

Timber Legality Risk Assessment China

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A. Introduction

This Timber Legality Risk Assessment for China provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCo has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

In that time, NEPCon has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.

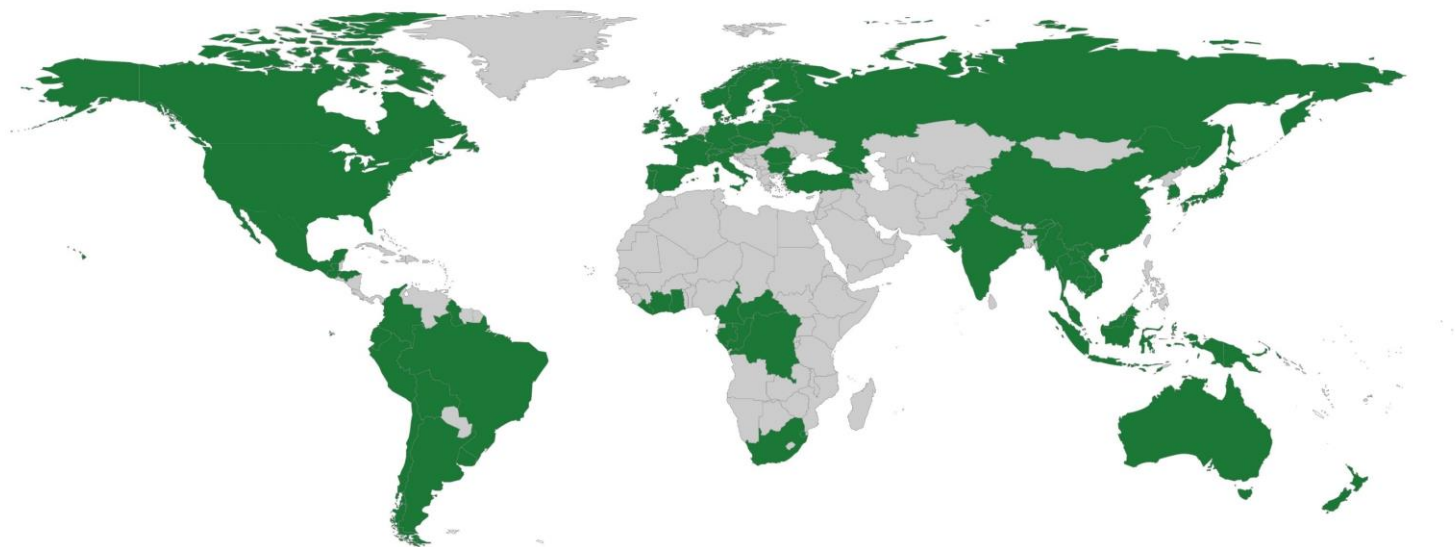


Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on NEPCon's website.

B. Overview of timber legality risks in China

Timber Risk Score: 73 / 100 in 2017

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

- **Specified risk for 5 sub-categories.**
- **Low risk for 13 sub-categories.**
- **No legal requirements for 3 sub-categories.**

The Timber Risk Score for China is 73 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities and trade and transport.

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

- A lack of registration and tenure certificates (applicable only to collective forest plantation only) (Sub-category 1.1)
- Conflicts in relation to land rent (applicable only to collective forest plantation only) (1.1.)
- A lack management plans and failure to meet the requirements for drafting management plans (applicable on to state-owned forest management enterprises) (1.3)
- Harvesting without permit and unlawful issuing of harvesting permit and the (1.4)

For **Taxes and Fees**, there is a risk that that value-added taxes (VAT) are not paid according to law (1.6).

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

- Safety equipment is not used in harvesting activities (1.11)
- Employment contracts are not in place for all employees (1.12)
- Social security payments are not up to date for all employees

For **Trade and Transport**, there is a risk of miss-/under reporting on customs declarations, exacerbated by the issues related to corruption and poor governance (1.19).

Timber source types and risks

There are three timber source types found in China. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ between them.

Plantation Forest

Commercial Plantation Timber – from collectively, individually or corporately owned commercial plantations, mostly state managed. A harvesting permit and logging permit application is required. **The is the primary source of timber in China.**

Timber from forests planted for other purposes i.e. fruit trees – known as economic forests, when the forest has no yield, they might be cut as materials for forest products. A harvesting permit, logging permit application and forest tenure certificate is required.

Natural Forest

State owned natural forests are not a source of timber, except for timber from tending. Natural forest managed by collectives, individuals or corporation can be a source, but a logging ban is increasingly implemented through contracts with forest owners. See full source table at Annex I for further information.

Protected forests (Class III) are a limited source of timber. They are state or collectively owned, and include natural and planted forest. A Harvesting Permit, logging permit application, forest management plan, logging plan, regeneration certification for previous year, forest tenure certificate and the approval of local, provincial and state governments is required.

Bamboo Forest

Trees/bamboo planted around farm house and households: Trees or bamboo planted close to farm houses and households in China.

Bamboo forest: Bamboo forest refers to the community composed of advantageous bamboo species, generally including timber bamboo forest, shoot bamboo forest and timber-shoot bamboo forest.

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

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

C. Overview of the forest sector in China

Introduction

The eighth national forest resources inventory for the period 2009 to 2013 revealed that forest cover in China is 207.69 million ha, 21.63% of the national territory, with a growing stock volume of 15.14 billion m³. These figures include 6.01 million ha of bamboo forest.

Within the stated forest cover, natural forests make up 64% in area at 121.84 million ha and 12.30 billion m³ growing stock (83% in volume), while plantations make up 36% in area at 69 million ha and growing stock volume of 2.48 billion m³ (17% in volume). These figures are a reflection of five key trends within Chinese forests: (i) gross forest resources in China are growing; (ii) forest quality is steadily improving; (iii) natural forests are steadily growing in total area; (iv) total plantation area has increased rapidly in recent decades; and (v) more timber is being produced from plantations.

Ownership and use of the forest resources

According to China's Constitution and the Forestry Law, forest ownership refers to the ownership or use rights to forest, timber and forest land, including three types of ownership:

- i. State-owned forest, timber and forest land;
- ii. Collectively owned forest, timber and forest land; and
- iii. Individually owned timber and use rights to forest land.

Ownership can be separated from use rights, which is recognized and protected by law. Moreover, companies could also own the timber and use rights to forest land. The State Forestry Administration (SFA) is an administrative unit of the People's Republic of China, in charge of national forestry affairs. SFA uses the forest tenure certificate with a nationally standardized format and series number to register: owners of forest land; use right owners of forest land; owners of forest or timber and use right owners of forest or timber. The legal rights of forest, timber and forest land owners – and use right owners – are legally protected and should not be infringed. Forest transfers, as well as forest land acquisitions and conversions, must be reviewed and approved by the forestry authorities at county level or above after going through legally required procedures.

Forest classification types

Forests are managed in line with the classification management method. According to the Forestry Law of China, there are five main forest types in China:

- Protected forests (100 million ha approx.)
- Special-purpose forests (16 million ha approx.)
- Commercial timber forests (67 million ha approx.)
- Fuelwood forests (21 million ha approx.)
- Economic use forests (2 million ha approx.)

To better manage China's forest resources, a statement "Opinions on Strengthening the Collective Forest Tenure Reform" was issued by a Communist Party of China (CPC) Commission in 2008, which proposed the adoption of classification management for forest resources, and classified forests in China into ecological forest and commercial forest:

- Forests that grow on sites with good conditions and for which harvesting and utilization will not lead to harmful effects in relation to eco-balance and biodiversity could be classified as commercial forest;
- Forests growing in ecologically fragile areas could be classified as ecological forest. With this proposal, China classified forests into ecological and commercial forests in line with ecological niche and leading utilization methods, and has adopted different management regimes, mechanisms and policy measures for the two classifications.

Over 40% of forest cover is defined as commercial forest, whilst 59% of forests are designated as ecological forests. Ecological forest is managed as a public resource with funding deriving mostly from government with some private-sector investment; while commercial forest is managed as a primary industry using market resources. Owners of forests that are classified and managed as ecological forests will be reasonably compensated by government at various levels.

In line with technical indicators for the classification of ecological forest and commercial forest, ecological forest generally includes protective forests and special-purpose forests, while the category 'commercial forest' is generally composed of commercial timber forests, economic forests and fuelwood forests. Ecological forest can be further classified into specially protected forest, key protected forest and general protected forest. It is forbidden to harvest special-purpose and key ecological forest, and only general ecological forest may be thinned with a harvesting permit issued by the provincial forestry department.

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

Since 2014, the commercial harvesting of natural forests is in the process of being completely phased out. The timeframe for progression of this policy, which falls under the prohibition of natural forest harvesting under the National Forest Protection Programme (NFPP), is such that this will be accomplished by 2017. The harvesting of commercial forests and – while this still exists – harvesting of natural forests, must be conducted with the harvesting permit issued by forestry authorities at or above the county level in accordance with the harvest quota.

How timber harvesting is regulated

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

- Harvest quota and annual timber production plan:

The Forestry Law of China provides that the central government controls the annual harvest of forest in line with the principle that forest consumption should be less than forest growth. State-owned forest organisations managing State-owned forests – as well as forestry bureaus at county level, where collectives and individuals manage their forests - develop annual forest harvest quotas that are reviewed and approved by the State Council after being pooled and leveraged by provincial forestry authorities and reviewed by provincial governments. The harvest quota is reviewed and approved every five years. With the approved quota, an annual timber production plan will be developed and approved by the State; the volume stipulated in this plan should not exceed the approved annual harvest quota.

- Forest harvesting approval system:

Article 32 of the Forestry Law of China provides that a harvesting permit shall be obtained for forest harvesting and that harvesting activities shall follow the terms and condition on the

permit. Farmers may be exempted from this requirement when they cut their own forest on their family land and around their houses. The harvesting of forest by State-owned forest management enterprises or other organisations must be approved by forestry authorities at county level or above; the harvesting of forests by rural collective economic organisations must be approved by county forestry authorities; and the harvesting of forests by farmers from their family hill or contracted forest is approved by country forest authorities or the township government with authorisation by country forest authorities. In all cases above, a harvesting permit is issued.

As for bamboo forest, the 2014 SFA Opinion on Further Reforming and Improving the Harvest Management of Collectively Owned Forest provides that the forest harvesting permit system will not be implemented in relation to the harvesting of bamboo forest, which means no permit is required to harvest bamboo forest.

- Timber transportation permit system:

The Forestry Law of China and the Regulation of the Implementation of the Forestry Law state that timber transportation shall require a permit. Timber harvested in accordance with the harvesting permit can be transported from the forest only after applying for, and obtaining, a transportation permit issued by forestry authorities. The total volume of timber that may be transported out of the forest with the approval of the legally issued timber transportation permit cannot exceed the total volume that the local annual timber production plan allows for sales and transportation. Timber checkpoints are responsible for checking timber transportation to ensure the implementation of the permit system. Timber that needs to be transported shall have a transportation permit issued by forestry authorities at county level or above. When applying for a transportation permit, it is required to submit the harvesting permit or other legality documentation for legal origin, phytosanitary certificate and other documents required by local forestry authorities.

As for bamboo timber, the 2014 SFA Opinion on Further Reforming and Improving the Harvesting Management of Collectively Owned Forest provides that bamboo timber and its products can be transported without a transportation permit.

- Timber trading and processing permit system:

The State Council requires that forestry authorities shall check the origin of wood materials used by timber traders and processing facilities. It is forbidden to procure and use the wood materials without a harvesting permit or other legality documents relating to legal origin. The Regulation of the Implementation of the Forestry Law of China provides that trading and processing timber in forest areas (which mainly refers to log, sawn timber, bamboo timber and wood chips) requires approval and issue of a processing permit by forestry authorities at county level or above.

- Harvesting inspection and oversight system:

National and local forestry authorities and township forestry stations are responsible for the inspection and oversight of the implementation of the harvesting system. County-level forestry authorities check harvesting permits, transportation permits and processing permits relevant to their jurisdiction. Forestry stations set up points to check transportation permits; forestry authorities at different levels as well as business and commerce authorities check the number of processors and their size in combination with registration and business licence changes (these being permitted in line with the relevant laws and regulations, local forest

resources and harvest quotas). The SFA also sends task forces to check the three overall volumes (i.e., harvest volume, transportation volume and sales volume) for State-owned forest areas.

Interviews with Experts

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

Additional sources:

- Environmental Investigation Agency (2013): Liquidating the Forests. Hardwood flooring, organized crime, and the World's last Siberian tigers. EIA. Available at: https://content.eia-global.org/posts/documents/000/000/609/original/EIA_Liquidating_the_Forests.pdf?1479504214. [Accessed 27 April 2017]
- WWF (2013): Illegal Logging in the Russian Far East: global demand and taiga destruction. Smirnov, D.Y. (ed.) Kabanets, A.G., Milakovsky, B.J., Lepeshkin, E.A., Sychikov, D.V. 2013. WWF, Moscow. Available at: http://www.wwf.se/source.php/1527925/Illegal-logging-in-Russia-Report_ENGLISH.pdf. [Accessed 5 May 2017]

D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- 1) Constitution of the People's Republic of China dated 4th of December 1982 - Article 5-23 & 26. Available at: http://www.npc.gov.cn/npc/xinwen/node_505.htm
- 2) General Principle of Civil Law of the People's Republic of China dated 12th of April 1986 – Article 80-83. Available at: http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm
- 3) Law of the People's Republic of China on the Contracting of Rural Land ("Rural Land Contracting Law") dated 29th of August 2002 – Article 2 & 23. Available at: <http://en.pkulaw.cn/display.aspx?cgid=41762&lib=law>
- 4) Property Law of the People's Republic of China ("Property Law") dated 16th of March 2007 – Article 124, 125 & 127. Available at: <http://en.pkulaw.cn/display.aspx?cgid=89386&lib=law>
- 5) Forest Law of the People's Republic of China ("Forest Law") dated 20th September 1984, 1998 Amendment. Revised 27th of August 2009 – Article 3. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 6) Regulation on the Implementation of the Forestry Law of the People's Republic of China [Revised], dated 29th January 2000 - Article 15, 34. Available at: <http://www.forestry.gov.cn/main/3950/content-459869.html>
- 7) Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership dated 14th October 1996 – Article 2. Available at: <http://www.forestry.gov.cn/main/3951/content-204759.html>
- 8) Administration Measures for Forest and Forestland Tenure Registration dated 31st December 2000 – Article 3-9. Available at: <http://www.forestry.gov.cn/main/3951/content-204744.html>
- 9) Law of the People's Republic of China on the Mediation and Arbitration of Rural Land Contract Disputes dated 1st January 2010 – Article 2-6. Available at: <http://www.forestry.gov.cn/main/24/content-204668.html>
- 10) Company Law of the People's Republic of China (2005 Revision) dated 1st January 2006 – Article 6-9. Available at:

<http://wenku.baidu.com/link?url=rkIYkWRxwQBLXhGrPRie6g73Ns0fxTfa8Ed6YpN3ujSiDO5pRXKD3WAqNe3nHCtvkx-V4rMQ95qpywjBanHwewDrrFSs67bAffZWpGPh17>

- 11) Taxation Registration Administration Measure dated 1st February 2004 – Chapter 1 & 2. Available at: http://www.gov.cn/gongbao/content/2004/content_62924.htm
- 12) Regulations Governing Examination and Approval of Occupation and Requisition of Forest Land dated 4th January 2001. Available at: http://www.gov.cn/gongbao/content/2002/content_61894.htm
- 13) Land management law of P. R. China dated 25th of June 1986 and revised 28th of August 2004. Available at: <http://www.china.com.cn/chinese/law/647616.htm>

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

1.1.2. Legal authority

- State Forestry Administration and forest bureaus at different levels are responsible for the laws about forest, forest trees and forest land.
- State Administration of Taxation is responsible for Taxation, Registration, Administration and Measure.
- State Administration for Industry and Commerce is responsible for Company Law.

1.1.3. Legally required documents or records

Numbers below refers to the numbers in section 1.1.1.

- 8) Administration Measures for Forest and Forestland Tenure Registration dated 31st December 2000 – Article 3-9:
 - Forest Tree and Forest Land Tenure Certificate (Forest Tenure Certificate)
- 10) Company Law of the People's Republic of China (2005 Revision) dated 1st January 2006 – Article 6-9:
 - For companies leasing forest land for forest management: Forest land contract in addition to the above certificate.
 - Business Registration Certificate, only applicable for companies mentioned above
- 11) Taxation Registration Administration Measure dated 1st February 2004 – Chapter 1 and 2:
 - Tax Registration Certificate, applicable only for companies

1.1.4. Sources of information

- 1) Chatham House. Available at: <http://www.illegal-logging.info/>;
- 2) ELDIS regional and country profiles. Available at: <http://www.eldis.org>;
- 3) Environmental Investigation Agency. Available at: <http://www.eia-international.org>;

- 4) EU FLEGT process. Available at: http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm;
- 5) Forest Legality Alliance. Available at: <http://www.forestlegality.org/>;
- 6) Government reports and assessments of compliance with related laws and regulations;
- 7) Independent reports and assessments of compliance with related laws and regulations, e.g., the Royal Institute of International Affairs. Available AT: <http://www.illegallogging.org>;
- 8) Interpol. Available at: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- 9) Justice tribunal records;
- 10) Public summaries of FSC forest management certification reports published at info.fsc.org (information on legal areas where non compliances have been identified during the certification process that are likely to be common for non-certified operations);
- 11) Public summaries of other 3rd party forest legality certification/verification systems;
- 12) Stakeholder and expert consultation outcomes from NRA development processes;
- 13) Telapak (for Indonesia). Available at: <http://www.telapak.org>;
- 14) Transparency International Corruption Perceptions Index. Available at: http://www.transparency.org/policy_research/surveys_indices/cpi;
- 15) World Bank Worldwide Governance Indicators. Available at: <http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- 16) In cases where other sources of information are not available, consultations with experts within the area shall be conducted.

Government sources

- 1) China Forestry Development Report. 2013, 2014 and 2015. State Forestry Administration.
- 2) 92% forest land nationwide registered and issued with tenure certificate. 2012-12-27 Accessed 20 December 2015 at http://native.cnr.cn/list/201212/t20121227_511660083.html
- 3) State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forest land Rights, Sec. 11 (issued on October 16, 2009).

Non-Government sources

- 1) China.com.cn. (2009). *Collective Forest Tenure Reform and Forest Crisis*. [online]. China Web Report. Available at: http://www.china.com.cn/news/zhuanti/hblps/2009-05/08/content_17745715.htm [Accessed 15 July 2015]

- 2) Greenpeace (2005). *Investigation on APP's Hainan Project*. Greenpeace, pp. 1-8. Available at: <http://www.greenpeace.org/eastasia/Global/eastasia/publications/reports/forests/2005/investigation-app-hainan-project.pdf> [Accessed 22 Sep. 2015]
- 3) Blog.sina.com.cn (N.Y.). *Report on Foreign Forest Companies*. [online]. Ren. Available at: http://blog.sina.com.cn/s/blog_436698a40100f0p6.html [Accessed 15 July 2015]
- 4) Ping, L. (2014). *Large-Scale Land Acquisition: Field Findings and Recommendations*. Washington, DC: Rights and Resources Initiative, pp. 3-37. Available at: <http://www.rightsandresources.org/publication/large-scale-land-acquisition-for-app-forest-plantations-field-findings-and-recommendations/> [Accessed 3 November 2015]
- 5) Ping, L. and Xiaobei, W. (2014). *Forest Land Acquisition by Stora Enso in South China: Status, Issues, and Recommendations*. Washington, DC: Rights and Resources Initiative, pp. 3-45. Available at: <http://www.rightsandresources.org/publication/forest-land-acquisition-by-stora-enso-in-south-china-status-issues-and-recommendations/> [Accessed 3 November 2015]
- 6) Kram, M., Bedford, C., Durnin, M., Luo, Y., Rokpelnis, K., Roth, B., Smith, N., Wang, Y., Yu, G., Yu, Q., and Zhao, X. (2012). *Protecting China's Biodiversity: A Guide to Land Use, Land Tenure, and Land Protection Tools*. (N. Smith, Ed.) Beijing: The Nature Conservancy. Available at: <http://www.nature.org/media/china/chinabook-wholebook-lowres.pdf>
- 7) zgxcfx.com. (2013). *Forest tenure disputes and its reasons during collective forest tenure reform*. [online]. Available at: www.zgxcfx.com/Article/53458.html
- 8) forestry.gov.cn. (2012). *Forest tenure certificate issued for forest on non-forestry land in Sinan County, Guizhou*. [online]. Forestry website for China. Available at: <http://www.forestry.gov.cn/portal/main/s/102/content-567294.html>
- 9) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 10) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.1.5. Risk determination

Overview of legal requirements

The Constitution, General Principle of Civil Law, and the Forestry Law of China provide that forest resources are owned by the State except for those owned by collectives according to laws. There are three forms of ownership to forest, timber and forest land:

- (i) State-owned forest, timber and forest land;
- (ii) Collectively owned forest, timber and forest land; as well as

(iii) Individually owned timber and individuals' right to use forest land.

However, the use rights to forest, timber and forest land exist in multiple forms and can be transferred from one party to another via joint management, contracting or renting agreements. State forestry enterprises, State-owned forest farms, collective-owned forest farms, private sector organisations or individuals can all own the use rights. The Regulation of the Implementation of the Forestry Law provides that the State implements the registration and certificate issuance system for forest, timber and forest land, with the format of the forest tenure certificate developed by the State Forestry Administration (SFA). Since 18 April 2000, the SFA has begun to use a forest tenure certificate with a nationally integrated format and series number to register the owner of forest land, use right owner of forest land, owner of forest or timber, as well as the use right owner of forest or timber.

In accordance with the Opinion of the State Council on Enhancing Collective Forest Tenure Reform, China is implementing a reform to further clarify the ownership of forest trees and use rights of forest land and to develop a collective forest management system that highlights family contract management in conjunction with multiple forms of management as a precondition for the forest remaining under collective ownership. With the reform, the use right to forest land as well as the ownership and use right to forest trees is decentralised to households, joint households or other management bodies. Subsequently, forest tenure is registered, and the forest tenure certificate (in the nationally standardised format) issued in line with the Administration Measures for Forest and Forest land Tenure Registration. If there is a dispute regarding ownership, the forest tenure certificate will be issued after the disputes are settled, according to Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership.

In line with the principle of separation of forest land ownership from use rights, and on the condition that the collective ownership of forest land and forest land use remain unchanged, the transfer of forest ownership and forest land use rights is being encouraged to guide the reasonable distribution of forest resources and to promote scaled and intensive forest management by realising the optimal configuration of forest resources. The transfer of forest, forest trees and forest land must be conducted under a contract, in which the name and address of both parties, the condition of the forest to be transferred, the period of transfer including start and finish date, transfer price, and method of payment shall be clearly indicated. Generally, the transfer period lasts 30–50 years, and will be no more than 70 years. After the transfer, both parties must apply for a change in registration of tenure at the level of county forestry authority or above; and the county government or above must register the change in accordance with the law.

China implements a control system for forest land acquisition. According to Regulations Governing Examination and Approval of Occupation and Requisition of Forest Land, exploration and extraction by mines and other projects shall where possible avoid acquiring forest land. If necessary, the acquisition shall be reviewed and approved by forestry authorities and then go through an approval process in accordance with land management laws and regulations. Project managers wanting to acquire forest considered not to be significant at the national level must apply for the acquisition through county forestry authorities; those who want to acquire nationally important forests shall apply through State-owned forest bureaus. When applying for acquisition, project managers must submit a certificate for the legal entity, approval files for the

project, a forest tenure certificate, compensation agreement and feasibility report for forest land acquisition by the project, etc. Forestry authorities shall organise the development of forest vegetation restoration measures for the acquired forest land in the same or the following year, and also organise personnel for on-site checks of the forest land for which acquisition has been sought. After projects pass the check and project managers pay the forest vegetation restoration fee, the forestry authorities issue a Forest Land Use Consent. Forest land acquisition units shall then go through the review and approval procedure in accordance with the law.

The regulation describing how to deal with forest tenure disputes has been issued and related procedures developed. In addition, other national laws enact related regulations relating to resolving forest tenure disputes, including: the Forest Law, Land Reform Law, and Land Contract Law in Rural Areas. In Minority Autonomous Regions, some local unwritten laws regulate the detailed procedures governing resolution of conflicts on forest land borders.

The Company Law of China requires that an established company be issued a Business Registration Certificate by the local Industry and Commerce Bureau at or above county level (local offices of the State Administration for Industry and Commerce responsible for Company Law). Besides being required by law to justify the right to do business, companies are limited in their business activities according to the business scope approved within the licence. If there are any changes to its business activities, a company should inform the local Industry and Commerce Bureau and apply for a change in registration and be issued a new licence. Every year, Industry and Commerce Bureaus across the nation carry out checks of Business Registration Certificates. Companies will face penalties if they fail to pass these checks or refuse to be checked. There are two types of Business Registration Certificate: an Enterprise Legal Entity Business Licence is mainly issued to limited companies. A Business Licence provides the evidence for legal rights to manage an enterprise and is mainly issued to individual business establishments and joint ventures.

NOTE: In most cases, the local Industry and Commerce Bureau is responsible for issuing the Certificate after review and approval of an application. The Bureau is also responsible for the checks and inspection of the certificate.

According to the Tax Registration Administration Measure, taxpayers who engage in production and business should apply for a Tax Registration Certificate within 30 days of issue of the Business Registration Certificate. Tax Registration Certificates are legally required documents demonstrating that companies are registered with the Taxation Bureau (local offices of the State Administration of Taxation) and are required to open a bank account and purchase *Fapiao* (VAT invoices). Without this certificate, companies cannot carry out their normal business activities. Taxation Bureaus at or above county level have the authority to issue Tax Registration Certificates after review and approval of the application for the certificate.

Companies are subject to annual checks conducted by authorities of their tax certification, business registration and payments. Companies who fail to pass these checks face penalties depending on the severity of the offence.

Description of risk

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

- Forest tenure reform has been carried out in a stepwise fashion in China, with the core thrust of recent reforms being the decentralization of forest/forest land use rights and management rights. Since 2008, forest land tenure has been decentralized to farmers, with Forest tenure certificates issued to farmers, forest management enterprises (FME's) and forest farms by the People's Government at or above county level - or by the forestry authority authorized by the State Council. Up until now, nearly 92% of forest land has been demarcated and allocated to individual farmers and FME's, and their rights and obligations are very clearly defined. However, there is still some forest land that fails to be registered and issued with a certificate, which poses a potential risk in the context of tenure disputes.
- Processing Measures for the Disputes of Forest Trees and Forest Land Tenure and Ownership is a regulation describing how to deal with forest tenure disputes, issued 14 October 1996 and for which related procedures have subsequently been developed. In addition, other national laws enact related regulations relating to resolution of forest tenure disputes (Forest Law 2009, Rural Land Contracting Law 2002 etc.).
- In the past, some civil society organizations (e.g. Greenpeace, Rights and Resources Initiative) and media have reported conflicts in relation to land rent and timber purchasing between private forest companies and local communities, occurring mainly in Hainan, Guangxi, Guangdong and Yunnan Provinces. These conflicts focused on unfair rent, insufficient transparency in land tenure lease procedures, and low timber prices. There were also related reports for Fujian, Jiangxi and Henan Provinces. Reports on foreign forest companies (See Non-Government sources 2, 3, 4 and 5) revealed the fact that foreign forest companies have in the past secured forest land tenure by inappropriate means, which often violated (or at least insufficiently protected) individual farmers' land rights. However, after the implementation of the tenure reform and forest land tenure transfer mechanism (2008 onwards), such reports relating to land tenure conflicts have appeared less often in recent years. According to RRI (4), the central government has also issued a set of rules in 2009 requiring a comprehensive review of historical problems associated with large-scale transactions of collective forest land rights that occurred prior to the forest reform (Government Source 3).
- With the above in mind, discussions with various experts highlighted the case that forest tenure disputes still have the potential to occur nation-wide. This is, in part, due to the history of land tenure in China including a significant number of policy changes over recent decades, as well as old practices to which local authorities have become accustomed. However, while issues may still arise today, existing law is clear on this matter.
- Previous investigations by the Chinese Academy of Forestry (CAF) have shown that timber from conflicted forest tenure constitutes a small proportion compared to the total amount produced. CAF also highlighted the fact that forest tenure certificates are not issued for the forests on 'non-forestry land', which refers to the land around villages, along roadsides and waterfronts, cultivated land and wasteland – not

included in forestry land subject to planning. This could be considered a potential risk. However, these non-forestry lands are included within land use rights certificates, which can serve as evidence that the certificate holder owns the use right of land and the right to use the resources on the land. At any rate, to safeguard the interests of farmers, China now allows the issuing of forest tenure certificates for forest on non-forestry land, and some cities or provinces have been implementing the policy.

Risk Conclusion

Based on the available information, the risk in this category has been generally assessed as Low at the country level. However, also based on the available information, risks in some southern provinces in China persist and can be assessed as Specified, including: Hainan, Yunnan and Guangdong. The risks are reflected in two aspects: 1) some collective forests are not registered or issued with forest tenure certificates; and 2) harvesting on non-forestry land.

1.1.6. Risk designation and specification

Low risk:

China

Specified risk:

Commercial Plantations in some areas in Hainan, Yunnan, Guangdong and possibly other provinces within the Southern Collective Forest Region (Hunan, Jiangxi, Fujian, Zhejiang, Hubei).

1.1.7. Control measures and verifiers

- Harvesting permit may be used to confirm the ownership or tenure.
- In areas with land tenure conflicts: Consultation with neighbors, local communities and other stakeholders shall confirm that land tenure rights are clear and – where applicable - lease of the land has been agreed by all the land owners.
- Contractors shall have a valid forest land contract signed by all land tenure owners involved in the area.
- Contractors leasing forest land shall hold the forest tenure certificate (or similar document) to show the tenure transfer registration.
- Stakeholder consultation shall confirm that the legal status of the operation or rights for conducting the established activities are not subject to court orders or other legally established decisions to cease operations.
- Valid business registration documents (Business Registration Certificate and Tax Registration Certificate) shall exist for companies.

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

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

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

Overview of legal requirements

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

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

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

1.2.6. 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

- 1) Regulation on the Implementation of Forestry Law of People's Republic of China dated 1st of August 2011 - Article 11, 12, 13, 14, 28 & 33. Available at: <http://www.forestry.gov.cn/main/3950/content-459869.html>
- 2) Outlines for Development and Implementation of Forest Management Plan (Pilot) dated 21st November 2006. Available at: <http://www.forestry.gov.cn/portal/xby/s/1277/content-126980.html>
- 3) Forest Law of People's Republic of China dated 27th August 2009 - Article 29, 30, 31 & 34. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 4) SFA Opinion on Further Reform and Improved Harvesting Governance on Collective Forest dated 4th May 2014 - Article 3. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_2086.htm

1.3.2. Legal authority

- State Forestry Administration

1.3.3. Legally required documents or records

Numbers below refers to the numbers in section 1.3.1.

- 3) Forest Law of People's Republic of China dated 27th August 2009 - Article 29, 30, 31 & 34:
 - Approved Forest Management Plan. Note: The forest management plan developed by State-owned forestry enterprises and nature reserves shall receive approval by related forestry authorities.
 - Approved Harvesting Plan
 - (State Council approved) Annual Allowable Logging Quota

1.3.4. Sources of information

Government sources

- 1) npc.gov.cn. (2000). *Explanation of Forest Law*. [online]. Available at: http://www.npc.gov.cn/npc/flsyywd/xingzheng/node_2169.htm.

Non-Government sources

- 1) East China Institute of Forest Inventory and Planning. (2007). *Comment on the Issues about Forest Management Plan in China*. [online]. Zhejiang: WEI Xi-qin: East China Institute of Forest Inventory and Planning, SFA, Jinhua 321001. Available at: <http://cnki.lknet.ac.cn/kcms/detail/detail.aspx?recid=&FileName=LDGH200705025&DbName=CJFD0608&DbCode=CJFQ&uid=MjVZUFluTFVQMxhYd0MxOEIKTm53ZmZmeMtHcDV4d0phYnFFYXVGMG1NVjR4VGZZ> [Accessed 23 September 2015].
- 2) Xiao-jie, M., Bin, G., Ji-hui, E., Jiao-yang, W. and Jian-cai, G. (2011). Problems and Proposals Relating to Forest Cutting Quota. *Hebei Journal of Forestry and Orchard*

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- 3) Xu, J., Tao, r. and Amacher, G. (2004). An empirical analysis of China's State-owned forests. *Forest Policy and Economics* 6(3-4), pp. 379–390. Available at: http://econpapers.repec.org/article/eeeforpol/v_3a6_3ay_3a2004_3ai_3a3-4_3ap_3a379-390.htm
- 4) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 5) The World Bank. (2014). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.3.5. Risk determination

Overview of Legal Requirements

According to the Forestry Law and the Regulation of the Implementation of Forestry Law, governments at different levels must develop long-term plans for forests. State-owned forest management enterprises or other State-owned organisations, as well as nature reserves, shall prepare forest management plans in line with long-term planning and submit the plan to higher authorities for approval; while the rural collective economic organisations, State-owned forest or livestock farms, mining or industrial enterprises, shall develop forest management plans under the guidance of forestry authorities.

The forest management plan covers a ten-year period, with the industrial forest management plan spanning five years. When the time comes, new management plans must be prepared. Any organisation that engages in forest management and administration and has defined property and forest areas could be a forest management plan development organisation. There are three types of these organisations, including:

- **Class I:** Organisations such as State-owned forest bureau, State-owned forest farms, nature reserves, etc.;
- **Class II:** Organisations, including collective and private companies that manage collective forest areas greater than 200 ha;
- **Class III:** Organisations including other collective forest organisations or non-public management entities, whose forest development plans shall be prepared collaboratively with county forestry authorities.

Harvest quota management is a basic practice adopted in China's forest governance system based on the principle that timber production volumes shall not be more than the growth volume of the forest. To achieve the objective, annual timber harvest quotas are determined every five years by the State Council, and a timber production plan is required based on the approved harvest quota:

- **For State-owned forests**, the forest management bureau or State-owned forest management enterprises will submit the quota, based on the inventory result, to the State Forestry Administration and the State Council for final approval.
- **For collective forests**, forest authorities at county level will be responsible for preparing and submitting the quota, which will be pooled and balanced by provincial forestry departments and approved by the provincial government and then submitted to State Council for final approval.

It is a legal requirement for State-owned forest management enterprises and forest farms to develop a management plan and a harvesting plan based on the forest resources inventory, which shall be reviewed and approved by higher authorities.

Collective forests and the forest managed by farmers, pasture farms and mines need to develop simple forest management plans under the guidance of forestry authorities at county or provincial levels – as well as the harvesting plan for the harvesting of more than 5 m³.

Description of Risk

- Although China requires State-owned forest management units to develop forest management plans, there is no administrative or monitoring system in place and, therefore, oversight of the management plan and planning process is not strongly regulated nor enforced.
- Requirements for collectively owned forests to develop management plans are not mandatory, so most collectively owned forests do not have these. In fact, collective forests managed by villages, individual farmers and a significant number of small companies generally fail to develop both the forest management plan and even a simple harvesting plan.
- From the available information (1) and previous Chinese Academy of Forestry investigations, it can be highlighted that most State-owned forest management enterprises have developed a management plan; but some have failed to do so. Furthermore, even where the State-owned forest management enterprises have developed a plan, these are often too simple to meet the actual requirement.
- Discussions with various experts highlighted that forest management planning is not well implemented and does not meet the desired outcome. However, China is now making efforts to put more focus on science-based forest management planning and implementation. Future changes in policy and forest administration and management are likely to reflect this change of focus.
- China has a score of 36/100, at position 100 (of 175 countries assessed), according to Transparency International's 2014 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2014 perceptions ratings (on a scale of 1 to 100%):
 - Government Effectiveness: 66.3%;
 - Regulatory Quality: 45.2%;
 - Rule of Law: 42.8%;
 - Control of Corruption: 47.1%.

Risk Conclusion

Based on the risk description, the risk in this category can at present be assessed as Specified for State-owned forest management enterprises.

1.3.6. Risk designation and specification

Specified risk in some state-owned forest enterprises.

1.3.7. Control measures and verifiers

- Where applicable, FME's shall provide their Approved Forest Management Plan and Approved Harvesting Plan.
- The individual FME's management plan shall match against the county-level forest management plan as held by the county forestry authorities.
- County forestry authorities shall be consulted as to whether there exist specific local regulations on forest management plans for individuals, private companies and collective forest.

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- 1) Forest Law of People's Republic of China dated 27th August 2009 - Articles 32 & 33. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 2) Regulation on the Implementation of the Forestry Law of the People's Republic of China [Revised], dated 29th January 2000 - Article 30, 31 & 32. Available at: <http://www.forestry.gov.cn/main/3950/content-459869.html>
- 3) Measures for the Administration of Forest Logging and Regeneration dated 8th January 2011 - Article 5 & 6. Available at: http://www.gov.cn/qongbao/content/2011/content_1860813.htm
- 4) Technical Code for Forest Logging Operations dated 1st December 2005 - Article 5 (1). Available at: <http://www.hsly.gov.cn/DocHtml/1/2010/10/11/975634545394.html>

- 5) SFA Opinion on Further Reforming and Improving harvest management of Collectively owned Forest dated 4th May 2014 - Article 6. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_2086.htm
- 6) Circular on Carefully Implementing Pilot Complete Commercial Logging Ban dated 2014

1.4.2. Legal authority

- State Forestry Administration

1.4.3. Legally required documents or records

- Forest Harvesting Permit issued by the relevant forestry authority at or above county level according to Forest Law and Regulation of the Implementation of Forestry Law.
- State-owned forestry enterprises need to submit:
 - Logging Operation Design (developed by State-owned forestry enterprise)
 - Inspection and acceptance Certificate of last-year's forest regeneration
- Other types of forest management units:
 - Relevant documents that can indicate the purpose of harvesting, location, tree species, forest condition, area, stocking volume, methods and regeneration measures.

1.4.4. Sources of information

Government sources

- 1) Forestry.gov.cn. (2015). *China to phase out commercial logging of natural forests by 2017*. [online]. State Forestry Administration of the People's Republic of China. Last updated 11 June 2015. Available at: <http://english.forestry.gov.cn/index.php/key-program/683-china-to-phase-out-commercial-logging-of-natural-forests-by-2017>
- 2) Chinadaily.com.cn. (2015). *Report: Logging hurts panda habitat*. [online]. China Daily. Last updated 23 October 2015]. Available at: http://www.chinadaily.com.cn/china/2015-10/23/content_22262635.htm
- 3) Forestry.gov.cn. (2008). *Check of over-quota harvesting indicates harvesting beyond quota basically curbed*. [online]. State Forestry Administration of the People's Republic of China. Last updated 23 April 2008. Available at: <http://www.forestry.gov.cn/portal/main/s/72/content-203941.html>
- 4) China Forestry Statistical Book 2007-2009, p. 283, p. 257, p. 228; Available at: <http://tongji.cnki.net/overseas/engnavi/HomePage.aspx?id=N2011110055&name=YCSRT&floor=1>
- 5) Chinese Forestry Development Report 2005-2009;

Non-Government sources

- 1) Sai, Z. (2012). *Countermeasures on the Issues of License of Forest Harvest System in China*. Master Thesis. Hunan Teacher's University. Available at: <http://www.docin.com/p-605109205.html>. [Accessed 15 July 2015]
- 2) Wei, W. (2007). *Discussion on Issuing and Management of Forest Felling Licenses*. Forestry Investigation and Planning Institute of Kuandian County, 118202, Dandong, Liaoning. Available at: http://wenku.baidu.com/link?url=xBI30qiLGFZ516xWYik-IheLz6WIFj75uZGXjcheFZ-9wWPJXi9HAAXE-RLRmiStCQrza52dMz9ALSBjzW8o5d3f-QTjC7d2Z2Yhvyxv_C [Accessed 15 July 2015]
- 3) Tsinghua University - FOREST GOVERNANCE INTEGRITY REPORT CHINA - 2011 (High risk corruption area 1: Bribery to change the zoning of an area to allow logging / High risk corruption area 3: Bribery in the award of logging concessions).
- 4) Zhang, Y. (2015). *China Introduces Series of Logging Bans, Forestry Official Says*. [online]. Caixin Online. Available at: <http://english.caixin.com/2015-06-10/100817889.html>
- 5) Chinadaily.com.cn (2015). *China to phase out commercial logging of natural forests by 2017*. [online]. China Daily. Available at: http://m.chinadaily.com.cn/en/2015-06/10/content_20962885.htm.
- 6) Xia Changzheng, Chen Yeliang. Over-quota harvesting illegal even with harvesting permit. Jiancha Times. 2015-05-20.
- 7) Addressing Legality in China Wood Supply Chains (Presentation to the Chatham House/IUCN Update Meeting on Illegal Logging & Associated Trade) - Matthew Brady, TFT China Project Manager (April 26th 2007; Beijing, China), downloaded from: http://www.illegal-logging.info/presentations/26-270407/English/April%2026/4%20Matt%20Brady%20TFTChatham_April07%20Eng.ppt on 08/01/16
- 8) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 9) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.4.5. Risk determination

Overview of Legal Requirements

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

China's harvest quota system is carried out with the intention of limiting harvests to volumes at or below annual incremental growth. As part of 5-year development planning, the State Forestry Administration (SFA) prepares a 5-year harvest quota. After approval by the State Council, the SFA allocates quotas for each province and key forest bureau. Quotas are then allocated downward from provincial level through to county or town level. Harvesting permits are issued based on the logging quota locally available to forestry authorities. Based on the quota, national unified annual timber production plans

must be developed, in which the harvest volume cannot surpass the annual harvest quota approved, in line with the Forestry Law.

When applying for a harvesting permit, the applicant must submit a series of documents, including:

- (i) Logging operation design;
- (ii) Evidence for regeneration in the last year (an Inspection and Acceptance Certificate relating to regeneration as required in the Measures for the Administration of Forest Logging and Regeneration);
- (iii) Payment of afforestation fee; and
- (iv) Forest tenure certificate, etc. The issue of the harvesting permit must follow the logging quota approved by the State Council based on the amount reported by State-owned forest management enterprises, forestry bureaus at county level and other relevant units; otherwise harvesting without permission and excessive harvesting may be punished according to law.

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

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

- (i) Forestry bureau at the county level: County-owned forest farms, collective forests and forest farmers;
- (ii) Provincial forestry departments: provincially owned forest farms, prefecture-owned forest farms or enterprises, provincially managed nature reserves or forest parks, non-forestry units;
- (iii) State Forestry Administration: State-owned forest farms or forest management bureaus, nature reserves or forest parks of key national importance, or other forests with important ecological values.

Many provinces formulate their own rules regarding exemptions for farmers who cut trees around their houses and farms. In provinces where forest protection is prioritised (e.g. Anhui, Sichuan and Yunnan), farmers do need to apply for harvesting permits using a credential letter issued by the village committee. Conversely, in other areas (e.g. Guangxi and Shandong), farmers do not need a harvesting permit but a credential letter from the village committee may still be obtained.

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

Management of harvesting areas is implemented in China to administer and monitor inventory and design, timber production, harvesting, regeneration of the harvested area and inspection of harvesting quality. For any harvesting activities, an inventory and harvest design must be carried out before the harvesting operation commences; and

harvesters can enter the harvesting area only after applying for and gaining approval for the inventory and harvest design.

The SFA Opinion on Improving the Planted Commercial Forest Harvesting Administration provides that harvesting permits should be issued by forest authorities (at county level or above) for commercial forests established on non-forestry land after the application by the owners of the forest trees. The harvesting volume shall be included in the annual harvest quota and annual timber production plan. Note the following cases relating to the harvest quota:

- If, in the case of harvesting (thinning) of planted commercial forest, forest trees have a Diameter at Breast Height (DBH) of below 10 cm, they will not be included in the annual forest production plan.
- The harvesting of bamboo forest, with the primary objective to produce bamboo timber, should also not be included in the annual timber production plan.
- With regards to using up quotas, if the quota for planted commercial forest is surplus in one year, it may be transferred for use the following year; however only after approval by the provincial forestry authorities and documentation by the SFA.
- The quota for planted commercial forest cannot be used for harvesting of natural forest; however, the quota for natural forest can be used for planted commercial forest if the quota for plantations is insufficient to meet demand.

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

The monitoring and governance of harvesting of bamboo forest is loose compared to that of arboreal forest. In general, no harvesting permit is required for bamboo (although this does not apply in all provinces, see below). Furthermore, measures have been taken to provide farmers with greater freedom to manage bamboo forests. However, different provinces have slightly different regulations regarding the harvesting permit. For example, Hunan Province still requires that a harvesting permit be obtained for bamboo forest, although the procedure is much simplified.

Description of Risk

Overall, implementation and enforcement of the forest harvest quota system; the approval mechanism for forest harvesting; the annual timber production plan; timber transportation permit and timber management and processing licence system all play a role in combating illegal harvesting and related trade in China. However, based on the thesis on problems and counter-measures for harvesting permits, major issues include the lack of effective supervision and monitoring of harvesting operations, and overcutting beyond quotas, especially in north-eastern China.

Various sources refer to over-quota harvesting occurring as one or a combination of the following: Illegal actions by forest officials (with conflict of interest incentives to do so) either in the case of upward reporting or downward issuing of licences – as well as

fraudulent harvesting permit applications by the applicant. The use of bribery has been highlighted as a means to submit false timber inventories as well as to avoid requirements with regard to transport licences. While the Forest Law limits the volume of timber that can be legally logged, sustainable logging operations can be undermined by bribery to induce officials to submit false timber inventories (including using fraudulent documents or weak sampling to distort results) to over-estimate legal volumes. Bribery may also be used to avoid the use of legal transport licences or to ignore the terms of legal licences. Various sources indicate that official statistics ignore above-quota production, and real timber production may be close to double the reported production volume. Since the introduction of the harvest quota system in 1987, above-quota harvesting appears to be prevalent throughout the country. However Chinese official statistics on timber production often report only planned production and thus systematically under-estimate the true production level. According to 2003 estimates from the State Forestry Administration, the average above-quota harvest was 75.54 million m³ per year between 1998 and 2003, compared with an average quota production of 47.42 million m³. Offences include activities such as falsified logging permits and ownership certificates. There may be reluctance by local officials to report harvesting in excess of official quotas.

China has developed annual reporting relating to implementation of wood harvest quotas. The average rates of licensed-cutting, cutting licences issued, and qualified licences issued, are 89.9%, 83.0% and 84.0%, respectively, in national cutting areas in 2008; increasing by 24.6%, 12.4% and 0.8%, respectively, compared with 2006. These results indicate that there were unlawfully issued harvesting permits and timber transportation permits; and – in some locations – over-quota harvesting and cutting without licences. According to spot checks between 2006 and 2009, and reports between June 2009 and July 2010, the problems of over-quota harvesting, unlawfully issued Harvesting permits and harvesting without licences are comparatively high in many provinces such as Fujian, Guangdong, Guangxi, Hainan, Hubei, Hunan, Jiangxi, Hebei, Shanxi, Neimenggu, Xinjiang, Shaanxi, Gansu, Sichuan, Yunnan, Guizhou, Jilin and Heilongjiang etc.

Based on “Chinese Forestry Development Report 2005–2009”, the timber supplier volume of over-quota harvest and previous year storage was (in million m³) 47, 38, 44, 52 and 14 million m³, respectively over the 5-year period 2004 to 2008. The largest portion of this was the previous year’s reserves, but the over-quota harvest volume was imprecise. Some timber making up the over-quota harvest was from farm-derived firewood and trees around village houses harvested without a licence, with a small volume for which the origin was unclear.

Based on the evaluation reports of IUCN/TNC, Greenpeace, WWF, Forest Trends and TFT, among others, the Chinese government is aware of the significance and importance of legally harvested and traded timber and forest products, and has taken measures to improve domestic forest management and address illegal domestic harvesting. As a result, it is the authors’ view that over-quota harvesting was a more serious issue prior to 2005, but is less so now as SFA makes a greater effort to combat this issue; and legislative and administration measures have been taken to address over-quota harvesting.

Discussions with various experts highlighted the case that more timber now comes from planted forests and that the timber from natural forests account for less than 25% of total domestic production. Also, a very significant proportion of over-quota harvesting is a result of technical issues relating to how forest is classified and the inventory process (and not a reflection of illegality), such as: inappropriate quota development, 'macro' level rather than 'micro' level investigation of forest resources for quota development, without consideration of the specific forest resources in certain forest management units. One expert observed that the quota-based harvesting system might be withdrawn (or at least reduced in prominence) in the future as a primary administrative measure for forestry in China, as a forest management plan system is put into place and implemented.

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

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

This implies that at least some harvesting will be conducted in natural forest through 2017. Even though the phase-out of commercial logging in natural forests is not legally enacted, according to current advice the ban will last for at least ten years – and whether the logging is allowed after ten years will depend on forest quality. In this sense, the possibility of developing such a measure into law is considered remote. However, the possibility of the measure being referred to in Forestry Law currently under revision cannot be excluded: the policy is already strongly implemented in the north-eastern region and will be promulgated in other regions of China, as per the timeframe above. In this way, only plantations will be permitted to be harvested in the future, and the problems of overcutting beyond quota will be more-or-less consigned to history. For collective plantation forests, since tenure has been identified and protected, managers can apply for harvesting permits with their forest tenure certification using a simplified procedure.

China has a score of 36/100, at position 100 (of 175 countries assessed), according to Transparency International's 2014 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2014 perceptions ratings (on a scale of 1 to 100%):

- Government Effectiveness: 66.3%;

- Regulatory Quality: 45.2%;
- Rule of Law: 42.8%;
- Control of Corruption: 47.1%.

Risk Conclusion

According to the available information risks exist relating to the challenges of the forest harvest quota system and the approval mechanism for forest harvesting, including to some extent the unlawful issuing of harvesting permits and harvesting without licences. Furthermore, the ongoing stepwise phase-out of commercial logging in natural forests requires a precautionary approach to this category. As a result, the risk associated with this category is considered to be Specified.

1.4.6. Risk designation and specification

Specified risk for all forest types (to be reviewed after 2017)

1.4.7. Control measures and verifiers

- A Forest Harvesting Permit, issued by the relevant forestry authority, shall be made available. This Permit shall compare correctly against corresponding documents with regards to material descriptions, volumes, qualities and species. E.g. transportation permits, VAT invoices, delivery notes, contracts, etc.

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

- 1) Law of People's Republic of China on the Administration of Tax Collection dated 29th June 2013 - Article 1, 2 & 4. Available at: <http://en.pkulaw.cn/display.aspx?cgid=206072&lib=law>
- 2) Forest Law of People's Republic of China dated 27th August 2009 - Article 8. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 3) Regulation on Plant Quarantine dated 26th July 1994 - Article 26. Available at: <http://www.forestry.gov.cn/main/3951/content-204766.html>
- 4) Notice on cancelling, exempting and stopping a batch of administrative business fees dated 1st January 2015 - Annex 2. Available at: http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201412/t20141229_1173518.html
- 5) Measures for Plant Quarantine Fee Collection of People's Republic of China dated 1992 - Article 2, 3 & 5. Available at: http://www.moa.gov.cn/ztzl/gjzwbhgy/flfg/201205/t20120507_2618504.htmState

1.5.2. Legal authority

- Forestry Administration

1.5.3. Legally required documents or records

- Payment receipt for afforestation funds
- Payment receipt for plant quarantine fee (small and tiny companies are exempt from the fee)

1.5.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Yongjie, Z. (n.y.). *On Forestry Taxation after the Free-Tax in Agriculture*. [online]. China Science and Technology Thesis Online. Available at: <http://www.doc88.com/p-018966758363.html> [Accessed 27th Dec. 2015]
- 2) Xia, L. (n.y.). *Forestry-related tax and fee reform in China*. [online]. Rural Finance and Fiscal. Available at:

<http://doc.mbalib.com/view/599fa18f96cd06d8e3e86c2ea7337403.html> [Accessed 2 August 2015] (No English translation found)

- 3) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 4) The World Bank. (2014). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.5.5. Risk determination

Overview of Legal Requirements

China exempts forest management enterprises and forest managers from forestry taxes to lessen their burden of taxation. Currently, only a few fees are being collected, the afforestation fee and plant quarantine fee:

- **Afforestation fee:** this special fee came into force in 1961 and is collected by government to restore, cultivate and protect forest resources as a supplement to national input for forest management. Buyers of timber, bamboo timber and other forest products – as primary products – are subject to the payment of this fee.
- **Plant quarantine fee:** collected by plant quarantine bodies for quarantine and relevant actions required for seeds and seedlings as well as other plant products.

In 2014, the Ministry of Finance and State Administration of Taxation issued the Notice on Cancelling, Exempting and Discontinuing a Batch of Administration Business Fees, including provisions to cancel, discontinue and exempt the plant quarantine fee for small and micro-sized companies.

Description of Risk

Via review of the academic study on payment of royalties and harvesting fees (1), it can be observed that most fee collection has been cancelled or discontinued to lessen the financial and administrative burden on forest farmers as well as encouraging the planting of trees. Furthermore, the fees required are closely linked with the release of documents such as Harvesting permits and Phytosanitary certificates. Requirements are such that the Harvesting permit may be issued by forest authorities only after payment of the afforestation fee. In other words, the presence of a Harvesting permit provides assurance that the afforestation fee has been paid.

The plant quarantine fee must be paid to obtain the Phytosanitary certificate for wood and woody plants. Therefore, with a Harvesting permit and a Phytosanitary certificate, the two fees can be demonstrated to have been paid.

Risk Conclusion

Based on the current requirements, and given the governance system in place in relation to the Harvesting permit system, the risk for this category is assessed as Low.

1.5.6. Risk designation and specification

Low risk

1.5.7. Control measures and verifiers

N/A

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

- 1) Law of People's Republic of China on the Administration of Tax Collection dated 29th June 2013 - Article 1, 2 & 4. Available at: http://www.gov.cn/banshi/2005-08/31/content_146791.htm
- 2) Notice of the Ministry of Finance and the State Administration of Taxation on Immediate Reimbursement of VAT after Collection Levied on Comprehensive Utilization Product Manufactured by Three Surpluses and inferior log dated 3rd August 2006. Available at: http://www.mof.gov.cn/zhengwuxinxi/caizhengwengao/caizhengbuwengao2006/caizhengbu20069/200805/t20080519_24448.html
- 3) Interim VAT Regulation of People's Republic of China dated 5th December 2008 - Article 15, 20 & 21. Available at: http://www.gov.cn/zxft/ft162/content_1171395.htm
- 4) Regulation Bylaw of Interim VAT Regulation of People's Republic of China dated 28th December 2008- Article 35. Available at: http://www.gov.cn/flfg/2008-12/18/content_1181744.htm
- 5) Invoice Management Measure of People's Republic of China dated 23rd December 1993, revised at 20th December 2010. Available at: <http://www.chinanews.com/fz/2010/12-27/2748437.shtml>

1.6.2. Legal authority

- State Administration of Taxation and taxation authorities at different levels

1.6.3. Legally required documents or records

- VAT invoice issued by companies:
 - 13% VAT levied on logs, forest products produced and sold by the same forest producer exempt from this VAT;
 - 4% VAT for small commercial businesses
- Invoice

1.6.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Xia, L. (N.Y.). *Forestry-related tax and fee reform in China*. [online]. Rural Finance and Fiscal. Available at: <http://doc.mbalib.com/view/599fa18f96cd06d8e3e86c2ea7337403.html> [Accessed on 2nd August 2015]
- 2) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 3) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.6.5. Risk determination

Overview of Legal Requirements

Any invoice provides evidence of a goods transaction. In China, taxation is closely linked to an invoice (including VAT invoice or *Fapiao*) and is controlled such that an invoice demonstrates that a company pays tax and represents evidence for tax reimbursement. Taxpayers who engage in production and trading must apply for a Tax Registration Certificate (using the Business Licence and other required documents) within 30 days of obtaining the Business Licence. According to the *Fapiao* Administration Measure of the People's Republic of China and relevant rules established by taxation authorities, VAT invoices used by value-added tax payers are administered by the State Administration of Taxation, and must be purchased from local taxation authorities.

Up until now, the Chinese government has issued some notices on forest management enterprises relating to the exemption or reduction of taxes. Currently, there are only three relevant taxes, including:

- (i) Value-added tax (VAT);
- (ii) City maintenance and construction tax; and
- (iii) Income tax.

However, VAT exemptions exist in a number of cases:

- Companies using residues to produce products;
- Forest management companies or individuals who sell their own products, for example, sales of round-wood are exempt from VAT where the forest management unit sells the logs it produces;
- Individuals who do not register as a legal entity but are allowed to sell individual trees that are scattered or distributed on their land are not required to issue invoices. They are also not required to pay VAT according to the Interim VAT Regulation.

Otherwise, all non-exempt forestry-related companies need to issue invoices when selling wood products. By means of China's tax collection control system, these invoices are used as the evidence of VAT payment.

Fapiao have uniform requirements and format and are printed on special paper. Booklets are printed and sold by the designated tax authority, which monitors and supervises tax collection based on these documents.

To combat the nation-wide problem of fake or falsified invoices (produced as a means to avoid tax payments), invoicing is connected with the taxation control system, through which every invoice can be visualised, traced or controlled by local tax authorities at or above county level. It is possible to check invoices online (through taxation authority facilities); the public can therefore check if the invoice is legitimate or not using the online check.

Description of Risk

From the academic study on VAT and other sales taxes (1), it can be seen that forestry management enterprises are required to pay limited taxes, which is taken as an incentive to encourage forest management activities. However, there is still some illegal activity with regard to the non-payment of VAT. To avoid tax payments, some companies utilise different methods, such as:

- Providing only receipts that indicate only the transaction amount and value. However, receipts do not have the same legal status as invoices in China, and cannot be used as evidence of payment of tax.
- To avoid VAT and other sales taxes, companies (especially downstream enterprises) may refuse to issue invoices, or indicate smaller volumes or values on invoices than the reality.
- NOTE: Individual farmers who harvest scattered trees around their houses and on their farmland cannot submit invoices since the farmers are not considered legal entities.

China has a score of 36/100, at position 100 (of 175 countries assessed), according to Transparency International's 2014 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2014 perceptions ratings (on a scale of 1 to 100%):

- Government Effectiveness: 66.3%;
- Regulatory Quality: 45.2%;
- Rule of Law: 42.8%;
- Control of Corruption: 47.1%.

Risk Conclusion

Based on the risk description above, the risk of this category has been assessed as Low at the forest level and Specified risk at the trading and processing level.

1.6.6. Risk designation and specification

- Low risk at forest level

- Specified risk at trading and processing level

1.6.7. Control measures and verifiers

- Suppliers (trading and processing level) shall provide a VAT invoice for goods sold.
- These shall compare correctly against corresponding documents with regards to product descriptions, volumes, qualities and species. E.g. harvesting permits, transportation permits, delivery notes, contracts, etc.

1.7. Income and profit taxes

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

1.7.1. Applicable laws and regulations

- 1) Law of People's Republic of China on the Administration of Tax Collection dated 29th 2013 - Article 1, 2 & 4. Available at:
<http://en.pkulaw.cn/display.aspx?cgid=206072&lib=law>
- 2) Notice of Ministry of Finance and State Administration of Taxation on Forestry Taxation Policy dated 1st January 2001 - Article 2. Available at:
http://wenku.baidu.com/link?url=ftcih8V9O-GV82mhzm5p9BPCOLMOqyVmrBKJrYiFXp3F_g97efoueFylcvA4Q8kYmD8LRvaZiYb5o4Wz7G8HeO5ek-cQjAfYmVJi8hUSGgu
- 3) Notice of the Ministry of Finance and the State Administration of Taxation on Company Income Tax Collection by State-owned Agriculture enterprises dated 8th May 1997 - Article 2 & Annex 1, 3 & 4. Available at:
<http://www.chinaacc.com/new/63/67/88/1997/5/ad25921610111857991992.htm>
- 4) Law of the People's Republic of China on Enterprise Income Tax dated 16th March 2007 - Article 1, 4, 27 & 28. Available at:
<http://wenku.baidu.com/link?url=RYJptti2iMZ-o-8xJUJ5IDPY7WNsJQCIDIJRyOu7xInjP42SOizqDA3R39rWhaFWMGcFXT5B956LeTsmjJPAvCLbjMkMHKIJOXzWUstylES>
- 5) Invoice Management Measure of People's Republic of China dated 23rd December 1993, revised at 20th December 2010. Available at:
<http://www.chinanews.com/fz/2010/12-27/2748437.shtml>

1.7.2. Legal authority

- State Administration of Taxation

1.7.3. Legally required documents or records

- Annual income tax declaration form
- Invoice and other evidence

1.7.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Xia, L. (N.Y.). *Forestry-related tax and fee reform in China*. [online]. Rural Finance and Fiscal. Available at: <http://doc.mbalib.com/view/599fa18f96cd06d8e3e86c2ea7337403.html> [Accessed 2 August 2015]
- 2) Docin.com. (N.Y.). *Forestry taxes and fees*. [online]. Docin Library. Available at: <http://www.docin.com/p-747196452.html> [Accessed 2 August 2015]
- 3) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 4) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.7.5. Risk determination

Overview of Legal Requirements

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

According to the Law on Enterprise Income Tax, companies must pay income tax at 25% of their taxable income. The law also provides for income tax exemptions and reductions. There are two such provisions related to forestry companies:

- i) Forestry, agriculture, farming, and fishery business activities may be exempted from income tax requirements; and
- ii) Small and micro-enterprises may pay the income tax at 20% of their income.

Furthermore, according to the notices issued by the Ministry of Finance and State Administration of Taxation, income tax and profit tax exemptions may apply in two cases:

- i) Enterprises engaged in forest management, seedling production, and primary timber processing are exempt from income tax and profit taxes.
- ii) Secondary processing companies that use small-diameter logs, logging residues or materials processing residues to process wood-based panels, wood chips, fodders, pulp, charcoal, particles, etc. are also exempt from paying income tax.

Additionally, income tax exemption is permitted in the case of some State-owned forest farms at the borders with other countries. All other companies shall pay income tax.

If a company is also engaged in business activities other than forest management, seedling production and primary timber processing (i.e. activities that are exempt in the context of income tax, as above), the company shall manage the finances of the

business separately from the tax-exempted business. If combined, all income tax shall be collected for the entire business.

Description of Risk

According to laws and notices, zero tax is now implemented in China for many forest-related companies. This analysis is supported by the thesis of Liu Xia (1) and Docin library (2), which also highlight the fact that – after the issue by central government of a series of notices to lessen the tax burden on forestry companies – most forest-related companies are exempt from paying income tax, particularly forest management units and primary processors. Income tax avoidance is not considered a risk of any significant proportion.

Risk Conclusion

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

1.7.6. Risk designation and specification

Low risk

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

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

1.8.1. Applicable laws and regulations

- 1) Measures for the Administration of Forest Logging and Regeneration dated 8th January 2011. Available at: http://www.gov.cn/gongbao/content/2011/content_1860813.htm
- 2) Technical Code for Forest Logging Operations dated 1st December 2005. Available at: <http://www.hsly.gov.cn/DocHtml/1/2010/10/11/975634545394.html>
- 3) Forest Law of People's Republic of China dated 27th August 2009 - Article 31, 34 & 35. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 4) Criminal Law dated 25th February 2011 - Article 344, 345 & 407. Available at: <http://www.lawtime.cn/faguizt/23.html>
- 5) Explanation of Several Issues of the Supreme People's Court on Specific Application of Laws for Hearing the Criminal Case in Forest Resources Damages dated 17th November 2000. Available at: <http://www.forestry.gov.cn/portal/zfs/s/809/content-105803.html>
- 6) SFA Opinion on Improvement of Harvesting Administration for Commercial Plantations dated 30th December 2003 - Article 2, 3 & 5. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_1130.html

1.8.2. Legal authority

- State Forestry Administration

1.8.3. Legally required documents or records

- Logging records and harvest volume records (consistent with Logging Operation Design and Harvesting Permit);
- (Harvest area) Inspection and acceptance Certificate for state or locally owned forest farms.

1.8.4. Sources of Information

Government sources

N/A

Non-Government sources

- 1) Yuanan.gov.cn (N.Y.) Type and method for forest harvesting.
- 2) Zhigao, W. (2013). *Working manner for forest resources supervision and governance*. [online]. China Forestry Press.
- 3) Chinese Academy of Forestry. (N.Y.). *FSC Controlled Wood field investigation report*. Internal use.
- 5) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 6) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.8.5. Risk determination

Overview of Legal Requirements

In China, a number of forest harvesting regulations act to regulate harvesting operations.

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

State-owned forestry enterprises must submit the harvesting area inventory design plan to the State Forestry Administration (SFA) as part of the process of applying for the harvesting permit. Other organisations, when applying for a harvesting permit, must submit documents indicating the harvesting objective, location, species, condition, area, volume and regeneration method. If the harvesting operation does not meet the design plan, the authorities issuing the harvesting permit have the right to seize the harvesting permit and terminate the operation. The harvesters must achieve forest regeneration outcomes as per the details included on the harvesting permit including area, plant species and period; with the regenerated area not to be less than that harvested.

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

- (i) Mainstay cutting;
- (ii) Tending (thinning) cutting;
- (iii) Regeneration cutting; and
- (iv) Low-efficiency forest cutting for improvement.

Mainstay and tending cutting are used for wood production in commercial forests, while regeneration cutting is used for improving the functions of protective forests and special-purpose forests. Low-efficiency forest cutting is intended to improve wood quality in stands for commercial use. Selective cutting, clear-cutting and gradual cutting are the

major silvicultural methods used for forest harvesting. Forest companies must choose the right method based on the condition of the forest to be harvested. Natural forest is not permitted to be clear-cut.

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

The harvesting operation must strictly follow the design plan and the conditions on the harvesting permit, with these documents required to be available at the harvesting site. The harvesting area, volume and timber produced must not exceed the error levels assumed in the design plan. Additionally, harvesting must not cause significant damage to the remaining forest resource, and young trees must be well-protected. Large quantities of wood wastage are not permitted and the operation must adhere to a minimal waste principle. After the harvesting operation, residues must be removed from the harvesting area, with the primary objective of enhancing regeneration, with this activity also required to follow the Technical Code for Forest Logging Operations 2005.

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

Description of Risk

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

For information relating to challenges associated with over-quota harvesting, see category 1.4.

Risk Conclusion

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

1.8.6. Risk designation and specification

Low risk

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- 1) Forest Law of People's Republic of China dated 27th August 2009 - Article 4, 24, 25 & 38. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 2) Technical Code for Ecological Forest Establishment dated 2001- Article 5(1) B & C. Available at: <http://www.forestry.gov.cn/portal/xby/s/1312/content-127443.html>
- 3) Measures for Demarcating National-Level Ecological Forests dated 1st January 2010 - Article 7. Available at: <http://www.forestry.gov.cn/portal/xby/s/1277/content-126974.html>
- 4) Nature Reserve Regulation of P.R. China dated 9th October 1994 - Article 2, 3, 10, 11, 12, 14, 15, 18, 26, 27, 28, 29 & 32. Available at: http://www.gov.cn/ziliao/flfg/2005-09/27/content_70636.htm
- 5) Measures for National-level Nature Reserve Monitoring and Check dated 26th October 2006 - Article 3, 7, 10, 13, 14, 18 & 19. Available at: http://www.fdi.gov.cn/1800000121_23_61805_0_7.html
- 6) Wild Plant Protection Regulation dated 30th September 1996 - Chapter 3. Available at: <http://www.forestry.gov.cn/portal/jsxh/s/3477/content-537529.html>
- 7) Administration Measures for National-level Ecological Forestry dated 27th April 2013 - Chapter 2.3. Available at: http://www.gov.cn/qzdt/2013-06/09/content_2423499.htm

1.9.2. Legal authority

- State Forestry Administration
- Ministry of Environment Protection for Nature Reserve Regulation

1.9.3. Legally required documents or records

- Forest Harvesting Permit issued by the relevant forestry authority at or above county level (with description of species, location, logging method and logging prohibition area);
- List of local rare and endangered species - provided by State-owned forest farms

- Ecological forest distribution map - provided by local forestry bureau or State-owned forest farms

1.9.4. Sources of Information

Government sources

N/A

Non-Government sources

- 1) xzbu.com. (2013). *Protection counter-measures for endangered wildlife*. [online]. Available at: <http://www.xzbu.com/3/view-4413243.htm> [Accessed 4 August 2015]
- 2) cbd.int. (N.Y.) *National synthesis analysis on forest ecosystem to indicate the improved management of protected area networking*. [online]. Available at: <https://www.cbd.int/doc/world/cn/cn-nr-fe-en.pdf> [Accessed 4 August 2015]
- 3) The Ministry of Environmental Protection of China (2014). *China's Fifth National Report on the Implementation of the Convention on Biological Diversity*. [online]. Available at: <https://www.cbd.int/doc/world/cn/cn-nr-05-en.pdf> [Accessed 4 August 2015]
- 4) Su Zhou (China Daily) (2015). Report: Logging hurts panda habitat. Available at http://www.chinadaily.com.cn/china/2015-10/23/content_22262635.htm [Accessed 14 September 2016].
- 5) Greenpeace (2015). Deforestation in UNESCO Sichuan Giant Panda Sanctuaries. Available at <http://www.greenpeace.org/eastasia/publications/reports/forests/2015/report-illegal-logging-sichuan/> [Accessed 14 September 2016].
- 6) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 7) The World Bank. (2014). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.9.5. Risk determination

Overview of Legal Requirements

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

Forests are divided into commercial forests and ecological forests based on their principal function. The category 'ecological forest' is mainly reserved for the protective and special-purpose functions, in areas with significant ecological importance. Ecological forests are mainly established in areas of important or fragile ecological conditions or in

areas with an important role in safeguarding ecological security, biodiversity conservation or sustainable and social development. The Technical Code for Ecological Forest Establishment 2001 defines the method, mode and species selection for establishing ecological forests of different types, as well as the management and tending of these forests.

The Wild Plant Protection Regulation requires that the government shall enhance the protection of wild plant resources and actively develop as well as responsibly encourage their utilisation. Wild plant authorities or related bodies take measures to rescue key threatened national or local wild plant resources to protect and restore their habitats and, when necessary, other measures such as establishing a propagation base, germplasm bank, etc. To protect wild plant resources, the State Council approved the National Key Protected Wild Plant List (first edition), while key local protected wildlife lists are approved and released by provinces.

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

China has a well-established system of natural reserves and has set up laws and a regulatory system to protect these. Besides this, there are well-established, administrative organisations in charge of natural reserve protection, including the Ministry of Environment Protection and State Forestry Administration. These ensure a robust level of protection of protected areas and species. The Nature Reserve Regulation requires that China adopts economic and technical policies and measures consistent with developing nature reserves, and includes nature reserve development planning in conjunction with national and social development planning.

Harvesting, hunting, grazing of livestock, fishing, land reclamation, mining and quarrying are not permitted in nature reserves unless these activities occur in areas with lower levels of protection (e.g. class 3: generally protected forest). In the core and buffer areas of nature reserves, no tourism or production activities are permitted; and the core area may not be accessed. If someone wants to enter a core area for scientific research, he or she must request access through the nature reserve administration authorities (including, where relevant, the national authority), having submitted an activities plan in advance and obtained approval from provincial nature reserve authorities.

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

Besides the natural reserve protection system, in general ecological forests (and associated conservation values) do not appear to be threatened by management or harvesting activities. According to relevant laws and regulations relating to the establishment of non-commercial forests, commercial harvesting is not permitted in ecological forests: logging is solely for the purpose of forest management and to encourage natural regeneration. An integrated system has been established focussing on protection and management relating to wildlife, NTFP resource survey and utilisation, and construction of roads and other infrastructure.

Description of Risk

- 1) There have been no recent reports of adverse impacts of forest management or harvesting activities on protected areas or species. In protected sites, only thinning and intermediate harvesting are permitted after review and approval by forest authorities at or above provincial level. Also, sufficiently robust protection and management systems have been adopted for wildlife, development and utilization of non-wood resources, roads and other infrastructure. Complete forest closure without harvesting is practiced in areas with fragile ecological environments, core and buffer areas of nature reserves, ecological forest that is difficult to regenerate after harvesting, etc.
- 2) As a signatory country to the Framework Convention on the Conservation of Biological Diversity, China has developed a biodiversity protection activities plan and has submitted national reports on the implementation of the Convention. According to the Fifth China National Report (3), China has made significant achievements in establishing biodiversity protection and management systems.
- 3) There are well-established administrative organizations in charge of natural reserve protection. The State Council environment administrative department is responsible for national reserve management. Forestry, agriculture, mining, water conservation, marine (and related administrative departments) manage natural reserves in their own areas of responsibility.
- 4) There appears to be a well-established system and set of laws protecting natural reserves. No evidence, nor significant body of reports has been identified relating to the threat to these natural reserves by forest management or harvesting activities.

Risk Conclusion

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

1.9.6. Risk designation and specification

Low risk

1.9.7. Control measures and verifiers

N/A

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open

areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- 1) Technical Code for Ecological Forest Establishment dated 2001 - Article 4(2). Available at: <http://www.forestry.gov.cn/portal/xby/s/1312/content-127443.html>
- 2) SFA Opinion on Improvement of Harvesting Administration for Commercial Plantations dated 30th December 2003 - Article 14. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_1130.html
- 3) Technical Code for Forest Logging Operations dated 2005 - Article 4 (2). Available at: <http://www.hsly.gov.cn/DocHtml/1/2010/10/11/975634545394.html>
- 4) Law of the People's Republic of China on Environmental Impact Assessment dated 1st September 2003 - Chapter 1 & 2. Available at: <http://www.china-eia.com/en/policiesregulations/lawsregulations/4659.htm>
- 5) Forest Law of People's Republic of China dated 27th August 2009 - Article 21. Available at: <http://en.pkulaw.cn/display.aspx?cqid=20095&lib=law>
- 6) Forest Fire Prevention Regulation dated 1st January 2009. Available at: http://www.gov.cn/flfg/2008-12/05/content_1171407.htm
- 7) Forest Disease and Pest Control Regulation dated 18th December 1989. Available at: http://www.gov.cn/flfg/2005-09/27/content_70642.htm
- 8) Soil and Water Retention Law dated 25th December 2010 (Revised) - Article 18-23. Available at: http://www.gov.cn/flfg/2010-12/25/content_1773571.htm

1.10.2. Legal authority

- State Forestry Administration
- Ministry of Environment Protection for the Law on Environment Impact Assessment

1.10.3. Legally required documents or records

- Approved Forest Management Plan
- Approved Forest Harvesting Plan

1.10.4. Sources of information

Government sources

- 1) Fj.cq.gov.cn. (N.Y.). *Twelfth Five Year Plan making new requirements on forestry ecological environment*. [online]. Fengjie County Government website. Available at: http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm [Accessed 8 October 2015]

- 2) Forestry.gov.cn. (2014). *Yongchuan in Chongqing Green for Grain Program beautifying environment*. [online]. China Forestry website. Available at: www.forestry.gov.cn/portal/main/s/435/content-653193.html [Accessed 8 October 2015].

Non-Government sources

- 1) News.ifeng.com. (2015). *Eulogy to Tianshan: Xinjiang towards new chapter of ecological civilization*. [online]. Phoenix News. Available at: http://news.ifeng.com/a/20150918/44682403_0.shtml [Accessed 8 October 2015]
- 2) gscn.com.cn. (2015). *Department of Environment Protection and State Forestry Administration giving a verbal warning to Zhangye Government agencies on Qilian Mount ecological environment*. [online]. Gscn.com. Last updated 10 August 2015. Available at: <http://gansu.gscn.com.cn/system/2015/10/08/011129431.shtml> [Accessed 8 October 2015]
- 3) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 4) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.10.5. Risk determination

Overview of Legal Requirements

In terms of China's environmental laws:

- It is legally required to protect environmental values during forest harvesting. For example, harvesting along riverbanks is not permitted and a buffer zone must be maintained for soil and water protection according to the Technical Code for Forest Logging Operations.
- SFA Opinion on Improvement of Harvesting Administration for Commercial Plantations states that, in the harvesting of commercial plantations, consideration shall be given to the impact on ecological values and land and water conservation, and that clear cut areas on slopes greater than 15 degrees shall not be more than 5 ha in size.
- The Law on Environmental Impact Assessments applies to land use planning and architecture/infrastructure projects implemented by governments and relevant agencies. An Environmental Impact Assessment (EIA) is required during planning for construction, development and utilisation relating to land use, and the planning-related text shall also have a specific chapter or explanation relating to the EIA. Architecture/infrastructure projects implemented by governments and agencies relevant to industry, agriculture, forestry, energy, transportation, etc. shall have an EIA before the project plan is submitted for approval. According to law, land use planning for forest establishment also requires an EIA to be developed by government or designated agency.

- The Forestry Law provides that efforts shall be taken by government at different levels to prevent and control forest fires. The Forest Fire Prevention Regulation states that local government shall define a forest fire responsibility zone, in which a system is established for regular checking of the potential factors relevant to forest fires and to prevent their potential occurrence. At the same time, government at or above county level shall define a forest fire prevention period based on forest conditions and fire occurrence rules. During this period, no forest access is permitted unless approved by government.
- The Soil and Water Retention Law provides that plants and vegetation be protected from soil and water loss in ecologically fragile areas. Deforestation is prohibited within soil- and water-loss prone areas and forest harvesting must be conducted in a responsible manner; while clear-cutting is not permitted. Only thinning and regeneration cutting are allowed for water conservancy forests, windbreak forests or other protective forest types. Measures must be adopted to prevent soil and water loss in harvesting areas and skidding roads:
- If forests are harvested in forest regions, the harvesting plan must include soil and water retention measures. When approved by forestry authorities, the plan shall be implemented under the oversight of forestry and water authorities.
- Soil and water retention measures shall also be adopted for establishment activities and young forest thinning on slopes greater than 5 degrees.
- Forestry Law and Forest Disease and Pest Prevention Regulation requires that measures be taken to prevent the occurrence of forest diseases and pests in forest management activities, to prevent the introduction of overseas diseases and pests and to protect healthy specimens in the forest. Severe forest disease and pest outbreaks must be reported to forestry authorities at different administrative levels (as appropriate depending on severity) for immediate control.

Description of Risk

- 1) According to the CAF investigations, environmental protection practices, as required in the Technical Code for Forest Logging Operations, are often not followed. This is especially the case in collective-managed forests, found in abundance in the southern region of China. However, this Code is not fully mandatory, but instead provides recommended requirements for all types of forests.
- 2) According to advice relating to China's Twelfth Five-Year Plan (2011–2015) (Government sources 1) which includes new requirements on ecological and environmental forestry, the government has requested the enhancement of ecological values by implementing ecological restoration projects and strengthening the delivery of projects such as: natural forest protection; conversion of agricultural land to forest so as to conserve water; retention of water and soil; preventing sand loss; and establishment of wind breaks as well as protecting biodiversity. Thus, there is a clear indication that environmental requirements are increasingly valued and will be better implemented in future, even though some shortfall may currently exist.
- 3) The information available on China Forestry website (2) and Phoenix News (1) indicates that ecological values have improved after the government has taken measures to improve the environment. Projects such as the Grain for Green program

have made significant contributions to local water conservation, air purification, and environmental improvement.

- 4) News from gscn.com.cn demonstrates that environment protection-related government departments have strengthened their inspection, supervision and monitoring of environmental protection to ensure forest management, harvesting and protection meet environmental requirements.
- 5) There appears to be a sufficiently well established system related to the identification and/or protection of environmental values. No evidence, nor significant body of reports has been identified relating to the threat to these values nor to any systematic and/or large scale non-compliance with legally required environmental protection measures.

Risk Conclusion

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

1.10.6. Risk designation and specification

Low risk

1.10.7. Control measures and verifiers

N/A

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- 1) Law of People's Republic of China on Prevention and Control of Occupational Disease dated 31st December 2011. Available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=9208&CGid>
- 2) Labour Law of People's Republic of China dated 27th August 2009, Chapter 6-7. Available at: http://www.china.org.cn/living_in_china/abc/2009-07/15/content_18140508.htm
- 3) Women's Labour Protection Law dated 18th April 2012. Available at: <http://www.66law.cn/tiaoli/465.aspx>
- 4) Work Safety Law of the People's Republic of China (amended) dated 31st August 2014 - Chapter 2–4. Available at: <http://www.safehoo.com/Laws/Interpretation/201502/384140.shtml>

- 5) Technical Code for Forest Logging Operations dated 2005 - Article 11.1.2, Appendix C. Available at: <http://www.hsly.gov.cn/DocHtml/1/2010/10/11/975634545394.html>

1.11.2. Legal authority

- Ministry of Human Resources and Social Security

1.11.3. Legally required documents or records

- Training Records for safe operation;
- Accident Insurance;
- Work permit for special occupations, e.g. chainsaw operator;
- Outsourcing agreement;
- Accident records and related administrative procedures and measures

1.11.4. Sources of information

Government sources

- 1) Forestry.gov.cn. (2011). *Subsidies policy for employers' housing of forest management enterprises in natural forest protection program area*. [online]. Forestry.gov.cn. Available at: <http://www.forestry.gov.cn/portal/main/s/4045/content-637137.html>
- 2) Forestry.gov.cn. (2011). *Subsidies policy for employers' social security account of forest management enterprises in natural forest protection program area*. [online]. Forestry.gov.cn. Available at: <http://www.forestry.gov.cn/portal/main/s/4045/content-637138.html>
- 3) Forestry.gov.cn. (2015). *How to refine the State-owned forest region reform plan*. [online]. Forestry.gov.cn. Available at: <http://www.forestry.gov.cn/portal/main/s/4044/content-749948.html>

Non-Government sources

- 1) Ilo.org. (2014). *World Social Protection Report 2014-15: Building economic recovery, inclusive development and social justice*. [online]. Geneva: International Labour Organization, pp. 1-314. Available at: http://www.ilo.org/global/research/global-reports/world-social-security-report/2014/WCMS_245201/lang--en/index.htm
- 2) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 3) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.11.5. Risk determination

Overview of Legal Requirements

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

- Organizations are required to establish a worker health and safety system and comply with requirements in this regard against accidents in the workplace and in reducing occupational hazards. Organizations must ensure adequate health and safety conditions exist and the necessary materials and equipment for employees are provided in line with national requirements. Regular health checks must be provided to those who engage in dangerous work. Employees engaging in special operations must be specially trained and qualified.
- The Chinese government has also placed special emphasis on protecting workers' basic interests and rights, to improve employment conditions and to promote social equality. The law on work safety provides that employees of a business entity shall be safeguarded against unsafe work practices and be able to perform safe work practices according to the law. It also requires that the trade union of a business entity helps develop or amend work safety policy and rules, and protect the lawful rights and interests of employees in terms of work safety.
- Organizations that hire workers must create an enabling working environment consistent with occupational sanitary requirements, and adopt measures to ensure health and safety protection. Trade unions must monitor the prevention of occupational diseases to safeguard the legal rights of employees. Organizations must take into account to the recommendations of labour unions when developing or revising approaches to occupational disease prevention. At the national level, the labour authorities shall establish a treatment system for accidents and occupational diseases – and monitor/ pool data on these to facilitate reporting on and addressing accidents, deaths and occupational diseases.
- Organizations must pay employment injury insurance. The People's Government is required to ensure the oversight and governance of employment-related injuries to ensure employees receive compensation in accordance with laws.
- China provides special labour protection to women by prohibiting (or not recommending) that women engage in jobs with a certain level of work intensity. Women enjoy no fewer than 90 days' maternal leave. Women who are breastfeeding shall not engage in work above a certain level of intensity; or which is incompatible with breastfeeding; or work overtime or night shifts.
- China has also issued regulations to protect female workers' work safety conditions and requires business entities to adopt measures to provide training to female workers and to improve their health and safety and working conditions.

Description of Risk

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

Development Program etc. According to related reports by ILO, significant progress has also been made with the social protection of workers.

- 2) According to the China Forest Certification Scheme (CFCC) pilot project results, while forest management enterprises establish systems and procedures in terms of health and safety and provide some safety equipment, there has been less progress with the compulsory requirements for workers to use safety equipment. Some workers, especially older or skilled ones, are reluctant to use the safety equipment. Currently, human resources and social security authorities strictly enforce the law to protect the health and safety of workers, such that the above problems in health and security are being gradually and adequately addressed.
- 3) Discussions with experts highlighted that health and safety is an area in which some improvement is still required. Experts also observed that the situation has improved following improvements to health and safety law and regulations.

Risk Conclusion

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

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

- Organization shall be able to demonstrate the existence and maintenance of a health and safety procedures document, in line with national laws and regulations.
- Organization shall be able to demonstrate, upon request, the existence and maintenance of the following:
 - Training Records for safe operation;
 - Evidence of Accident Insurance to cover all workers;
 - Work permit for special occupations; e.g. chainsaw operator;
 - Accident records and related administration procedures and measures
- Inspections of FME's and harvesting sites shall verify the implementation of safety training and health and safety procedures.
 - Interviews with relevant staff/workers shall provide confidence that they are aware of procedures and have participated in training;
 - Interviews with staff/workers engaged in special areas of work shall provide confidence that they have attended specific training, have secured the relevant qualification certificate for the work and have access to safety equipment;
 - Field observations to harvesting sites shall verify the correct implementation of health and safety procedures.

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- 1) Labour Law of People's Republic of China dated 27th of August 2009 - Chapters 3, 4, 6, 7 and 9. Available at: http://www.china.org.cn/living_in_china/abc/2009-07/15/content_18140508.htm
- 2) Labour Contract Law dated 28th December 2012 - Chapters 3-5, 8-9. Available at: <http://en.pkulaw.cn/display.aspx?cgid=199310&lib=law>
- 3) Labour Protection Law of People's Republic of China dated 5th of July 1994 - Article 16, 17, 19, 25, 26 and 28. Available at: <http://www.doc88.com/p-212659327962.html>
- 4) Trade Union Law dated 27th of August 2009 - Article 9, 10, 12, 19, 20 and 21. Available at: <http://en.pkulaw.cn/display.aspx?cgid=37083&lib=law>
- 5) Women's Rights Protection Law dated 28th of August 2005 - Chapter 4. Available at: <http://en.pkulaw.cn/display.aspx?cgid=59781&lib=law>
- 6) Regulation of Labour Security Supervision dated 11th of January 2004. Available at: <http://en.pkulaw.cn/display.aspx?cgid=55940&lib=law>

1.12.2. Legal authority

- Ministry of Human Resources and Social Security
- State Forestry Administration

1.12.3. Legally required documents or records

- Name lists for staff and contractors;
- Salary payment records;
- Employment contracts for permanent and temporary staff

NOTE: Social Security card of each worker provides evidence of social security and other insurances paid.

1.12.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Chinese Academy of Forestry. (N.Y.). *FSC Controlled Wood field investigation report*. Internal use.
- 2) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 3) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.12.5. Risk determination

Overview of Legal Requirements

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

- Workers enjoy the right to be equally employed, choose their own occupations, receive payment, enjoy leave, get health and safety protection, receive professional and work-related training, have social security and other welfare, apply for settlement of labour disputes and other labour rights in line with laws and regulations. Those employing workers shall establish and improve the rules and procedures to protect the rights of workers.
- Workers enjoy the right to participate in, or organise, labour unions that can independently carry out activities and represent and safeguard the legal rights of workers. Workers can also participate in the management of an organisation or carry out negotiations with regards the protection of legal rights by participating in employer meetings, employer representative meeting and others.
- The government at various levels has the obligation to promote legal employment by providing employment-related services. Workers' rights to be employed are protected from bias or discrimination based on nationality, ethnicity, gender and religion. Women enjoy equal rights to men and cannot be refused employment because of gender. However, employment of juveniles (under 16 years old) is prohibited.
- Organizations are obliged to sign labour contracts with workers to establish the labour relationship and clarify the rights and obligations of both parties. Contracts include the duration of the work relationship, specific work requirements, issues relating to work protection or conditions, payment, working rules, contract cessation conditions, responsibilities for breach of contract, etc. In addition, employees are empowered to engage in collective bargaining with their employers for issues relating to payment, working hours, leave and rest arrangements, work-related health and safety, insurance and welfare issues; and may sign a collective labour contract. The draft contract shall be discussed and approved in employer representative meetings or by all employers. The collective contract shall be signed by the labour union on behalf of employees and, if no labour union exists, representatives of employees will sign the contract with the organization.
- China requires that workers' daily working hours cannot exceed 8 hours and weekly the working time cannot be greater than 44 hours. Organisations must guarantee

that workers have one day of rest per week, and must arrange for leave by workers during legally required holidays. If an employer requests overtime work, the employer must negotiate with the labour union and workers, and the overtime work cannot be more than one hour in principle and no more than three hours in special circumstances. If workers engage in overtime work, organisations shall compensate the overtime by paying no less than 150% of the normal day payment, or 200% of normal payment if working at weekends (although there is no compensation for rest) or 300% of the normal payment if working on a legally required holiday.

- China implements a minimum pay (minimum wage) system. Minimal pay is defined by provincial governments and documented by the State Council. Organisations shall pay their workers no less than the local minimum pay.
- Organizations should establish work-related training systems for the benefit of workers in light of a training plan developed based on actual needs. Workers engaging in technical work shall be trained before conducting such work.
- China has established and is further developing its social security system to enable workers to receive assistance and compensation when retired, ill, unemployed or requiring maternity leave. Organisations are encouraged to pay workers supplementary insurance.
- During any dispute between an employer and employee, the worker has the right to apply for mediation or arbitration or even take legal action. The employer may set up a labour dispute mediation committee, composed of an employee representative, a representative of the organisation and a labour union representative who also chairs the committee.
- The Labour Security Supervision Regulation requires that the national labour security supervision authorities are responsible for the overall supervision nationwide of labour laws while local supervision authorities are responsible for the work in their jurisdictions as well as supervising the implementation of labour laws. Labour unions safeguard the legal labour rights of workers, and supervise the organisations' compliance with relevant laws, regulations and rules.
- Forest management enterprises, as legal entities, need to comply with all the above general laws and regulations, including signing labour contracts, paying social security and insurance on behalf of their staff, providing vocational training, respecting the right of staff to be employed, etc.

Description of Risk

- 1) The CAF investigation on FSC Controlled Wood (1) showed that legal employment has been much improved in China. State-owned forest farms or forest management enterprises strictly follow legal employment laws and regulations by signing employment contracts, paying workers above minimum wage, social security insurance and pension insurance, as well as provide training to workers, etc. They also sign an employment contract with temporary workers and pay required insurances.

- 2) There are many migrant workers working in forests or in forest processing facilities, especially in South China. Companies employing these workers sign labour contracts with them and pay the basic social security fee on their behalf.
- 3) However, keeping the above in mind, discussions with various experts highlighted that a significant number of companies – to save on costs – fail to sign labour contracts or pay social security for their employees.
- 4) China has a score of 36/100, at position 100 (of 175 countries assessed), according to Transparency International's 2014 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to the 2014 perceptions ratings (on a scale of 1 to 100%):
 - Government Effectiveness: 66.3%;
 - Regulatory Quality: 45.2%;
 - Rule of Law: 42.8%;
 - Control of Corruption: 47.1%.

Risk Conclusion

Based on the available information, the risk associated with this category has been assessed as Specified based on risks associated with the failure of employers to sign work contracts or pay social security for their employees.

1.12.6. Risk designation and specification

Specified risk

1.12.7. Control measures and verifiers

- Organization shall facilitate a list of (permanent and temporary) workers' as well as their contracts with the organization, salary payment records. These may be verified on-site if required;
- Local social security authorities shall verify that the Organization pays the social insurance for its staff and that there are no outstanding disputes over employee social security payments;
- Interviews with Organization employees/workers shall provide confidence that there is no illegality in terms of overtime work, social security, insurance, contract or other statutorily-required working terms and conditions.

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

- 1) Villager Committee Organisation Law of P.R. China dated 4th of November 1998 - Article 3, 8 and 10. Available at: <http://baike.baidu.com/view/27973.htm>
- 2) People's Mediation Committee Organisation Regulation dated 5th of May 1989 - Article 3 and 6. Available at: http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7060246.htm

1.13.2. Legal authority

- State Ethnic Affairs Commission
- State Forestry Administration

1.13.3. Legally required documents or records

N/A

1.13.4. Sources of information

Government sources

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

Non-Government sources

- 1) Chinese Academy of Forestry. (N.Y.). *FSC Controlled Wood field investigation report*. Internal use.

1.13.5. Risk determination

Overview of Legal Requirements

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

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

regulate the detailed procedure to resolve conflicts relating to forest land borders and forest resource use rights.

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

Description of Risk

Experts from some international organisations such as World Bank have spoken highly of the autonomous regions system in China (2). This is despite some concerns raised by foreign governments and NGOs relating to minority policies implemented in China, especially those focussing on Tibet and Xinjiang autonomous regions. However, these concerns do not necessarily completely reflect the situation in China and, regardless, there is no direct relationship between these concerns and the traditional rights to forest harvesting activities and forest resources.

With recognised and equitable processes through the regional autonomous systems – the villagers' self-government system and the court system in China – there is a legal framework for protecting traditional rights, for which there is little evidence to suggest it is not working well with regards to forest harvesting activities and forest resources.

Risk Conclusion

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

1.13.6. Risk designation and specification

Low risk

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

N/A

1.14.2. Legal authority

N/A

1.14.3. Legally required documents or records

N/A

1.14.4. Sources of information

N/A

1.14.5. Risk determination

This principle is not applicable in China:

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

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

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

1.15.1. Applicable laws and regulations

- 1) Villager Committee Organisation Law of P.R. China dated 4th November 1998 - Articles 3, 8 and 10. Available at: <http://baike.baidu.com/view/27973.htm>
- 2) People's Mediation Committee Organisation Regulation dated 5th May 1985 - Articles 3 and 6. Available at: http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7060246.htm
- 3) Constitution of the People's Republic of China dated 4th December 1982. Available at: http://www.npc.gov.cn/npc/xinwen/node_505.htm

4) Regional Ethnic Autonomy Law of P. R. China dated 31st of May 1984 and revised 28th of February 2001. Available at: http://www.gov.cn/ziliao/flfg/2005-09/12/content_31168.htm

1.15.2. Legal authority

- State Ethnic Affairs Commission
- State Forestry Administration

1.15.3. Legally required documents or records

N/A

1.15.4. Sources of information

Government sources

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

Non-government sources

- Human Right Magazine (N.Y.) An interview with Mr. Li Dezhu, Director of State Ethnic Affairs Commission. [online]. Available at: <http://humanrights-china.org/>

1.15.5. Risk determination

Overview of Legal Requirements

NOTE 1: Definitions employed, as per FSC-STD-01-001 V5-2 EN, include:

1) INDIGENOUS PEOPLES:

People and groups of people that can be identified or characterized as follows:

- The key characteristic or criterion is self-identification as Indigenous Peoples at the individual level and acceptance by the community as their member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

*Source: Adapted from United Nations Permanent Forum on Indigenous Issues, Factsheet 'Who are Indigenous Peoples' October 2007; United Nations Development Group, 'Guidelines on Indigenous Peoples' Issues' United Nations 2009, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007.

2. TRADITIONAL PEOPLES:

Traditional peoples are social groups or peoples who do not self-identify as Indigenous and who affirm rights to their lands, forests and other resources based on long established custom or traditional occupation and use.

*Source: Forest Peoples Programme (Marcus Colchester, 7 October 2009).

NOTE 2:

Two additional definitions (and both differing from the above definition) of indigenous peoples occur in the draft FSC China national standard (V3.0):

- I.G.I. 3.1.1. NOTE 2: *"In Chinese standard, "indigenous people" refers to 1) official recognized and self-identified minorities; and 2) the earliest settlements or migrating before 1949".*
- Appendix 1: Terms and Definitions *"Indigenous peoples: People and groups of people that can be identified or characterized as follows:*
 - The key characteristic or criterion is self-identification as indigenous peoples at the individual level and acceptance by the community as their member
 - Historical continuity with pre-colonial and/or pre-settler societies
 - Strong link to territories and surrounding natural resources
 - Distinct social, economic or political systems
 - Distinct language, culture and beliefs
 - Form non-dominant groups of society
 - Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

**Source:* Adapted from United Nations Permanent Forum on Indigenous, Factsheet 'Who are indigenous peoples' October 2007; United Nations Development Group, 'Guidelines on Indigenous Peoples' Issues' United Nations 2009, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007.

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

There, are however, 56 nationalities in China. The 55 ethnic minorities (excepting Han people) in total make up a smaller group compared to the total population of Han people in China; so they are termed minorities. Each has identifying characteristics, languages and customs of their own. To promote social and economic development of ethnic groups, a special minority policy has been developed focussing on the following five aspects:

- 1) As a unified State with multi-nationalities, it is necessary for China to develop a relationship of equality, unity and mutual assistance among different nationalities.
- 2) Every nationality has equal rights and all nationalities are regarded as masters of the country.

- 3) Regional national autonomy is implemented in concentrated regions of minority, which ensures the right of the minority nationalities to administer their internal affairs.
- 4) The State shall support the national autonomous areas to increase the rate of their economic and social development to achieve common prosperity.
- 5) Great efforts shall be made to maintain and develop the culture of ethnic minorities.

To ensure successful implementation of the above policy, some laws and regulations have been developed, such as the Law on Regional Ethnic Autonomy. In national autonomous areas, autonomous rules and specific regulations may be worked out according to local political, economic and cultural characteristics. At present there are five autonomous regions on a provincial level: Inner Mongolia, Guangxi Zhuang, Tibet, Ningxia Hui and Xinjiang. In addition, there are seven autonomous prefectures and 115 autonomous counties in China.

In ethnic regions of China, the system of regional national autonomy is implemented according to the Constitution. The Law of the People's Republic of China on Regional National Autonomy has been issued to ensure the minority nationalities can practice regional autonomy in areas where they live in concentrated communities and can set up agencies of self-government allowing them to exercise the power of autonomy.

Description of Risk

- 1) No evidence has been found to indicate risk in relation to traditional rights to forest harvesting activities and forest resources. Recognised and equitable processes exist via the regional autonomous systems – the villagers' self-government system and the court system in China. There is a legal framework for protecting traditional rights, for which there is little evidence to suggest it is not working well with regards to forest harvesting activities and forest resources.
- 2) While most minorities live in forest areas in China. No body of evidence has been observed to suggest that their forest resource-related traditional rights are not broadly guaranteed. Special laws and regulations have been enacted to prevent activities that will violate traditional rights of minorities in a serious way.
- 3) The above-mentioned autonomous agencies of self-government have developed relevant policies and regulations to protect traditional culture and traditional rights, including the resolution mechanism on traditional rights conflicts.

Risk Conclusion

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

1.15.6. Risk designation and specification

Low risk

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

N/A

1.16.2. Legal authority

- China Administration of Customs
- State Forestry Administration

1.16.3. Legally required documents or records

- Transportation permit;
- Declaration form for import or export (not publically available).
- Wildlife import and export license

1.16.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 2) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.16.5. Risk determination

Overview of Legal Requirements

China has some requirements on the classification on species, quality and quantity.

- The transportation permit for raw materials requires details including species, quality and quantity, in addition to the essential information on transportation method, route, starting and end point. The information on species, quality and quantity will be

checked at checkpoints during the journey. If there is information missing on the transportation permit, the organisation will be fined or the commodity seized at the checkpoint.

- Customs Law of People's Republic of China 2005, Article 42 requires the correct goods classification. The Harmonised Commodity Description and Coding System (HS codes) is adopted for imports and exports of goods. When exporting or importing commodities, the consigner or consignee must provide the correct species, specification and quantity for the duty or tariff payment. Customs Law also provides that Customs could require consigner and consignee of the imported/exported commodity to provide – as part of the declaration form – the document describing the commodity classification. If necessary, Customs could organise an inspection or testing, and use the results as the basis for commodity classification.
- Article 6 requires that importers shall declare correctly the name, specification, quantity, etc. of imported or exported goods.
- Article 34 of the Administration Regulation on Wildlife Import and Export License requires that the import or export of wildlife and its products which are listed on the import and export catalogue shall declare to Customs and submit the import or export permission certificate or species certificate, and complete the import and export, in accordance with the species, volume, port and period indicated on the permission certificate or species certificate. See also sub-category 1.19.

Description of Risk

There is no specified legislative requirement for the correct classification of species and qualities for wood/wood product imports and exports, even though the General Administration of Customs of China is making efforts to develop a classification system for species, volume and value. There is little public information on this classification system. However, in practice, the forms relevant to these categories are developed to require information relating to species, qualities and quantities for the convenience of inspections. There is therefore an inherent requirement for the classification of products and some measures have been taken to ensure the correct provision of information.

Risk Conclusion

Based on the above information, the risk can be assessed as Low.

1.16.6. Risk designation and specification

Low risk

1.16.7. Control measures and verifiers

N/A

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites

other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- 1) Forest Law of People's Republic of China dated 27th of August 2009 - Article 22, 37 & 38. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 2) Regulation of the Implementation of Forestry Law of People's Republic of China dated 1st of August 2011 - Article 35 & 36. Available at: <http://en.pkulaw.cn/display.aspx?cgid=26935&lib=law>
- 3) Bylaw of the Implementation of Plant Quarantine (Forestry Part) dated 30th of June 1994 - Article 14. Available at: <http://www.btly.gov.cn/web/show.asp?id=684>
- 4) Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine dated 1st January 1997 - Chapters 1-4. Available at: http://www.lnciq.gov.cn/ywpd/spjy/ywcs/201201/t20120109_66987.htm
- 5) SFA Circular on Relative Issues of Regulating the Supervision and Management of Wood Transportation dated 18th of June 2013. Available at: <http://www.forestry.gov.cn/portal/main/s/72/content-610448.html>
- 6) SFA Circular on Further Strengthening the Administration of Wood Transportation dated 11th of November 2009. Available at: <http://www.forestry.gov.cn/portal/lycy/s/2883/content-441724.html>
- 7) SFA Opinion on Improvement of Harvesting Administration for Commercial Plantations dated 30th December 2003 - Article 2, 3 & 5. Available at: http://www.forestry.gov.cn/portal/main/govfile/13/govfile_1130.html

1.17.2. Legal authority

- State Forestry Administration
- General Administration of Customs

1.17.3. Legally required documents or records

- 1) Forest Law of People's Republic of China 2009 - Article 22, 37 and 38.
 - 2) Regulation of the Implementation of Forestry Law of People's Republic of China 2011 - Article 35 & 36
- Transportation permit (according to law and regulation above)
 - a. Bylaw of the Implementation of Plant Quarantine (Forestry Part) 1994 - Article 14
 - b. Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine 1991 - Chapters 1-4
 - Phytosanitary Certificate (according to bylaw and regulation above)
 - Processing Certificate (according to bylaw and regulation above)

1.17.4. Sources of information

Non-Government sources

- 1) News.jc001.cn. (2013). No transportation permit needed for 24 kinds of timber. [online]. Jiuzheng Decorative Materials Website. Available at: <http://news.jc001.cn/13/0903/753398.html> [Accessed 9 October 2015]
- 2) Tsinghua University - FOREST GOVERNANCE INTEGRITY REPORT CHINA - 2011 (High risk corruption area 4: Bribery to undermine sustainable logging operations)
- 3) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 4) The World Bank. (2014). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.17.5. Risk determination

Overview of Legal Requirements

China has implemented a governance system for wood timber processing, trade and transport.

- Timber transported from one forest region to another shall require a transportation permit. It is required that transportation permit (and phytosanitary permits if required) travel with timber goods from the starting to the end point of their journey. Transportation permits are issued by different levels of forestry authority depending on the importance of the region in terms of forestry. The transportation permit for timber from key forestry regions, such as North China, will be issued by the State Forestry Administration (SFA). However, for timber from other regions, the licence may be issued by forest authorities at or above county level. To apply for a transportation permit, applicants must usually submit the harvesting permit, phytosanitary permit, as well as any other relevant documents required by provinces or cities. However, in terms of the process and requirements, these are in constant change and vary across China.
- SFA is now preparing to provide online checking of transportation permits to make their issue and traceability more transparent.
 - As per the SFA Circular on Further Strengthening the Administration of Wood Transportation issued in 2013, transportation permits are now only required for primary forest products, including logs, sawn timber, bamboo timber and wood chips. Secondary forest products are largely exempt from the permit. However, some differences do occur between provinces: where ecological functions have greater emphasis (e.g. Yunnan, Sichuan, Fuzhou and North China), some secondary forest products – including veneer, plywood and core-board – still require a transportation permit. In provinces where most forest cover is plantation and the forest products industry is well-developed (e.g. Guangxi, Shandong and Zhejiang), there are no requirements for transportation permits.

Even for logs transported within a county, there is no need to apply for a transportation permit.

- For primary forest products, transportation permits apply to both Chinese and imported materials. However, transportation directly from ports to mill/ factory does not require a permit.
- Bamboo and bamboo products (excluding timber) may be transported without a transportation permit.
- Trading or processing of timber (including logs, sawn timber, bamboo timber and wood chips) at forest regional level must be approved at or above the level of county forestry authority. Timber procurement organisations or individuals shall not procure the timber without a harvesting permit or other certificate for legal source.
- Quarantine inspection shall be carried out for imported/exported timber or timber products as well as for the carriers and packages. Consignees shall make a quarantine declaration by submitting the phytosanitary certificate issued by exporting countries when importing or exporting timber or timber products.

Description of Risk

- 1) Transportation permits are still required in China for primary forest products including logs, sawn timber and wood chips even though control over transportation of processed timber products is reduced now compared to historical arrangements. SFA Circular on Relative Issues of Regulating the Supervision and Management of Wood Transportation (2) still highlights the importance of checking wood transportation at check points situated in forest regions and requires forestry authorities at various levels to enhance the printing, issue and management of timber transportation permits via the national timber transportation management system.
- 2) Regarding the Forest Governance Integrity Report China, 2011 (3), some points were raised in relation to the transport licence (although the scale or frequency is not clear), namely: "There is also the danger of corruption during the transportation stage, where officials may be induced to ignore timber transportation documents, thereby enabling the illegal transport of timber, over the legal quota." and "Article 37 of the Forest Law regulates the transportation of timber out of forest districts, and states that once logging licences have been issued transport licences should also be issued. With the approval of the provincial government, autonomous region or directly administered municipality, timber inspection posts can be set up in forest districts to inspect timber transportation. This post has the right to stop the transport of timber without the requisite documentation or the allocation and transfer notice issued by the authorities. There are weaknesses in these procedures, however. The development of new roads, for example, enables illegal timber to avoid roads where the inspection stations are set. In addition, the current laws and regulations have not empowered the timber inspection stations to administer sanctions as these need to be implemented by forestry staff in charge of security. As a result, timber inspection stations can only inspect and monitor the transport of timber and detain timber without the correct certificates. The separation of timber inspection and sanctions breeds a high risk of bribery of officials to ignore the necessary documents. The lack

of scientific procedures for the inspection of timber also increases the difficulty in identifying illegal timber from what is legally allowed."

- 3) Discussions with various experts highlighted significant variability across China in terms of how the timber transport licence is enforced; strictly in some areas (Fujian) while in other provinces less so. In practice, it appears the timber transport licencing system does not always serve well the role for which it is intended. Summarising expert comments, broadly speaking there is little cause for concern with regard to compliance; however, it is recognised that some transgression / illegal practices will occur regionally. There is little to no information permitting these to be quantified.

Risk Conclusion

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

1.17.6. Risk designation and specification

Low risk

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

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

1.18.1. Applicable laws and regulations

- 1) State Administration of Taxation Circular on Issues Dealing with Taxation on Foreign Investment Companies related to their Subsidiaries dated 28th September 2002. Available at: http://www.law-lib.com/law/law_view.asp?id=42261
- 2) Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises dated 1st July 1991 - Article 13. Available at: <http://www.lawtime.cn/info/shuifa/ssfl/2011022825669.html>

1.18.2. Legal authority

- State Administration of Taxation

1.18.3. Legally required documents or records

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

1.18.4. Sources of information

Government sources

N/A

Non-Government sources

- 1) Miduncpa.com.cn. (N.Y.). *Tax avoidance means by offshore companies and related laws and regulation*. [online]. Nathan Commercial Center. Available at: http://www.miduncpa.com.cn/baikearticle/article_603.html [Accessed 2 August 2015]
- 2) Lawtime.cn. (2010). Discussions on China's laws on transfer pricing. [online]. Lawtime. Available at: <http://www.lawtime.cn/info/shuifa/sflw/2010122521158.html> [Accessed 2 August 2015]
- 3) Transparency.org. (2014). *Corruption by Country/Territory: Corruption Perceptions Index 2014 for China*. [online]. Transparency International. Available at: <http://www.transparency.org/country/#CHN>
- 4) The World Bank. (2014). Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.18.5. Risk determination

Overview of Legal Requirements

- The State Administration of Taxation Circular on Issues Dealing with Taxation on Foreign Invested Companies related to their Subsidiaries (2002) requires that foreign-invested companies that provide services to subsidiary companies shall sign a service contract to define the service to be provided and payment criteria. The income from the service provision shall be included in the taxation base for income tax and operational tax. The investment cost and the loss shall not be deducted from the base for income taxation and shall also not be shared with its subsidiary companies. In other words, foreign-invested companies cannot collect fees from their subsidiary companies nor ask their subsidiary companies to share their operational costs. The companies must pay or collect fees from their subsidiary companies according to the arm's length principle - in a way similar to that which would occur between two separate independent companies for the same services or goods. If payment is considered by tax authorities to be less than what is considered a normal level, the authorities have the right to raise it for tax collection purposes.
- This is similar for the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (which refers to enterprises established with foreign investment and registered as foreign companies with some preferential policy) which requires that foreign-invested companies shall pay or collect fees from their subsidiary companies using a similar mechanism as between two separate independent companies for the same services or goods.

Description of Risk

- 1) Generally, China has almost no enforceable laws and regulations in terms of offshore trading and transfer pricing.
- 2) The report (1) on China's laws on transfer pricing shows that foreign enterprises use transfer pricing to evade or avoid taxes, and generate an annual tax loss of 24 billion yuan. China has made some progress with regards to transfer pricing. There are many challenges. In terms of legislation, China does not have a strong legislative system for parent and subsidiary companies, nor for labour and intangible goods, including services and technology. Even though China requires taxpayers to report and provide evidence for transfer pricing, the requirement is often difficult to enforce in practice due to lack of statutory power.
- 3) In terms of enforcement, tax authorities have a poor record of tracking transfer pricing because of the tax authorities' relatively poor experience and poor foreign language skills. In addition, law enforcers have only very limited sources of information and have little opportunity to conduct transfer pricing investigations in other countries. It is very difficult for them to investigate transfer pricing.
- 4) Chinese tax laws are minimal with regard to offshore trading. Furthermore, laws relating to transfer pricing and regulation of anti-tax avoidance are not extensively developed (in order to encourage foreign investment), but China has strengthened its international cooperation in this context.
- 5) Expert consultations confirmed that there is minimal tax law on offshore trading in China and confirmed that the focus of Chinese companies (such as through the use of tax havens in China) can – in the main – be viewed in the light of avoidance of profit tax rather than tax evasion.

Risk Conclusion

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

1.18.6. Risk designation and specification

Low risk

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

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

1.19.1. Applicable laws and regulations

- 1) Customs Law of People's Republic of China dated 26th of August 2005 – Article 9, 10, 11, 24 and 42. Available at:
<http://www.customs.gov.cn/tabid/2433/InfoID/3420/frtid/399/Default.aspx>

- 2) Administration Provision of General Customs Administration on Classification of Import/Exported Goods dated 17th of February 2007 - Article 2, 11 and 12. Available at:
<http://shijiazhuang.customs.gov.cn/publish/portal171/tab2315/module61454/info124780.htm>
- 3) Company Law of the People's Republic of China dated 1st January 2006 (2014 Revision) - Articles 23, 24, 27, 77 & 79. Available at:
<http://wenku.baidu.com/link?url=rkIYkWRxwQBLXhGrPRie6g73Ns0fxTfa8Ed6YpN3ujSiDO5pRXKD3WAqNe3nHCtvkx-V4rMQ95qpywjBanHwewDrrFSs67bAffZWpGPh17>
- 4) Notice of the State Administration of Taxation on Reimbursement of Tax Levied on Exported Wood Compound Parquet (National Taxation No. 2006-1263) dated 1st April 2006. Available at:
<http://www.chinatax.gov.cn/2013/n1586/n1593/n1620/n1622/c267864/content.html>
- 5) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) dated 1st July 1975. Available at:
<http://www.fws.gov/le/pdf/CITESTreaty.pdf>
- 6) Regulation of Administrating Import and Export of Endangered Fauna and Flora of People's Republic of China dated 1st September 2006 - Article 2, 4, 6, 7, 8, 12, 17 and 18. Available at: http://eia-international.org/wp-content/uploads/Regulation-of-the-People%E2%80%99s-Republic-of-China-on-the-Administration-of-the-Import-and-Export-of-Endangered-Wild-Fauna-and-Flora_2006_ENG1.pdf
- 7) Law of People's Republic of China on the Entry and Exit Animal and Plant Quarantine dated 1992. Revised on 27 August 2009. Available at:
http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004560.htm
- 8) Administrative Measures of Wildlife Import and Export Licence dated 1st of May 2014. Available at: http://www.law-lib.com/law/law_view.asp?id=445636

1.19.2. Legal authority

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

1.19.3. Legally required documents or records

- Customs Declaration Registration Approval Certificate for Customs Declaration Company
- Customs Declaration Registration Approval Certificate for Consigner and Consignee of Import/ Export Goods
- Phytosanitary certificate
- Species certificate

1.19.4. Sources of information

Government sources

- 1) Customs.gov.cn. (2013). *Mengla Customs Office strengthen the administration of added tree species in CITES appendix*. [online]. Customs website. Available at: <http://www.customs.gov.cn/publish/portal174/tab61586/info641251.htm>
- 2) Forestry.gov.cn. (2014). *Guangzhou Office of Endangered Species Import and Export Strengthening the management of rosewood import and export in Guangxi*. [online]. State Administration of Forestry Website. Available at: <http://www.forestry.gov.cn/portal/bhxxh/s/651/content-658332.html>

Non-Government sources

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- 2) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>
- 3) EIA. (2013). *Liquidating the Forests*. London and Washington DC: Environmental Investigation Agency (EIA). Available at: http://eia-global.org/images/uploads/EIA_Liquidating_the_Forest_2013_Chinese.pdf [Accessed 4 November 2015]

1.19.5. Risk determination

Overview of Legal Requirements

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

- In China, only the person or companies registered with the General Administration of Customs are qualified to make declarations regarding the import or export of goods. The Customs Law provides that the customs declaration must be submitted by registered companies or individuals as consigner or consignee to ensure the correct declaration of import/ export goods. Companies that entrust customs declaration companies to declare or pay duties on their behalf must provide a true declaration related to commodity import/ export to its customs declaration company, which shall check the information for authenticity.
- Harmonized Commodity Description and Coding System (HS) codes must be correctly provided according to related Customs and Taxation regulations. Customs may ask the consignee and consigner to provide information that could help identify the classification. If the parties refuse to provide such information, Customs could identify the classification according to the declaration. If Customs finds the classification to be incorrect, Customs could re-identify the commodity classification and also revise the declaration.
- The Entry/ Exit Animal and Plant Quarantine Law requires that animals or plants and their products shall be inspected and quarantined to prevent any bacteria or other harmful organisms when imported, transit exported or generally exported. If the goods pass quarantine, a phytosanitary certificate will be issued. If found with

bacteria or other harmful organisms, a note addressing quarantine issues will be issued, requiring the importer or exporter to take further action, including refusal to accept, or to destroy the infectious commodity. When applying for quarantine at port, applicants shall submit the quarantine application form and the phytosanitary certificate, certificate of origin, commercial invoice and other relevant certificate. If no such certificate exists, the port quarantine bodies could require the commodities to be returned or destroyed.

- CITES Appendix I species are prohibited from being imported or exported, and if there is a need for scientific research, propagation or domestication, or cultural exchange, their import or export shall be approved by the National Endangered Species Import and Export Administration Office. If import or export approval is required by the State Council, this shall be obtained. Unnamed or newly found species with high value are prohibited from being exported, as are certain other wildlife and related products. Import or export of other CITES species shall be approved by the National Endangered Species Import and Export Administration Office.
- The Wildlife Import and Export Licensing system is implemented when importing or exporting wildlife and wildlife products including CITES species; with the documentation including the import or export permission certificate and species certificate. See sub-category 1.16. These certificates are issued by the National Endangered Species Import and Export Administration Office and its affiliated offices. The format of these certificates is nationally standardised, and printed by the National Endangered Species Import and Export Administration Office. When importing or exporting wildlife or wildlife products that are listed in the wildlife commodity catalogue, importers or exporters shall declare this to Customs, present the certificates and complete the import or export in accordance with the requirements of the certificate with respect to species, volume, port and timeframe. If it is found that the imported or exported wildlife and products fail to be consistent with the information indicated on certificates, Customs has the right to address this. But if the declared volume is not higher than the allowed volume, and there are no other inconsistencies, the commodity will be cleared.

Description of Risk

- 1) China is now strengthening its administration over wildlife import and exports. An import and export licensing system has been established since 2014 to enhance the supervision of import and export of protected wildlife and wildlife products, which requires that – only with the import/ export allowance certificate and species certificate issued by National Endangered Species Import and Export Administration Offices – can wildlife and their products be allowed to be imported or exported. These offices also work closely with Customs providing training on wildlife to Customs officials to improve their enforcement capacity. Relevant information showed that China actively implements the CITES Convention by designating ports specifically for import or export and carries out joint enforcement with other relevant authorities.
- 2) In terms of Customs declarations, the possibility for registered consignees or consignors to engage in illegal activity (either deliberately or unwittingly) is high. China has a score of 36/100, at position 100 (of 175 countries assessed), according

to Transparency International's 2014 Corruption Perceptions Index. With regard to the Worldwide Governance Indicators, China scores as follows according to 2014 perceptions ratings (on a scale of 1 to 100%): Government Effectiveness: 66.3%; Regulatory Quality: 45.2%; Rule of Law: 42.8%; Control of Corruption: 47.1%.

- 3) Customs book fraud (4) may exist. This relates to a policy that allows duty free import of raw materials by a single manufacturer for further processing and export by the same company, with such information recorded in a Customs book. Types of illegal activity include the selling of rights to import between importers and exporters and other types in relation to qualities etc.
- 4) Expert consultations highlighted the potential for market stresses (extreme demand for some species) to create stresses in compliance levels, such that risk of incorrect reporting of imports may occur, including possibly: under-reporting (for the purposes of tariff or tax evasion); false reporting (effectively smuggling) and shipping/sending goods as 'personal items' (as a method of avoidance of Customs requirements). However, these inevitably occur to some extent in all countries and there is no clear data on the size of any potential problem specifically with regards to China. Such risks are more likely to occur in the context of imports, and with regards to specific species, rather than with exports.

Risk Conclusion

Incentives exist for mis-/under reporting on customs declarations. These are difficult to quantify and occur to some extent in all countries, although may be viewed in the light of China's medium position in a number of key governance and corruption indicators. The potential for market stresses (extreme demand for some species) to create pressures in compliance levels must also be recognised, although these are perhaps likely to occur in the context of imports rather than with exports. Given the above considerations, risk in associated with this category requires (if only for precautionary purposes) to be assessed as Specified.

1.19.6. Risk designation and specification

Specified risk

1.19.7. Control measures and verifiers

- Products shall be correctly classified (type, HS custom code, species, quantities, qualities, etc.).
- Full complement of import/export documentation shall be made available, including Customs Declaration Registration Approval Certificate & Phytosanitary certificate (where applicable)
- 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).

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation

existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- 1) Forest Law of People's Republic of China dated 27th August 2009 - Article 21. Available at: <http://en.pkulaw.cn/display.aspx?cgid=20095&lib=law>
- 2) Wild Plant Protection Regulation of People's Republic of China dated 1st January 2007. Available at: <http://www.cites.gov.cn/ShowIndex/ShowNews.aspx?sort=t4&id=20>
- 3) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) dated 1st July 1975. Available at: <http://www.fws.gov/le/pdf/CITESTreaty.pdf>

1.20.2. Legal authority

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

1.20.3. Legally required documents or records

- Collection permit for national or local key protected plants
- CITES import/export permission certificate

NOTE: Indicator 1.20 relates to legislation existing in regard to China sourced CITES-listed trees species and their potential export (including the usual CITES Export Approval licence). CITES import/ re-export legal requirements should be covered, but may be included under the customs indicator (1.19 Custom regulations).

1.20.4. Sources of information

Government sources

- 1) CITES (N.Y.). *Biennial reports for total number of seizures and prosecutions for all CITES species*. [online]. Convention on International Trade in Endangered Species of Wild Fauna and Flora. Available at: <https://cites.org/eng/cms/index.php/component/cp/country/CN/national-reports>
- 2) Money.163.com. (2014). *China land greening report 2014*. [online]. China net. http://money.163.com/15/0312/11/AKGMC2VJ00254TI5_all.html [Accessed 27 November]

Non-Government sources

- 1) Chinadaily.com.cn. (2013). *Expert advocates the increase of cultivation of rare and valued species in response to more Hongmu species included in the CITES appendix*. China Daily. Available at: http://www.chinadaily.com.cn/hqcj/xfly/2013-06-13/content_9303199.html
- 2) CITES (N.Y.). *Endangered Species Scientific Commission of PRC. China CITES Annexed Species Database going online*. Available at: <http://www.cites.org.cn/Article/show.php?itemid=848> [Accessed 27 November 2015]

- 3) Qhnews.com. (2012). *CITES Protected endangered wildlife coordination group set up to protect endangered species and maintain ecological balance*. Xihai Urban Post. Available at:
<http://www.qhnews.com/newscenter/system/2012/06/14/010798777.shtml>
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- 4) The World Bank. (2014). *Worldwide Governance Indicators for China: Country Data Report for China, 1996-2014*. [online]. Available at:
<http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

1.20.5. Risk determination

Overview of Legal Requirements

The Forestry Law and the Wild Plant Protection Regulation have some provisions relating to the protection of rare and endangered wildlife species. As one of the parties to the CITES Convention, China also applies these laws to CITES species protection.

- The Forestry Law provides that forestry authorities at or above provincial level shall establish nature reserves protecting typical forest ecosystems in various settings including forest areas where rare wildlife occurs; within rainforest; and within forest areas having special protection values – to enhance the protection of wildlife. Protection shall also be provided to rare species and plant resources with special values situated outside nature reserves. No cutting or collection of wildlife may be carried out without the permission of provincial forestry authorities.
- Wild Plant Protection Regulations require protection of wild plants and their habitats. No organisation or individual is permitted to engage in illegal collection of wild plants or damage their habitat. Wildlife under national Class I protection shall not be traded. The trading of wildlife under national Class II protection shall be approved by provincial-level wildlife authorities or their designated bodies, while the trading is also supervised and checked by provincial wildlife authorities. The export of national key protected wild plants or of CITES species shall be reviewed by provincial wildlife authorities and then submitted to national wildlife authorities for approval and, following the approval, application shall be made for an export permission certificate from the National Endangered Species Import and Export Administration Office. Customs shall clear the export against the certificate. Information about wild plant export shall be copied to the national Environment Protection Authority. In addition, it is prohibited to export unnamed or newly found species with important values.

Description of Risk

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

- 1) Currently, no commonly commercially traded timber species from China are listed on any of the CITES appendices. Furthermore, China is not a listing country for any CITES Appendix III tree species. However, the following agarwood and yew tree species included in Appendix II include at least part of China in their native ranges: *Aquilaria spp.* (specifically *A. grandiflora*, *A. sinensis*, *A. yunnanensis*); *Taxus chinensis*; *T. cuspidate*; *T. fauna*; *T. sumatrana*; *T. wallichiana*.

- 2) The National Endangered Species Import and Export Administration Office is set up under State Forestry Administration to take charge of the administration and governance of wild fauna and flora. Its main functions are to participate in the formulation of policies, laws, regulations and directives in terms of wildlife nationally; represent the Chinese Government and be responsible for the management of CITES species and other CITES affairs; prepare the import/export quota plan based on the overall annual quota for wildlife hunting, collection and utilisation approved by the State Council; review and approve the import/export allowance certificate; register the organisation and individuals importing or exporting wildlife, etc.
- 3) The volume of international trade of wildlife in China has been growing while protection and utilisation present more prominent challenges. In this sense, China is facing pressure to protect its own rare and endangered wildlife. If the challenges of policing CITES laws are not to be underestimated, China appears to be placing significant focus on the protection of CITES species. In line with the laws, key protected wildlife may not be cut or collected unless with permission by forestry authorities. Trading of CITES species is also not permitted unless this occurs with the certificate issued by the National Endangered Species Import and Export Administration Office. Additionally, data from the period 2009 to 2012 indicate that China is not complacent in enforcing CITES laws, given the number of CITES import seizures and prosecutions (928 seizures and 60 prosecutions in 2010, 1024 seizures and 114 prosecutions in 2011...) while - perhaps as an indication of a functioning system - the number of seizures and prosecutions for species to be exported is minimal, amounting to less than 5, year on year. No evidence was found that these are related to tree species.
- 4) The National Endangered Species Import and Export Administration Office has sought to ensure strict supervision of the implementation of CITES-related laws and regulations. For example, the Guangzhou Office is working with relevant organisations to: identify the ports specifically assigned for the import and export of rosewood; carry out the classified loading and transport of imported and exported timber; and mark species to ensure that the correct species of rosewood are imported, and undeclared rosewood is not imported.

Risk Conclusion

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

1.20.6. Risk designation and specification

Low 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

N/A

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

There is no legal requirement covering due diligence or due care procedures in China.

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 China** identifies the different types of sources of timber it is possible to find in the country of origin.

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

- which forest types 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 CHINA						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest – ecological	National or local ecological forest – all provinces	Class I protected forest, mainly natural forest but also includes some planted forest in the ecological fragile category in Class I, including forest used for defensive purposes or used for military purposes, core area of nature reserve, old growth, etc.	State-owned	State	Harvesting Permit + logging permit application, forest management plan, logging plan, regeneration certification for previous year, forest tenure certificate, the approval of local, provincial and state governments	No source. No harvesting is allowed in principle. If there is scientific research needed or severe forest fires or diseases and pests occur, and harvesting has to be conducted, forestry authorities at or above county level shall organise a forest silviculturalist, ecologist or other relevant expert to carry out an evaluation for the approval of the harvesting, with the approval to be by forest authorities at or above county level.
		Class II forest, mainly natural but also planted forest in the ecological fragile category in Class II, including experimental forest, culturally significant forest, scenic forest, environment protection forest, etc.	State or collectively owned	State or collectively owned	Harvesting Permit + logging permit application, forest management plan, logging plan, regeneration certification for previous year, forest tenure certificate, the approval of local, provincial and state governments	No source. No harvesting is permitted, except for thinning or regeneration purposes, with the operational method contributing to biodiversity protection and to the formation of an uneven-aged forest structure, multiple layers and/or mixed forest communities.
		Class III protected forest, including natural and planted forest, which refers to the forest beyond the scope of special and key protected forest.	State or collectively owned	Responsibility of the provincial forestry authorities for scientific use	Harvesting Permit + logging permit application, forest management plan, logging plan, regeneration certification for previous year, forest tenure certificate, the approval of local, provincial and state governments	Limited source. The forest resource may be improved via scientific management and reasonable utilization in order to increase forest vegetation and improve forest quality.
Natural – commercial forests	All provinces	Commercial Timber (Natural) Forest	State or collectively owned	Mostly state, collectives, individuals or corporations	Harvesting Permit + logging permit application, forest management plan, logging plan, regeneration certification for previous year, forest tenure certificate	Natural Forest on non-state owned farms, supplying wood for industrial use as timber or fibre – NOTE: <u>Logging ban in all state owned farms</u> Incremental logging ban in natural forests has been rolled out since 2014, intention is to phase-out commercial logging in natural forests by 2017. Progress to date: <ul style="list-style-type: none"> - April 2014: Trial of Natural Forest Logging ban in key state-owned forests in Heilongjiang - April 2015: Trial of Natural Forest Logging ban in Heilongjiang extended to include Jilin & Inner Mongolia Autonomous Regions. Logging ban already covered natural forest within mid to upper watersheds of Yellow and Yangtze Rivers since 1998. - 2016: Natural Forest Logging ban extended to all state-owned forest farms in China. - By end 2017: Natural Forest Logging ban <i>extended to collectively-owned and private forest farms owned land</i>.
		Fuelwood forests			N/A	No source Fuelwood forest is to produce woody energy and daily fuel requirements, and will not be used as timber or wood materials.
Plantation Forest	All provinces	Plantations (planted forest).	Collectively, individually	Mostly state, collective, individuals or	Harvesting permit + logging permit application	Commercial Plantation Timber. Plantations (planted forest) provide the main source of timber and is managed and harvested in accordance with national law

			or corporately owned	corporations		and regulations as the general timber forest and industrial fibre forest.
		Economic forest			Harvesting permit + logging permit application, forest tenure certificate	End of lifecycle trees, initially planted for other purposes. Economic forest refers to fruit forest, oil wood, chemical material forest and other forest such as beverage, medicine, spice, fodder, flowers. When the forest has no yield, they might be cut as materials for forest products.
Bamboo Forests	All provinces	Bamboo forest			Harvesting permit (in some provinces) + logging permit application (in some provinces)	Bamboo Bamboo forest refers to the community composed of advantageous bamboo species, generally including timber bamboo forest, shoot bamboo forest and timber-shoot bamboo forest.



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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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