

Timber Legality Risk Assessment Brazil

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FSC™ A000535

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Contents

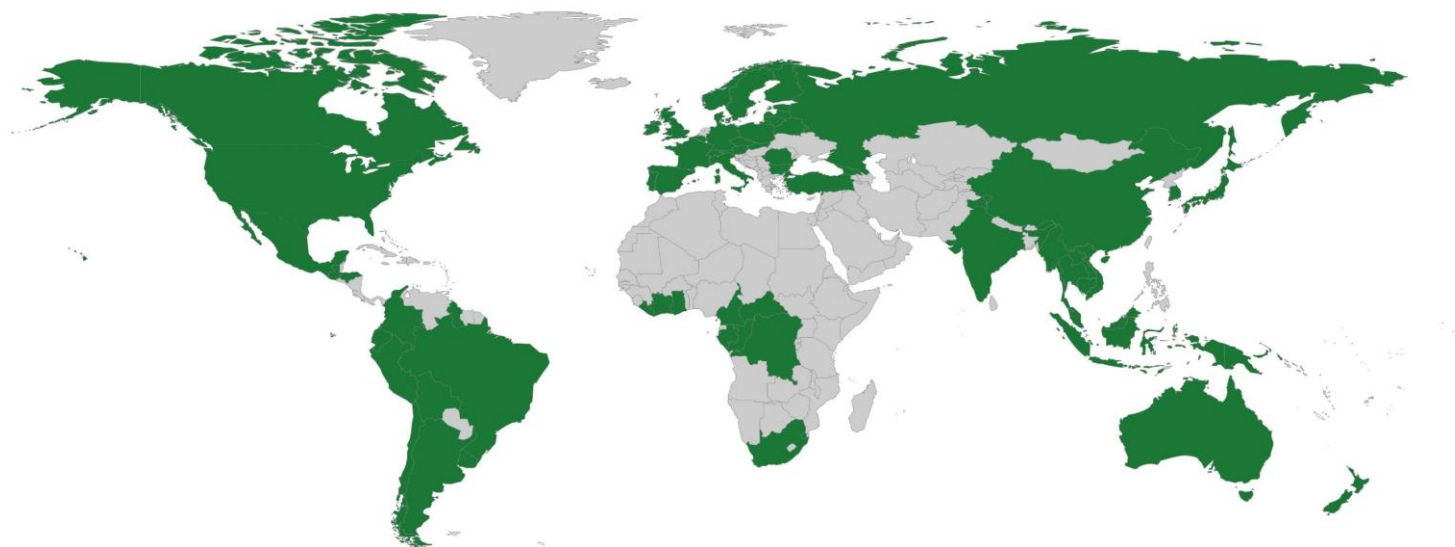
A. Introduction	1
B. Overview of legality risks	2
C. Overview of the forest sector in Brazil	5
D. Legality Risk Assessment	7
LEGAL RIGHTS TO HARVEST	7
1.1. Land tenure and management rights	7
1.2. Concession licenses	11
1.3. Management and harvesting planning	13
1.4. Harvesting permits	17
TAXES AND FEES	21
1.5. Payment of royalties and harvesting fees	21
1.6. Value added taxes and other sales taxes	22
1.7. Income and profit taxes	25
TIMBER HARVESTING ACTIVITIES	27
1.8. Timber harvesting regulations	27
1.9. Protected sites and species	29
1.10. Environmental requirements	33
1.11. Health and safety	36
1.12. Legal employment	39
THIRD PARTIES' RIGHTS	45
1.13 Customary rights	45
1.14. Free prior and informed consent	47
1.15. Indigenous/traditional peoples' rights	48
TRADE AND TRANSPORT	51
1.16. Classification of species, quantities, qualities	51
1.17. Trade and transport	53
1.18. Offshore trading and transfer pricing	56
1.19. Custom regulations	58
1.20. CITES	60
1.21. Legislation requiring due diligence/due care procedures	62
Annex I. Timber source types	63

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A. Introduction

This Timber Legality Risk Assessment for Brazil provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCon 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.



Map created by StatSik (2016). StatPlanet: Interactive Data Visualization and Mapping Software. www.statistik.com

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 legality risks

Timber Risk Score: 42 / 100 in 2017

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

- **Specified risk for 11 sub-categories.**
- **Low risk for 8 sub-categories.**
- **No legal requirements for 2 sub-categories.**

The Timber Risk Score for Brazil is 42 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights and trade and transport.

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

- Illegitimate property allocation because of dysfunctional legislation and confusing and bureaucratic procedures (e.g. land is not properly recorded in the property registers) (Sub-category 1.1).
- Risk of disputes for the use, possession and access to land inhabited by traditional communities (1.1).
- Risk of insufficient/absence of management plans or low adherence to approved management plans in natural forests (1.3).
- Risk of forest management activities taking place without license or with a license issued through illegal means such as corruption (1.3).
- Risk that forestry licenses are obtained illegally due to corruption and lack of law enforcement (1.4)

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

- Tax evasion on value added taxes due to the high probability of the occurrence of the sale of products in conflict with the Brazilian tax legislation (1.6).
- Products being sold without the provision of a fiscal bill of sale (1.6).
- The fiscal bill of sale incorporating a volume less than the actual volume delivered or a value of the product less than the actual value (1.6).

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

- Unauthorized forest management practices (e.g. harvest of prohibited timber species, harvest in non-licensed areas, and larger harvest volumes than are authorized) in natural forests (1.8).
- Illegal logging in protected areas (Permanent Preservation Areas) (1.9).
- Non-approved management or plantation activities in Legal Reserve Areas (1.9) or non-approved management or deforestation in conservation units (1.10).
- Non-compliance with environmental regulations (e.g. not conducting/adhering to an EIA) because of corruption and inadequate enforcement (1.10).
- Occupational health and safety rights not being respected because of lack of minimum health and safety work conditions (1.11), irregularities associated with worker contracting and compensations and inadequate law enforcement (1.12).

For **Third Parties` Rights**, there is a risk of:

- Non-compliance with existing laws and regulations on third parties' rights because of confusing and bureaucratic procedures and the large number, diversity, and scattered nature of the traditional communities (1.13 and 1.15).

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

- Incorrect specification of species, quantity and quality of wood products from natural forests (e.g. changing species, type of material or volume) due to a dysfunctional DOF system and corruption (1.16).
- Risk that timber from natural forests is sold without a bill of sale and/or without the DOF, or accompanied by such documents with fraudulent data (1.17).

Timber source types and risks

There are two timber source types found in Brazil. 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 both source types and found the risks differ between them.

Natural Forest

Timber from natural forests on both state and privately owned land. For all timber from natural forests a concession contract, an AUTEF/AUTEX – Authorization of Forest Exploitation, Sustainable Forest Management Plan (Plano de Manejo Florestal Sustentável - PMFS) and Approved Annual Operational Plan (Plano Operacional Anual - POA) must be in place, and complied with. Trade and transport must be accompanied by the DOF/GF – Document of Forest Origin (Documento de Origem Florestal), Fiscal Bill of Sale (nota fiscal) and an Invoice to be considered legal.

Plantation Forest

Timber, both native and exotic species, from plantation forests on privately owned land. All plantations require a AUTEF/AUTEX – Authorization of Forest Exploitation, Planting license and a Forest Voucher. Some states also require an environmental license for the management of plantations. Trade and transport must be accompanied by the DOF/GF – Document of Forest Origin (Documento de Origem Florestal), Fiscal Bill of Sale (nota fiscal) and an Invoice to be considered legal.

This table summarises the findings of the timber legality risk assessment by source type.

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

C. Overview of the forest sector in Brazil

Brazil is a forest country with approximately 463.2 million hectares (54.4% of its territory) covered by natural and planted forests – which represents the second largest forested area in the world; second only to Russia. Of the 463.2 million hectares, 456.1 million hectares are native or natural forests (with 325.5 million hectares of these in the Amazon Biome). The remaining 7.2 million hectares are planted forests (2013) of which 71% are *Eucalyptus* spp., 21.7% are *Pinus* spp., and the remainder is divided among *Acacia* spp. (Acacia), *Hevea brasiliensis* (Rubber Tree - for latex extraction), *Schizolobium amazonicum* (Paricá), *Tectona grandis* (Teak), *Araucaria angustifolia* (Araucaria), and other species. Approximately 50% of the forests planted in Brazil are certified through some kind of forest certification (FSC and/or PEFC). The natural forests include 308 million hectares of public forests, of which 91% are in the Amazon Biome. There are 110.96 million hectares of protected areas in Conservation Units in the Amazon Biome and a total of 124.6 million hectares of communal forests (these may overlap with some conservation units). There is a forest concession of 145,000 hectares of public forests in the Amazon Biome for sustainable forest use.

From the perspective of the forest type, forest management activities in Brazil can occur in natural forests (rainforests) or planted forests. From the point of view of land ownership, forest management can be carried out on public or private land. Public lands subject to management are covered with natural forests (there is no plantation management on public lands) and can be carried out by private companies or by traditional communities. The management of natural forests may also occur on private land. Although there are no restrictions on who can carry out the management of planted forests, these are usually managed by companies, farmers or families, always in particular locations (given that the public lands have natural forests).

The total volume of timber originating from native forests of the Legal Amazon that was traded lawfully in 2011 (the most recent data) was 12.9 million m³, of which 89% originated from the states of Pará, Mato Grosso, and Rondonia. In the same year the lumber production was about 5.9 million m³ with gross revenue of 4.3 billion Brazilian reais.

The management of Brazil's forests involves different institutions at three levels of government (federal, state, and city). In the federal government, the forest management is under the direct responsibility of four institutions: the Department of the Environment (MM) is responsible for formulating forestry policies. It operates by granting power for sustainable forest production and is responsible for signing forest concession contracts. The Brazilian Forestry Service (SFB) is the administrative institution of the federal public forests for the sustainable production of goods and services. It is also responsible for the generation of information, qualifications, and fostering the forest area. The Brazilian Institute of the Environment and of Renewable Natural Resources (IBAMA) is the institution responsible for environmental control and inspection, and is also responsible for licensing and environmental control of the Brazilian forests in its area of competence. The institute Chico Mendes of Conservation and Biodiversity (ICMBio) is responsible for proposing, implementing, managing, protecting, inspecting, and monitoring the Conservation Units instituted by the Federal Government.

In the state scope, generally, the state departments of the environment are responsible for formulating policies and forest standards, and the state environmental institutions are

responsible for licensing, controlling, and inspecting forest activities and conservation. In the cities that have a forest management structure, the arrangement is similar.

The rules for the management of native forests are much more stringent than those for plantations, and in many States, there is no need for environmental licensing for plantations. Due to the large areas, numbers of applicable laws and regulations, as well as the difficulty of performing inspections, the risks to legality of native wood are greater than those relating to the use of plantations – justifying the risk analysis for the two types of forests (natural and plantations).

Source of statistics: Brazilian Forestry Service

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

- Constitution of the Federative Republic of Brazil – 1988. Chapter I – Clause 5 (XXII – Property of land). Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
- Law No. 5868/72 – National Rural Registration System (Sistema Nacional de Cadastro Rural) (VI). Full text. Available at: http://www.planalto.gov.br/ccivil_03/leis/l5868.htm
- Law No. 4947/66 – Agrarian Law (VI). Chapters III and IV (agrarian contracts and general provisions). Available at: http://www.planalto.gov.br/ccivil_03/leis/L4947.htm
- DECREE 72.106/73 REGULATES LAW 5868, OF 12/12/1972, WHICH INSTITUTED THE NATIONAL RURAL REGISTRATION SYSTEM AND PROVIDES FOR OTHER MATTERS (VI). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/1970-1979/D72106.htm
- Law No. 4504/64 – Land Statute (VI). Chapter I (Access to land); Chapter IV (Use or temporary possession of the land). Available at: https://www.planalto.gov.br/ccivil_03/leis/l4504.htm
- Law No. 9393/96 Provides for the Rural Territorial Property Tax (ITR) (IV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9393.htm
- Law No. 6015/73 – Provides for public records (VIII). Title V (Property Deed Records). Available at: https://www.planalto.gov.br/ccivil_03/Leis/L6015compilada.htm
- Decree No. 4,382/02 Provides for the Rural Territorial Property Tax (ITR) (IV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2002/d4382.htm
- Law No. 11.284/06 – Public Forests Management Law (I/II). Titles I and II – Management of Public Forests for Sustainable Production. Available at: http://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/lei/l11284.htm

- Law No. 6.063/07 – Regulates the Public Forests Management Law (I/II). Full text. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6063.htm
- Law 10.406/02 – Instituted the Civil Code (IX). Title II (Clause 45).
- LAW No. 11.598/07 – Establishes guidelines and procedures for the simplification and integration of the registering and legalization processes of entrepreneurs and legal entities (IX). Chapter I. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lei/L11598.htm

1.1.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA e ICMBio; State and City Bodies) (I);
- SFB – Brazilian Forest Service (Serviço Florestal Brasileiro) (II)
- Secretariat of the Federal Revenue of Brazil (Secretaria da Receita Federal do Brasil) (IV)
- Real Estate Registration Notary (Cartório de Registro de Imóveis) (VIII)
- INCRA – National Institute for Colonization and Agrarian Reform (Instituto nacional de Colonização e Reforma Agrária) (VI)
- Executive Power (City, State or Federal) (IX)

1.1.3. Legally required documents or records

- CCIR (Certificate of Registration of Rural Real Estate – Certificado de Cadastro do Imóvel Rural) (VI). Available at: <http://www.incra.gov.br/estrutura-fundiaria/regularizacao-fundiaria/cadastro-rural>
- Proof of Registration of the Territorial Institute – Land Institute – ITR (VI)
- Authorization of Temporary Occupation provided by INCRA (VI)
- Certificate of Deed of Entire Content of the Rural Real estate (Certidão de Matrícula de Inteiro Teor do Imóvel Rural) (VIII). Available at: <http://www.registradores.org.br/>
- CNDIR (Certidão Negativa de Débitos do Imóvel Rural) (IV). Available at: <http://www.receita.fazenda.gov.br/aplicacoes/atspo/certidao/certinter/niitr.asp>
- CNPJ card (IV). Available at: http://www.receita.fazenda.gov.br/pessoajuridica/cnpj/cnpjreva/cnpjreva_solicitacao.asp
- Operation License (I)
- Operation Permit (IX)

1.1.4. Sources of information

Government sources

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at:

<https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]

- Receita.fazenda.gov.br (n.d.). *Secretariat of the Federal Revenue of Brazil website*. [online]. Available at: <http://www.receita.fazenda.gov.br/aplicacoes/atbhe/tus/default.aspx?/a/2>
- Florestal.gov.br. (n.d.). Brazilian Forest service (SFB). [online]. Available at: <http://www.florestal.gov.br/concessoes-florestais/florestas-sob-concessao/tres-florestas-nacionais-abrigam-concessao-florestal> [Accessed 7 December 2016]

Non-Government sources

- Bibliotecadigital.fgv.br (2013). *Perception Index of Legal Compliance – IPCL Brazil*. [online]. FGV – Fundação Getúlio Vargas, pp. 1-37. Available at: <http://bibliotecadigital.fgv.br/dspace/handle/10438/10801> [Accessed 7 December 2016]
- Greenpeace (2014). [online]. Greenpeace Brazil, pp. 1-12. Available at: http://www.greenpeace.org/brasil/Global/brasil/report/2014/Denuncia%20GP%20madeira%20ilegal_13%2005%202014.pdf
- Imazon.org.br (n.d.). *Boletim Transparência Manejo Florestal* (IMAZON – Forest management Transparency Bulletin). [online]. Available at: <http://www.imazon.org.br/publicacoes/transparencia-manejo-florestal>
- Onu.org.br (2012). *Probabilidade de madeireiro ilegal ser punido no Brasil é baixa, revela estudo do Banco Mundial* (Probability that illegal lumber merchant is punished in Brazil is low, reveals study of the World Bank). [online]. United Nations in Brazil. Available at: <http://www.onu.org.br/probabilidade-de-madeireiro-ilegal-ser-punido-no-brasil-e-baixa-revela-estudo-do-banco-mundial/> [Accessed 7 December 2016]
- Transparency International (2015). *Corruption Perception Index (CPI) for Brazil* (Country Profile). [online]. Available at: <http://www.transparency.org/country#BRA> [Accessed 7 December 2016]

1.1.5. Risk determination

Overview of Legal Requirements

In Brazil, land ownership can be considered legal if the land possession is valid and notarized on behalf of the owners.

Forestry activities may occur in three situations: management of natural forests in public areas through forest concessions; management of natural forests on private lands; and management of plantations on private areas.

Description of risk

Historically, land rights have been inconsistently managed, resulting in many properties under illegal possession, mainly in the north of the country. As there are forest plantations throughout the country, this risk of illegal possession is not limited to natural forests: it applies also to forest plantations.

There may be forest management units in areas inhabited by traditional communities, with the risk of disputes for the use, possession and access to land. The existing legislation is dysfunctional and has led to confusing and bureaucratic procedures, which in turn often lead to regulation of land ownership through judicial and extra-judicial means. It is common that land is not properly recorded in the property registers; or there are forged documents ('land grabbing') that can result in more than one ownership document of relating to the same area. Usually this overlap becomes noticeable only when there is a conflict related to land tenure, where more than one owner calls for legitimate possession, or when the whole dominion is analysed (this being a requirement of some state environmental agencies). Therefore, there is a risk of forest management taking place without license or with a license issued through illegal means, such as corruption. Oversight and surveillance by government is limited and passive, occurring only when it is demanded for licensing purposes or conflict resolution.

The IMAZON studies and Greenpeace reports indicate that, in 2012, 78% of logging in Pará and 58% in Mato Grosso (Brazilian states responsible for most tropical timber production) was performed without authorization by the competent agencies. According to the UN study, the probability that illegal timber harvesting in Brazil results in penalties is less than 0.08%. Brazil can be considered a country with a high perception of corruption: The IPCL (Perception Index of Legal Compliance) was 6.8 in the first quarter of 2014 (on a scale of 0 to 10 where 10 represents the perception that laws are enforced in the country). This perception of law enforcement fell compared with the index for the first half of 2013 (7.2). In addition, the CPI (corruption perception index) in Brazil in 2014 was 43 (on a scale from 0 to 100 where 100 is the lowest level of corruption). This means there is strong perception that Brazil is a corrupt country.

Risk conclusion

Because there are common cases of irregular property allocation and numerous instances of unlicensed forestry activity or illegally obtained licenses for forestry activity, it is concluded that there is a specific risk of illegality relating to the possession and ownership of land.

1.1.6. Risk designation and specification

Specified risk

1.1.7. Control measures and verifiers

- Land registry shall confirm ownership and validity of property deed.
- The business register shall confirm valid business licenses to operate within the jurisdiction.
- In areas with land ownership conflicts, consultation with neighbors, the local communities and others shall confirm that land tenure rights are clear.
- Stakeholder consultation can be used to confirm legal status of the operation; or that the rights established for conducting activities are not subject to court orders or other legally established decisions to cease operations.
- The management contract or other agreements with the owner shall indicate clear management rights.

- Valid business registration documents shall exist.
- Inspections of harvesting site shall confirm that harvesting (including felling, transport and log landings) takes place within property limits.
- A map with the traditional communities close to forest areas should be created to help identify potential conflicts over land use, depending on the size of the enterprise.

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

- Law No. 4947/66 – Agrarian Law (VI). Chapter III and IV (agrarian contracts and general provisions). Available at: http://www.planalto.gov.br/ccivil_03/leis/L4947.htm
- Law No. 4504/64 – Land Statute (VI/VII). Chapter I (Access to land); Chapter IV (Use or temporary possession of the land). Available at: https://www.planalto.gov.br/ccivil_03/leis/l4504.htm
- Law No. 6.938/81 – Provides for the National Environmental Policy Act, its purposes and formulation and application mechanisms, and provides for other matters (i). Clause 10. Available at: http://www.planalto.gov.br/ccivil_03/leis/L6938compilada.htm
- Law No. 11.284/06 – Public Forests Management Law (I/II). Titles I and II – Management of Public Forests for Sustainable Production. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11284.htm
- Law No. 6.063/07 – Regulates the Public Forests Management Law (I/II). Full. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6063.htm
- Law No. 11.516/07 – Provides for the creation of the Chico Mendes Institute for the Conservation of the Biodiversity – Institute Chico Mendes; (I). Clause 1. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11516.htm
- Law No. 12651/12 Forest Code. (I/II). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm
- DECREE No. 59.566/66 – Regulates Sections I, II and III of Chapter IV of Title III of Law No. 4.504, of November 30, 1964, the Land Statute, the Chapter III of Law No. 4.947, of April 6, 1966, and provides for other matters. (VI/VII). Chapters, I, II and III.

1.2.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State and Municipal Environmental Bodies) (I)SFB
- SFB Brazilian Forest Service (II)
- INCRA – National Institute of Colonization and Land Reform (IV)
- Notary for the Registration of Deeds and Documents (VII)
- Notary for Registration of Deeds and Documents (I)
- Brazilian Forest Service (II)
- INCRA (III)
- SISNAMA (IV)

1.2.3. Legally required documents or records

- Leasing, partnership, or rural loan for use contract registered or with a notary's acknowledgment (VII)
- Actual Right of Use Concession Contract – CCDRU (Extrativist Reserve and Sustainable Development Reserve) (II)
- Use Concession Contract (National Forest) (II)
- Registration in the CTF (Federal Technical Register) (I). Available at: <https://servicos.ibama.gov.br/index.php/cadastro/394-como-emitir-o-certificado-de-regularidade>

1.2.4. Sources of information

Government sources

- Ibama.gov.br (n.d.). *Website for the Brazilian Institute of Environment and Renewable Natural Resources*. [online]. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA). Available at: <http://www.ibama.gov.br/> [Accessed 7 December 2016]
- Agriculture.gov.br (n.d.). Website for the Ministry of Agriculture. [online]. Ministério da agricultura. Available at: <http://www.agricultura.gov.br/> [Accessed 7 December 2016]
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- Florestal.gov.br. (n.d.). Brazilian Forest service (SFB). [online]. Available at: <http://www.florestal.gov.br/concessoes-florestais/florestas-sob-concessao/tres-florestas-nacionais-abrigam-concessao-florestal> [Accessed 7 December 2016]

1.2.5. Risk determination

Overview of Legal Requirements

The economic exploitation of the land is a right of its owner; and if there is interest in other options, the right may be transferred to a third party. However, there are legal methods governing the issue of concession rights.

Forest management concession rights occur in two forms in Brazil: if the forest is public, the concession is managed through public forest concession contracts, when the government assigns the right to sustainable forest management to the company that presents the best financial and technical proposal, (according to Clause 35 of decree 6063/07). If the land is privately held, the owner may assign the exploitation right to a third party through formal contracts that are registered with notaries (Clause 92 of Law 4504/64) – a very common practice for forest plantations. Up to November 2014, the SFB had granted exploitation rights on 400,000 hectares of public forests.

Description of risk

The public concession process is quite transparent and is reviewed, reducing the possibility of unethical conduct in all phases of the process, from the publication of the tender bids to the performance of the audits on the completion of the contracts. The use right concessions for private areas may be carried out in a relatively simple way, without high costs for all involved. This is a practice that is consolidated in Brazil, and the risk is considered low when related to forest concession rights.

Risk conclusion

Risk is considered as low

1.2.6. Risk designation and specification

Low risk

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

- Law No. 12651/12 Forest Code. (i). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm
- CONAMA Resolution No. 406/09 – Establishment of the PMFS in the Amazon (I). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=597>
- DECREE No. 5.975/06 – Regulates a variety of laws and decrees on management and transportation (I). Full (Clause 29 forbids the cutting of the chestnut and rubber). Available at: http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5975.htm

- IN MM 05/06 – Technical procedures for the preparation, presentation, execution and technical evaluation of Sustainable Forest Management – PMFSs (I). Full text. Available at: <http://www.mma.gov.br/estruturas/pnf/arquivos/in%20mma%2005-06.pdf>
- IN IBAMA No. 31/2009 – Provides for the registration in the Federal Technical Register (I). Full text. Available at: http://www.ibama.gov.br/phocadownload/Qualidade_Ambiental/in%2031_2009.pdf
- CONAMA Resolution No.1/86 – Environmental Impact Report – RIMA (I). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res86/res0186.html>
- Normative Instruction MM No. 5/09 – Restoration/Recovery of APP (I). Full text.
- CONAMA Resolution 378/06 – Defines the undertakings that would potentially cause environmental national or regional impacts. (i). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=510>
- CONAMA Resolution 237/97 – Environmental licensing required for forest, agricultural and industrial, road activities, and gravel exploitation. (i). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res97/res23797.html>
- IBAMA Administrative Decision No. 19/03 – Follow-up and evaluation of the PMFS (I). Full text.
- Decree No. 4733/2003 – Criteria for exploitation of mahogany in the Amazon (I). First Clause. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2003/d4722.htm
- IBAMA Administrative Decision No. 083/91 – Criteria for the exploitation of the aroeira (of the Anacardiaceae family) (I). Full text. Available at: <http://www.ibama.gov.br/documentos/portaria-83n>
- CONAMA Resolution No. 13/90 – Surrounding areas to the conservation units (I). Full (in a radius of 10km of the CUs, any activity that can affect the biota should be licensed). Available at: <http://www.mma.gov.br/port/conama/res/res90/res1390.html>
- DECREE No. 7830, OF OCTOBER 17, 2012 – Provides for the Rural Environmental Register System, the Rural Environmental Register, establishes rules of a general nature for the Environmental Regularization Programs, which are dealt with by Law 12.651, of May 25, 2012, and provides for other matters. (i). Full text. Available at: https://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/decreto/d7830.htm
- IN ICMBIO 16/11 – Regulates, in the scope of the Chico Mendes Institute, the guidelines and the administrative procedures for the approval of the communal Sustainable Forest management Plan (PMFS) for exploitation of lumber resources in the interior of Extractive Reserves, Sustainable Development Reserves, and National Forests. Full text. Available at: <http://www.icmbio.gov.br/portal/images/stories/o-que-somos/in162011.pdf>
- Normative Instruction IBAMA No. 10/2013 – New IN of the Federal Technical Register of Activities and Instruments of Environmental Defense (I). Full text.

1.3.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal Bodies) (I)
- MMA – Department of the Environment (III)

1.3.3. Legally required documents or records

- Query to the status of the CAR (III). Available at: <http://www.car.gov.br/#/consultar>

Only for natural forests:

- APAT – Prior Authorization for the Analysis of the PMFS (I)
- PMFS – Sustainable Forest Management Plan (I)

Plantations are not required to have a management plan.

1.3.4. Sources of information

Government sources

- Ibama.gov.br (n.d.). *Manejo florestal sustentável* (Sustainable Forest Management). [online]. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA). Available at: <http://www.ibama.gov.br/> [Accessed 7 December 2016]
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- Florestal.gov.br. (n.d.). Brazilian Forest service (SFB). [online]. Available at: <http://www.florestal.gov.br/concessoes-florestais/florestas-sob-concessao/tres-florestas-nacionais-abrigam-concessao-florestal> [Accessed 7 December 2016]
- Mma.gov.br (n.d.). Website for the Ministry of the Environment. [online]. Ministério do Meio Ambient. Available at: <http://www.mma.gov.br/> [Accessed 7 December 2016]
- Mma.gov.br (n.d.). Website for the Ministry of the Environment, National Council of the Environment (CONAMA). Available at: <http://www.mma.gov.br/port/conama/> [Accessed 7 December 2016]
- Icmbio.gov.br (n.d.). Chico Mendes Institute for Biodiversity Conservation (ICMBio). [online]. Available at: <http://www.icmbio.gov.br/portal/biodiversidade/unidades-de-conservacao/planos-de-manejo.html> [Accessed 7 December 2016]

Non-Government sources

- Imazon.org.br (n.d.). IMAZON – Forest management Transparency Bulletin. [online]. Available at: <http://www.imazon.org.br/publicacoes/transparencia-manejo-florestal>

1.3.5. Risk determination

Overview of Legal Requirements

In Brazil, there are no legal requirements for forest plantations to have a management plan; therefore, there is no risk of illegality related to the management plan for plantations. The management of natural forests must have a sustainable forest management plan approved by the relevant environmental body (Clause 2 of Decree 5975/06). The content of the management plan varies according to the scale and intensity of the enterprise and must follow minimum guidelines established through resolutions as well as normative instructions issued by federal environmental agencies (Conama 406/09; MM IN 05/06, IBAMA 19/03).

Each State has autonomy to establish its own procedures for the approval of management plans, leading to significant differences in legal requirements in different districts. There is a high frequency of change in the relevant regulatory state laws.

Description of risk

The inherent risks for the forest management plan are mainly:

- Approval of low-quality management plans that do not fulfill the minimum legal requirements or that have false or inexact information;
- forest management carried out in violation of the approved management plan, resulting in social and environmental impacts beyond those anticipated; and,
- illegal forest management, without an approved management plan.

The last IMAZON Forest Management Transparency Bulletin (dated 2011-2012), indicates that most of the forestry activities occur illegally in the States Pará and Mato Grosso (the largest lumber producers), reaching levels of illegal production of 58% in Mato Grosso and 78% in Pará.

According to the same IMAZON study, even among the few cases where management occurs with the approval of the regulatory body, almost the entire area is managed under practices considered of intermediate or low quality, reaching 90% in Mato Grosso and 96% in Pará (i.e. the percent of forests managed at an intermediate or low level of compliance in relation to their forest management plan).

Risk conclusion

Therefore, the management of natural forests is considered specified risk because of the high probability of the forest activity occurring without authorization, or in non-compliance with the approved Forest Management Plan.

1.3.6. Risk designation and specification

Natural forest: Specified risk

Plantations: NA

1.3.7. Control measures and verifiers

- Maps showing harvesting areas (in compliance with the harvesting plan)
- Document review: approved harvesting plan and management plan approved forest management plans for the FMU shall exist where the harvesting is taking place.

- Forest management plans shall contain all legally required information and procedures.
- Annual operating plans or harvesting shall be in place and legally approved by Competent Authorities.
- Annual operating plans or harvesting shall contain information and procedures, according to all statutory requirements.
- The contents of the operating and harvesting plans shall be consistent with approved forest management plans.
- Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required.
- Harvesting restrictions shall be identified in management plan and maps if legally required.
- Harvesting inventories shall be conducted according to statutory requirements.
- Field verifications shall indicate that the harvesting plans are followed in the field.
- Field verification should indicate within the FMU that the permanent preservation areas are not harvested and the management shall not have affected their physical integrity, in accordance with the law.

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

- Law No. 12651/12 Forest Code. (i). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm
- CONAMA Resolution No. 406/09 – Establishment of the PMFS in the Amazon (I). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=597>
- DECREE No. 5.975/06 – Regulates a variety of laws and decrees on management and transportation(I). Full (Clause 29 forbids the cutting of the chestnut and rubber trees). Available at: http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5975.htm

- IN MM 05/06 – Technical procedures for the preparation, presentation, execution and technical evaluation of Sustainable Forest Management – PMFSs (I). Full text. Available at: <http://www.mma.gov.br/estruturas/pnf/arquivos/in%20mma%2005-06.pdf>
- IN IBAMA No. 31/2009 – Provides for the registration in the Federal Technical Register (I). Full text. Available at: http://www.ibama.gov.br/phocadownload/Qualidade_Ambiental/in%2031_2009.pdf
- CONAMA Resolution No.1/86 – Environmental Impact Report – RIMA (I). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res86/res0186.html>
- Normative Instruction MM No. 5/09 – Restoration/Recovery of APP (I). Full text.
- CONAMA Resolution 378/06 – Defines the undertakings that would potentially cause environmental national or regional impacts. (i). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=510>
- CONAMA Resolution 237/97 – Environmental licensing required for forest, agricultural, agricultural, and industrial, road activities, and gravel exploitation. (i). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res97/res23797.html>
- IBAMA Administrative Decision No. 19/03 – Follow-up and evaluation of the PMFS (I). Full text.
- Decree No. 4733/2003 – Criteria for exploitation of mahogany in the Amazon (I). Clause 1st. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2003/d4722.htm
- IBAMA Administrative Decision No. 083/91 – Criteria for the exploitation of the aroeira (of the Anacardiaceae family) (I). Full text. Available at: <http://www.ibama.gov.br/documentos/portaria-83n>
- CONAMA Resolution No. 13/90 – Surrounding areas to the conservation units (I). Full (in a radius of 10km of the CUs, any activity that can affect the biota should be licensed). Available at: <http://www.mma.gov.br/port/conama/res/res90/res1390.html>
- DECREE No. 7830, OF OCTOBER 17, 2012 – Provides for the Rural Environmental Register System, the Rural Environmental Register, establishes rules general nature for the Environmental Regularization Programs, which are dealt with by Law 12.651, of May 25, 2012, and provides for other matters. (i). Full text. Available at: https://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/decreto/d7830.htm
- Normative Instruction IBAMA No. 10/2013 – New IN of the Federal Technical Register of Activities and Instruments of Environmental Defense (I). Full text.

1.4.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal Bodies) (I)

1.4.3. Legally required documents or records

- Operation License (I)
- AUTEX – Authorization for Exploitation (I)

1.4.4. Sources of information

Government sources

- Ibama.gov.br (n.d.). *Description of the Procedures for Monitoring and Evaluating the Execution of PMFS in the Legal Amazon – Analysis and Approval of the POAs*. [online]. Available at: <http://www.ibama.gov.br/licenciamento-ambiental/processo-de-licenciamento> [Accessed 7 December 2016]

Non-Government sources

- Description of the Procedures for the Preparation, Presentation, Analysis, and Approval of PMFS in the Legal Amazon.
- Imazon.org.br (n.d.). IMAZON – Forest management Transparency Bulletin. [online]. Available at: <http://www.imazon.org.br/publicacoes/transparencia-manejo-florestal>
- Greenpeace (2014). xxxxxx [online]. Greenpeace Brazil, pp. 1-12. Available at: <http://www.greenpeace.org/brasil/Global/brasil/report/2014/Denuncia%20GP%20madeira%20ilegal%2013%2005%202014.pdf> [Accessed 7 December 2016]
- Onu.org.br (2012). *Probabilidade de madeireiro ilegal ser punido no Brasil é baixa, revela estudo do Banco Mundial* (Probability that illegal lumber merchant is punished in Brazil is low, reveals study of the World Bank). [online]. United Nations in Brazil. Available at: <http://www.onu.org.br/probabilidade-de-madeireiro-ilegal-ser-punido-no-brasil-e-baixa-revela-estudo-do-banco-mundial/> [Accessed 7 December 2016]

1.4.5. Risk determination

Overview of Legal Requirements

The Brazilian constitution provides that the states and cities can legislate in a more restrictive form relating to matters already regulated by federal law. Federal law 12.651/12, in Clause 31, provides that the exploitation of natural forests always depends on a license issued by the relevant SISNAMA body through the approval of the sustainable forest management plan – PMFS.

CONAMA Resolution 237/97 provides that the activities that may cause environmental impacts must be licensed according to their size and location, considering their environmental impact potential, and that they may be regulated by the SISNAMA bodies at federal, state, or municipal level. This causes the different states and cities to define the criteria for the mandatory environmental licensing for silviculture and forest management of natural forest areas, and the mandatory nature may be confirmed or not, or there may be a definition of size or location limits that requires comprehensive licensing or simplified forms of licensing.

Description of risk

In addition to the Corruption Perception Index of Brazil being 43 (below 50), it is common to see reports in the media of scandals involving corruption around the issue of environmental licenses. Also, besides the risk of licenses being issued illegally, there is

the risk of unlicensed management activities. The IMAZON studies and Greenpeace report indicate that in 2012, 78% of logging in Pará and 58% in Mato Grosso (Brazilian states responsible for the most tropical timber production) were performed without authorization by the relevant agencies.

According to the UN study the probability of illegal timber activities resulting in penalties in Brazil is less than 0.08%. It is not possible to consider as low risk the licensing of plantation management due to the fact that the mandatory nature and licensing forms of forestry activities vary between states and cities.

Risk conclusion

A high risk related to the licensing of natural forest management has been identified based on the high probability that management activities may occur without licensing, or with the license obtained through illegal means, or in non-compliance with the projects that are based on the environmental license.

1.4.6. Risk designation and specification

Specified risk

1.4.7. Control measures and verifiers

- Field visits to verify if maps reflect reality
- Harvesting permits (license or similar statutory document governing the harvesting of forest resources) shall exist.
- Harvesting shall have clearly defined limits based on maps and quantities.
- Authorities shall confirm the validity of the harvesting permit.
- Field inspections shall confirm that harvesting takes place within the limits required in the harvesting permit.
- Field inspections shall confirm that the information relating to area, species, volumes, and other information provided in the harvesting permit is correct and within the limits prescribed in the legislation
- For planted forests, verify the applicability of the environmental licensing by the state or municipality

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

- Law 11.284 / 06 – Law of Public Forest Management (II). Titles I and II – Management of Public Forests for Sustainable Production. Available at: http://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/lei/l11284.htm
- Law 8.137/1990 (common law) defines crimes against the tax, and economic orders, and against the consumption relations, and provides for other matters. (xvii/ iv/ v). Clause 1. Available at: https://www.planalto.gov.br/ccivil_03/leis/l8137.htm

1.5.2. Legal authority

- SFB – Brazilian Forest Service (II)
- National Treasury (XVII)
- Secretariat of the Federal Revenue of Brazil (IV)
- State Department of Treasury (V)

1.5.3. Legally required documents or records

- Proof of payment of the rates regarding the analysis of the management plan by the responsible environmental body (IV/V)
- In case of a public forest concession – Proof of payment of the GRU (Union Collection Voucher) regarding the costs of the communication, lumber products actually explored, residual wood stuff, non-lumber products exploited, services actually explored, and of the minimum annual defined in the concession contract. (II) – http://consulta.tesouro.fazenda.gov.br/darf_gps/recibos_siafi_darf_gps.asp
- Joint Certificate of Debits Related to Federal Taxes and to the Current Debt Before the Union (IV/ XVII) – <http://www.receita.fazenda.gov.br/Certidoes/PessoaJuridica.htm>

1.5.4. Sources of information

Government sources

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26Autoframed> [Accessed 7 December 2016]

- Florestal.gov.br (n.d.). *Brazilian Forest Service – Economic Results of Forest Concessions*. [online]. Available at: <http://www.florestal.gov.br/concessoes-florestais/beneficios-economicos/resultados-economicos>
- Receita.fazenda.gov.br (n.d.). *Secretariat of the Federal Revenue of Brazil*. [online]. Available at: <http://www.receita.fazenda.gov.br/aplicacoes/atbhe/tus/Servico.aspx?id=180&idArea=3&idAssunto=43> [Accessed 7 December 2016]

1.5.5. Risk determination

Overview of Legal Requirements

In Brazil, there is no specific fee for forest management, except for the concessions of public forests, where the concessionaire pays the State proportionately according to the wood volume exploited. This information is audited by institutions accredited by a recognized certification body. It is mandatory for the concessionaire to pay an Annual Minimum Value (VMA), whether any activity occurs or not, and this value may be reduced subsequently as the management occurs. The values paid are publicly available on the website of the Brazilian Forest Service.

The rates that an interested party must pay, when carrying out any economic activity (including forestry) in Brazil, are referred for analysis and approval by the administrative bodies. An example might be the analysis and approval of the management plan and the rates related to the issuance of operation permits.

Description of risk

In general, companies willing to legally carry out the activity are also usually willing to pay the rates. The non-payment of the rates results in the license being withheld and may cause the company to become indebted to the Government. It may also cause the confiscation of the company's property for the settlement of the pending fees.

Risk conclusion

Considering that only legally established companies with licensed operations must pay rates for forest management – and that the rates do not represent a significant financial burden for the companies – the risk for this criterion is considered 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

- Law 8.137/1990 (common law) defines crimes against the tax, and economic orders, and against the consumption relations, and provides for other matters. (IV/ V). Clause 1. Available at: https://www.planalto.gov.br/ccivil_03/leis/l8137.htm
- Decree-Law 1.899/1981 – Classification, Inspection, and Inspection rate for animal products and vegetables or of consumption in the agricultural activities (IV/V). Clause 1st. Available at: https://www.planalto.gov.br/ccivil_03/decreto-lei/1965-1988/Del1899.htm
- Decree 7212/10 – Regulates the Industrialized Products Tax (IPI) (IV). Clause 24º. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/decreto/d7212.htm
- Decree 7660/11 – Table of Levies of the IPI (IV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/Decreto/D7660.htm
- Complementary Law 87/96 Circulation Tax on Goods and Services (ICMS) (V). Clause 2º.
- Law No. 8.846/94 – Provides about the issuance of fiscal documents and the arbitrage of the minimum revenue for taxation, and provides for other matters. (IV/ V). Full text. Available at: http://www.planalto.gov.br/ccivil_03/leis/L8846.htm

1.6.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal bodies) (I)
- Secretariat of the Federal Revenue of Brazil (IV)
- State Department of Revenue (V)

1.6.3. Legally required documents or records

- Negative Debit Certificate of IBAMA (I). Available at: <https://www.ibama.gov.br/sicafixt>
- Joint Certificate of Debits Related to Federal Taxes and to the Current Debt Before the Union (IV). Available at: <http://www.receita.fazenda.gov.br/Certidoes/PessoaJuridica.htm>
- Product Fiscal Bill of Sale (IV/ V)

1.6.4. Sources of information

Government sources

- Florestal.goc.br (2013). *Strengthening the Brazilian Forest Sector*. [online]. Brazilian Forest Service, Ministry of the Environment, pp. 1-98. Available at: http://www.florestal.gov.br/index.php?option=com_k2&view=item&task=download&id=166 [Accessed 7 December 2016]
- Receita.fazenda.gov.br (n.d.). *Secretariat of the Federal Revenue of Brazil – Taxes on industrialized Products IPI*. [online]. Available at:

<http://www.receita.fazenda.gov.br/Aliquotas/ImpSobProdIndustr.htm> [Accessed 7 December 2016]

Non-Government sources

- Quantocustaobrasil.com.br (2013). *Sonegação no Brasil - Uma Estimativa do Desvio da Arrecadação do Exercício de 2013* (Tax Evasion in Brazil – An Estimate of the Tax Evasion of the Period of 2013). SINPROFAZ – National Union of the State Attorneys of the Internal Revenue. [online]. Available at: <http://www.quantocustaobrasil.com.br/artigos/sonegacao-no-brasil-uma-estimativa-do-desvio-da-arrecadacao-do-exercicio-de-2013>
- IBAMA
- Secretariat of the Federal Revenue of Brazil
- State Departments of Revenue

1.6.5. Risk determination

Overview of Legal Requirements

Most of the taxes paid by the industry are calculated on the basis of the company's billings (COFINS, Income Tax, IPI, PIS, among others). The value invoiced by the company is checked according to the volume and value of the fiscal bills of sale (invoices) issued.

Description of risk

As the tax burden in Brazil is relatively high (some 42% of the final value of the product), there are practices established to evade the payment of taxes. Techniques used include the sale of products without the provision of a fiscal bill of sale; the issuance of the fiscal bill of sale incorporating a volume less than the actual volume delivered; or the issuance of a fiscal bill of sale with the stated value of the product less than the actual value. A study carried out by SINPROFAZ showed that an amount equivalent to 10% of the Brazilian GDP is the amount of tax evaded each year.

The large diversity of taxes (depending on the product, there may be up to 63 different taxes) and the large number of relevant laws makes the tax environment confusing and prone to errors, whether deliberate or not. Inspections are carried out through cross-checking of information by the Secretariat of the Federal Revenue of Brazil; fiscal (internal) audits by companies; or roadblocks to verify transport documentation. However, the capability of the inspecting bodies is insufficient to reduce the existing risk.

Risk conclusion

Tax evasion is considered specified risk due to the high probability of the occurrence of the sale of products in conflict with the Brazilian tax legislation, both for plantations and natural forests.

1.6.6. Risk designation and specification

Specified risk

1.6.7. Control measures and verifiers

- Fiscal bills of sale shall include applicable sales taxes.
- Receipts for payment of sales taxes shall exist.
- Volumes, species and qualities given in sales and transport documents shall match the taxes paid.
- Sales prices shall be in line with market prices.
- Harvested species, volume, and qualities shall match the sales documents.
- Authorities shall confirm that the operation is up-to-date in the payment of the applicable sales taxes.

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

- Law 8.137/1990 (common law) defines crimes against the tax, and economic orders, and against the consumption relations, and provides for other matters. (IV). Clause 1. Available at: https://www.planalto.gov.br/ccivil_03/leis/l8137.htm
- Law No. 8.846/94 – Provides about the issuance of fiscal documents and the arbitrage of the minimum revenue for taxation, and provides for other matters. (IV). Full text. http://www.planalto.gov.br/ccivil_03/leis/L8846.htm
- DECREE No. 3,000, OF MARCH 26, 1999. – Regulates the taxation, inspection, collection, and administration of the Income Tax and Proceeds of Any Nature (IV). As of Chapter IV. Available at: https://www.planalto.gov.br/ccivil_03/decreto/d3000.htm
- Export Tax (IE) Law No. 1.578, of October 11, 1977 (IV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto-lei/del1578.htm

1.7.2. Legal authority

- Secretariat of the Federal Revenue of Brazil (IV)

1.7.3. Legally required documents or records

- Joint Certificate of Debits Related to Federal Taxes and to the Outstanding Debt Before the Union (IV). Available at: <http://www.receita.fazenda.gov.br/Certidoes/PessoaJuridica.htm>

1.7.4. Sources of information

Government sources

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Fram>

[e=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed](#) [Accessed 7 December 2016]

- Receita.fazenda.gov.br (n.d.). *Secretariat of the Federal Revenue of Brazil website*. [online]. Available at: <http://www.receita.fazenda.gov.br/aplicacoes/atbhe/tus/default.aspx?a/2> [Accessed 7 December 2016]
- Secretariat of the Federal Revenue of Brazil

Non-Government sources

- Portaltributario.com.br (n.d.). *Tax Portal*. [online]. Available at: <http://www.portaltributario.com.br/tributos/irpj.html> [Accessed 7 December 2016]

1.7.5. Risk determination

Overview of Legal Requirements

In Brazil, the responsible body for the collection and inspection of the income tax is the Secretariat of the Federal Revenue of Brazil (RFB).

The RFB has a computerized system to collect the income taxes of all statutory Individuals and entities, cross-checking data between different payers and income recipients. The government acts upon those who try to evade income taxes. Anyone can check if a company has any disputes with the Secretariat of the Federal Revenue of Brazil through the RFB website.

Risk conclusion

Considering that the existing problems of tax evasion are related to generating income (Criterion 2.2), and not to the non-payment of profit taxes, this criterion is considered to be of low risk.

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

- Law No. 12651/12 Forest Code. (I). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm
- CONAMA Resolution No. 406/09 – Establishment of the PMFS in the Amazon (I). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=597>
- DECREE No. 5.975/06 – Regulates a variety of laws and decrees on management and transportation(I). Full (Clause 29 Forbids the cutting of the chestnut and rubber trees). Available at: http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5975.htm
- IN MM 05/06 – Technical procedures for the preparation, presentation, execution and technical evaluation of Sustainable Forest Management – PMFSs (I). Full text. Available at: http://www.mma.gov.br/estruturas/pnf/_arquivos/in%20mma%2005-06.pdf
- CONAMA Resolution No. 1/86 – Environmental Impact Report – RIMA (I). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res86/res0186.html>
- Normative Instruction MM No. 5/09 – Restoration/Recovery of APP (I). Full text.
- CONAMA Resolution 237/97 – Environmental licensing required for forest, agricultural, agricultural, and industrial, road activities, and gravel exploitation. (i). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res97/res23797.html>
- IBAMA Administrative Decision No. 19/03 – Follow-up and evaluation of the PMFS (I). Full text.
- CONAMA Resolution No. 13/90 – Surrounding areas to the conservation units (I). Full (in a radius of 10km of the CUs, any activity that can affect the biota should be licensed). Available at: <http://www.mma.gov.br/port/conama/res/res90/res1390.html>
- IN ICMBIO 16/11 – Guidelines for the approval of the management plan (I). Full text. Available at: <http://www.icmbio.gov.br/portal/images/stories/o-que-somos/in162011.pdf>

1.8.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal Bodies) (I)

1.8.3. Legally required documents or records

All for natural forests:

- Previous Authorization for the Technical Analysis of the Sustainable Forest Management Plan (I)
- PMFS – Sustainable Forest Management Plan (Plano de Manejo Florestal Sustentável) (I)
- POA – Annual Operational Plan (Plano Operacional Anual) (I)
- Forest Maintenance Responsibility Statement (Termo de Responsabilidade de Manutenção da Floresta) (I)
- Activities Report (I)
- AUTEX – Forest Exploitation Authorization (Autorização de Exploração Florestal) (I)

1.8.4. Sources of Information

Government sources

- Ibama.gov.br (n.d.). *Manejo florestal sustentável* (Sustainable Forest Management). [online]. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA). Available at: <http://www.ibama.gov.br/> [Accessed 7 December 2016]
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]

Non-Government sources

- Imazon.org.br (n.d.). *Boletim Transparência Manejo Florestal* (IMAZON – Forest management Transparency Bulletin). [online]. Available at: <http://www.imazon.org.br/publicacoes/transparencia-manejo-florestal> [Accessed 7 December 2016]

1.8.5. Risk determination

Overview of Legal Requirements

There are no regulations specifying the management techniques that shall be utilized in plantations; therefore, risk related to harvest regulations for forest plantations is not applicable. According to Clause 31 of Law 12.651/ 12 (Forest Code) the management of Brazil's natural forests may be approved only upon the approval of a plan for sustainable forest management. For the plan to be approved by the relevant environmental body, it must fulfill the minimum requirements defined by normative instructions and resolutions (Conama 406/09; MM IN 05/06, IBAMA 19/03).

These normative instructions and resolutions present criteria such as the permitted management intensity, minimum cutting diameters, number of trees per species, management cycle, inventory techniques, maintenance of protected species and seeds, etc.

Description of risk

The last IMAZON Forest Management Transparency Bulletin from 2011–2012, indicates that most illegal forestry activities occur in the States Pará and Mato Grosso (the largest lumber producers), reaching levels of 54% in Mato Grosso and 78% in Pará. According to the same study, even among the few cases where management occurs with the approval of the regulatory body, almost the entire area is managed under practices considered of intermediate or low quality, reaching 90% in Mato Grosso and 96% in Pará. This indicates that the inspection capacity of the responsible bodies is not sufficient to reduce the risk of management being carried out in breach of the approved management plan.

By carrying out management in breach of the approved management plan, the company risks infringing the technical criteria of sustainable forest management, and may exploit forbidden trees, exploit in non-licensed areas, in greater than authorized volumes, or harvest trees with a diameter smaller than permitted, etc.

Risk conclusion

Based on the high probability that forest management of natural forests will take place without authorization or in violation of authorization, the risk associated with natural forests in this category is determined to be specified.

1.8.6. Risk designation and specification

Natural forests: specified risk

Plantations: Not applicable

1.8.7. Control measures and verifiers

- Field Visits should occur to check if:
- Harvesting shall be conducted within the boundaries of the authorized FMU and according to the management plan.
- Harvesting shall not take place in areas where harvesting is legally prohibited.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be listed in operational plans.
- Harvesting restrictions shall be observed in the field.
- Tree species or selected trees found within the FMU for which the felling is prohibited shall be marked in the field.

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

- Law No. 12651/12 Forest Code. (i). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/L12651compilado.htm
- DECREE No. 5.975/06 – Regulates a variety of laws and decrees on management and transportation (I). Full (Clause 29 Felling of the Brazil nut tree and the Rubber tree). Available at: http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5975.htm
- DECREE No. 6.514/08 – provides for the violations and administrative sanctions to the environment, establishes the federal administrative process for the verification of these violations, and provides for other matters. (i). Subsection II. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/d6514.htm
- Decree No. 4733/2003 – Criteria for exploitation of mahogany in the Amazon (I). First Clause. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2003/d4722.htm
- IBAMA Administrative Decision No. 083/91 – Criteria for the exploitation of the aroeira (of the Anacardiaceae family) (I). Full text. Available at: <http://www.ibama.gov.br/documentos/portaria-83n>
- Law No. 5.197/67 – provides for THE PROTECTION OF THE FAUNA AND PROVIDES OTHER MATTERS. (i). Clause 1 (Hunting is prohibited). Available at: https://www.planalto.gov.br/ccivil_03/leis/l5197.htm
- Normative Instruction No. 03/03 – Threatened species of the Brazilian fauna (I). Full text.
- Normative Instruction No. 06/08 – Species of the Brazilian fauna threatened with extinction (I). Full text.
- Decree 3607/00 – provides for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES, and provides for other matters. (i). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/d3607.htm
- CONAMA Resolution No. 369/06 CONAMA – Suppression in APP (I). Sections I, V, and VI. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=489>
- Law No. 9.985/00 – Founds the SNUC (III). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9985.htm
- Law No. 11.428 / 06 – Protection of the Atlantic Forest (I). Clause 14 (prohibits the suppression of the primary and secondary vegetation in advanced stages). Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11428.htm
- CONAMA Resolution 278/01 – Prohibits the felling of endangered species of flora of the Atlantic Forest. Full text (prohibits the felling of the species threatened of

extinction (IN Ibama 06/08)). Available at:
<http://www.mma.gov.br/port/conama/res/res01/res27801.html>

- Attachments I, II, and III of CITES (I). Flora. Available at:
<https://cites.org/eng/app/appendices.php>

1.9.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal Bodies) (I)

1.9.3. Legally required documents or records

- Environmental license for wood cut in APPs (Permanent Preservation Areas) (I)
- AUTEX – Forest Exploitation Authorization (I)
- Agreement of Environmental Bodies for the management of areas near the Conservation Units; (I)

1.9.4. Sources of Information

Government sources

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at:
<https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- [Florestal.gov.br](http://www.florestal.gov.br). (n.d.). Brazilian Forest service (SFB). [online]. Available at:
<http://www.florestal.gov.br/concessoes-florestais/florestas-sob-concessao/tres-florestas-nacionais-abrigam-concessao-florestal> [Accessed 7 December 2016]
- [Icmbio.gov.br](http://www.icmbio.gov.br) (n.d.). Chico Mendes Institute for Biodiversity Conservation (ICMBio). [online]. Available at: <http://www.icmbio.gov.br/portal/biodiversidade/unidades-de-conservacao/planos-de-manejo.html> [Accessed 8 December 2016]
- [Ibama.gov.br](http://www.ibama.gov.br) (n.d.). Threatened species. Available at:
<http://www.ibama.gov.br/documentos/o-que-e-especie-ameacada>

Non-Government sources

- [Oeco.org.br](http://www.oeco.org.br) (2013). *Unidades de conservação estão ameaçadas em Rondônia* (Conservation units are threatened in Rondônia). [online]. O Eco. Available at:
<http://www.oeco.org.br/oeco-data/27682-unidades-de-conservacao-estao-ameacadas-em-rondonia> [Accessed 8 December 2016]
- Greenpeace (2014). *Governo omite informações sobre degradação na Amazônia* (Government omits information on degradation in the Amazon). [online]. Greenpeace Brasil. Available at: <http://www.greenpeace.org/brasil/pt/Noticias/Governo-omite-informacoes-sobre-degradacao-na-Amazonia/> [Accessed 8 December 2016]
- [Exame.abril.com.br](http://exame.abril.com.br) (2014). *Desmatamento na Amazônia brasileira subiu 467%, alerta ONG* (Deforestation in the Brazilian Amazon rose 467%, warns NGO). [online].

Available at: <http://exame.abril.com.br/brasil/noticias/desmatamento-na-amazonia-brasileira-subiu-467-alerta-ong-imazon> [Accessed 8 December 2016]

- Valor.com.br (2014). *Desmatamento da Amazônia dispara em agosto e setembro*. [online]. Valor Econômico. Available at: <http://www.valor.com.br/brasil/3771746/desmatamento-da-amazonia-dispara-em-agosto-e-setembro> [Accessed 8 December 2016]
- Maretti, C.C., Riveros S., J.C., Hofstede, R., Oliveira, D., Charity, S., Granizo, T., Alvarez, C., Valdujo, P. & C. Thompson. (2014). *State of the Amazon: Ecological Representation in Protected Areas and Indigenous Territories*. Brasília and Quito: WWF Living Amazon (Global) Initiative. 82 pp. Available at: http://d2ouvy59p0dg6k.cloudfront.net/downloads/final_report_11_11_14.pdf [Accessed 8 December 2016]

1.9.5. Risk determination

Overview of Legal Requirements

Brazil recognizes through its Forest Code (Law 12.651/ 12 Clauses 4, 5, and 6) a large number of 'areas of permanent preservation', represented mostly as riverbanks and areas adjacent to watercourses. Due to their large collective volume and broad distribution, these protected areas are also the most vulnerable areas during forestry activities.

Clauses 12 to 25 of the same law present the 'Legal Reserve Area' that may represent 20% to 80% (depending on the biome where it is located) of the land that should be maintained with the native vegetation. In these areas, sustainable forest management may be carried out but not silviculture. In addition to these areas, Brazil has over 300 protected areas that can be classified as fully protected or as for sustainable use (Law 9985/00, Clause 7). Sustainable use units may be handled through forest concessions.

Description of risk

The risks regarding potential impact of forest management activities in protected areas may largely relate to:

- damage in Permanent Preservation Areas;
- non-approved management or plantation activities in Legal Reserve Areas; and
- non-approved management or deforestation in conservation units.

In spite of the extensive legal framework existing in Brazil for defining protected areas, the inspection system is insufficient to mitigate the risk of damage in these areas; as can be seen in everyday news, such as the websites of Greenpeace and 'O Eco', the magazine 'Exame' and newspaper 'Valor Econômico'.

A WWF publication, 'WWF – State of the Amazon: Ecological Representation in Protected Areas and Indigenous Territories' shows that the Amazon protected areas are threatened by human activity. Small-scale deforestation driven mostly by local slash and burn agriculture and occupation alongside rivers has always been present. Large-scale deforestation, however, increased in the middle of the 20th Century, increasing through the 1970s and 1980s. This destruction was largely the result of land conversion driven by a complex range of factors, including land speculation, land grabbing associated with

the price of the land, new road routes and access to the rainforest, large-scale agriculture and cattle ranching, and interest in exploiting natural resources (timber, minerals, oil and gas, and hydropower). Today, these threats persist. The prevalence of agribusiness including cattle, soy, palm oil and sugarcane – along with the continuation of land speculation – has drastically accelerated deforestation.

The main species with lumber potential that are protected in Brazil are mahogany (*Swietenia macrophylla* King), which can be exploited through management approval; Aroeira (*Astronium* spp.), Araucaria (*Araucaria angustifolia*) and the Rubber Tree (*Hevea brasiliensis*), which can be exploited only if originating from plantations. The Atlantic Forest Biome has other diverse, commercially interesting species, however the Biome is protected by law and its exploitation is prohibited.

Risk conclusion

The risk regarding protected areas is considered specific – both for the management of natural forests, and in plantations – based on the broad distribution of protected areas and on the limitations of the inspection system.

1.9.6. Risk designation and specification

Specified risk

1.9.7. Control measures and verifiers

- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.
- Legal procedures established for surveying, managing, and protecting endangered or threatened species within the management unit shall be followed.
- Nature protection-related supplementary regulations such as protected areas, reserved areas, protected species, and hunting shall be followed.
- Conservation units in the vicinity of supplier districts are mapped and when activities occur in the buffer zone of these CUs, appropriate approvals are obtained by the management.
- Within the FMU, the permanent preservation areas shall not be harvested without permission of the relevant authority; or alternatively shall not be impacted, according to the legislation.
- When there is authorization relating to protected areas, management operations shall be performed with the lowest possible environmental impact and the required conditions shall be met;

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

- Law No. 12651/12 Forest Code. (i). Full, especially Chapter VII (Forest Exploitation). Available at: https://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/lei/L12651compilado.htm
- Law No. 8171/91 – Agrarian Policy (I). Clause 102 and 103 – Soil damage (Erosion). Available at: http://www.planalto.gov.br/ccivil_03/leis/l8171.htm
- IN IBAMA No. 05/2009 – Standardizes the model of the Environmental Declaratory Act – ADA (I). Clause 27 – Embargo.
- Law No. 9.605/98 – Law of Crimes, Conducts, and Harmful Activities to the Environment (I). Chapter IV – Environmental crimes. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9605.htm
- CONAMA Resolution No. 406/09 – Establishment of the P MFS in the Amazon (I). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=597>
- Law No. 5.197/67 – provides for THE PROTECTION OF THE FAUNA AND PROVIDES OTHER MATTERS. (i). Available at: https://www.planalto.gov.br/ccivil_03/leis/l5197.htm
- Normative Instruction No. 03/03 – Threatened species of the Brazilian fauna (I). Full text.
- CONAMA Resolution No.1/86 – Environmental Impact Report – RIMA (I). Full text. Available at: <http://www.mma.gov.br/port/conama/res/res86/res0186.html>
- Normative Instruction No. 06/08 – Species of the Brazilian fauna threatened with extinction (I). Full text.
- Law No. 9.433/97 – National Policy of Water Resources (I). Clause 49 (Violations and penalties in the use of the water). Available at: https://www.planalto.gov.br/ccivil_03/leis/l9433.htm
- LAW No. 12.305/2010 – Implemented the Nacional Policy for Solid Residues (I). Section V. Available at: http://www.planalto.gov.br/ccivil_03/ato2007-2010/2010/lei/l12305.htm

1.10.2. Legal authority

- SISNAMA (Federal Execution Bodies: IBAMA and ICMBio; State Environmental and Municipal Bodies) (I)

1.10.3. Legally required documents or records

- Operating Permit, upon conditions (I)
- CTF – Federal Technical Register (I). Available at: <https://servicos.ibama.gov.br/index.php/cadastro>

- Sustainable Forest Management Plan (I)

1.10.4. Sources of information

Government sources

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- ibama.gov.br (n.d.). *Description of the Procedures of Monitoring and Evaluation of the Execution of PMFS in the Legal Amazon – Analysis and Approval of the POAs*.

Non-Government sources

- [Bibliotecadigital.fgv.br](http://bibliotecadigital.fgv.br) (2013). *Perception Index of Legal Compliance – IPCL Brazil*. [online]. FGV – Fundação Getúlio Vargas, pp. 1-37. Available at: <http://bibliotecadigital.fgv.br/dspace/handle/10438/10801> [Accessed 7 December 2016]
- Transparency International (2015). *Corruption Perception Index (CPI) for Brazil* (Country Profile). [online]. Available at: <http://www.transparency.org/country#BRA> [Accessed 7 December 2016]

1.10.5. Risk determination

Overview of Legal Requirements

The environmental licensing of activities with a potential impact must be preceded by an environmental impact analysis. The CONAMA Resolution 01/86 (Clause 2 Inc XIV) stipulates that in wood exploitation or firewood extraction activities in areas over 100 ha (or smaller when approaching significant areas in percentage terms, or of importance in an environmental context), the requirement exists for a formal document known as the Study and Report of Environmental Impact (EIA/RIMA). In general, the responsible body (SISNAMA) links the validity of the operational license to environmental conditions. If these conditions are not fulfilled, the license will be invalid.

Description of risk

Due to the large area, the difficulties of access and resulting reduced supervisory power of regulatory authorities, the areas of activity are rarely inspected to verify compliance with environmental conditions. The IPCL index was 6.8 in the first quarter of 2014 (on a scale of 0 to 10 where 10 represents the perception that laws enforced in the country). This perception of law enforcement fell compared with the index for the first half of 2013 (7.2). The CPI (corruption perception index) in Brazil in 2013 was 42 (on a scale from 0 to 100 where 100 is good or 'very clean'). All these indicators suggest that there is a high level of corruption in Brazil.

Risk conclusion

Considering the high probability – if there are no inspections – that forestry activities are undertaken using techniques that damage the environment; or of the existence of

corruption in cases where there are inspections, it is considered that there is specific risk in relation to this criterion, both for the management of natural forests, and for planted forests.

1.10.6. Risk designation and specification

Specified risk

1.10.7. Control measures and verifiers

- Environmental and/or Social Impact Assessments shall be in place and approved by the relevant authority, if legally required.
- Requirements for environmental monitoring shall be observed.
- Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retained trees, seasonal restrictions, etc.

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

- Administrative Decision No. 3.158 of 05/18/1971 MTE – Creates the Inspection Book (XI/ XIV/ XV). Full text.
- ADMINISTRATIVE DECISION No. 3.214, JUNE 8, 1978 – "Approves the Regulatory Standard – NR – of Chapter V, Title II, of the Consolidation of the Labor Laws, relative to the Labor Safety and Medicine" (XI/ XIV/ XV). Full text.
- Regulatory Standard No. 01 – General Provisions (XI/ XIV/ XV). Full text.
- Regulatory Standard No. 02 – Previous Inspections (XI/ XIV/ XV). Full text.
- Regulatory Standard No. 03 – Embargo or Interdiction (XI/ XIV/ XV). Full text.
- Regulatory Standard No. 04 – Specialized Services in Safety Engineering and in Labor Medicine (XI/ XIV/ XV). Full text.
- Regulatory Standard No. 05 – Internal Committee for Accident Prevention (XI/ XIV/ XV). Full text (mainly Clause 5.26).
- Regulatory Standard No. 06 – Personal Protective Equipment – PPE (XI/XIV/XV). Full text (mainly Item 6.6.1h).
- Regulatory Standard No. 07 – Occupational Health Medical Control Programs – (XI/XIV/XV). Full text (mainly Items 7.1.1 and 7.4.4.1).

- Regulatory Standard No. 09 – Environmental Risks Control Programs – (XI/XIV/XV). Full text (mainly Item 9.1.1).
- Regulatory Standard No. 11 – Transportation, Handling, Storing and Manipulating Materials (XI/XIV/XV). Full text.
- Regulatory Standard No. 12 – Machinery and Equipment Labor Safety (XI/XIV/XV). Full text (mainly Clause 12,138).
- Regulatory Standard No. 16 – Hazardous Activities and Operations (XI/XIV/XV). Full text.
- Regulatory Standard No. 17 – Ergonomics (XI/XIV/XV). Full text.
- Regulatory Standard No. 20 – Security and Health at Work with Flammables and Combustibles. (XI/XIV/XV). Full text.
- Regulatory Standard No. 21 – Working in an External Environment (XI/XIV/XV). Full text.
- Regulatory Standard No. 23 – Protection Against Fires (XI/XIV/ XV). Full text.
- Regulatory Standard No. 24 – Sanitary and Comfort Conditions in the Workplace (XI/XIV/XV). Full text.
- Regulatory Standard No. 26 – Safety Signaling (XI/XIV/XV). Full text.
- Regulatory Standard No. 31 – Regulatory Standard for Safety and Health in Working Safely in Agriculture, Livestock, Forestry, Forest Exploration, and Aquaculture. (XI/XIV/XV). Item (mainly Clause 31.12.39).
- Regulatory Standard No. 35 – Working at Height. (XI/XIV/XV). Full text.
- Decree – Law No. 5.452 / 1943 Approves the Consolidation of Labor Laws – CLT. (XI/XIV/XV). Full text. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452compilado.htm
- ANVISA Resolution No. 216/2004 – Food Service (XI/XIV/XV). Full text.

1.11.2. Legal authority

- MTE – Ministry of Labor and Employment (XI)
- DRT – Regional Labor Agency (XIV)
- MPT – Labor Public Attorney (XV)

1.11.3. Legally required documents or records

- PPRA – Program for the Prevention of Environmental Risks (XI/ XIV/ XV)
- PCMSO – Program for the Medical Control of Occupational Health (XI/ XIV/ XV)
- Minutes of the CIPA/CIPATR (XI/ XIV/ XV)
- Labor Ministry Inspection Book (XI/ XIV/ XV)
- IPE (Individual Protection Equipment) Delivery Voucher (XI/ XIV/ XV)
- ASO – Occupational Health Certificate (XI/ XIV/ XV)

- SSO Training Proof (for operators of chainsaws, machine operators and application of herbicides, etc.) (XI/ XIV/ XV)

1.11.4. Sources of information

Government sources

- Fundacentro.gov.br (n.d.). *Segurança e Saúde no Trabalho Florestal* (Security and health in the forest work: code of practices). [online]. Available at: <http://fundacentro.gov.br/biblioteca/biblioteca-digital/download/Publicacao/167/Trabalho%20Florestal-pdf> [Accessed 8 December 2016]
- Portal.mpt.gov.br (n.d.). *Labor Public Attorney* [online]. Ministério Público do Trabalho. Available at: <http://portal.mpt.gov.br/> [Accessed 8 December 2016]

Non-Government sources

- Oitbrasil.org.br (n.d.). *International Labor Organization (ILO)*. [online]. Available at: <http://www.oitbrasil.org.br/content/seguran-e-sa-de-no-trabalho-florestal-c-digo-de-pr-ticas> [Accessed 8 December 2016]
- Portal.mte.gov (n.d.). *Ministry of Labour and Employment*. [online]. Available at: <http://portal.mte.gov.br/legislacao/normas-regulamentadoras-1.htm> [Accessed 8 December 2016]
- Reporterbrasil.org.br (n.d.). *O que é trabalho escravo* (Black List of Slave Work). [online]. NGO Reporter Brazil. Available at: <http://reporterbrasil.org.br/trabalho-escravo/> [Accessed 8 December 2016]

1.11.5. Risk determination

Overview of Legal Requirements

Forest management in Brazil is usually accomplished with low mechanization and a large amount of human effort, especially on small farms (forestry) and for the management of natural forests (large trees and the fragility of the soil make it impossible to completely mechanize the activity). The type of activity creates risks for the health and security of the members of staff because it includes chemical, physical and even biological risks (such as poisonous animals and endemic illnesses).

The Ministry of Labor and Employment (MTE) is the authority responsible for inspection and regulation in this area. There is a large range of Regulating Norms (NR) that deal with the matter, with the most applicable to the forestry sector being the NR 31 (Security and Health in the Work in Agriculture, Livestock Farming, Forestry, Forest Exploitation and Aquaculture), which has the objective of aligning the planning and development of rural activities with the health and security of the workers.

Description of risk

The forest sector has a very low degree of professionalization, and a large proportion of the workers learned how to work in a practical way, with no professional guidance. That fact, added to a persistent culture that treats the issue of health and occupational safety

as unimportant, results in a large number of workers exposed to risks beyond legal limits.

Ministry of Labor and Employment inspections have resulted in countless companies being sued for lack of minimum health and safety work conditions, as well as for irregularities associated with worker contracting and compensations. The 'Black List of Slave Work' created by the Ministry of Labor and Employment and broadly disseminated by the NGO Reporter Brazil, lists 590 companies of which at least 37 are directly connected with the forest activity. In spite of these fines, the inspection is not sufficient to guarantee a significant reduction in the occurrence of crimes.

Risk conclusion

Due to the large number of fines relating to health and safety and the prevailing culture related to health and occupational safety, this category is considered to be specified risk for both plantations and natural forests.

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

Field visits shall occur to prove that:

- All safety and health supplements and regulations shall be followed and all required safety equipment shall be used
- Occupational health and safety requirements shall be observed by all personnel involved in harvesting activities.
- Interviews with staff and contractors shall confirm that legally required protection equipment is required / provided by the organization with no cost for the forestry worker.
- All requirements for the prevention of air and water pollution shall be followed and verified through pollution monitoring reports (when applicable)
- Working conditions related to harvest activities shall be safe in the forest management unit for all employees.

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

- Decree – Law No. 5.452 / 1943 Approves the Consolidation of Labor Laws – CLT. (XI/XIV/XV). Full text. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452compilado.htm
- Decree 3048/99 – Regulates the Social Security (XVI/XVIII). Chapter I. Available at: http://www.planalto.gov.br/ccivil_03/decreto/D3048.htm
- Normative instruction RFB No. 971/09 – provides for social security taxation rules on the collection of social contributions (IV). Clause 8.
- Law 8212/91 – provides for the organization of the Social Security, created the Funding Plan, and provides for other matters. (XVIII). Clause 11. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8212cons.htm
- Law 605/1949 – Compensation for Weekly Rest (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l0605.htm
- Law 3.030/1956 – Discount due to the Supply of Food (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l3030.htm
- Law 4.090/1962 – Christmas Bonus (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l4090.htm
- Law 4.749/1965 – 13th Salary (XI/XIV/XV). Full text. Available at:
- Administrative Decision MTE 768/14 – Approves instructions for the provision of information by the employer, relative to the movements of employees, for the purpose of the CAGED and unemployment compensation (XI/ XIV/ XV/ XVIII). Full text.
- Law 5.889/1973 – Rural Labor (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l5889.htm
- Law 7.418/1985 – Transportation Voucher (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l7418.htm
- Law 8.036/1990 – FGTS Law (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l8036consol.htm
- Law 9.601/1998 – Hours Bank and Contract for Specific Term (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9601.htm<http://www.guiatrabalhista.com.br/legislacao/l9601.htm>
- Law 10.101/2000 – Profit Sharing (XI/ XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l10101.htm
- Law 10.101/2000 – Profit Sharing (XI/ XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l10101.htm
- Law 10.820/2003 - Discounts of Instalments in the Payroll (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/Leis/2003/L10.820.htm
- Resolution No. 425/10 – Characterization of a Family Rural Enterprise (XI/XIV/XV). Full text. Available at: <http://www.mma.gov.br/port/conama/legiabre.cfm?codlegi=630>

- Law 4.266/63 – Family Wage (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l4266.htm
- Law 4.725/65 – Collective Agreements (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/1950-1969/l4725.htm
- Law 4.923/65 – Work Hours (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l4923.htm
- Law No. 7.783/89 – Strikes (XI/ XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l7783.htm
- Law 8.900/94 – Unemployment Compensation (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l8900.htm
- Law No. 9.029/95 – Admission to Work (XI/ XIV/XV). Full text. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9029.htm
- Law No. 9.093/95 – Holidays (XI/XIV/XV). Full text. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9093.htm
- Law 10.097/00 – Child Labor (Prohibition of the Child Labor) – A minor is considered for the purposes the Consolidation when aged fourteen to eighteen. (XI/XIV/XV). Full text. Available at: https://www.planalto.gov.br/ccivil_03/leis/l10097.htm

1.12.2. Legal authority

- Federal Revenue of Brazil (IV)
- MTE – Ministry of Labor and Employment (XI)
- TST – Higher Labor Court (XII)
- TRT – Regional Court of Labor (XIII)
- DRT – Regional Labor Agency (XIV)
- MPT – Public Labor Attorney (XV)
- CEF – Federal Savings Bank (XVI)
- INSS – National Social Security Institute (XVIII)

1.12.3. Legally required documents or records

- CAGED Statement – General Register of Employees and Unemployed (XI)
- Collective Agreement recorded in MTE (XI)
- CNDT – Negative Certificate of Labor Law Debit (XII/XIII)
- Negative Certificate of Labor Lawsuits (XII/XIII)
- CRF – FGTS Regularity Certificate (Time of Service Guarantee Fund) (XVI)

- CND – Negative Certificate of Debits Before the Federal Revenue Service – INSS (National Social Security Institute) (IV)
- Salary Receipt or Proof of Deposit in Checking Account ((XI/ XIV/XV))
- CTPS – Work and Social Security Booklet (XI/XIV/XV)

1.12.4. Sources of information

Government sources

- Granulito (n.d.). *Ministry of Labor and Employment (MTE)*. [online]. Available at: <https://granulito.mte.gov.br/portalcaged/paginas/home/home.xhtml>
- Sifge.caixa.gov.br (n.d.). *Federal Savings Bank*. [online]. Available at: <https://www.sifge.caixa.gov.br/Cidadao/Governo/Asp/crf.asp> [Accessed 8 December 2016]
- Dataprev.gov.br (n.d.). *Federal Revenue of Brazil – DTAPREV*. [online].
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- Portal.mte.gov.br (n.d.). *Employers Register that submitted workers to conditions analogous to slavery*. [online]. Available at: http://portal.mte.gov.br/trab_escravo/portaria-do-mte-cria-cadastro-de-empresas-e-pessoas-autuadas-por-exploracao-do-trabalho-escravo.htm [Accessed 8 December 2016]

Non-Government sources

- Tst.jus.br (n.d.). *Higher Labor Court (TST)*. [online]. Available at: www.tst.jus.br/certidao [Accessed 8 December 2016]
- Portalamazonia.com.br (n.d.). Available at: <http://www.portalamazonia.com.br/editoria/economia/amazonia-concentra-mais-da-metade-de-empresas-com-trabalho-escravo-no-brasil/>
- Reporterbrasil.org.br (n.d.). *O que é trabalho escravo* (Black List of Slave Work). [online]. NGO Reporter Brazil. Available at: <http://reporterbrasil.org.br/trabalho-escravo/> [Accessed 8 December 2016]
- Info.worldbank.org (n.d.). *Worldwide Governance Indicators project*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports> [Accessed 8 December 2016]

1.12.5. Risk determination

Overview of Legal Requirements

Brazil has a broad legal framework relating to the legality of employment. The Decree-Law 5452/1943 (Consolidation of the Labor Laws – CLT) is the main guideline on this matter. Its Clause 41 stipulates that all workers should be registered by the company

employer. Other points present workday rules, paid rest, child and woman labor, compensation, unionization, and others matters.

The registration of the worker ensures rights such as the Guarantee Fund for Time of Service (a cumulative amount that can be withdrawn when the employee is terminated, the contract expires or when the worker retires) and the support of the INSS (National Social Security Institute – for a pension after retirement or various benefits in cases such as sick leave, incapacity, or death). To make this structure feasible, the employer pays the government a monthly contribution proportional to the salary of the registered employee.

The Law 7998/1990 regulates unemployment insurance, which is a compensation given by the government to workers who are unemployed without fair cause after having fulfilled at least six months of registered work. This benefit lasts for four months.

Description of risk

In general, the forest worker in Brazil has a low level of schooling and is frequently unaware of his or her labor law rights. The inspections carried out by the Ministry of Labor and Employment are insufficient to ensure compliance with the law, specifically in the rural sector. The results obtained during inspections, such as the slave labor list, demonstrate that there are serious issues in the sector. Among the 590 companies fined by the Ministry of Labor and Employment for work analogous to slavery, 37 cases related to forest management (MTE – Employers Register that submitted workers to conditions analogous to slavery).

In general, the labor laws are not well respected in the forest sector in Brazil. This is corroborated by the index of 'Rule of Law' of about 50 (on a scale from 0 to 100 where 100 is good), instituted by the World Bank (www.govindicators.org).

Risk conclusion

Based on a high probability of the forest worker having his labor rights disregarded, this criterion is considered specified risk.

1.12.6. Risk designation and specification

Specified risk

1.12.7. Control measures and verifiers

- All workers are employed according to the regulations and required contracts / evidence are in place
- Persons involved in harvesting activities shall be covered by mandatory insurance policies (INSS).
- Persons involved in harvesting activities shall hold certificates of competence required for the function that they perform
- At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
- Salaries shall be paid and officially stated by the employer according to legal requirements for personnel involved in harvesting activities.

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- The minimum age shall be observed for all personnel involved in harvesting activities.
 - The minimum age shall be observed for all personnel involved in hazardous work.
 - Stakeholders shall confirm that forced or compulsory work is not involved in harvesting activities.
 - If any supplier or a service provider is listed in the Black List of Slave Labor of the MTE, there shall be a field audit.
 - The company shall not employ unregistered workers, either on probation, or receiving government benefits for the unemployed.

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

- Constitution of the Federal Republic of Brazil – 1988 (X). Chapter VIII (Indians). Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
- LEGISLATIVE DECREE No. 485/06 – Approves the text of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, celebrated in Paris, on October 20, 2005. (X). Clause 1. Available at: http://legis.senado.gov.br/legislacao/ListaNormas.action?numero=485&tipo_norma=DLG&data=20061220&link=s
- DECREE No. 5.753/06 – Enacts the Convention for the Protection of the Immaterial Cultural Assets, adopted in Paris, on October 17, 2003 and signed on November 3, 2003. (X). Clause 1. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5753.htm
- DECREE No. 6.040/07 – Establishes the National Policy for the Sustainable Development of the Traditional People and Communities. (X). Clause 3. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm
- INTER-MINISTERIAL ADMINISTRATIVE DECREE NO. 419/11 – Enacts the actuation of offices and entities of the Public Federal Administration involved in environmental licensing, that are the object of Clause 14 of Act No. 11.516 of August 28, 2007 (I/X). Full text. Available at: http://licenciamento.ibama.gov.br/Encontro%20Superintendentes%20-%20DILIC/Normativos/Portaria%20Interministerial%20419_2011%20Atua%C3%A7%C3%A3o%20dos%20envolvidos%20no%20licenciamento%20ambiental.pdf
- Decree No. 5.051 of April 19, 2004 – Enacts Convention No. 169 of the International Labor Organization – ILO about Indigenous and tribal people. Full text. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Decreto/D5051.htm
- Act No. 6.001/73 – Statute of the Indians (X). Title III. Available at: https://www.planalto.gov.br/ccivil_03/leis/l6001.htm

1.13.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- FUNAI – Fundação Nacional do Índio (National Foundation for Indians)
- FCP – Palmares Cultural Foundation
- IPHAN – Institute of the National Historic and Artistic Heritage (X)

1.13.3. Legally required documents or records

- In cases of forest management in areas near Indian Reserves, Environmental License issued by IBAMA and endorsed by the legally competent agencies (FUNAI, FCP, IPHAN) (I/X)

1.13.4. Sources of information

Government sources

- Funai.gov.br (n.d.). *Modalidades de Terras Indígenas* (Modalities of Indigenous Lands). [online]. Ministry of Justice. Available at: <http://www.funai.gov.br/index.php/indios-no-brasil/terras-indigenas> [Accessed 8 December 2016]
- Palmeres.gov.br (n.d.). *Website for Palmeres*. [online]. Fundação Cultural Palmares (Palmares Cultural Foundation). Available at: http://www.palmares.gov.br/?page_id=95 [Accessed 8 December 2016]
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]

Non-Government sources

- Socioambiental.org. (n.d.). [online]. Available at: http://www.socioambiental.org/inst/esp/consulta_previa/?q=consulta-predicted-and-measures-legislative
- Novacartografiasocial.com (n.d.). Nova Cartografia Social. [online]. Available at: <http://novacartografiasocial.com/apresentacao/> [Accessed 8 december 2016]

1.13.5. Risk determination

Overview of Legal Requirements

Decree 6.040/07 defines Traditional People and Communities as: culturally differentiated groups that acknowledge themselves as such and maintain their own social organization, and which occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction, using knowledge, innovation and practices generated and transmitted by tradition. The same decree also defines Traditional Territories as: the spaces necessary for the cultural, social and economic reproduction of the Traditional People and Communities, whether they are used in permanent or temporary form; According to the Ministry of Environment, Brazilian traditional people and communities include the following groups: Indigenous people, Quilombolas (descendants of rebelled slave communities), Seringueiros (latex collectors), Castanheiros (Brazilian nut collectors), Quebradeiras de coco-de-babaçu (Babaçu coconut-breakers), Comunidades de Fundo de Pasto (back pasture communities), prairie dwellers, artisan fishermen, Marisqueiras (shellfish collectors), Ribeirinhos (riverside dwellers), Varjeiros (mangrove dwellers), Caiçaras and Praieiros (seashore dwellers), Sertanejos (farm dwellers), Jangadeiros (raft fishermen), gypsies, Açorianos (descendants of settlers from the Azores) and other backwoods and river

community workers. Note that Indigenous people (Indians) are included in the definition of traditional peoples.

The New Social Cartography Institute has identified and mapped several traditional communities in Brazil, indicating that there are traditional communities spread over the entire national territory. The Palmares Foundation has identified and certified more than 2,000 quilombola communities in 23 Brazilian states. FUNAI has mapped and delineated 544 traditionally occupied Indigenous areas all around the country, and there are another 135 either under study or blocked to provide isolation to the communities. Additionally, there are 51 Indigenous reserves either already established or in the process of being established. In total, there are more than 110 million hectares of Indigenous lands in Brazil.

The Inter-ministerial administrative decree issued by the Environment Ministry under No. 419/11 states that, upon the act of application for an environmental license for activities in the vicinity of Indigenous or Quilombola land, the applicant must inform IBAMA of this fact; so that IBAMA will consult with the entities involved. It might be necessary to prepare an EIA/RIMA (Environmental Impact Study and Report) following public consultation.

Description of risk

Laws exist in Brazil in relation to the rights of traditional and Indigenous communities to access forest resources; however – because of the large number, diversity and scattered nature of the traditional communities – there is risk in Brazil that there will be a low level of compliance with the relevant legislation.

Risk conclusion

The risk of this sub-criterion is specified risk.

1.13.6. Risk designation and specification

Specified risk

1.13.7. Control measures and verifiers

- In areas of conflict, stakeholder consultation shall confirm that customary rights are observed during harvesting activities.
- Traditional communities shall be known and/or mapped in wood-supplying districts, and when potentially affected by forest management activities, these communities shall be consulted beforehand.

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

Brazil has no the legislation that governs FPIC. As the analysis is about the risk of the existing law not being complied with, this criterion was considered as not applicable.

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

N/A

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

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

1.15.1. Applicable laws and regulations

- Constitution of the Federative Republic of Brazil – 1988 (VI/X). Chapter I – Clause 5 (XXII – Land ownership); Chapter VIII (Indians). Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
- Decree No. 5.051, of April 19, 2004 – Enacts Convention No. 169 of the International Labor Organization – ILO about Indigenous and tribal people (X). Full text. Available at: https://www.planalto.gov.br/ccivil_03/Ato2004-2006/2004/Decreto/D5051.htm
- IN INCRA 57/09 – Regulates the procedure for the identification, acknowledgment, delimitation, marking, deed preparation and register for the land occupied by the people remaining from the Quilombola communities. (VI/X). Clause 24. Available at: <http://www.palmares.gov.br/wp-content/uploads/2010/11/legis12.pdf>
- Decree No. 4.887/2003 – Regulates the procedure for the identification, acknowledgment, delimitation, marking, deed preparation and register for the land occupied by the people remaining from the Quilombola communities, pursuant Clause 68 of the Act of the Transitory Constitutional Provisions. (VI/X). Clause 3. Available at: http://www.planalto.gov.br/ccivil_03/decreto/2003/D4887.htm
- Act No. 6.001/73 – Statute of the Indians (X). Title III. Available at: https://www.planalto.gov.br/ccivil_03/leis/l6001.htm

1.15.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- FUNAI – National Indian Foundation
- FCP – Palmares Cultural Foundation
- IPHAN – National Historic and Artistic Assets Institute (X)
- INCRA – National Institute for Colonization and Farming Reform (VI)

1.15.3. Legally required documents or records

- In cases of managed forestry in areas nearby Indian Reserves, Environmental License issued by IBAMA and endorsed by the legally competent agencies (FUNAI, FCP, IPHAN) (I/X)

1.15.4. Sources of information

Government source

- Funai.gov.br (n.d.). *Modalidades de Terras Indígenas* (Modalities of Indigenous Lands). [online]. Ministry of Justice. Available at: <http://www.funai.gov.br/index.php/indios-no-brasil/terras-indigenas> [Accessed 8 December 2016]
- Legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]
- Incra.gov.br (n.d.). Quilombolas. [online]. INCRA. Available at: <http://www.incra.gov.br/estrutura-fundiaria/quilombolas>
- Indigenas.ibge.gov.br (n.g.). Visualize a distribuição total, rural e urbana da população indígena no Brasil no mapa abaixo (View of the total rural and urban distribution of the indigenous population in Brazil in the map below). [online]. Available at: <http://indigenas.ibge.gov.br/mapas-indigenas-2> [Accessed 8 December 2016]
- Mma.gov.br (n.d.). Povos e Comunidades Tradicionais (Traditional Peoples and Communities). [online]. Ministry of the Environment (MMA). Available at: <http://www.mma.gov.br/desenvolvimento-rural/terras-ind%C3%ADgenas,-povos-e-comunidades-tradicionais> [Accessed 8 December 2016]
- Palmeres.gov.br (n.d.). *Comunidades Quilombolas* (Quilombola Communities). [online]. Fundação Cultural Palmares (Palmares Cultural Foundation). Available at: http://www.palmares.gov.br/?page_id=88&estado=SP [Accessed 8 December 2016]

Non-Government sources

- Cpisp.org.br (n.d.). *Pró-Índio Commission in São Paulo*. [online]. Available at: <http://www.cpisp.org.br/> [Accessed 8 December 2016]

1.15.5. Risk determination

Overview of Legal Requirements

In Brazil, Indigenous people are defined as Indians, but include also Quilombolas, who receive the same legal rights as Indian communities. Clause 231 of the Federal Constitution states that the land traditionally occupied by Indians is inalienable and in their permanent possession, therefore they are exclusively entitled to use the resources existing in the soil, rivers and lakes. Clause 68 of the Act of the Transitory Constitutional Provisions (ADCT) establishes in its text that "The people remaining from the Quilombo communities, who are occupying their land, will have the definitive ownership of such land acknowledged, and the State shall issue them the respective deeds". Through such mechanisms, the right to the ownership of the land by the Indigenous communities is acknowledged.

The Inter-ministerial administrative decree issued by the Environment Ministry under No. 419/11 states that, upon the act of application for an environmental license for activities in the vicinity of Indigenous or Quilombola land, the applicant must inform IBAMA of this fact; so that IBAMA will consult with the entities involved. It might be necessary to prepare an EIA/RIMA (Environmental Impact Study and Report) following public consultation.

Description of risk

The disorganized process of land occupation that took place in Brazil – as well as the bureaucracy involved in the process of approving the Indigenous and Quilombola land – resulted in a situation where many traditional communities are 'isolated' within large privately owned areas. The demand of such communities, for access and possession of the areas that are traditionally necessary for their survival, was a source of conflict over land use in Brazil. Although the legislation exists that describes the requirement for consultation with Indigenous community-related entities – in cases where the enterprise is near to or uses Indigenous or Quilombola land – the large number, diversity and scattered nature of the traditional communities in Brazil leads to a low compliance level with such legislation.

Risk conclusion

This criterion, therefore, is considered a specified risk, both for natural forests and plantations.

1.15.6. Risk designation and specification

Specified risk

1.15.7. Control measures and verifiers

- In areas of conflict, stakeholder consultation shall confirm that Indigenous peoples' established rights are not being violated.
- Traditional communities shall be known and/or mapped in wood-supplying districts, and when potentially affected by forest management activity, these are consulted beforehand.

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

- IBAMA Resolution No. 411/2009. Procedures for the inspection of industries that consume or transform forest wood products and sub-products of native origin, as well as the respective nomenclature standards and volumetric efficiency coefficients, including charcoal and saw-plant residues. (I/ X). Full text. Available at: https://servicos.ibama.gov.br/phocadownload/legislacao/resolucao_conama_411.pdf
- IN IBAMA No. 112/2006; Creates the DOF for wood transportation (I). Full text. Available at: <https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf>
- IN IBAMA No. 187/08; – Defines nomenclature and coefficient procedures and standards for industries that consume or transform forestry wood products and sub-products of native origin, including charcoal. (i). Full text. Available at: <https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf>
- SINIEF ADJUSTMENT 07/05 – National System for Economic and Fiscal Information – Creates the electronic bill of sale and the DANFE (IV/ V). First Clause. Available at: http://www1.fazenda.gov.br/confaz/confaz/ajustes/2005/AJ_007_05.htm
- SINIEF ADJUSTMENT 12/09 – Indication of NCM in the fiscal document (IV/ V). Second Clause II. Available at: http://www1.fazenda.gov.br/confaz/confaz/ajustes/2009/AJ_012_09.htm
- Decree 6759/09 – Regulates the administration of customs activities and the inspection, control and taxation of foreign trade operations. (IV). Arts. 557, 703, 86.

1.16.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- Office of the Brazilian Federal Revenue System (IV)
- State Revenue Office (V)

1.16.3. Legally required documents or records

- Bills of Sale (IV/ V)
- DOF (Document of Forestry Origin) (I)

- Regularity Certificate (I). Available at:
https://servicos.ibama.gov.br/ctf/publico/certificado_regularidade_consulta.php

1.16.4. Sources of information

Government sources

- Nfe.fazenda.gov.br (n.d.). *Nota Fiscal Electronica* (Portal of the Electronic Bill of Sale). [online]. Available at:
<http://www.nfe.fazenda.gov.br/portal/listaSubMenu.aspx?Id=33ol5hhSYZk>
[Accessed 9 December 2016]
- Servicos.ibama.gov.br (n.d.). *Documento de Origen Forestal – DOF* (Forest Origin Document). [online]. Ibama. Available at:
<https://servicos.ibama.gov.br/index.php/licencas/documento-de-origem-florestal-dof>
- Florestal.gov.br (2013). *Strengthening of the Forestry Sector in Brazil – 2013*. [online]. Brazilian Forestry Service, 98 p. Available at:
http://www.florestal.gov.br/index.php?option=com_k2&view=item&task=download&id=166 [Accessed 9 December 2016]

Non-Government sources

- Greenpeace (2014). *Denouncement report 2014*. [online]. Greenpeace Brazil. Available at: <http://www.greenpeace.org/brasil/pt/Noticias/Madeira-ilegal-na-Amazonia-lavou-ficou-legal/> [Accessed 9 December 2016]

1.16.5. Risk determination

Overview of Legal Requirements

Changes in the quantity and/or value of goods in fiscal documents in Brazil is a well-known means of tax evasion, since taxes are usually charged based on a company's income. In Brazil there are no different taxes for different wood species. However, in some states the most valuable wood species have an established minimum price. In such cases, a change of species in fiscal documents can be used as a means to take advantage of a price below the minimum, therefore generating fewer taxes.

All transportation of native wood species (whether managed or planted) must be carried out accompanied by a DOF (Forestry Origin Document). The DOF system was created by virtue of IBAMA 112/06 and has the purpose of allowing volumes of native species to be traced between companies, thus allowing the identification of illegal wood transportation. The DOF is a computerized timber control system. It should contain information about the timber's origin, species, type of product, quantity and value of the cargo, as well as detailed transportation route. Products and sub-products should be accompanied by the relevant DOF from the originating timber yard to customs terminal. In the case of an inspection by the competent environmental agency, the inspectors check whether the volume of the transported wood and the wood in inventory match the balances and transfers informed by the DOF system, thus identifying possible influx or efflux of illegal wood. In case of assessment by the environmental agency, the companies involved can have their activities embargoed.

Description of risk

Other methods used to generate credits that may hide illegal wood transfers include changing species, type of material or volume. Other means of defrauding the system include corruption within the agencies controlling the credits (making possible the generation of credit without the physical receipt of wood); and the use of a different conversion factor, such that there will be outstanding credits in the system to cover the illegal wood. Investigation by the inspecting agencies (IBAMA), federal police or NGOs has revealed fraud and system failures, as recently described in the Greenpeace report.

Risk conclusion

The risk of incorrect classification of species, quantity or quality of wood products can be considered specified for natural forest species due to the fragility of the DOF system and the high degree of the perception of corruption in Brazil.

For plantations, there are different scenarios: exotic species are not included in the DOF system (except in charcoal production); there are cases of native species plantations where the DOF applies, but the planting of native species for sawmills in Brazil is insignificant. Changing species' details in fiscal documents does not bring many advantages in such cases; therefore, this is considered a low risk for plantations.

1.16.6. Risk designation and specification

Specific risk: Natural forests

Low risk: Plantations

1.16.7. Control measures and verifiers

- All information about species, quantities, qualities etc. shall be correctly stated on sales documents, custom declarations and other legally required documents.
- Evidence shall be provided upon request (photographs of labeling).
- The wood supplier shall not have its activities embargoed by the environmental agencies.
- Wood of native species shall be accompanied by the DOF (forestry origin document).

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

- IBAMA Resolution No. 411/2009. Procedures for the inspection of industries that consume or transform forest wood products and sub-products of native origin, as well as the respective nomenclature standards and volumetric efficiency coefficients,

including charcoal and saw-plant residues. (i). Full text. Available at:
https://servicos.ibama.gov.br/phocadownload/legislacao/resolucao_conama_411.pdf

- IN IBAMA No. 112/2006; Has created the DOF for wood transportation (I). Full text. Available at: <https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf>
- ACT No. 8.846/94 – Regulates the issuing of fiscal documents and the arbitration of the minimum income for tributary purposes, and includes other provisions. (IV/ V). Full text. Available at:
<https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf>
- SINIEF Adjustment 07/05 – National System for Economic and Fiscal Information – Creates the electronic bill of sale and the DANFE (IV/ V). First Clause. Available at: http://www1.fazenda.gov.br/confaz/confaz/ajustes/2005/AJ_007_05.htm
- IN IBAMA No. 15/11 – Establishes the procedures for the exportation of wood products and sub-products from native species originated from natural or planted forests. Full text.
- SINIEF ADJUSTMENT 12/09 – Indication of NCM in the fiscal document (IV/ V). Second Clause – II. Available at:
http://www1.fazenda.gov.br/confaz/confaz/ajustes/2009/AJ_012_09.htm
- IBAMA Normative Instruction No. 21/2013 – national DOF and DOF for exportation, importation (I). Full text. Available at:
<http://www.ibama.gov.br/sophia/cnia/legislacao/IBAMA/IN0021-261213.pdf>

1.17.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- Office of the Brazilian Federal Revenue System (IV)
- State Revenue Office (V)

1.17.3. Legally required documents or records

- CNPJ card (IV)
- Bill of sale (IV/ V)
- DOF/GF (I)
- Regularity Certificate IBAMA (I)

1.17.4. Sources of information

Government sources

- [Servicos.ibama.gov.](https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf) (n.d.). *Documento de Origen Forestal – DOF* (Forest Origin Document). [online]. Ibama. Available at:
<https://servicos.ibama.gov.br/phocadownload/legislacao/in%20112-21-8-2006-dof.pdf>

- legislacao.planalto.gov.br (n.d.). *Legislation Portal of the Federal Government*. [online]. Available at: <https://legislacao.planalto.gov.br/legisla/legislacao.nsf/fraWeb?OpenFrameSet&Frame=frmWeb2&Src=/legisla/legislacao.nsf%2FFrmConsultaWeb1%3FOpenForm%26AutoFramed> [Accessed 7 December 2016]

1.17.5. Risk determination

Overview of Legal Requirements

Within the Brazilian domestic market, the mandatory official document that legalizes the sale of a product and that must accompany this product during the transportation is the bill of sale. Currently, the great majority of companies use the electronic bill of sale, and in such cases the physical document that accompanies the product is the DANFE – Auxiliary Document of the Electronic Bill of Sale – which bears the same information.

For export, the invoice is the document that transfers legal possession of the product; and the bill of lading is the transport document that will accompany the goods during exportation. Bills of sale are national documents, therefore they are retained by Customs. Raw or 'in natura' timber of native species shall be always accompanied by the DOF (Forestry Origin Document) during transportation. IN IBAMA 21/2013 has created the DOF for exportation, which shall accompany the goods from the exporter's yard to Brazilian Customs. Native wood in timber or sawn to a thickness greater than 250mm requires a special IBAMA authorization. The exportation of timber from natural forests is forbidden (IN IBAMA 15/11, Clause 6).

Description of risk

Other methods used to generate credits that may hide illegal wood transfers include changing species, type of material or volume. Other means of defrauding the system include corruption within the agencies controlling the credits (making possible the generation of credit without the physical receipt of wood); and the use of a different conversion factor, such that there will be outstanding credits in the system to cover the illegal wood.

Brazil can be considered a country with a high perception of corruption: The IPCL (Perception Index of Legal Compliance) was 6.8 in the first quarter of 2014 (on a scale of 0 to 10 where 10 represents the perception that laws are enforced in the country). This perception of law enforcement fell compared with the index for the first half of 2013 (7.2). In addition, the CPI (corruption perception index) in Brazil in 2013 was 42 (on a scale from 0 to 100 where 100 is good). This means there is strong perception that Brazil is a corrupt country.

Risk conclusion

The bill of sale is a well-consolidated instrument in Brazil and, although there are sales without a bill of sale, these do not represent a significant amount in the planted wood market. There are no restrictions on the exportation of exotic wood, and the DOF does not apply to it. Given the scale of native species plantations is not significant in Brazil, this is considered a low risk for plantations.

The risk is considered specified for natural forests because the sale of native wood without a bill of sale and/or without the DOF, or accompanied by such documents with

altered data, occurs with the intent of confounding the tracing systems implemented by the government.

1.17.6. Risk designation and specification

Specified risk: Natural forests

Low risk: Plantations

1.17.7. Control measures and verifiers

- Required permits exist and trade shall be documented.
- All required transport documents shall exist and be documented (bill of sale accompanied by the DOF or GF in the Brazilian domestic market; for exportation, invoice correctly specifying the species and volumes).
- Volume, species and qualities shall be classified according to statutory requirements.
- Documents related to transportation, trade or export shall be clearly linked to the specific materials in question.

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

- Decree 6759/09 – Regulates the administration of customs activities and the inspection, control and taxation of foreign trade operations. (IV). Arts. 557, 703, 86.
- Lei 5.172/1966 CTN – National Tributary Code (IV). Section II and Clause 173 e 174 (keeping of bills of sale for 5 years). Available at: https://www.planalto.gov.br/ccivil_03/leis/l5172.htm
- Decree No. 3.607 of 21/09/2000 – Licensing for importation and exportation of CITES species (I). full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/d3607.htm
- IBAMA Normative Instruction No. 15/11 – Exportation procedures (I). Full text.
- Act No. 9.430/96 – Transfer pricing (IV). section V – transfer pricing. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9430.htm
- FEDERAL Revenue Normative Instruction No. 1.312/12 – Transfer pricing (IV). Arts. 20 and 53.

- FEDERAL Revenue Normative Instruction No. 1.037/10 – Fiscal Haven (IV). Full text.
- IN IBAMA 77/05 – Regulates wood exportation (I). Full text.

1.18.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- Office of the Brazilian Federal Revenue System (IV)
- State Revenue Office (V)

1.18.3. Legally required documents or records

- Invoice (IV)
- Exportation DOF (I)
- Exportation authorization for CITES species (I)

1.18.4. Sources of information

Government sources

- Receita.fazenda.gov.br (2012). *Federal Revenue – transfer pricing*. [online]. Available at:
<http://www.receita.fazenda.gov.br/Legislacao/ins/2012/in13122012.htm>

1.18.5. Risk determination

Overview of Legal Requirements

Act No. 9.430/96 and IN RFB 1312/12 govern price formation for importation and exportation activities, to prevent prices differing from the ones actually being charged in transfer operations between headquarters' subsidiaries in different countries.

Description of risk

For a Brazilian company to export its products it must be registered in the Federal Revenue as an exporter and, therefore, must comply with several legal requirements. Normally, the export mechanisms are very demanding, well controlled and well inspected. There may be cases of corruption, but they are not sufficiently significant to make this a specified risk.

Additionally, there are very few Brazilian companies that have a structure that includes associated companies abroad; with this situation reducing the risk and the probability of the existence of associated companies in tax havens.

Risk conclusion

Therefore, this is classified as low risk for all districts.

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

- Decree 6759/09 – Regulates the administration of customs activities and the inspection, control and taxation of foreign trade operations. (IV). Arts. 557, 703, 86.
- IBAMA Normative Instruction No. 15/11 – Exportation procedures (I). Full text.
- IN IBAMA 77/05 – Regulates wood exportation (I). Full text.
- Act No. 8171/91 – Agricultural policy (XIX). Arts. 102 e 103 – Soil damage (Erosion). Available at: http://www.planalto.gov.br/ccivil_03/leis/l8171.htm
- DECREE No. 24.114/34 – Approves the Regulation of the Sanitarian Vegetation Defense (XIX). Clause 47. Available at: https://www.planalto.gov.br/ccivil_03/decreto/1930-1949/D24114.htm
- DECREE No. 5.741/06 – Regulates arts. 27-A, 28-A and 29-A of Act No. 8.171, of January 17, 1991 that organizes the Unified Assistance System for Farming Sanitation, and include other provisions. (XIX). Chapter III, Section VIII and Chapter VI, Section IV. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5741.htm
- DECREE No. 5.759/06 – Enacts the reviewed text of the International Convention for Vegetation Protection (CIVP), as approved in the 29th Conference of the United Nations Organization for Agriculture and Nutrition – FAO, on November 17, 1997. (XIX). Clause V. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5759.htm
- MAPA NORMATIVE INSTRUCTION No. 55/07 – Approves the Technical Standard for the use of the Phytosanitarian Origin Certificate – CFO and the Consolidated Phytosanitarian Origin Certificate – CFOC. (XIX). Attachment I. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5759.htm
- SINIEF ADJUSTMENT 12/09 – Indication of NCM in the fiscal document (IV/ V). Second Clause – II. Available at: http://www1.fazenda.gov.br/confaz/confaz/ajustes/2009/AJ_012_09.htm
- SRF Normative Instruction No. 28/1994 Regulates the shipping of goods destined to exportation by customs; (IV). Full text.
- ADMINISTRATIVE DECREE MDIC No. 23, OF JULY 14, 2011 Regulates foreign trade operations. (IV). Chapter IV. Available at: http://www.mdic.gov.br/arquivos/dwnl_1311100642.pdf

1.19.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA and ICMBio; State and Municipal Environmental Agencies) (I)
- Office of the Brazilian Federal Revenue System (IV)
- State Revenue Office (V)

1.19.3. Legally required documents or records

- DOF / Forestry Guide /Exportation DOF (in the Brazilian territory) (I)
- Exportation authorization by IBAMA (I)
- Enrollment at SISCOMEX (Integrated Foreign Trade System) (IV)
- Invoice (IV)
- Phytosanitarian Origin Certificate – CFO and the Consolidated Phytosanitarian Origin Certificate – CFOC. (XIX)
- EXPORTATION SHIPPING DECLARATION
- Notes: Shipping Declaration (Must include SISCOMEX NUMBER). Issued by local customs office.
- Sales Agreement (optional)
- Packing list
- Bill of Lading (Bill of Lading/ CRT/ AWB/ TIF)

1.19.4. Sources of information

Government sources

- Ibama.gov.br (n.d.). *Exportação e Importação de Fauna, Partes, Produtos e Material Biológico* (Export and Import of Fauna, Parts, Products and Biological Material). [online]. Available at: <http://www.ibama.gov.br/areas-tematicas-fauna-silvestre/exportacao-e-importacao-de-fauna-partes-produtos-e-material-biologico>
- Servicos.ibama.gov.br (n.d.). *Licença para importação ou exportação de flora e fauna - CITES e não CITES* (License for the import or export of flora and fauna - CITES and non-CITES). [online]. Available at: <https://servicos.ibama.gov.br/index.php/licencas/importacaoexportacao-de-flora-e-fauna-cites-e-nao-cites> [Accessed 9 December 2016]
- Mdic.gov.br (n.d.). *Ministros do Brasil e da Argentina definem 2018 como meta para fechar acordo Mercosul –UE* (Ministers of Brazil and Argentina set 2018 as goal to close Mercosul-EU agreement). Ministry of Development, Industry and Foreign Trade. Available at: <http://www.mdic.gov.br/sitio/> [Accessed 9 December 2016]

1.19.5. Risk determination

Overview of Legal Requirements

Exportation in Brazil is regulated by the Brazilian Federal Revenue (RFB) through the on-line system called SISCOMEX (Integrated Foreign Trade System). For a company to have access to exportation it is required to submit to the Federal Revenue particular

documents. The RFB Normative Instruction No. 1.288/12, Clause 14, presents the reasons that can lead to the suspension of the SISCOMEX enrolment, with such restrictions reducing the possibility that a company has legal problems associated with exporting its products.

The exportation documents always state the code of the exported product according to the Harmonized System; in the case of Mercosul companies, the system used is the NCM (Common Mercosul Nomenclature). Such codes provide a worldwide, unique product codification.

Description of risk

Considering that the SISCOMEX enrolment indicates that the company has a legal exportation status and that the more structured companies are entitled to export, the risk of exportation occurring with the official procedures at odds with the customs regulations is defined as low.

Risk conclusion

Risk is considered as low.

1.19.6. Risk designation and specification

Low risk

1.19.7. Control measures and verifiers

N/A

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

- IN IBAMA 77/05 – Regulates wood exportation (I). Full text.
- Decree No. 3.607 of 21/09/2000 – Licensing for importation and exportation of CITES species (I). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/d3607.htm
- Normative Instruction No. 06/08 – Species in danger of extinction in the Brazilian flora (I). Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/d3607.htm
- Decree No. 4.722/03 – Establishes criteria for mahogany exploration. Full text. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2003/d4722.htm
- CONAMA Resolution 278/01 – Prohibits the cutting of species in danger of extinction in the Atlantic rainforest flora; (I). Full (prohibits the cutting of species in danger of extinction (IN IBAMA 06/08)). Available at: <http://www.mma.gov.br/port/conama/res/res01/res27801.html>

- IBAMA Normative Instruction No. 140/11 – Exportation procedures (I). Full text.
- CITES (I). Flora attachment. Available at: <https://cites.org/eng/app/appendices.php>

1.20.2. Legal authority

- SISNAMA (Federal Executive Agencies: IBAMA e ICMBio; State and Municipal Environmental Agencies) (I)
- Research Institute of the Botanic Garden of Rio de Janeiro – JBRJ (I)

1.20.3. Legally required documents or records

- CITES License or Certificate issued by IBAMA (I)

1.20.4. Sources of information

Government sources

- Ibama.gov.br (n.d.). *Exportação e Importação de Fauna, Partes, Produtos e Material Biológico* (Export and Import of Fauna, Parts, Products and Biological Material). [online]. Available at: <http://www.ibama.gov.br/areas-tematicas-fauna-silvestre/exportacao-e-importacao-de-fauna-partes-produtos-e-material-biologico>
- Servicos.ibama.gov.br (n.d.). *Licença para importação ou exportação de flora e fauna - CITES e não CITES* (License for the import or export of flora and fauna - CITES and non-CITES). [online]. Available at: <https://servicos.ibama.gov.br/index.php/licencas/importacaoexportacao-de-flora-e-fauna-cites-e-nao-cites> [Accessed 9 December 2016]
- Ibama.gov.br (n.d.). *Ibama implanta novo módulo DOF para controle de exportação de madeira* (Ibama implements new DOF module for export control of wood). [online]. Available at: <http://www.ibama.gov.br/publicadas/ibama-implanta-novo-modulo-dof-para-controle-de-exportacao-de-madeira> [Accessed 9 December 2016]

1.20.5. Risk determination

Overview of Legal Requirements

Brazil has a large number of laws that regulate the protection, exploration, marketing and exportation of species protected by CITES. Decree No. 3.607/00 regulates the exportation and importation procedures for species registered in CITES.

The exportation is conditional on the issue, by IBAMA, of an Exportation License. Such licenses can be issued after a report by the scientific authority (Botanic Garden Institute of Rio de Janeiro) certifying that the exportation will not affect the survival of the species, and after verification by IBAMA that an importation license has been issued for the addressee; and the purchase is considered legal.

The main Brazilian forestry species that are commercially favorable and protected by CITES are Mahogany (*Swietenia macrophylla*), registered in Appendix II of CITES, and Cedro Rosa (*Cedrela odorata*) registered in Appendix III. Both species, originating from the Amazonian Biome, are more common in the south of the state of Pará, but are also found in the states of Goiás, Acre, Maranhão, Mato Grosso, Rondônia and Tocantins.

Description of risk

A scandal was reported in Brazil in 2002, involving IBAMA's seizing mahogany illegally extracted from conservation units by the so-called "Mahogany Mafia". Since then, there has been no publicity relating to illegal activities and mahogany.

Until 2003, the government prohibited mahogany exploitation; but with the passage of Decree No. 4.722/03, the government authorized the exploration of this species under a sustainable management plan approved by IBAMA.

Risk conclusion

Risk is considered as low.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

N/A

1.21. Legislation requiring due diligence/due care procedures

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

1.21.1. Applicable laws and regulations

Not applicable. Brazil has no legislation governing the obligation of due diligence, therefore this category is not applicable.

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

N/A

1.21.5. Risk determination

N/A

1.21.6. Risk designation and specification

N/A

1.21.7. Control measures and verifiers

N/A

Annex I. Timber source types

The table **Timber Source Types in Brazil** 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:

- a. **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.
- b. **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.
- c. **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.
- d. **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.
- e. **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.
- f. **License type** - Licenses may be issues 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 BRAZIL

Forest type	Region/Area	Ownership	Management regime	License / Permit Type	Description of source type
Natural forests	All regions	State owned	Private companies or Traditional communities.	<ul style="list-style-type: none"> • Concession contract • AUTEF/AUTEX – Authorization of Forest Exploitation • Sustainable Forest Management Plan (Plano de Manejo Florestal Sustentável - PMFS) • Approved Annual Operational Plan (Plano Operacional Anual - POA). • DOF/GF – Document of Forest Origin (<i>Documento de Origem Florestal</i>) • Fiscal Bill of Sale (<i>nota fiscal</i>) • Invoice <p>Note: The DOF is not required for some sub-products e.g. windows, doors, furniture, cellulose and wood paste. The states of Mato Grosso, Pará and Rondônia (Guia Florestal - GF) and Minas Gerais (Guia de Controle Ambiental - GCA) have their own transportation licenses, which are integrated with the DOF system.</p>	Timber from state owned natural forests, managed by either private companies, or traditional communities, accompanied by the appropriate documentation.
		Privately owned	No restrictions. Usually managed by companies, farmers or families.	<ul style="list-style-type: none"> • Concession contract • AUTEF/AUTEX – Authorization of Forest Exploitation • Sustainable Forest Management Plan (Plano de 	Timber from privately owned natural forests, accompanied by the appropriate documentation.

				<p>Manejo Florestal Sustentável - PMFS)</p> <ul style="list-style-type: none"> • Approved Annual Operational Plan (Plano Operacional Anual - POA). • DOF/GF – Document of Forest Origin • Fiscal Bill of Sale • Invoice 	
Plantations - exotic species	All regions	Privately owned	No restriction	<ul style="list-style-type: none"> • Planting license • Fiscal Bill of Sale • Invoice • Some states also require an environmental license for the management of plantations. • No harvesting permit is required. 	Timber of an exotic species (likely to be eucalyptus (<i>Eucalyptus</i> spp.) or pines (<i>Pinus</i> spp.), may also be acacia (<i>Acacia</i> spp.) or teak (<i>Tectona</i> spp.), accompanied by the appropriate documentation.
Plantations - native species	All regions	Privately owned	No restriction	<ul style="list-style-type: none"> • AUTEF/AUTEX – Authorization of Forest Exploitation • Planting license • Forest Voucher • DOF/GF – Document of Forest Origin • Fiscal Bill of Sale • Invoice • Some states also require an environmental license for the management of plantations 	Timber of an exotic species (likely to be Parica (<i>Schizolobium amazonicum</i>) or Rubber Wood (<i>Hevea brasiliensis</i>)), accompanied by the appropriate documentation.



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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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