Forest flora.
- SERNAPESCA: Hydrobiological fauna

Scientific Authorities

*They serve an advisory and support function for the administrative authorities by assessing the risk to the species of their trade. Furthermore, they approve the exports of specimens from the wild.*

- National Museum of Natural History: non-forest flora and fauna.
- Forestry Institute, INFOR: Forest flora.
- Elasmobranchial Laboratory (ELASMOLAB), Faculty of Sciences, UACH: Hydrobiological Fauna.

### 1.20.3. Legally required documents or records

- Permit application/CITES export certificate
- Permit application for the Import of species from Appendix I of CITES
- Permit application/CITES export certificate/Re-export of other specimens

### 1.20.4. Sources of information

*Non-Government sources*

- CITES Chile: [www.citeschile.cl](http://www.citeschile.cl)
- Cites Farming and Livestock Service (Servicio Agrícola y Ganadero): [www.sag.gob.cl/ambitos-de-accion/convencion-cites](http://www.sag.gob.cl/ambitos-de-accion/convencion-cites)
- Museum of Natural History (Museo de historia natural): <http://www.mhmv.cl/636/w3-article-56537.html>

*Government sources*

- ccc-chile.org (N.Y.). *What is CITES ? (¿Qué es CITES?)*. [online]. Website of CCC (Centre for Cetacean Conservation/ Centro de conservación cetácea). Available at : [http://www.ccc-chile.org/view\\_articulo-9-53\\_9-182-que\\_es\\_cites.html](http://www.ccc-chile.org/view_articulo-9-53_9-182-que_es_cites.html) [Accessed 3 April 2017]
- Conversations with different experts conducted during May 2016 helped the writers of this report to better understand the applicable legislation and the associated risks with their implementation. Regarding this sub-category, representatives of different organisations were interviewed including: National Forest Corporation, the Ministry of the environment, Forestry Companies, FSC Chile, Internal Revenue Service, Police Investigations, WWF Chile, SSC Americas, National Customs Service and legal expert.

### 1.20.5. Risk determination

#### *Overview of Legal Requirements*

CITES was signed by Chile on September 16, 1974, being the eighth country to do so. In 1975, the Government approved it and transformed it into Law/decreto of the Republic. Thus, this year the country commemorates 4 decades since the Convention came into force. However, since 1975 the law/decreto was not implemented because no specific requirements were developed for the correct implementation. Since March 8, 2010, a special law has been under discussion in the National Congress in order to achieve full implementation of the Convention. Therefore, there is no law to implement CITES in Chile

([http://www.senado.cl/listo-para-recibir-indicaciones-proyecto-que-aplica-la-convencion-internacional-de-especies-amenazadas-de-flora-y-fauna-silvestre/prontus\\_senado/2015-06-17/182619.html](http://www.senado.cl/listo-para-recibir-indicaciones-proyecto-que-aplica-la-convencion-internacional-de-especies-amenazadas-de-flora-y-fauna-silvestre/prontus_senado/2015-06-17/182619.html)).

Recently, 18 august 2016 (<http://www.citeschile.cl/expo/articulo/24-se+aprobo+el+proyecto+de+ley+cites>) the project for improvement the CITES law have been approved and aims to introduce various adaptations to national legislation in the area of prevention, control and sanctioning of conduct related to the traffic and commercialization of endangered species of wild fauna and flora. It is too early to evaluate the outcome of this project.

#### *Description of Risk*

The fact that Chile does not have a law means it remains in category 2 (of CITES) with a medium risk, with a large number of countries being in category 1, on the other hand, the non-existence of a law implies that there are no penalties strong punitive sanctions in Chile that reduce the risk, this has been confirmed by the stakeholders interviewed especially the CITES area of the investigative police.

There are three species of Chilean trees protected by CITES at their highest level of trade restriction (Appendix I): araucaria, Guayteca cypress and larch. The National Forestry Corporation (CONAF), CITES Management Authority, supervises the banning of harvesting (larch and araucaria) and export (larch, Araucaria and Guayteca cypress).

Despite forest controls and monitoring, there have been cases of illegal logging. For example, in the sector of Huellethue in the commune of Río Negro, Los Lagos region, Carabineros de Chile seized 13 bases of green larch, corresponding to 7 cut trees 20 meters high and 40 centimeters in diameter.

#### *Risk Conclusion*

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

### 1.20.6. Risk designation and specification

Specified risk

### 1.20.7. Control measures and verifiers

- All cross border-trade of CITES-listed species shall be documented and accompanied by required export, import and re-export certificates issued by competent authorities

(CITES Management Authorities).

### **1.21. Legislation requiring due diligence/due care procedures**

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

#### **1.21.1. Applicable laws and regulations**

Not applicable for Chile

#### **1.21.2. Legal authority**

N/A

#### **1.21.3. Legally required documents or records**

N/A

#### **1.21.4. Sources of information**

N/A

#### **1.21.5. Risk determination**

N/A

#### **1.21.6. Risk designation and specification**

N/A

#### **1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

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

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

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

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

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

## TIMBER SOURCE TYPES IN CHILE

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Forest plantations	Nationwide	Exotic plantations (2.6 million ha)	Private	<p>Management aim: Productive management and conservation in areas which have been declared protected sites.</p> <p>For the felling of any plantation, there must be a CONAF-approved management plan, except in the case of land not classified as preferably suited to forestry (APF) by CONAF.</p>	<p>CONAF-approved management plan</p> <p>Legislation states that to manage a plantation, there are two requirements: a plantation management plan and membership rules (schedule management plan), signed by a forest engineer or equivalent professional.</p> <p>An approved management plan allows the user to begin harvesting or management of natural forests. Extracting timber resources can only be done with Timber Extraction Contracts. It is illegal if the quantities, species and/or origins are not correctly declared. Certificates have a limited validity, after which the</p>	<p>Exotic timer plantations</p> <p>Logs for pulpwood and saw-wood, mainly pine and eucalyptus. NTFP removal by harvesters who have contracts with logging companies</p>



					product becomes illegal and cannot be further processed even if it is in or has come place that holds harvesting licences.	
Native Forest	Nationwide	National parks, forest reserves and natural monuments (4.3 million ha)	State	<p>Management aim: Preservation and conservation. Removal of species declared as natural monuments is forbidden. Work to preserve forests is undertaken primarily in national parks. On reserves, existing forest management can be done, as long as it is not detrimental to the forest's attributes. Some reserves have forest plantations open to public tender so that private companies can commercialise them.</p>	<p>CONAF-approved native forest management plan, or Environment Impact Assessment/Statement approved by the Ministry of the Environment (Ministerio de Medioambiente).</p> <p>Clearcutting or conversion is not permitted unless an environmental impact assessment is approved by the Ministry of the Environment's environmental impact service, if the plan involves circumstances covered by Act 19,300 and its regulations.</p> <p>An approved management plan, allows the user to begin harvesting or</p>	<p>Protected forest.</p> <p>Mainly forest services through nature tourism, protection of biodiversity. Exceptionally, with the respective management plan, logs for pulpwood or saw-wood can be removed from reserves, in small quantities and mainly from native forests.</p>

		Government-owned forests (4.1 million ha)	State	Management aim: multiple uses. A management plan must be submitted to CONAF under Act 20,283 on native forests.	management of natural forests. Transport of timber resources can only be done with Timber Extraction Contracts (guías de libre tránsito). It is illegal if the quantities, species and/or origins are not correctly declared. Inspections are carried out by police and CONAF.	Logs for pulpwood and saw-wood from native species.
		Productive forests (4.9 million ha)	Private	Conservation, productive management. Development incentives offered to manage commercial or conservation forests under Act 20,283.		Logs for pulpwood and saw-wood from native species, except those declared natural monuments or endangered.



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## About

### Supporting Legal Timber Trade

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



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

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