

Timber Legality Risk Assessment Malaysia - Peninsular

Version 1.3 | May 2018



COUNTRY RISK
ASSESSMENTS



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The original document of FSC can be accessed here <https://ic.fsc.org/en/document-center>.

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A. Introduction

This Timber Legality Risk Assessment for Malaysia Peninsular 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.

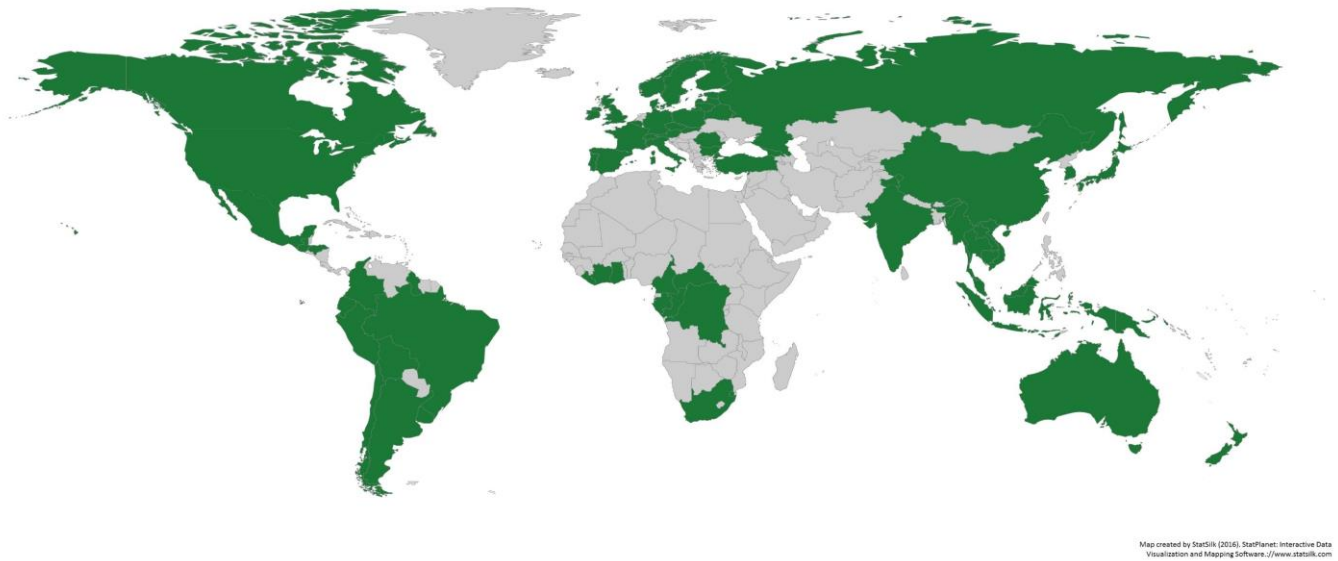


Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

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 the [NEPCon Sourcing Hub](#).

For risk assessment conducted according to the FSC-STD-40-005, ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification.

You can see the countries with approved risk assessment in the FSC document: [FSC-PRO-60-002b V2-0 List of FSC approved Controlled Wood documents](#). All FSC Risk Assessments can be downloaded in the [FSC Document Centre](#).

This risk assessment was prepared by NEPCon between 2015 and 2017 as follows:

Draft prepared by NEPCon:	February 2016
Stakeholder consultation	September 2017
Final approval by FSC:	8 May 2018

FSC CW effective date: 8 May 2018

NEPCon originally published the Timber Legality Risk Assessment for Peninsular Malaysia in August 2017. Since then, amendments to the Assessment have been made, including changing the risk conclusions of indicators 1.3, 1.5, 1.7, 1.16, 1.17 and 1.19 from low risk to specified risk. Additional risk information has also been included for other indicators. These changes have been made to align the risk assessment with the final FSC version, which NEPCon have worked with FSC to update based on stakeholder feedback received in September 2017.

B. Overview of legality risks

Timber Risk Score 5 / 100 in 2018

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

- **Specified risk for 19 sub-categories.**
- **No legal requirements for 2 sub-categories.**

The Timber Risk Score for Peninsular Malaysia is 5 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 that:

- Grants for the privatization of land for plantations (conversion of natural forest to plantations or non-forest uses) are corruptly awarded (1.1)
- Customary lands and aboriginal reserves are not gazetted as such and thus are not recognized by law, resulting in tenure disputes (1.1).
- Concession licenses for PFR are corruptly awarded because of unfair competition, nepotism and cronyism (1.2).
- Harvesting plans are not prepared in State Land, Alienated Land, and Rubber Plantations (1.3)
- Harvesting permits are corruptly awarded, not adhered to or not obtained (1.4).
- Timber from rubber plantations on alienated land does not have the correct licenses or permits (1.4).

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

- Tax fraud occurs due to stamping of logs from State/Alienated Land and Permanent Reserved Forest with royalty marks not being done consistently (1.5).
- Goods and Service Tax (GST) is not paid (1.6)
- Taxable amounts from input and profit taxes are tempered with (1.7)

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

- Environmental regulations (e.g. that prohibit logging outside agreed boundaries, logging on steep slopes, and overharvesting) are not followed in PRF (1.8).
- Protected areas are illegally harvested (1.9).
- Environmental impact assessments are not conducted for forest clearance for oil palm and rubber plantations (1.10).
- Health and safety requirements (e.g. for protective equipment) are violated (1.11).
- Legal rights of resident workers are violated (e.g. wages lower than the legal minimum, and sub-standard living conditions) (1.12).
- Legal rights of migrant workers are violated (e.g. non-payment of wages, long working hours, lack of insurance, and unfair dismissal) (1.12).

For **Third Parties' Rights**, there is a risk that:

- Customary rights of indigenous peoples are violated because many customary lands and aboriginal reserves are not recognized by the Forestry Department and thus not taken into account in the issuance of licenses or subsequent management plans (1.13, 1.15).

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

- Royalties are not paid on logs originating from clear-felled areas in natural forests because the practice for classifying logs from clear-felled areas is ambiguous and allows false classification (1.16).
- Timber from rubber plantations is illegally traded because the removal pass system is rarely applied to rubber plantations (1.17)
- Transfer pricing is practiced (1.18).
- Timber of illegal origin (without proof of origin) entering the Malaysian supply chain (1.19)
- Fraudulent CITES permits are used for products originating from Malaysia (1.20).
- Ramin and Aquilaria spp. is illegally harvested and traded (1.20).

Timber source types and risks

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

Managed natural forest timber	Timber that comes from the Permanent Reserve Forest (PRF), State Land or Alienated land that is being managed for the purpose of producing timber (i.e. forests are regenerated after the harvest).
Conversion natural forest timber	In the Permanent Reserve Forest, clearance takes place under a Timber Plantation Concession Licence, the natural forests can be cleared to make way for a timber plantation. On State land and Alienated land, the natural forests can be cleared for non-forest uses, usually agriculture with appropriate permits.
Plantation timber	Industrial timber plantations (e.g. Acacia, Eucalyptus, Teak) commonly occur in the Permanent Reserve Forest. On State land and Alienated land, plantations are rare, occurring when timber plantations established in the PRF are later excised to state land.
Rubber wood	Rubber wood is either a by-product from Replanting Operations (i.e. when the trees have stopped

producing the latex and are cleared to make way for new rubber trees) or when rubber trees are planted for wood production. Rubberwood is grown in the PRF, on State Land and on Alienated land (that has been classified as '*Agricultural Land*')

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

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

KEY
Managed Natural Forests (MNF)
Industrial Timber Plantations (ITP)
Agricultural plantations or land, producing rubberwood (RB)
* The specified risk does not apply in the 5/11 states which have MCTS certification
Low risk
Specified risk
Not applicable

C. Overview of the forest sector in Malaysia Peninsular

According to the most up to date statistics available from the Ministry of Natural Resources and Environment (NRE), Malaysia's total land area is 33.08 million hectares, of which 18.2 million hectares (55.01%) is forested (MNRE 2014). This data is for 2014.

Under the Malaysian Constitution, forestry comes under the jurisdiction of the respective State Governments. As such, each State is empowered to enact laws on forestry and to formulate forestry policy independently. The executive authority of the Federal Government only extends to the provision of advice and technical assistance to the States, training, the conduct of research, and in the maintenance of experimental and demonstration stations.

In Malaysia there are 3 geographical regions: Peninsular Malaysia, Sabah and Sarawak. The State governments of these three demarcations have jurisdiction over agriculture, land and soil conservation, rivers, water and forest resources. Forest Management-related issues are governed at the Federal level by two Ministries; the Ministry of Natural Resources and Environment and the Ministry of Plantation Industries and Commodities.

Peninsular Malaysia is made up of 11 states and two federal territories. These individual states have a fairly uniform set of laws and regulations for forest management. The states of Sabah and Sarawak are autonomous, and each have differing laws and regulations. However, a common approach to forest management for the three regions was facilitated through the National Forestry Council (NFC). The NFC harmonised Sustainable Forest Management (SFM) policies and practices between Federal and State Governments. However, it must be noted that the National Forestry Council no longer exists, and forestry matters are now incorporated into the meetings of the National Land Council. Generally, while forestry matters are managed by State governments, under the Constitution the Federal government can enact laws to harmonise and standardise State enactments. To this end, the National Forestry Act of 1984 was formulated and later adopted by the individual States in Peninsular Malaysia.

Legally, land in Malaysia is divided into State land, Alienated land (for which private titles have been issued) and the Permanent Forest Estate (PFE which includes forest reserves, protected forests, National Parks/Wildlife & Bird Sanctuaries). All these legal categories can include various types of forests including unlogged virgin forests, selectively logged forests, forests that have been cleared and regenerated naturally, and planted forests (including plantations of rubber, acacia and other exotic species).

Logging and land clearance/conversion is permitted on most State land and alienated land. Logging and land clearance is also permitted in those parts of the PFE that have been zoned for timber production, however the land must be replanted with timber species. No logging is permitted in those parts of the PFE that have been zoned for protection (including water catchment forests, national parks, wildlife reserves and bird sanctuaries). The state governments have the power to remove any area from the PFE should they wish to use the land for some other purpose.

On these land types, different use-permits and licenses can be issued, depending on the State (Timber Trade Portal, 2016; MNRE 2014a; MNRE 2014b; Australian Government Department of Agriculture and Water Resources 2017; Australian Government Department of Agriculture and Water Resources 2017a and Australian Government Department of Agriculture and Water Resources 2017b). The main types are natural forest concession, plantations and agricultural use-permits:

1. Permanent Reserved Forest

- a. Natural forest, being managed for long term timber production.
- b. Natural forest being cleared as part of, or to establish, a timber plantation concession.
- c. Timber plantation (e.g. Acacia, Eucalyptus, Latex Timber Clones Rubberwood) in forest reserves.
- d. Agricultural plantation (primarily rubberwood, but also some other fruit woods etc...), that has reach the end of its productive life and is being cleared to make way for a new agricultural/forest plantation NB: very rare in the PRF.

2. State Land

- a. Natural forest, being managed for long term timber production.
- b. Natural forests being cleared for future potential land use the land is zoned for possible future use for agriculture, housing, etc. but no private title to the land has yet been issued.
- c. Timber plantation (NB: rare). Occasionally, timber plantations established on forest reserves are later excised to state land. This land is usually more profitably used for growing oil palm or rubber, not trees for timber.
- d. Agricultural plantation (primarily rubberwood, but also some other fruit woods etc...), that has reach the end of its productive life and is being cleared to make way for a new agricultural or forest plantation.

3. Alienated Land

- a. Natural forest, being managed for long term timber production.
- b. Natural forests being cleared for future potential land use – land holders are given the rights to log the area which will be converted into another use.
- c. Timber plantations are rare (usually used for growing oil palm or rubber, rather than trees for timber). A harvest permit or license is required.
- d. Timber from private "agricultural" estates. This is mainly rubberwood plantations that are being cleared for oil palm or for another rotation of rubber (i.e. grown primarily for latex and not primarily for timber). Includes the cultivation of trees their produce, i.e. fruit and rubber.

In some cases, Malaysian law recognises the existence of native customary rights (NCR) over State land, alienated land and the PFE. In such cases, common law requires that the state get the consent of the holders of the NCR. This is a grey area in the law and there remains significant ambiguities on the extent to which NCR can be claimed. The majority of NCR claims are not recognised by the state governments.

There are no specific restrictions in the statutes regulating the harvesting of timber on indigenous reserves or areas for where there are communal property rights. Consequently, the authorities manage such areas no differently from areas without such rights. Thus, these areas are not distinguished in the table on timber source types.

The forestry and timber agencies in Malaysia ('upstream') who issue harvesting permits, licenses and log transport documents are:

1. Forestry Department Peninsular (FDPM) and the State Forestry Departments under the authority of the National Forestry Act 1984, guided by the National Forestry Policy 1978 (revised 1992).
2. Sabah Forestry Department (SFD) under the Forest Enactment 1968
3. Sarawak Forestry Corporation (SFC) under the Sarawak Forestry Corporation Ordinance, 1995 & Forest Department Sarawak (FDS) under the Forest Ordinance, 1958 (Cap. 126).

The licensing authorities issuing export and import licenses for timber products, as provided for under Schedule 2 of the Customs (Prohibition of Export) Order 2012 and (Prohibition of Import) Order 2012:

1. Malaysian Timber Industry Board (MTIB) for Peninsular
2. Sabah Forestry Department; and
3. Sarawak Timber Industry Development Corporation (STIDC)

In 2016, Malaysia had a Corruption Perception Index of 49 (2015:50). There are several reports of corruption in the forestry sector in Malaysia, and corruption is an issue of relevance to the legality of timber grown there. According to the World Bank Worldwide Governance Indicators Malaysia receives a ranking of 0,64 in Rule of law; 0,48 in Control of Corruption; 0,84 in Regulatory Quality and 1,14 for Government Effectiveness on a scale of -2,5 to 2,5.

The Malaysian Timber Certification Scheme (MTCS) is a voluntary, PEFC-endorsed and state-supported third-party certification scheme for PRFs in Malaysia. It does not apply to State Land and Alienated Land. In Peninsular Malaysia, MTCS is implemented with each state as a single Forest Management Unit. As of 31st May 2017, the PRFs of six out of the eleven states in Peninsular Malaysia are certified under MTCS (Forest Management). Consultation with in-country experts was carried out in 2015-2017, including face to face consultation meetings held in Malaysia. A broad range of experts were consulted, including representatives from Non-government organizations, a number of relevant Government Ministries and enterprises. Due to confidentiality issues, the experts consulted have not been named specifically in this report, but a full list of experts was provided to Policy and Standards Unit (PSU) of the FSC International Center.

References

Where possible, links to sources of information and applicable legislation have been included in this assessment. Note that links to legislation in particular can change frequently, and the links in this report, that were correct at the time of preparation, may no longer be viable.

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- Environmental Investigation Agency: <http://www.eia-international.org>;
- EU FLEGT process: http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm;
- Government reports and assessments of compliance with related laws and regulations;
- Independent reports and assessments of compliance with related laws and regulations, e.g., the Royal Institute of International Affairs: <http://www.illegallogging.org>;
- Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- Justice tribunal records;
- Transparency International Corruption Perceptions Index: http://www.transparency.org/policy_research/surveys_indices/cpi;
- World Bank Worldwide Governance Indicators: <http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- In cases where other sources of information are not available, consultations with experts within the area shall be conducted.

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

- National Forestry Act 1984 (Sections 14, 19, 28, 33, 34, 40 and 62, Part IV, Chapters 1, 2 and 3), 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104., adopted in the State Forest Enactment for Peninsular.
- National Land Code 1965 (Part 5, Chapter 1, 2 & 3, Section 62)
- Aboriginal Peoples Act 1954 (Sections 6, 7, 8, 10, 13 and 19)
- Companies Act 1965, Section 16
- Land Conservation Act 1960 – Sections 3 & 4
- Federal Constitution
- National Forestry Policy, 1978

Town and Country Planning Act 1976 (Act 172) Laws

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1.1.2. Legal authority

- Forest Department Peninsular Malaysia (FDPM)
- State Land Office
- Jabatan Kemajuan Orang Asli (JAKOA)

1.1.3. Legally required documents or records

- Land title
- Gazettal record of permanent reserved forest (PRF)
- Records of classification of PRFs
- Concessionaires' agreements
- Record on relevant decision by the Civil Court
- Contract agreement with local communities with use rights for use of land.

1.1.4. Sources of information

Government sources

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1.1.5. Risk determination

Overview of Legal Requirements

Forest land in Peninsular Malaysia belongs to the State Government. The Forestry Department of Peninsular Malaysia (FDPM) is the authority responsible for managing most forest in accordance with the National Forestry Act 1984. Most forest areas have been gazetted and marked according to 11 different classifications based on purposes of the land [section 10 (1)]. Some areas of forest (mostly plantations) are under private title (usually land alienated for agriculture) and some areas are totally protected areas under separate legislation.

The responsible authority for most forest areas is the respective State Forestry Department while FDPM HQ provide the policies and standard operating procedures (SOPs), training etc. The main legislative act related to the native customary rights (NCRs) of land tenure of Orang Asli or the aboriginal peoples of Peninsular Malaysia, the Aboriginal Peoples Act, is administered by the Department of Orang Asli Development (JAKOA, 2016).

The forest management shall ensure:

- Clear, documented and unchallenged legal registration of FME (Forest Management Enterprise) with authorization for specific activities.
- Formally registered as a business or corporate enterprise with vested rights and obligations in respect of conducting business, including for taxation purposes and with the relevant social authorities or agencies as required by law.
- Adherence to the requirements of relevant organizations including, where applicable, appropriate industry and trade bodies or councils.

In Peninsular Malaysia, there are three ways to gain land ownership: transfer/purchase, inheritance and alienation. Land ownership is based on the National Land Code 1965 and the "Torrens System", meaning that everything is registered, and ownership is thus determined by the name on the Title Document. Transfer/purchase also includes leases, charges, easements and liens (Buang, 2002). Inheritance is when land is inherited from one's parents or ancestors.

Alienation refers to state land being disposed by way of "alienation", meaning acquired from customary landowners by government.

Land ownership is legally guaranteed and protected by both the Federal Constitution (FC) (Article 13), and the National Land Code 1965 (NCL), which states that a land title is indefeasible (cannot be annulled or overturned) (Buang, 2002).

Transfer of ownership can happen through approval by state government in two ways: to either individual people or to corporations. Once transferred to private hands, land is no longer considered PRF (Permanent Reserved Forest). Transfer of tenure to private hands is documented via a land grant/title, and is considered alienated land intended for purposes other than forest management/logging (usually for agriculture) (Buang, 2002).

There exist two types of ownership: *freehold* (land held in perpetuity) and *leasehold* (leased land not exceeding a 99-year term). Land ownership comes with certain duties in the form an annual rent to the State as well as express conditions for agricultural land referent to section 115 of the NCL. If these conditions are breached, the right to land can be forfeited.

However, the adoption of the Land Acquisition Act 1960 made it possible for any State Authority to legally acquire land (compulsory land acquisition) for one of the following purposes:

- For any public purpose (see *Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors*)
- For an economic development deemed to be beneficial to the public of Malaysia; or
- For purpose of mining, residential, agricultural, commercial, industrial or recreational purposes (*Mah & Balasundaram, 2013*)

Should the State Authority choose to acquire one's land, it is obligated to pay an adequate compensation fee based on the current market value. Hence, despite the guarantee of private property as provided in the FC, private land can be legally acquired by the State authority based on opaque grounds.

In Peninsular Malaysia, the main statute in relation to customary rights is the 'Aboriginal Peoples Act 1954', which circumscribes the rights of the Orang Asli. While the Act allows for the designation of aboriginal areas, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and can therefore only have the status of 'tenants' subject to the will of their landlord (*Aiken & Leigh, 2011, p. 478*). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land.

Description of risk

Plantation on private land: There is a risk of political bias (nepotism and/or corruption) in the issuing of grants for privatization of land

According to Transparency International (2011) an area of specific weakness for corruption in Peninsular Malaysia relates to 'forest classification changes – establishment and excision of Permanent Reserved Forests and conversion of high forest to plantation forest'. Forest excision and granting of private title (for conversion of natural forest to plantations or non-forest uses) requires public notification only after the decision of changing the status has been made and the perception is that this process is open to political bias.

Natural forest and plantation on forest reserve and State land: There is a risk of conflict with native peoples in relation to the alienation of land. There is a risk of excising land title from customary land owners illegally or through an undue process.

The issue lies within the provisions of the National Land Code which provide the State authority with incontestable power to seize private land for the benefit of private companies and/or individuals. As there exist significant economic incentive for the State authority to sell large areas of land to private developers, the indigenous group of Orang Asli is often forced to relocate (*Nicholas, 2010*). Consequently, legislation and statutory law have been the main route to opening land for private development at the expense of residing indigenous populations (*Nicholas, Engi, & Ping, 2010*).

While the High Court has recognized the customary rights of the Orang Asli as exemplified by the *Sagong Tasi* case, a vast majority of the Orang Asli remains too few and too

politically disorganized to make a political influence (Weiss (2006, p. 91) quoted in Aiken & Leigh (2011, p. 477)).

In Malaysia, the access to secure land tenure seems to be contingent upon by socioeconomic status or ethnicity and some level of discrimination, especially against the indigenous Orang Asli population, is thus present (Subramaniam, 2015).

Little evidence or cases of alleged corruption in the transfer of land has been found in Peninsular Malaysia regarding transfer/purchase of land as well as inheritance. However, land alienation from customary land owners have received notable media attention and been taken to the high court as well. The root of this conflict seems to be the apparent discrimination AGAINST the Orang Asli, a discrimination present despite a seemingly encompassing Malaysian legal framework and international commitments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

According to Chatham House, "Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by law; for this reason, they are not taken into account in the issuance of licences or subsequent management plans." (Hoare 2015). In other words, forestry laws are sometimes conflicted against customary laws.

There is an increase in Orang Asli land claims being brought to the court and often in favour of the Orang Asli (JAKOA). This is an issue primarily for natural forest and plantation timber from forest reserve and is not usually an issue for rubberwood from agricultural sources on Alienated Land (Hoare, 2015).

According to SAM and JKOASM (2017) 'encroachments on Orang Asli customary land have indeed been caused by systemic governance and legal issues, as opposed to isolated incidents that may have occurred as a result of the violations and breaches of legislative requirements or executive directives'.

Risk Conclusion

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

1.1.6. Risk designation and specification

Specified

1.1.7. Control measures and verifiers

- Confirm land registry ownership and validity of property deed.
- Confirm that land tenure rights are clear through consultation with neighbours, local communities and others.
- Confirm that registration of FME has been granted following legally prescribed processes through stakeholder consultation.

- Confirm that legal status of the operation or rights for conducting the established activities are not subject to court orders or other legally established decisions to cease operations through stakeholders' consultation.

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

- National Forestry Act 1984, Part IV - Section 14, 16
- National Forestry Act 1984, Sections 14, 19, 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104
- Aboriginal Peoples Act 1954 – Section 8 & 19
<https://www.ecolex.org/details/legislation/aboriginal-peoples-act-1954-no-134-lex-faoc033568/> [Accessed 12 September 2018].
- Land Conservation Act 1960 – Sections 3 & 4
<https://www.jkptg.gov.my/sites/default/files/article/Act%20385-land%20conserve.pdf> [Accessed 12 September 2018].
- National Land Code 1965 – Section 62
<https://www.ecolex.org/details/legislation/national-land-code-act-no-56-of-1965-lex-faoc005145/> [Accessed 12 September 2018].

Laws

- National Forestry Act 1984. Available at:
http://theredddesk.org/sites/default/files/national_forest_act.pdf [Accessed 12 September 2018].

1.2.2. Legal authority

State Forestry Department

1.2.3. Legally required documents or records

- Concession permits
- Harvest permits/licenses
- Records of Gazettal of Permanent Reserve Forests (PRF);
- Records of classification of PRFs;
- Concessionaire's agreement, and

- Licence To Take Forest Produce as well as other relevant permits as applicable, for instance:
- Entry permits
- Road permits
- Use permits
- Records of aboriginal reserves
- Records of aboriginal areas

1.2.4. Sources of information

Government sources

- forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: <http://www.forestry.gov.my/index.php/en/> [Accessed 12 September 2018].
- Forestry Department Peninsular Malaysia, 2018. Licensing (Yield License). Available at: <https://www.forestry.gov.my/index.php/en/2016-06-07-02-31-39/licensing-yield-license> [Accessed 12 September 2018].

Non-Government sources

- awsassets.panda.org (2009) *Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex, Malaysia*. [online] WWF and TRAFFIC. Available at: http://awsassets.panda.org/downloads/national_legality_framework_final_malaysia.pdf [Accessed 12 September 2018].
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- transparency.org.my (2011). *Forest Governance Integrity Report - Peninsular Malaysia*. [online]. Transparency International. Available at <http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf> [Accessed 24 February 2015]
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- Teoh, C. H. (2002). The Palm Oil Industry in Malaysia: From Seed to Frying Pan. WWF.
- Wyn, L. T. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 [Accessed 12 September 2018].
- NEPCon expert consultation 2015 – 2017

1.2.5. Risk determination

Overview of Legal Requirements

Section 16 of the National Forestry Act 1984 empowers the State Authority to permit collection of forest produce – with a license or minor license – from Permanent Reserved Forests and State Government Lands:

All states that produce forest products (within Peninsular Malaysia) can permit the collection of forest produce wither via a tender process, concession agreement or general application.

Applications for license to extract forest produce is open to all, however, in some states the application is only open to loggers registered with the State Forestry Department.

For licenses issued through tender process, the tender is open to loggers registered with the State Forestry Department. In certain circumstances, the tender is open specifically only to certain party such as of forest mill owners or Bumiputera.

For concession areas, license would only be considered for concession holders in accordance with the agreement.

Details of the work process for the issuance of licenses is available on the Forestry Department Peninsular Malaysia *Licensing (Yield License)* [page](#).

In Peninsular Malaysia, concessions are categorized by size, each with its own length of tenure. Concessions up to 1000 hectares in area are allocated for 1–2 years; 1,001–2000 hectare concessions are allocated for 1–5 years; 2,001–20,000 hectares are allocated for 10–30 years; and those exceeding 20,001 hectares are allocated for 20–30 years.

A licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Department before a license is issued for Permanent Reserved Forest, State Land or Alienated Land (Expert consultation conducted by NEPCon, 2015). The licensee must then register its classification mark with the State Forestry Department. Clearing of forest usually takes place on state land forest licensed for logging, and classification mark from the State Forestry Department is not required.

Description of risk

There is a risk of corruption in the licensing process:

- According to Transparency International (2011), an area of specific weakness for corruption in Peninsular Malaysia relates to the 'licensing chain: Award of timber concessions and logging licenses'. That report further states 'State governments have the authority to award preferential timber concessions and logging licenses without ensuring that competitive bidding takes place'. The process is approved by the State, but is not transparent, and thus potentially allows for corruption, nepotism and cronyism to take place.
- In their 2011 Forest Governance Integrity Report of Peninsular Malaysia, Transparency International pointed to several weaknesses in the legislation and possible areas influenced by corruption. In relation to corruption and licensing in the forestry sector, the main concern was the legislation's inability to address issues of preferential treatment exercised by state governments towards private companies. However, Transparency International Malaysia also admits that the failure in forest governance cannot be entirely attributed to corruption and bribery (Transparency International Malaysia, 2011).

- Even though no cases have been successfully prosecuted, research shows several cases of alleged corruption in the issuance of licenses in Peninsular Malaysia. More specifically, Forest Trends (2014) found 13 cases of violations of environmental- and planning laws. Most of these cases were related to issues of political patronage, cronyism and nepotism at an often very high level. Hence, the conclusion "... seems to suggest that breaches of regulations during plantation development are common across the country" (Lawson, et al., 2014). This notion is backed by the evidence presented by Wyn (2014), who presents several cases of allegedly unlawful forest clearance for plantation development in Malaysia, which she ascribes to high-level corruption in the granting of land concessions by state governments.

Based on the risk of corruption associated with issuing concession licences, the risk is considered Specified for the PRF and State Lands. Licensing does not apply to the Alienated Land or Agricultural Land, and is therefore not applicable for these source types.

Risk conclusion

This indicator has been evaluated as specified risk for concessions on Permanent Forest Reserve and State Land (SL), based on the risk of corruption associated with issuing concession licences. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

N/A For other source types.

1.2.6. Risk designation and specification

Specified risk for concessions on Permanent Forest Reserve and State Land (SL)

and

N/A for other source types

1.2.7. Control measures and verifiers

- The organisation shall ensure that a valid concession license is in place which meets all the legal requirements.
- The organisation shall ensure that any public allegations of corruption in awarding of concession licence have been rebutted publicly.
- Independent stakeholder consultation shall confirm that legal procedures for obtaining concession licenses have been followed

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

- National Forestry Act 1984, Part IV - Section 24

- cf. 1.10 for environmental legislation

Laws

- National Forestry Act 1984. Available at:
http://theredddesk.org/sites/default/files/national_forest_act.pdf [Accessed 12 September 2018].

1.3.2. Legal authority

- State Forestry Department

1.3.3. Legally required documents or records

- Forest Management Plan
- Record of monitoring by FDs
- Record of demarcated boundaries
- Record of mitigating measures taken

1.3.4. Sources of information

Government sources

- forestry.gov.my (N.Y.). Forestry Department. [online]. Available at:
<http://www.forestry.gov.my/index.php/en> [Accessed 12 September 2018].

Non - Government Sources

- World Resources Institute (2013) Forest Legality Initiative Risk Tool - Malaysia,
<http://www.forestlegality.org/risk-tool/country/malaysia#tab-management> [Accessed 12 September 2018].
- Malaysian Timber Certification Scheme (MTCS) N.Y: List of Certification bodies:
<https://mtcc.com.my/certification-bodies/> [Accessed 12 September 2018].
- Kamarudin, Norizah & Ismail, Mohd Hasmadi & Jusoff, Kamaruzaman & Sood, Alias. (2011). Evolution and development of forest harvesting in Peninsular Malaysia. Malaysian Forester. 74. 79-102. Available at:
https://www.researchgate.net/publication/285983754_Evolution_and_development_of_forest_harvesting_in_Peninsular_Malaysia [Accessed 12 September 2018].
- Plantation managers or owners.
- Expert consultation conducted by NEPCon, 2015

1.3.5. Risk determination

Overview of Legal Requirements

Under Section 20 of the National Forestry Act 1984, a licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Departments before a license is issued for harvesting in a Permanent Reserved Forest or State land (Expert consultation conducted by NEPCon, 2015).

A Forest Harvesting Plan is not required for Alienated land. The owner of Alienated (privately owned land) and State land will have to apply for a harvesting permit from the State Forest Department.

Forest management in PRF in Malaysia is regulated through area and volume control, but for State Land and Alienated Land it is only regulated by area control (Expert consultation conducted by NEPCon, 2015).

Section 20 of the National Forestry Act empowers the State Authority to require a forest management plan OR forest harvesting plan. At the time of writing, a Forest Management Plan was not required as forest harvesting plans are required (Expert consultation conducted by NEPCon, 2015).

For the PRF, the Forestry Department of each state in Peninsular Malaysia reviews the state level Forest Management Plan (FMP) every 10 years (Expert consultation conducted by NEPCon, 2015). The state level forest management plan is not applicable to State Land and Alienated Land (Expert consultation conducted by NEPCon, 2015).

Harvesting plans are prepared by the FMEs and have to be approved before harvesting can take place.

The harvesting plans include an inventory of the trees to be harvested. Each state is then required to report their state's compliance with the annual extraction limit. Review of these numbers is overseen by the National Land Council (World Resources Institute, 2013).

Description of Risk

There is a risk that the requirement for the preparation a Forest Harvesting Plan is not complied with.

The Forest Harvesting Plan is a condition of the issuance of the Harvesting License, and as such, a Harvesting License is an indication that a Harvesting Plan has been submitted and approved.

In Peninsular Malaysia, the Malaysian Timber Certification Scheme (MTCS) is implemented with each state as a single Forest Management Unit. As of 31st May 2017, the PRFs of six out of the eleven states in Peninsular Malaysia are certified under MTCS (Forest Management) whereby the FMP and Harvesting Plan are audited (MTCS, 2017).

Nonetheless, the practice of preparing management and harvesting plans for logging inside PRF, regardless of MTCS certification status, is generally well implemented (Expert consultation conducted by NEPCon, 2015).

Because of lower level of enforcement, there is specified risk of non-compliance with preparation of harvesting plans in State Land, Alienated Land, and Rubber Plantations (Expert consultation conducted by NEPCon, 2015).

For rubberwood, because there is no royalty charged, there is little incentive for the forestry department to monitor logging in rubber plantations (Expert consultation conducted by NEPCon, 2015). As such, the lack of monitoring and enforcement reportedly leads to lower levels of compliance in rubberwood plantations (Expert consultation conducted by NEPCon, 2015). While the prescriptions of these plans are not always followed on the ground, this is a separate risk which will be covered under 1.8.

As the practice of preparing management plans and obtaining approval for harvesting inside PRF of the six states that are certified under MTCS is considered generally complied with, the risk is considered Low. The risk is specified for State Land, Alienated Land, and Rubber Plantations.

The risk is Specified for State Land, Rubber Plantations and PRF of the five states that are not certified under MTCS.

Risk Conclusion

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

This indicator has been evaluated as specified risk for State Land, Permanent Reserved Forest of the five states without MTCS certification and Rubber Plantations. Threshold (2) is met. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

Not applicable for Alienated Land.

1.3.6. Risk designation and specification

Specified risk for State Land, PRF*, and Rubber Plantations.

N/A for Alienated Land

* Specified Risk for PRF in 5 out of 11 states, Low for the remainder.

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
- Field visits to verify that the contractors have a Timber Extraction Contract
- Approved forest management plans shall exist for the FMU where the harvesting is taking place.
- Forest management plans shall contain all legally required information and procedures.
- Annual operating or harvesting plans shall be in place and approved by legally competent authorities.
- Annual operating or harvesting plans shall contain information and procedures, according to all legal 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 legal requirements.
- Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field.
- Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process.
- FSC or MTCS certificate

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

- National Forestry Act 1984, Part IV - Section 16, 32,47, 50, 81-8
Director General's Directive on the use of monitoring forms A-D.(Form A: Infrastructure, B: Forest Harvesting, C: Environment, D: Output)
- National Forestry Act 1984, Sections 14, 19, 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104
- Aboriginal Peoples Act 1954 – Section 8 & 19
- Land Conservation Act 1960 – Sections 3 & 4
- National Land Code 1965 – Section 62

Laws

- National Forestry Act 1984. Available at:
http://theredddesk.org/sites/default/files/national_forest_act.pdf [Accessed 13 September 2018].

1.4.2. Legal authority

- State Forestry Department

1.4.3. Legally required documents or records

- License To Take Forest Produce as well as other relevant permits as applicable such as:
 - Entry permits
 - Road permits

- Use permits
- Records of aboriginal reserves
- Records of aboriginal areas
- Concession permits
- Harvest permits/license
- Registration with the Forestry Department

1.4.4. Sources of information

Government sources

- forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: <http://www.forestry.gov.my/index.php/en> [Accessed 12 September 2018].
- Forestry Department Peninsular Malaysia, (2016). Annual Report 2016. [pdf]. Available at: <https://www.forestry.gov.my/images/Laporan%20Tahunan/2016/annual-report-jpsm-2016.pdf> [Accessed 12 September 2018].
- Nizum bin Mohd. Nor Abd. Ramlizauyahudin bin Mahli (2017) Executive Talk 2017: Combating Wildlife & Forestry Crime - Forest Crimes & It's Challenges in Peninsular Malaysia, [pdf] Enforcement Division, Forestry Department Peninsular Malaysia. Available at: <http://www.wildlife.gov.my/images/stories/ExecTalk/Talk-3.pdf>, [Accessed 12 September 2018].

Non-Government sources

- transparency.org.my (2011). *Forest Governance Integrity Report - Peninsular Malaysia*. [online]. Transparency International. Available at <http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf> [Accessed 24 February 2015]
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- thestar.com.my (2013). *District forestry officer on graft charge goes wild*. [online]. (District officer receiving bribery). Available at: <http://www.thestar.com.my/News/Nation/2013/02/02/District-forestry-officer-on-graft-charge-goes-wild/> [Accessed 12 September 2018].
- Transparency International, (2018). Corruption Perception Index 2017. Available at: https://www.transparency.org/news/feature/corruption_perceptions_index_2016 . [Accessed 12 September 2018].
- Expert consultation conducted by NEPCon, 2015

1.4.5. Risk determination

Overview of Legal Requirements

As highlighted in section 1.2, any company or person wishing to take or remove timber from a forest area must first have a valid harvesting license. The first step to securing a harvesting license is to obtain approval from the state authorities or the relevant state forestry department where applicable. Only companies or persons registered with the State Forestry Departments are eligible to apply for the harvesting license. A company or person that has obtained a harvesting license is referred to as the licensee. Harvest permits in the PRF are issued through open tender or by direct award by the State Forestry Department in accordance with the National Forestry Act 1984, Section 16.

A licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Department before a license is issued for logging in Permanent Reserved Forests. The Licensee must then register its classification mark with the State Forestry Department.

The owner of alienated land (privately owned land) and State Land will have to apply for a harvesting permit from the State Forest Department for any logging where the timber is intended for sale. This applies to all forest whether natural forest or plantations although timber from rubber plantations is not subjected to royalty payments and in practice harvesting permits are seldom applied for.

Description of Risk

There is a risk that harvesting of timber takes places in Peninsular Malaysia without the requisite permission from authorities.

In 2017, Transparency International gave Malaysia a Corruption Perception Index score of 47 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 62 out of the 167 countries assessed. The score of 47 see's Malaysia losing points compared to 2016 where they scored 49, 2015 where they scored 50 and 2014 where they scored 52.

According to Transparency International (2011) an area of weakness for corruption in Peninsular Malaysia relates to, inter alia, the award of timber concessions, logging licenses and restrictions on re-entry logging in Permanent Reserved Forest areas.

Control of encroachment, illegal harvesting without permits and other unauthorized activities in PRFs and State Land for Peninsular Malaysia is carried out by the Forest Departments, who keep records of these activities. The National Forestry Act was amended in 2010 to empower the state forestry departments in Peninsular Malaysia to request the assistance of police and armed forces in combating illegal logging. At the same time, increased fines and imprisonment for those found guilty of illegal logging were incorporated into the act.

Additional enforcement officers have been recruited by the Peninsular Malaysia Forestry Department, and training for enforcement officials across the country has been provided under INTERPOL's Law Enforcement Assistance for Forests (LEAF) project. In 2011 a hotline was set up at the headquarters of the Peninsular Malaysia Forestry Department for the public to report cases of illegal logging and other offences. However, despite the additional initiatives the number of personnel remains insufficient, as do resources for effective enforcement (Hoare, 2015).

There are thus still cases reported of companies overharvesting or logging under a license in an area that does not apply to the actual permit area. Based on stakeholder input there are indications that the Forest Department Rangers seldom conduct on-ground patrols and that

it is common for bribes to be paid to forest officials. Thus, the misuse of permits is at risk of not being detected and/or reported.

Detection of illegal logging activities in forested areas is being done. For example, an increase in Enforcement Operations successfully reduced illegal logging from 42 cases in 2008 to one (1) case in 2014 (Peninsular Malaysia Forestry Department 2016).

Mr Mohd. Nizum, in his Executive Talk in 2017, states that as of August in 2017, only three of the 121 forestry offences detected by the Enforcement Division of the Forestry Department Peninsular Malaysia were 'illegal logging'. 12 and 11 illegal logging offences were detected in 2015 and 2016 respectively (Mohd. Nizum 2017). 'illegal logging is defined in that report as 'unlicensed logging activities, syndicated and/or using heavy machinery'. According to the information in that presentation, historically, illegal logging offences have been detected far more frequently in the PRF, as opposed to on SL or AL. For example, in 2016, 88 per cent of all offences occurred in the PRF, and 91 per cent of the illegal logging offences occurred in the PRF.

According to the experience of the authors and experts consulted in the preparation of this report, there is a high risk that timber from rubber plantations on alienated land does not have the licences or permits required by the National Forestry Act 1984 because the state forestry departments seldom require companies harvesting timber from such sources to apply for the necessary permits.

Based on the risk of corruption related to issuing permits, misuse of permits, as well as the risk of no permits issued (in the case of rubberwood) the risk is considered Specified for all sources.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.4.6. Risk designation and specification

Specified risk

1.4.7. Control measures and verifiers

- Field visits shall verify that maps are in compliance with reality
- Harvesting permits shall exist
- Harvesting limits shall be clearly defined based on maps and quantities
- Authorities shall confirm the validity of harvesting permit
- Field inspection shall confirm that harvesting takes place within limits given in the harvesting permit.
- Field inspection shall confirm that information regarding area, species, volumes and other information given in the harvesting permit is correct and within limits prescribed in the legislation.

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

- National Forestry Act 1984: Part IV - Cha.8, Part V - Cha.1, Cha.5
 - Sections 60, 61 and 75
- State Forest Rules: Second schedule (premium rate), Third schedule (royalty rate), Fourth schedule (forest premium and cess), Fifth schedule (liquidated damages)
 - Rules 22 and 23

Laws

- National Forestry Act 1984 -
<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20313.pdf>
[Accessed 11 September 2018].
- National Forestry Act 1984, Part IV-Section 16, 32,47, 50, 81-8
- State Forest Rules

1.5.2. Legal authority

- State Forestry Department

1.5.3. Legally required documents or records

- Records of payment of required fees, royalties, taxes and other charges kept by forest managers/company and State Forestry Department.

1.5.4. Sources of information

Government sources

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- Adie Suri Zulkefli (2017) Man caught red-handed illegally transporting timber logs worth RM10,000. New Straits Times. Available at: <https://www.nst.com.my/news/2017/01/202304/man-caught-red-handed-illegally-transporting-timber-logs-worth-rm10000> [Accessed 12 September 2018].
- Expert consultation conducted by NEPCon, 2015

1.5.5. Risk determination

Overview of Legal Requirements

Most tax revenue (such as income tax) is collected by the Federal Government, but state governments can collect land-related revenue, including timber royalties.

Part V of the National Forestry Act is dedicated to royalties and premiums for the use and extraction of forest resources.

The National Forestry Act 1984 [Sections 60, 61 & 75] and State Forest Rules (Rules 22 & 23) stipulate the statutory charges that need to be paid by a licensee to obtain a harvesting license for the extraction of logs from the Permanent Reserved Forest, State Land, Alienated Land and Mining Land. A licensee must pay all premiums, royalties, Forest Department cess

and other charges payable in respect of the license and the harvested timber before claiming ownership of the timber from the licensed area.

All logs that are felled for commercial purposes are inspected for payment of royalties and cess (a tax) at the nearest Forest Checking Station (FCS) manned by the State Forestry Department officials. Once payment is made, a Removal Pass is issued for each lorry load. The Removal Pass carries a record of the type/species, volume of produce, and the payments made.

Once the royalty is paid, each log shall be stamped with the royalty mark at the FCS.

Previously, rubberwood from Peninsular Malaysia was exempted from royalty payments. (The Star Online, 2013, Personal communication 2). This changed in 2015, and now royalties do apply to rubberwood depending on the land type, as described above (Pers. Comm. with official from the Forestry Department of Peninsular Malaysia).

Description of Risk

According to Chatham House 'Responsibility for financial management lies with the states; and [...] the financial management systems deployed are deemed well designed and well implemented. Before a logging licence is issued, potential licensees must pay a timber premium on the area to be harvested and deposit funds with the respective forestry department to offset future royalties. The royalties due are recorded by the forest checking stations.' (Hoare, 2015, p. 4).

Experts consulted in the preparation of this report stated that they believed the incentives for the Forest Department to collect royalties, results in higher levels of compliance with these requirements, Experts stated that royalty payments based on correct classification of timber outputs are well implemented (Expert consultation conducted by NEPCon, 2015).

Experts also stated that the stamping of logs with royalty marks is often not done systematically for logs from State Land forest or for logs from clear-felled areas (whether inside forest reserves or from alienated land) which allows for fraud to take place. It was not clear from the experts why this issue arises for State and Alienated Land only, and not for the PRF.

After reviewing the Forestry Statistics for Peninsular, more than 85 per cent of the forested land in Peninsular occurs in the PRF, whereas 4.5 per cent occurs in State Land (NB: no figure is provided for Alienated Land, but we assume the SL figure incorporated AL).

The presentation given in 2017 by Mohd. Nizum, an executive from the Forestry Department Peninsular Malaysia, states that one of the 'Issues and Challenges in Forest Enforcement' is 'Inadequate number of enforcement staff at State Forestry Department [to conduct detection and enforcement patrols and routine surveillance activities, investigations on forest offense cases and forensic practices].' From these two pieces of information, it is possible to deduce that the Forestry Department focusses their attention on the PRF, as most of the forestry activity is taking place there.

According to Mohd. Nizum (2017), in his Executive Talk, further states that a common forestry offence is [under Sec. 84 of the National Forestry Act] "unlawful possession of forest produce (possession, custody or control forest produce without paying royalty, premium, cess or other charges)". [...] Normally done by the local communities adjacent to the forest."

According to Wyn “[largescale commercial plantation] operations are [...] broadly in compliance with the need to pay royalties per cubic meter of timber harvested.” (Wyn, 2013). Based on the 2016 Forestry Statistics, plantations make up only about 6 per cent of the forested area in Peninsular, and 7 per cent of the Production Forests within the PRF.

The 2011 Forest Governance Integrity Report - Peninsular Malaysia from Transparency International includes a recommendation to “modernise monitoring of timber movement through electronic means by using radio frequency identification (RFID) and real-time data transfer and storage systems to enhance enforcement capabilities and combat log stealing and royalty evasion.” This Recommendation implies that royalty evasion was an issue detected in the preparation of that report, although the report itself does not go into any detail on this matter.

Many news articles relating to tax evasion in Peninsular have been identified. Most articles highlight that tax evasion occurs frequently in cases of timber theft (i.e. illegal logging without permits and therefor unpaid taxes and fees):

In November 2017, New Straits Times (NST) reports on rubberwood suppliers evading paying tax to government (November 2017). The article states that Kedah Forestry Department deputy director (operation) Mohd Rahim Ramli said some 20 rubberwood suppliers had been caught for failing to furnish a licence to transport the timber since early this year. As proof of royalty payment is a prerequisite to a removal pass (see indicator 1.16 below), there is a risk that royalties are not being paid for rubber wood.

In April 2017, NST reported on a case of a contractor is facing a fine of RM500,000 and a jail term of between one and 20 years for stealing four Kapur (Dryobalanops) logs. Foo Chee Chean, 38, is facing an additional punishment of a maximum fine of RM50,000 or a maximum jail of five years, or both, upon conviction for failing to pay royalty, premium and other charges for the said logs (New Straits Times 2017).

September 2017, NST reports of four arrested in MACC crackdown on illegal logging. The article states that the three of the men are facing charges of tax (royalty) evasion and bribing officials.

January 2017, NST reports of the arrest of a man for transporting illegal timber logs worth about RM10,000, including unpaid taxes. It is estimated that the logs are worth about RM6,000, with unpaid taxes of RM4,000.

Based on the findings described above the risk for this indicator has been evaluated as specified for all sources.

Risk Conclusion

This indicator has been evaluated as Specified Risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.5.6. Risk designation and specification

Specified risk

1.5.7. Control measures and verifiers

- Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges.
- Volumes, species and qualities given in sales and transport documents shall match the paid fees.
- Classification of species, volumes and qualities shall match the royalties and fees paid.
- Harvesting permit should verify origin. If timber originates from cleared areas royalty stamps on logs should be verified.
- Verification of the Removal Pass to ensure that the species and volumes are indicated with royalty payment correctly.

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

- Goods And Services Tax Act 2014 (GST). Part I, Section 3 (Meaning of business), Section 4 (Meaning of supply); Part III, Section 9 (Imposition and scope of goods and services tax); Part V, Section 33 (Issuance of tax invoice) Laws
- Goods And Services Tax Act 2014 (GST). Available at: http://www.federalgazette.agc.gov.my/outputaktap/20140619_762_BI_ACT%20762.pdf [Accessed 12 September 2018].

1.6.2. Legal authority

- Royal Malaysian Customs Department

1.6.3. Legally required documents or records

- Records of payment kept by forest managers/company

1.6.4. Sources of information

Government sources

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Non-government sources:

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- The Malaysian Reserve, March 2017. Business warned not to cheat GST system[online]. Available at: <https://themalaysianreserve.com/2017/03/31/business-warned-not-to-cheat-gst-system/>, [Accessed 12 September 2018].
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1.6.5. Risk determination

Overview of Legal Requirements

The Goods and Services Tax (GST) was implemented on a nation-wide basis April 1st, 2015 and replaced the former types of sales- and service tax. The GST is a multi-stage “consumption based tax on goods and services” (Ting, 2015, p. 2) and as such it differs from direct taxes (RPGT, income tax etc.)..

According to the Goods and Services Tax Act 2014, the GST applies to goods or services supplied in Malaysia, as well as on any importation of goods into Malaysia (Ting, 2015) and is rated at either 6% or 0% unless explicitly exempt by the law.

Generally upstream activities involve in a supply of logs are treated as taxable supplies and subject to GST at standard rate. Reforestation and forestation as well as forest husbandry are also part of the upstream activities. GST treatments for these activities are in accordance to the normal provision as prescribed in the GST Act, Regulations and Orders.

Generally downstream activities involve in the conversion and manufacturing of logs in primary and secondary processes and subsequently supplied are treated as taxable supplies of goods and subject to GST at standard rate. For GST purposes, any taxable person who make a taxable supply of goods or services in Malaysia with an annual turnover exceeding the prescribed threshold in the past 12 months, or expected to exceed the prescribed threshold within the future of 12 months, are liable to register for GST.

GST registered person, you are required to

(a) keep your business records for 7 years.

- (b) issue a tax invoice to taxable person for provision of taxable supply;
- (c) complete and submit the GST returns and pay the Director General the amount of tax not later than the last working day of the month following the end of the specified taxable period;
- (d) provide all information and reasonable assistance as requested by the Director General in the event of an inspection;
- (e) notify the Director General in writing when you cease making taxable supplies or when you transfer your business;
- (f) If you are a voluntary registrant, you must remain registered for at least two years;
- (g) show the price as GST inclusive when you issue a receipt.

Description of Risk

Since GST was introduced in Malaysia in April 2015, there is possibly some tax evasion in the forest products sector, but no sector-specific reports highlight this as a risk.

Based on the Customs Department's audit, most of the 417,000 GST-registered companies nationwide were not ready in terms of record-keeping, usually managed by third parties such as tax agents, accountants or consultants (New Straits Times (NST), 2017).

In 2017, the Sun Daily reported that over 2,000 cases of tax evasion related to GST have been charged in court since 2015. The article states that Customs have opened a total of 14,578 investigation papers since the GST implementation of which some 2,097 cases were prosecuted in court. As of July 928 of the cases were found guilty. Deputy Finance Minister Datuk Othman Aziz is quoted as saying "one of the biggest issues we face is the failure to declare taxes by businesses." The article does not contain any specific information about the industries affected.

Regarding the enforcement of the GST requirement, according to the Malaysian Reserve (March 2017), Royal Malaysian Customs is "well prepared" to detect cheats, dodgers or illegal collection of the Goods and Services Tax (GST). Businesses that may try to take advantage of loopholes have been warned that the Customs department, which is responsible for collection, has in place the technology and a highly skilled task force to detect any fraud. The Royal Malaysian Customs GST director Datuk Subramaniam Tholasy said the department is well prepared and is armed with the toughest laws to act against offenders. "We have a system that can recognise anomalies based on the returns submissions. It will pick up the faulty ones and tag it with a red flag, if anything is suspicious".

Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014); these types of ownerships are also found in the palm oil plantation sector in Malaysia.

Given the general lack of GST readiness reported by the NST, and the specific corruption issues related to the timber sector, a precautionary approach has been taken to the evaluation of this indicator, and it is considered specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.6.6. Risk designation and specification

Specified risk

1.6.7. Control measures and verifiers

- Sales documents shall include applicable sales taxes.
- Receipts for payment sales taxes shall exist.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.
- Harvested species, volume and qualities shall match the sales documents.
- Authorities shall confirm that operation is up to date in payment of applicable sales taxes.
- Consultation with financial authority to verify that all required income and profit taxes have been paid

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

- Income Tax Act 1967: Part II - Imposition and General Characteristic of the Tax, Section 3 (Charge of income tax), Section 4 (Classes of income).
- The Goods and Services Act 2014 - <http://www.customs.gov.my/en/pg/Documents/BI%20ACT%20762.pdf> [Accessed 12 September 2018].
- Income Tax Act 1967: <http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm> [Accessed 12 September 2018].

1.7.2. Legal authority

- The Ministry of Finance - <http://www.treasury.gov.my/index.php/en/ministrysprofile/treasurys-profile.html> The ministry in charge of formulating and implementing monetary policies and further in charge of distribution and the management of financial resources of Malaysia.
- Royal Malaysian Customs Department -

- http://www.customs.gov.my/en/ci/Pages/ci_vmv.aspx Responsible for the nations indirect tax
- Inland Revenue Board of Malaysia

1.7.3. Legally required documents or records

- Receipt of payment maintained by company and IRB which normally can only be obtained from the company or from IRB with company authorisation

1.7.4. Sources of information

Government sources

- hasil.gov.my (N.Y). Inland Revenue Board. [online]. Available at: <http://www.hasil.gov.my/goindex.php?kump=5&skum=5&posi=3&unit=1&sequ=2> [Accessed 12 September 2018].
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Non-Government sources

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- Nor Shaipah Abdul Wahab, 2015: Corporate Tax in Malaysia: Revenue, Collection and Enforcement
- Nor Shaipah Abdul Wahab, 2015a: Corporate Tax In Malaysia: Revenue, Collection And Enforcement[online], Available at: <https://worldconferences.net/proceedings/icsr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf>. [Accessed 12 September 2018].
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- Chin, M. (2011). *Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework*. Bogor, Indonesia: CIFOR.[online], Available at: https://books.google.dk/books?id=mkNLPmZC0eoC&printsec=frontcover&source=gbs_g_e_summary_r&cad=0#v=onepage&q&f=false [Accessed 12 September 2018].

- PwC. (2016). 2015/2016 Malaysian Tax and Business Booklet. Kuala Lumpur, Malaysia: 24 Palm oil Risk Assessment – Malaysia - Peninsular PricewaterhouseCoopers Taxation Services SD Bhd.,[online], Available at: <https://www.pwc.com/my/en/assets/publications/2016-malaysian-tax-business-booklet.pdf> [Accessed 12 September 2018].
- Nor Shaipah Abdul Wahab, 2015b. Corporate Tax in Malaysia: Revenue, Collection and Enforcement - E-Proceeding of the International Conference on Social Science Research, ICSSR 2015.[online], Available at: <https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf>, [Accessed 12 September 2018].
- Josephine Hilary Dom, Inland Revenue Board, Malaysia, (2013). Enforcement Trend and Compliance Challenges: Malaysia’s Experience. The Fourth IMF-Japan High-Level Tax Conference for Asian Countries.[online], Available at: <https://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/malaysia2.pdf>, [Accessed 12 September 2018].

1.7.5. Risk determination

Overview of Legal Requirements

Income taxation is managed and enforced centrally by the Federal Government in Malaysia.

In Malaysia, the standard taxation of corporate income is at 25% percent. This level of taxation applies to all sectors, except for the following: banking, insurance, air transport and shipping. Taxable income is all earnings derived from Malaysia and covers gains from dividend, royalty and land trading. Companies with annual earnings below 2,500,000MYR is classified as ‘Small to-Medium Enterprise’ (SME) and qualifies for a 5% tax decrease for the first 50,000MYR (PWC, 2017). All related records and receipts must be maintained for inspection by the Inland Revenue Board staff/inspector whenever needed (Inland Revenue Board).

Description of Risk

There is a risk of manipulation of the taxable amount (giving extra bonus, buying assets that can be deducted). However, all companies are subject to tax audits, and are audited by tax agencies, ensuring transparency and that tax deduction takes place according to the tax regulations and rules. Income tax is considered to be well-monitored and enforced (Abdul Wahab, 2015).

Even small-scale farmers and small companies have to pay tax. If they do not have a registered company, they must declare tax as individual income (Abdul Wahab, 2015).

Between 2000 and 2013, the composition of direct taxes to the Malaysian government’s total revenue is made up by corporate tax at the largest, followed by individual tax, petroleum tax and others. This trend is consistent and significant for the 14-year period and is expected to continue for future years due to effective enforcement policy of the tax authority (Abdul Wahab, 2015).

The main risk in relation to taxation is related to corruption. In 2017, Transparency International gave Malaysia a Corruption Perception Index score of 47 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 62 out of the

167 countries assessed. The score of 47 see's Malaysia losing points compared to 2016 where they scored 49, 2015 where they scored 50 and 2014 where they scored 52.

Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014).

Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion. It is likely that this observation can also apply to the timber sector.

In the paper Corporate Tax in Malaysia: Revenue, Collection and Enforcement, Abdul Wahab (2015b) states that the 'loophole[s] in the tax system may create opportunities for firms to avoid or evade the corporate tax. Studies in corporate tax field find evidence on tax planning opportunities created by ambiguity of the tax laws and firms' specific characteristics. Tax planning interpretation is basically referring to tax avoidance and evasion. Tax planning activities among firms are mainly triggered by the availability of the opportunity to avoid tax.' The paper concluded by recommending the 'government [...] levy sufficient corporate tax and respond to the increase administrative and compliance costs in its current enforcement strategies.'

Josephine Dom of the IRB, in a presentation at the Fourth IMF-Japan High-Level Tax Conference for Asian Countries in 2013 listed the following as the key compliance challenges for the IRB:

- Improving voluntary compliance;
- Tax evasion and frauds;
- Cross-border transactions, e-commerce and aggressive tax planning
- Limited human resources and enhancing skills of audit officers.
- Underground economy/cash economy
- Incomplete recordkeeping among SME and sole proprietor
- High tax arrears every year

Although there are no specific reports of income tax evasion in the forestry sector in Peninsular, the well documented corruption issues are considered significant enough to warrant a specified risk finding, based on the precautionary approach.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.7.6. Risk designation and specification

Specified risk

1.7.7. Control measures and verifiers

- Verify that the user has issued current accounting invoices.
- Verify timber species, volumes and prices (depending on qualities) shown in the accounting invoice.
- Verify monthly, quarterly or end-of-year payment of income tax
- Cross-check between duplicates of invoices issued and the report submitted
- Cross-check between issuance of accounting invoices and the enterprise's shipping tickets (they should coincide about the species and volumes shown).

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

- Spesifikasi Jalan Hutan (Jalan Tuju dan Lorong Penarik) untuk Semenanjung Malaysia, 1999 [Forest Road Specification (Feeder Road and Skid Trails) For Peninsular Malaysia, 1999]
- Manual Kerja Luar Sistem Pengurusan Memilih, Bab 4, JPSM, 1997 [Selective Management System, Chapter 4, Forest Department Peninsular Malaysia, 1997]
- Panduan Kerja Luar Inventori Hutan Selepas Tebangan [Field Manual on Post-felling Forest Inventories]
- Manual Kerja Luar Sistem Pengurusan Memilih (Selective Management System – SMS), Bab 10 [Field Manual of Selective Management System (SMS), Chapter 10]
- National Forestry Act 1984. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20313.pdf> [Accessed 11 September 2018]
- Guidelines for Reduced Impact Logging in Peninsular Malaysia, 2003
- Environmental Quality Act 1974. Available at: <http://faolex.fao.org/docs/pdf/mal13278.pdf> [Accessed 12 September 2018].

1.8.2. Legal authority

- State Forestry Department

1.8.3. Legally required documents or records

Detailed requirements for harvesting using the “Natural Forest Management” system in forest reserves are described in the Forest Harvesting Plan which can be obtained for review from concession owners or forest managers and the Forestry Department. Documents include the following:

- Pre-felling inventories
- Post-felling inventories
- Forest Maps
- Procedures on reduced and low impact harvesting included in harvesting licence

- Provisions for the utilization of harvesting residue
- Environmental Impact Assessment (EIA)
- Records of timber products, species and quantity harvested under licence
- Quarterly reports on areas harvested
- Compliance report

1.8.4. Sources of Information

Government sources

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Non-Government sources

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- Expert consultation conducted by NEPCon, 2015

1.8.5. Risk determination

Overview of Legal Requirements

In forest reserves (PRF), all forest/business enterprises are required to comply with the regulations listed before any harvesting activities can be conducted, exemptions are often given when natural forest is felled for conversion to plantation forest.

Transparency International 2011 Forest Governance Integrity Report Peninsular Malaysia rates the likelihood of conversion of Permanent Reserved Forests to plantation forest in violations of land use regulations at a grade of 4 (out of scale of 1-5, 5 being most likely).

The forest management plan demonstrates the implementation of management guidelines to assess forest composition before harvesting. Forest maps must have been drawn up according to the available standards. Boundaries demarcated on maps must be clearly marked on the ground in compliance with the regulations in force.

There are requirements in place for selective logging inside forest reserves in Peninsular Malaysia to ensure the planning and construction of road and tracks and log extraction

operations are in compliance with operating standards and reduced/low impact logging that minimizes impacts, damage and foregone revenue opportunities is employed. Procedures on reduced and low impact harvesting are included in the harvesting licence, as well as the provisions for the utilization of harvesting residue, the Environmental Impact Assessment (EIA) and records of monitoring by FDs.

There are also requirements in place for selective logging inside forest reserves relating to minimum harvestable diameters; ensuring only timber species that are duly authorised by the forest management plan are harvested; and maintaining the quantity of residual stands. Compliance with these requirements can be verified by reference to the records of timber products, species and quantity harvested under licence, Quarterly reports on areas harvested and Compliance reports.

Logging on alienated land and State Land and clear-felling inside forest reserves are not subject to most of these requirements such as pre-felling inventory and assessment or tree tagging prior to logging. Clearance for plantations (even inside forest reserves) are usually not subject to these requirements.

In certain cases, plantations would have to comply with requirements. This could relate to in cases where e.g. a company applies for certification. The requirement for each FME will be specified by the Forestry Department Director and put in the licence.

Control of encroachment, illegal harvesting without permits and other unauthorized activities in PRFs and State Land in Peninsular Malaysia is carried out by the state forestry departments, who keep records of these activities.

Description of Risk

According to Transparency International (2011) an area of specific weakness for corruption in Peninsular Malaysia relates to, among others, the control of harvesting and restrictions on re-entry logging in Permanent Reserved Forest areas. That report further states that because State governments have the authority to award preferential timber concessions and logging licenses (without ensuring that competitive bidding takes place), inexperienced operators and inappropriate logging activities can lead to degradation of forest resources and operators not abiding by sustainable forestry management practices.'

In 2017, Transparency International gave Malaysia a Corruption Perception Index score of 47 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 62 out of the 167 countries assessed. The score of 47 see's Malaysia losing points compared to 2016 where they scored 49, 2015 where they scored 50 and 2014 where they scored 52.

There are cases of logging outside agreed boundaries, and well as logging on steep slopes and overharvesting. Transparency International 2011 Forest Governance Integrity Report Peninsular Malaysia rates the likelihood that these cases happen at a grade of 4 (out of scale of 1-5, 5 being most likely). Much of the timber harvesting is regulated through guidelines and the guidelines are often not clear.

Additional enforcement officers have been recruited by the Peninsular Malaysia Forestry Department, and training for enforcement officials across the country has been provided under INTERPOL's Law Enforcement Assistance for Forests (LEAF) project. In 2011 a hotline

was set up at the headquarters of the Peninsular Malaysia Forestry Department for the public to report cases of illegal logging and other offences. However, despite the additional initiatives the number of personnel remains insufficient, as do resources for effective enforcement (Hoare, 2015).

Based on stakeholder input there are indications that Forestry Department Rangers seldom conduct on-ground patrols and that it is widely perceived that bribes are paid to forest officials.

Mohd. Nizum (2017), in his Executive Talk, highlights that the inadequate number of enforcement staff at State Forestry Department [to conduct detection and enforcement patrols and routine surveillance activities, investigations on forest offense cases and forensic practices] is an issue and challenge in forest enforcement in Peninsular Malaysia. He points out that there is a total of 236 ground staff (Operational and Enforcement Unit) are responsible to monitor 4,916,748 ha PRF and a total of 522 operational wood processing mills operating throughout Peninsular Malaysia. There is a total of 19 Intelligence Officers and 3 forensic personnel for the whole peninsula.

The regulations and the associated risk of non-compliance are mainly associated with logging inside forest reserves. For logging on alienated land and State Land ((if any)), the main legal mechanism for timber harvesting compliance verification is the EIA process (which are dealt with under section 1.10) (Expert consultation conducted by NEPCon, 2015). As many of the licences/permits issued for AL and SL do not include the same requirements (this is at the discretion of the licensor), it is difficult to assess the risk not applicable for the all activities on these land types. As such, the experts who developed this assessment believe, based on the research and experience, that the risk should be specified, using a precautionary approach, but it is necessary to review the license conditions to determine if there are specific harvesting requirements applicable to a licensee/permit holder

Based on unclear harvest regulations, lack of implementation of harvesting plans, as well as lack of enforcement resources and corruption amongst forest officials, the risk is considered Specified for all source types.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.8.6. Risk designation and specification

Specified risk

1.8.7. Control measures and verifiers

- The FMU shall have in place approved Harvesting Plan.
- Prior to harvest the FMU shall have a valid harvesting licence
- There shall be evidence that the requirements of the Harvesting Plan and procedures on reduced and low impact harvesting as specified in the harvesting license are being followed in the forest.

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

- Aboriginal Peoples Act 1954 – Available at: <http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf> [Accessed 12 September 2018].
- Forestry Manual 2003
- International Trade in Endangered Species Act 2008. Available at: [http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International Trade in Endangered Species Act 2008.pdf](http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International%20Trade%20in%20Endangered%20Species%20Act%202008.pdf) [Accessed 12 September 2018].
- National Land Code 1965. Available at: <http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf> [Accessed 12 September 2018].
- National Parks Act, 1980. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20226%20-%20National%20Parks%20Act%201980.pdf> [Accessed 12 September 2018].
- Protection of Wildlife Act, 1972. Available at: <http://extwprlegs1.fao.org/docs/pdf/mal11322.pdf> [Accessed 12 September 2018].
- Protection of Wildlife Act, 1972. Available at: <http://extwprlegs1.fao.org/docs/pdf/mal11322.pdf> [Accessed 12 September 2018].
- Wildlife Conservation Act 2010. Available at: <http://www.gunungganang.com.my/pdf/Malaysian-Legislation/National/Wildlife%20Conservation%20Act%202010.pdf>. [Accessed 12 September 2018].

1.9.2. Legal authority

- Department of Environment (DOE): enforces the Environmental Quality Act 1974.
- Department of Director General of Lands and Mines (JKPTG): enforces land law and legislation regarding with land administration.
- Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984.
- Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: enforces the Wildlife Conservation Act 2010.

- Department of Orang Asli Development (JAKOA): enforces aboriginal reserves under the Aboriginal Peoples Act 1954.
- Department of Wildlife and National Parks (DWNP) Pahang: enforces Taman Negara Enactment (Pahang) No.2, 1939 [En.2 of 1938]
- Department of Wildlife and National Parks (DWNP) Terengganu: enforces Taman Negara Enactment (Terengganu) No.6, 1939 [En.6 of 1358]
- Department of Wildlife and National Parks (DWNP) Kelantan: Taman Negara Enactment (Kelantan) No.14, 1938 [En.14 of 1938]
- Johor National Parks Corporation (JNPC): enforces Johor National Parks Corporation Enactment
- Perak State Park Corporation (PSPC): enforces Perak State Parks Corporation Enactment 2001
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1.9.3. Legally required documents or records

Detailed requirements for harvesting using the “Natural Forest Management” system in forest reserves are described in the Forest Harvesting Plan which can be obtained for review from concession owner or forest manager and Forestry Department. Documents include the following:

- Forest Management Plan
- Compliance Report
- List of protected species
- List of totally protected species

1.9.4. Sources of Information

Government sources

- wildlife.gov.my (2010). *Red List of Mammals for Peninsular Malaysia*. [online]. Department of Wildlife and National Parks (DWNP), Peninsular Malaysia. Available at: http://www.wildlife.gov.my/images/stories/penerbitan/lain_lain/Redlist%20Final.pdf [Accessed 12 September 2018].
- Ministry of Natural Resources and Environment, Malaysia. (2014). Fifth National Report to the Convention on Biological Diversity. Putrajaya: Ministry of Natural Resources and Environment, Malaysia. Retrieved from <https://www.cbd.int/doc/world/my/my-nr-05-en.pdf> [Accessed 12 September 2018].
- Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Putrajaya: Environmental Requirements: A Guide for Investors. Retrieved from <http://www.doe.gov.my/eia/wp-content/uploads/2012/03/A-Guide-For-Investors1.pdf> [Accessed 12 September 2018].

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- Ahmad, C. B., Jaafar, J., & Abdullah, J. (2011). Buffer zone characteristics for protected areas: a preliminary study of Krau Wildlife Reserve. WIT Transactions on Ecology and The Environment. Retrieved from <http://www.witpress.com/Secure/elibrary/papers/RAV11/RAV11003FU1.pdf> [Accessed 12 September 2018].
- Azhar, B., Sapari, M., Zulkifly, S., Suhailan, W. M., & Sajap, A. S. (2013). Protecting Biodiversity Outside Natural Forests: Environmental-friendly Oil Palm Plantations as an Off-reserve Strategy in Peninsular Malaysia. TROPICAL AGRICULTURAL SCIENCE. Retrieved from [http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JTAS%20Vol.%2036%20\(S\)%20Dec.%202013/21%20Page%20231-246%20\(JTAS%200476-2012\).pdf](http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JTAS%20Vol.%2036%20(S)%20Dec.%202013/21%20Page%20231-246%20(JTAS%200476-2012).pdf) [Accessed 12 September 2018].
- Clean Malaysia. (2016, February 13). Malaysia's Lax Enforcement is failing Endangered Species. Retrieved from Clean Malaysia: <http://cleanmalaysia.com/2015/08/28/5-reasons-malysias-wildlife-conservation-act-is-one-of-historys-most-important-wildlife-regulations/> [Accessed 12 September 2018].
- Human Rights Commission of Malaysia (SUHAKAM). (2013). REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from <http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf> [Accessed 12 September 2018].
- Sukswan, S., & Abidin, S. Z. (2012). Protected Areas Master List. My BioD 2012. My BioD 2012.
- UNDP. (2013). Enhancing Effectiveness and Financial Sustainability of Protected Areas in Malaysia "Pa Financing Project" (PIMS 3967) INCEPTION REPORT Final. Kuala Lumpur: UNDP. Retrieved from http://www.protectedareasmalaysia.my/wp-content/uploads/2014/07/FINAL-INCEPTION-PA-FINANCE_13-Jan-2014.pdf [Accessed 12 September 2018].
- Wyn, L. T. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 [Accessed 12 September 2018].

1.9.5. Risk determination

Overview of Legal Requirements

As a signatory of the CBD, Malaysia has an obligation to contribute to global targets for protected areas. According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base (UNDP, 2013). Timber harvesting and hunting is prohibited in these areas. Official figures state that Peninsular Malaysia has approximately 13% of its land under protection, consisting of protection forests within PRFs, wildlife areas/sanctuaries and State Parks. PAs under different networks are governed by different laws with varying degrees of protection status, and gazetting and de-gazetting procedures (UNDP, 2013). In general, Protected Areas (PAs) in Malaysia can be grouped according to the laws used for their establishment (Sukswan & Abidin, 2012):

- National parks and state parks under the park laws
- Sanctuaries or reserves under the wildlife laws
- Protection forests under the forestry laws
- Marine parks and fisheries prohibited areas under the National Fisheries Act 1985
- Areas reserved for a public purpose under the land laws

The Protection of Wildlife Act 1972 was repealed and replaced by the Wildlife Conservation Act 2010 which came into force in 2011 (Ministry of Natural Resources and Environment, Malaysia, 2014). The new Act contains significantly stricter provisions on species protection by adding species to the protective status and alleviating the protection of several species (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for "presumptions under the law" (Ministry of Natural Resources and Environment, Malaysia, 2014). Simply by being in possession of snares, the presumption under the law is that there was the intention to hunt, trap and/or kill wildlife which is punishable by a fine of up to RM100,000 and a prison term of up to three (3) years or both. There is also the presumption now that if any wildlife or any part or derivative or any wildlife or snare is found on any premises, the 'occupier' of the premises is presumed to be in possession of the above (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for more punitive measures (Ministry of Natural Resources and Environment, Malaysia, 2014). For example, any person who has been convicted of an offence under the Act or any of its subsidiary legislation may be barred from holding any license, permit or special permit for hunting, commercial use of wildlife, or research for a period not exceeding five (5) years (Ministry of Natural Resources and Environment, Malaysia, 2014). Another significant change made under the new Act relates to the power to compound offences under the previous Act (Ministry of Natural Resources and Environment, Malaysia, 2014). As a result, certain offences such as failure to obtain prerequisite special permits in relation to Totally Protected species, the female or the immature of a Totally Protected species will result in prosecution of the offence rather than an offer to compound the offence through a fine (Ministry of Natural Resources and Environment, Malaysia, 2014).

Under the Aboriginal Peoples Act 1954, all matters pertaining to land, including the gazetting and de-gazetting of aboriginal reserves come under the purview of the State, who may by notification in the gazette, declare any area exclusively inhabited by aborigines to be (a) an aboriginal reserve, (b) an aboriginal area, or (c) an aboriginal inhabited area. An aboriginal reserve is to be gazetted, under which no land may be declared for other uses such as sanctuary for wild animals, or reserved forests, neither shall lands be alienated, granted or leased except to Orang Asli who are resident there, and no temporary occupation of the land is permitted. An aboriginal inhabited area has almost similar protection, except the Director General of the Department of Orang Asli Affairs (JHEOA) has the power upon consultation to issue licence for collection of forest produce to people other than the Orang Asli residents. An aboriginal inhabited area may be declared by the state government, but the state has authority to revoke it and there appears to be no provision of any obligation imposed on the state to replace any land taken or de-gazetted. A total of 32 timber species has been identified by the State Forestry Departments to be retained from selective harvesting in the PRF (Forestry Manual 2003 and Field Manual for Selective Management System). However, this prescription does not apply to forest clearance activities (even inside forest reserves).

There are no such requirements for logging on areas outside forest reserves such as on alienated land or on State Land.

Peninsular Malaysia has allocated some forest areas for conservation of wildlife and endangered species. These forests area are demarcated and gazetted as such. Logging can take place only in forest areas that are identified as production forest.

Logging in protected areas is not permitted.

Description of Risk

Illegal logging, takes place in protected areas, and there are issues with the level of control by authorities due to lack of resources. This type of illegal logging however is conducted on a small scale by local people who use the timber for housing and personal village consumption. The timber is not included in the commercial timber chain.

The requirement for selective logging within forest reserves to identify and protect the specified retention species is not always observed. Often the control of an active logging site takes place primarily at the Forest Checking Station and there is often inadequate monitoring of logging within the forest (Expert consultation conducted by NEPCon, 2015).

In Malaysia, most protected areas and forest reserves are surrounded by oil palm plantations and smallholdings (e.g. Taman Negara, Krau Wildlife Reserve, and Endau Romping National Park) (Azhar, Sapari, Zulkifly, Suhailan, & Sajap, 2013). There are occurrence and risk of oil palm plantations encroaching into the boundaries of protected areas, for example the Krau Wildlife Reserve in the state of Pahang (Ahmad, Jaafar, & Abdullah, 2011).

Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species in oil palm plantations. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Wyn, 2013). These two measures are intended to avoid impacts on the physical and ecological environment (Wyn, 2013). However, the effectiveness of the monitoring is often limited by manpower shortages and other constraints faced by DOE (Wyn, 2013).

As for the Orang Asli communities, apart from loss of land, they have complained that the opening of plantations has resulted in destruction of graveyards (Human Rights Commission of Malaysia (SUHAKAM), 2013). The situation is compounded by the fact that many foresters and administrators are typically unfamiliar with or not informed of the nature of Orang Asli traditional markers (e.g. graves, orchards, old village sites, sacred sites), resulting in high risk of destruction of Orang Asli's protected sites by plantation activities (Human Rights Commission of Malaysia (SUHAKAM), 2013). Most officers from the State Land and Mines Office, and District Officers are ignorant of the Aboriginal Peoples Act which should protect Orang Asli's reserves, and court decisions and precedents on Orang Asli land matters (Human Rights Commission of Malaysia (SUHAKAM), 2013).

As protected areas within the forest are often not respected and there is a lack of enforcement, the indicator is classified as Specified risk.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.9.6. Risk designation and specification

Specified risk for all timber source types.

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.
- Confirm that all legally established procedures for surveying, managing and protecting endangered or threatened species within the management unit have been followed.
- Review RIL implementation guidelines and reports of RIL implementation at forest level. Verification of RIL implementation in the forest shall be confirmed, and workers shall be interviewed to confirm awareness of RIL requirements.
- The satellite data from Global Forest Watch can give a first indication if harvesting is encroaching on protected areas.
- A press review can also help to identify if a company has been involved in hunting of protected species or destruction of protected areas.
- FME shall clearly outline areas allowed for harvesting and avoid harvesting within protected areas.

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

- Destruction of Disease-Bearing Insects Act (1975) - <http://faolex.fao.org/docs/pdf/mal86137.pdf> [Accessed 12 September 2018].
- Environment Quality (Declared Activities) (Open Burning) Order 2003 - <http://faolex.fao.org/docs/texts/mal70151.doc> [Accessed 12 September 2018].
- Environmental Quality (Clean Air) Regulation 1978 - Available at: <http://faolex.fao.org/docs/texts/mal38060.doc> [Accessed 12 September 2018].

- Environmental Quality (Control of Emission from Diesel Engines) Regulation 1996 - <http://faolex.fao.org/docs/texts/mal38069.doc> [Accessed 12 September 2018].
- Environmental Quality (Control of Emission from Petrol Engines) Regulation 1996 - <http://faolex.fao.org/docs/texts/mal45141.doc> [Accessed 12 September 2018].
- Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 Available at: <http://www.doe.gov.my/eia/wp-content/uploads/2012/03/Environmental-Quality-Prescribed-Activities.pdf> [Accessed 12 September 2018].
- Environmental Quality Act 1974. Available at: <http://faolex.fao.org/docs/pdf/mal13278.pdf> [Accessed 12 September 2018].
- Factories and Machinery (Noise Exposure) Regulations 1989 - <http://www.dosh.gov.my/index.php/en/legislation/regulations-1/regulations-under-factories-and-machinery-act-1967-act-139/507-03-factories-and-machinery-noise-exposure-regulations-1989/file> [Accessed 12 September 2018].
- Land Conservation Act 1960, revised 1989 - <http://www.kptg.gov.my/sites/default/files/article/Act%20385-land%20conserve.pdf> [Accessed 12 September 2018].
- National Forestry Act 1984 - <http://faolex.fao.org/docs/pdf/mal3252.pdf> [Accessed 12 September 2018].
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- Pesticide Act 1974 (Pesticide Registration) Rules 2008 - <http://faolex.fao.org/docs/texts/mal91852.doc> [Accessed 12 September 2018].
- Road Transport Act 1987(Act 334) - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20334.pdf> [Accessed 12 September 2018].
- Use & Standards Exposure of Chemicals Hazardous to Health (USECHH) Regulations 2000 - <http://www.dosh.gov.my/index.php/en/legislation/regulations-1/osha-1994-act-154/522-pua-131-2000-1/file> [Accessed 12 September 2018].
- Water Act 1920 (Act 418) - <http://faolex.fao.org/docs/texts/mal33533.doc> [Accessed 12 September 2018].
- Wildlife Conservation Act 2010 - [https://www.unodc.org/res/cld/document/wildlife-conservation-act-2010.html/Wildlife Conservation Act 2010.pdf](https://www.unodc.org/res/cld/document/wildlife-conservation-act-2010.html/Wildlife%20Conservation%20Act%202010.pdf) [Accessed 12 September 2018].

1.10.2. Legal authority

- State Environment Department
- State Forestry Department
- Department of Environment (DOE): is responsible to prevent, eliminate, control pollution and improve the environment, consistent with the purposes of the Environmental Quality Act 1974.
- Department of Occupational Safety and Health (DOSH): is responsible for the administration and enforcement of legislations related to occupational safety and health of the country.
- Department of Director General of Lands and Mines (JKPTG): is responsible for Amendment or improvement of any provision of land law and legislation regarding with land administration; Management of the record of Federal Government's Property in Land; Acquisition of the alienated land for Federal Project purposes; Tenancy and enforcement of Federal Government's Property in Land; and Management of Small Estate Distribution.
- Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984.
- Department of Agriculture (DOA): is responsible for the provision of consultation services, technical support and professional advice in various agricultural field to ensure sufficient food production that are safe for consumption and control environmental pollution.
- Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: is responsible for the enforcement of the Wildlife Conservation Act 2010 and National Parks Act 1984.
- Department of Irrigation and Drainage (DID): is responsible to provide engineering expertise services and water resources management including river management, coastal and manage flood and drought to improve water security and environment sustainability.

1.10.3. Legally required documents or records

- EIA Report approved by the Department of Environment
- Forest Management Plan
- Seed Production Area
- Comprehensive Harvesting Plan
- List of fruit trees prohibited for felling

1.10.4. Sources of information

Government sources

- Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Putrajaya: Environmental Requirements: A Guide for

Investors.[online], Available at: <http://www.doe.gov.my/eia/wp-content/uploads/2012/03/A-Guide-For-Investors1.pdf> [Accessed 12 September 2018].

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- forestlegality.org (N.Y.). *Forest Legality Alliance Risk Tool – Malaysia*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/malaysia#tab-management> [Accessed 12 September 2018].
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Kebangsaan Ekonomi Malaysia Ke VIII 2013, (pp. 991 - 1003). available at: http://www.ukm.my/fep/perkem/pdf/perkemVIII/PKEM2013_4B4.pdf [Accessed 12 September 2018].

1.10.5. Risk determination

Overview of Legal Requirements

The Environmental Quality Act 1974 requires that forest enterprises must carry out an Environmental Impact Assessment prior to harvesting for logging areas of more than 500 hectares. The sensitive areas are normally identified in the approved topographic map. Monitoring is to be conducted during and after the harvesting activities. EIAs must include landscape level considerations, as well as the impacts of on-site processing facilities appropriate to the scale and intensity of forest management. EIAs must take into consideration the conservation of biological diversity and its associated values, water resources, soils and unique and fragile ecosystems. There are also requirements to ensure no discharge into Malaysian waters including no open burning and no pollution of soil. Buffer strips are required along streams and rivers and must be described in the Forest Management Plan.

Environmental Impact Assessments (EIAs) are required for logging areas greater than 500 ha. The Waters Act, 1920 and Wildlife Conservation Act, 2010 governs water resources and wildlife.

In Peninsular Malaysia, the respective State Forestry Department determines if the harvesting area to be licensed is subject to an EIA requirement.

Description of Risk

According to Lim (2013) "... in Peninsular Malaysia, very few EIAs for forest clearance for rubber and oil palm plantations have actually been produced since the Department of Environment rarely enforces this requirement and the Forestry Department deliberately facilitates projects to circumvent the EIA requirement by issuing licenses below the 500 ha threshold. Recent audits by the Malaysian Auditor General and reports in local newspapers have highlighted six prominent cases in Peninsular Malaysia where the Environmental Quality Act 1974 is alleged to have been flouted by failure to produce an EIA or failure to comply with prescribed mitigating measures".

In general most enterprises are in compliance with the requirement to conduct EIAs for areas over 500 hectares, but it is common that environmental requirements are not implemented. There is low control and monitoring by the Department of Environment, unless complaints are made; but logging is often conducted in remote areas that are closed to the public, and thus such offences are rarely detected. The level of enforcement is fully reliant on inspection by the respective agency which is generally limited in capacity (Expert consultation conducted by NEPCo, 2015).

In forest reserves, licence holders exploit an administrative loophole to harvest areas larger than 500 ha without an EIA by ensuring that the area to be logged is sub-divided into multiple licences, none of which individually exceed 500 ha.

Companies logging rubber plantations (particularly those on alienated land) seldom have completed EIAs prior to commencing their activities.

The DOE has had limited resources to undertake its functions (Memon, 2012 and Yaacob & Yusof, 2013). The DOE also has limited powers to deal with the land planning system (Maidin, 2005). This is because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005). Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action has been extremely low (Maidin, 2005). In 2014, Malaysia Federal Court judge Datuk Azhar Mohamed told a UN forum that enforcement agencies in Malaysia “do not have sufficient trained officers and tools, and many cases are not brought before the courts” (AHMAD, 2014).

There are serious problems with the EIA system under the law as it requires control measures in the EIA, but environmental audit to monitor the implementation of controls measures is not required (Yaacob & Yusof, 2013). Most sites are visited by DOE only once or twice a year, and there are high chances that plantation management units delay or do not comply with the control measures in the EIA (Yaacob & Yusof, 2013). There is also commonly a conflict of interest between the companies and the consultants they hire to do the EIA, and there are also loopholes whereby an EIA is required based on the size of the project but plantation companies can easily break the project into smaller lots to avoid the EIA requirement (Sharom, 2008). Most officials from environment related departments including the Town and Country Planning Department and the DOE often lack sufficient expertise to vet the Development Proposals and the EIA reports submitted by the applicants seeking for grant of planning permission (Maidin, 2005). Monitoring compliance of the EIA process is lacking due to lack of personnel and increasing numbers of newly approved development projects (Maidin, 2005).

Based on the risk of the lack of complying with environmental requirements, the risk is considered Specified for all timber sources.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.10.6. Risk designation and specification

Specified risk

1.10.7. Control measures and verifiers

- Ensure an EIA has been prepared for any FME greater than 500 ha.
- Third part verification of the implementation of the mitigation measures as prescribed in the EIA should be observed and cross-checked.

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

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1.11.2. Legal authority

- The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards
- The Department of Occupational Safety and Health (DOSH) is the department under MOHR responsible for the safety, health and welfare of the working people.

1.11.3. Legally required documents or records

- Employers and self-employed persons are required to produce a written Occupational Health & Safety policy, and employers advise employees about the content of the policy, and make revisions based on suggestions made by his employees
- Safety and health records
- Safety procedures
- Meeting minutes by safety and health Committee
- Records on equipment and maintenance

1.11.4. Sources of information

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1.11.5. Risk determination

Overview of Legal Requirements

The Occupational Safety and Health Act 1994 and regulations have the principal objective of providing for the prevention of harm to employees at work. This legislation applies to workers involved in harvesting timber from all forest types (forest reserves, alienated land and State land). These include:

- Active management commitment: A policy statement that reflects commitment to the health and safety of employees, employers and others.
- Hazard identification and control: A systematic identification of hazards to employees in the workplace, including appropriate controls.
- Information, training and supervision: Systems in place to ensure workers have the training or supervision to do the work safely and efficiently.
- Accident reporting and investigation: Investigation and recording of employee workplace accidents (and appropriate documentation).
- Emergency procedures: A plan covering procedures during emergencies, which may occur on the job.

The Act places responsibilities on employers, self-employed people and employees to ensure that their work activities do not harm themselves or other people. For forest operations, other people include visitors, people passing the operation, and the general public who may be in the vicinity of an operation.

Under the Act, employers are required to provide and maintain a safe working environment; provide and maintain facilities for the safety and health of employees; ensure that machinery and equipment are safe for employees; ensure that working arrangements are not hazardous to employees; provide procedures to deal with emergencies that may arise while the employees are at work; and provide information, instruction, training and supervision as is necessary.

Employers have general duties relating to the management of particular hazard, e.g. working at heights above three meters; activities under raised objects; earthworks and excavations; harmful noise; cleaning, maintenance and repair of machinery; protective structures of self-propelled plant; employment of young persons. Refer to Section 15, Part IV, OSHA 1994

Employers have a duty to maintain, keep clean and provide access to the following facilities, sufficient for the place of work: washing facilities; toilets; drinking water; first-aid equipment; facilities for employees who become ill at work; facilities for changing and storing clothes; facilities for meals; lighting; emergency exit plans.

Description of Risk

There is still lack of awareness of health and safety requirements amongst Forest Management Enterprises, particularly by small business owners/private land owners. On-site workers seldom wear personal protective equipment; first aid kits are lacking; and there is no strict enforcement of these requirements (Expert consultation conducted by NEPCon, 2015).

There is a requirement to report to DOSH regarding any accidents. DOSH has the authority to close operations until accidents have been investigated. If there is a breach, the director or CEO of the FME can be brought to court. Thus, accidents are often not reported by the FME and there is a lack of knowledge of accident statistics. Statistics from DOSH on occupational accidents by sector in 2017 up to the month of April shows that the "Agriculture, Forestry, Logging and Fishing" sector recorded the second highest number of occupational accidents among other sectors, indicating high risk in workers' health and safety in this sector (DOSH, 2017).

While the legal requirements for OSH effectively covers the potential risks in the forestry sector, research shows several instances of alleged breaches of the OSH requirements (Al-Mahmood, 2015; Human Rights Watch, 2011; Villadiego, 2015; US Department of State, 2016). Of special interest to Peninsular Malaysia is the Wall Street Journal report by Al-Mahmood (2015), who reported grave breaches of OSH standards in FELDA plantations.

One study conducted by Kumar, Ismail & Govindarajo (2014) suggested that OSH breaches were more common in smallholder- than large-scale (palm oil) plantations. However, this suggestion stands in contradiction to the widespread OSH breaches reported in FELDA-plantations by Al-Mahmood (2015).

While reports of OHS breaches in the forestry sector are not as common as the palm oil sector, it does show a breakdown of the monitoring and enforcement of the requirements, which may impact the forestry sector in a similar way.

Although a number of the risks mentioned here are specific to the palm oil sector, based on a precautionary approach, the indicator has been assessed as specified for all timber sources.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

- Verify Health and Accident records are kept
- Conduct thorough review of Health and Accident records and relevant documents; and when required conduct field verification.

- FME shall observe occupational health and safety requirements by all personnel involved in harvesting and forest management activities: provide and maintain a safe working environment; provide and maintain facilities for the safety and health of employees; ensure that machinery and equipment are safe for employees; ensure that working arrangements are not hazardous to employees; provide procedures to deal with emergencies that may arise while the employees are at work; and provide information, instruction, training and supervision as is necessary.
- Interviews with staff and contractors shall confirm that legally required protection equipment is provided by the FME and used by laborers.

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

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1.12.2. Legal authority

- Malaysia's State Labour Department KWSP (Employment Provident Fund - EPF)
- PERKESO (Social Security Organization - SOCSO)
- Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards
- State Industrial Relations Department
- Department of Labour, Peninsular Malaysia
- Occupational Health and Safety Department – Responsible for reviewing, enforcing and promoting industrial health and safety
- The Industrial Court of Malaysia: Main functions are to "... hear and down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties" (Industrial Court of Malaysia, n.d.) and to monitor the collective agreement reached between the employer/trade union of employers and trade union of employees - <http://www.mp.gov.my/en/about-us/client-s-charter>
- Social Security Organization (SOSCO): Government Agency administering and enforcing the Employee Social Security Act 1969 and Employee Social Security General Rules 1971
- Ministry of Finance
- Employees' Provident Fund (EPF): Management of mandatory savings- and retirement planning for all Malaysian workers in the private sector. To Malaysians, membership of EPF is obligatory and voluntary for non-Malaysian workers.
- Ministry of Home Affairs: Main function is "To ensure orderly management of the issue of travel documents, entry/exit of citizens and foreign nationals as well as the issue of appropriate passes to foreign nationals who reside in this country in accordance with immigration acts and regulations" - <http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian>
- The Immigration Department: Charged with issuance of passports and travel documents to Malaysians, visas, passes and permits to foreign nationals and management the movement of people at authorized entry and exist points - <http://www.imi.gov.my/index.php/en/corporate-profiles/introduction.html>
- Plantation Industries and Commodities Ministry: The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies regarding finance and implementation

1.12.3. Legally required documents or records

- Work Permits for Foreign Employees
- EPF Contribution Statements
- SOCSO Contribution Statements
- Employment Contract
 - Subject to the Employment Act 1955 and the Industrial Relations Act 1967, any employer or self-employed person must provide his/her employees with a written

contract of employment (unless the duration of the work is less than one month, in which an oral contract will suffice)

- The contract must include the following information:
 - Names of both employer and employee
 - Job title
 - Date of commencement of work
 - Place of work as well as work address
 - Required notice period as well as retirement age
- By law, following minimum terms and conditions must be adhered to:
 - No more than 48 hours per week
 - No more than 8 hours per day (maximum 10 hours if spread over a day)
 - A minimum 30 minutes of rest for every five hours worked
 - One day off per week
- Migrant workers also need to have a valid passport and a valid visa, and pass a medical exam prior to employment

1.12.4. Sources of information

Government sources

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1.12.5. Risk determination

Overview of Legal Requirements

Rights and benefits for workers engaged in forestry are mostly covered in the Employment Act 1955, which includes wages, maternity benefits, working hours and paid leave.

Section 8 of the Employment Act 1955 and Section 5 of the Industrial Relations Act 1967 (IRA) prescribe the inclusion in the individual worker's employment contract any condition restricting the rights of workers to organize or join a union and participate in its lawful activities. Sections 5 and 7 of the Industrial Relations Act 1967 lists Unfair Labour Practices such as intimidation, dismissal or threat of dismissal for joining a trade union or becoming an office bearer, discrimination against a union member in regard to employment,

promotion, conditions of employment and working conditions. However, the IRA also states explicitly that an employer may dismiss, demote, transfer or refuse to promote a worker on other grounds.

Establishment of unions is allowed only when approved by the Management of an FME before being registered by the industry. Unions are not common in FMEs and there are no unions in the FMEs in Peninsular Malaysia. The Malaysian Trade Union Act guarantees the right to form or participate in trade union activities, but it restricts the right to strike, calling for "socially responsible behaviour". Strikes are extremely rare in Malaysia for several reasons, including strong demand in the labour market and the Government's promotion of "industrial harmony" (summary of information provided by Liaw and Henry, 2011).

The Employment Act 1955 (EA) covers employees that have a monthly salary less than 2,000MYR, engage in manual labour, supervise manual labour, operate propelled machinery, or work as a domestic servant, as well as employees in certain positions in sea-going vessels (ICLG, 2016).

The coverage of manual labour means that the EA effectively covers most forestry workers and is significant to the forestry industry. Employees covered by the EA have the following minimum terms and conditions of employment:

- Maximum hours of work per day and per week;
- Overtime payment for work more than normal hours of work;
- Protection from deduction of wages;
- Paid annual leave/vacation leave;
- Paid sick leave
- Minimum 10 paid public holidays, five of which are determined by law
- Termination notice period
- Payment of termination benefits, except in cases where the termination of employment is due to misconduct or poor performance
- A minimum wage of 920MYR per month or 4.42 per hour in Sarawak (ICLG, 2016)

The EA requires all employees in the private sector to be members of the Employee's Provident Fund (EPF) and the Social Security Organization (SOCSO). EPF handles savings- and retirement- planning, while SOCSO provides medical insurance. SOCSO membership is contingent upon a salary not exceeding 3,000MYR unless the employee is a registered contributor (PERKESO, n.d.).

An important note is that foreign nationals working in Malaysia are excluded from EPF and SOCSO (ICLG, 2016). Instead, foreign workers are covered by the Workmen's Compensation Act. The EA also states that all contracts with a duration of one month or more must be in written form and contain provision for termination. Should a written contract not exist, the employment relationship and contractual terms still stand (ICLG, 2016)?

People working in the forest sector in Malaysia are covered by the EA and thus enjoy a set of minimum terms and conditions of employment, as well as implied rights to protection from unjust dismissal (ICLG, 2016). Unionizing is governed by the Trade Unions Act 1959 (TUA) and the Industrial Relations Act 1967 (IRA). Membership is restricted to certain sectors and

the law prohibits migrant workers from forming a trade union but allows for migrant workers to join an existing union. Subject to section 28(1) of the Trade Union Act, a migrant worker cannot hold an executive position in a trade union.

Malaysian law states that all job vacancies must be offered to Malaysian nationals before opening for migrant applications. An application to the Immigration Department (ID) is made by the employer and if successful, the ID will grant the employer with a license to import migrant workers. Migrant workers must then be able to show a valid visa and passport as well as pass a medical exam (Othman & Rahim, 2014). Upon expiry of the visa (usually valid for three months), the migrant worker is terminated. Migrant labour is thus temporary, and workers are tied to one Malaysian employer.

Referent to the Workmen's Compensation Act of 1952, all employers must insure all their foreign employees. In addition, it is the duty of the employer to produce a written OSH policy for the workplace, hire a safety and health officer (only in some cases) as well as provide the necessary training to the employees (ILO, 2013). Migrant labourers in Malaysia thus enjoy legal protection that is like that of Malaysians.

Description of Risk

According to the experts consulted, there is a risk that wages are below the minimum prescribed level. They reported examples of wages being lower than minimum pay, which often occurs through the contractor providing housing, water and electricity and deducting this from the minimum cost. This is an illegal practice, as housing and medical care cannot be used as an equivalent to wages.

There is also a risk that migrant workers are not afforded the correct legal working conditions.

Although the laws of Malaysia do not discriminate against migrant workers, in practice, the rights of migrant workers are not protected: workers suffer from non-payment of wages, wrongful deduction of wages to cover work permits, long working hours, sub-standard living conditions (also applicable to Malaysian forest workers); no insurance cover; travel documents withheld by employers; and unfair dismissal, etc. (Liaw and Henry, 2011).

"A significant share of the workforce in Malaysia comprises legal and illegal foreign workers from Indonesia, Bangladesh and the Philippines. One estimate indicates that there were or are more than 800,000 illegal workers in Malaysia. The presence of illegal workers often signifies that other labor-related laws are ignored. For example, the quality of the housing and amenities available to fieldworkers often falls short of the standard prescribed by law. One study finds that more than 35% of estate families live in houses that do not meet the basic minimum requirement, regulated by the Workers Minimum Standards of Housing and Amenities Act 1990." (Lim, 2013, p. 27). However, this is not widespread in the forest management area in Peninsular Malaysia and workers are often locals.

Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage. Other common treatment of foreign workers includes passport retention, contract violations, restricted movement, wage fraud, poor housing conditions and lack of H&S training (NEPCon Expert Consultation 2015).

Industrial growth in Malaysia has often led to an acute labour shortage in certain sectors, necessitating an influx of migrant workers. According to the 2015 Trafficking in Persons (TIP) report prepared by the US Department of State, Malaysia is a major destination for illegal trafficking and forced labour. This has been especially evident in the palm oil industry in Malaysia and Indonesia, which employs a total of some 3,5 million workers (Villadiego, 2015). In Malaysia, most of these workers are migrant workers from the Philippines, Nepal, Bangladesh and Indonesia.

It is estimated that Malaysia currently has two million documented, and even more undocumented, foreign workers (US Department of State, 2016, p. 254).

Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage (US Department of State, 2016).

Common policies in the treatment of foreign workers further include passport retention (both authorized and unauthorized), contract violations, restricted movement, wage fraud and imposition of debt by both recruitment agents and employers (US Department of State, 2016, p. 255).

In 2015, the Business & Human Rights Resource Centre concluded that: "There have been complaints of mistreatment, exploitation by unscrupulous recruitment agencies, physically abuse and poor living and work conditions of foreign workers" and further that these problems are exacerbated by the lack of law enforcement.

Several reports of abuse of foreign workers in Malaysian oil palm plantations have surfaced in the media in the last couple of years. Of greatest relevance to Peninsular Malaysia is probably an article by the Wall Street Journal in 2015 that reported horrible treatment and systematic abuse of foreign workers in some plantations (Al-Mahmood, 2015). Workers reported that they did not receive their salaries, lived secluded from society in inadequate housing, lacked training in operating machinery and spraying herbicides, and had to cover their own medical costs. Because they were in Malaysia illegally, they dared not complain to the employer (Al-Mahmood, 2015). This is one of many cases of alleged abuse of foreign workers in the Malaysian palm oil industry, which have prompted the US Department of Labor to designate palm oil as a product produced by both forced- and child labour (US Department of Labor, 2014). Hence, despite enjoying legal protection close to that of Malaysian nationals, reports of abuses of foreign labour are much more prominent in the media.

While the most publicised instances of illegality in this indicator relate to the palm oil sector, and not the forestry sector, it does indicate a breakdown in governance, and inadequate monitoring and enforcement of these requirements. Available data is not sufficient to determine whether legal employment requirements are enforced in the forestry sector, so a precautionary approach has to be applied for this indicator. The risk is considered specified for all timber sources.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.12.6. Risk designation and specification

Specified risk

1.12.7. Control measures and verifiers

- Conduct thorough review of employment records and relevant documents; and when required conduct field verification.
- For high risk migrant workers, interviews with workers shall confirm receipt of wages (and that wages have not been deducted to cover work permits), legal working hours, adequate living conditions, insurance and that travel documents are not being withheld by employers.
- Review the records of number of people employed
- Compliance Report
- SFMLA (Sustainable Forest Management Licence Agreements)
- Work permits for foreign workers

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

- Aboriginal Peoples Act 1954. (Sections 6, 7, 8, 10, 13 and 19) Available at: <http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf> [Accessed 12 September 2018].
- Federal Constitution of Malaysia 1963- [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf) [Accessed 12 September 2018].
- Land Acquisition Act 1960 - <http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf> [Accessed 12 September 2018].
- National Forestry Act 1984. (Sections 19, 28, 33, 34, 40 and 62) Available at: <http://extwprlegs1.fao.org/docs/pdf/mal3252.pdf> [Accessed 12 September 2018].
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- National Land Code. (for Malay reserve) Available at: <http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf> [Accessed 12 September 2018].
- UN Declaration on Rights of Indigenous Peoples 2007. Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Accessed 12 September 2018].

1.13.2. Legal authority

- State Forestry Department
- Department of Orang Asli Affairs (JAKOA)
- State Land Office
- Ministry of Rural Development - Department of Orang Asli Development (JAKOA) - Government agency overseeing the affairs of the Orang Asli "... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service" (Federal Constitution, Article 8(5)).
- Ministry of Home Affairs - The National Registration Department (NRD) - Responsible for the registration of important events of all Malaysians, including birth, adoption, marriage, divorce and death. NRD also distributes Identification Cards and determines citizenship status.

1.13.3. Legally required documents or records

- Gazettal record of permanent reserved forest (PRF)
- Concessionaires' agreements
- Forest harvest license
- Entry permits
- Road permits
- Use permits
- Maps of aboriginal reserves/area/customary land area/inhabited place
- Record on relevant decision by the Civil Court
- Contract agreement with local communities with use rights for use of Land titles

1.13.4. Sources of information

Non-Government sources

- Adong bin Kuwau & Ors v Kerajaan Negeri Johor [1998] 2 MLJ 158 (Court of Appeal); Superintendent of Land & Surveys Miri Division & Anor v Madeli bin Salleh (suing as Administrator of the Estate of the deceased, Salleh bin Kilong) [2008] 2 MLJ 677 (Federal Court).
- Aiken, R., & Leigh, C. H. (2011). In the Way of Development: Indigenous Land-Rights in Malaysia. *The Geographical View*, 1-127.
- Amnesty International. (2016). *Amnesty International 2015/16: The State of the World's Human Rights*. Amnesty International.
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- Hoare, A. (2015). *Illegal Logging and Related Trade - The Response in Malaysia*. [online]. A Chatham House Assessment. Chatham House, London. Available at: <https://www.chathamhouse.org/publication/illegal-logging-and-related-trade-response-malaysia> [Accessed 12 September 2018].
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1.13.5. Risk determination

Overview of Legal Requirements

Peninsular Malaysia is inhabited by the Orang Asli, who is "... the most impoverished and marginalized community in Malaysia" (Subramaniam, 2015, p. 73). The Orang Asli enjoys two statuses: Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples (Nicholas, 2010). The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite of this constitutional and statutory protection, the Orang Asli faces difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia (PM), the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and thus occupies the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land. The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004). In addition to the issues of land access, the Aboriginal Peoples Act 1954 transfers many administrative duties and rights of the Orang Asli to the Federal- and State governments, including the right to determine whether a person is Orang Asli, appointment of Orang Asli heads (Batin) and restriction of any material whether written or photographic deemed harmful by the relevant government (Subramaniam, 2015, p. 80). Consequently, the term Orang Asli places both makes their identity, leadership and ethnicity as a state responsibility (Subramaniam, 2015).

There exists a legal ambiguity in relation to the Orang Asli, as the legal framework on the one side provides recognition and protection on the special status of indigenous communities, while also affording incontestable power over land matters to the State authority as well as a paternalistic transfer of rights away from the Orang Asli. Consequently, while there exists little doubt of the encroachment of land development projects on customary Orang Asli land, both the Federal- and State governments oftentimes operate within the law to make these concessions. However, the Orang Asli's customary right to land is increasingly recognized by the High Courts in Malaysia, which have ruled in favour of the Orang Asli in many disputes (Nicholas, 2010, pp. 7-9). No court rulings have so far led to a change in legislation.

An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical

expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the Orang Asli is in contradiction with Malaysia's international moral obligations.

The Malaysian superior courts have recognised and repeatedly reaffirmed the native customary rights of Orang Asli since 1997 due to, among other factors, the special position of the Orang Asli under Article 8(5)(c) of the Federal Constitution (Thiru, 2016).

Aboriginal Reserves and Aboriginal Areas may be allowed to be harvested with prior consent of the Jabatan Kemajuan Orang Asli, Malaysia (JAKOA; Department of Orang Asli Development, Malaysia) and subsequent approval of the State Authority concerned. In addition, Indigenous people are allowed to collect forest produce from State Land for their own consumption (although not for trade). With regard to Indigenous Peoples, the schedules of the National Land Code (which applies only to Peninsular Malaysia) make reference to Indigenous areas and Indigenous reserves, requiring any dealings relating to such areas to make note of the number and date the areas were gazetted as such (e.g. Sch I, Form 5B).

In addition to statutory law, the Malaysian courts have held that customary land rights are also defined by reference to the broader native conception of native customary tenure under native law and customs.

Description of Risk

According to Chatham House, 'Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by law; for this reason, they are not considered in the issuance of licences or subsequent management plans.

Despite legal recognition, there are numerous examples where the customary rights of indigenous peoples have been violated, with many cases filed in the civil courts. As a result, a number of judicial decisions have been taken to integrate customary law into the modern legal framework. However, the policy and legislative reforms necessary to implement those decisions have not been made. This has implications for the legality of timber harvested from land where indigenous peoples claim their customary land rights.' (Hoare, 2015, p. 13).

There have been cases of Orang Asli's claims to customary lands not being marked or identified in the cadastral maps of the Department of Survey and Mapping Malaysia or the Jabatan Ukur dan Pemetaan Malaysia (JUPEM). This has meant that these claims have not been taken into account when, e.g., a new plantation is to be licensed.

The Department of Orang Asli Development (JAKOA) has admitted having insufficient resources to deal with applications for gazettal, and applications have been found not to be forwarded to the right departments, and have thus not been processed.

Furthermore, many Orang Asli witnesses – whose villages were included in logging concession areas within forest reserves – have testified that logging licensees had destroyed their sacred areas and old grave sites that had existed for generations, thus eliminating evidence of their continued occupation in the area (HRWM 2013).

Some mechanisms are in place for the resolution of disputes but these deal mostly with disputes between holders of customary rights. The village development and security committees provide a mechanism for resolving conflicts over property rights at the village level. For disputes between communities and licence holders and/or the Government, resolution can be sought through the courts or mediators. Such conflicts are widespread. The Indigenous in Peninsular Malaysia are supported by NGOs, and cases are continually being filed in the courts (IWGIA 2015; HRCM 2013).

Conflicts in areas being logged selectively inside forest reserves have decreased since 2012, since forest management has been more engaged with people. This has not been the case when large-scale conversion is taking place (whether in forest reserves, alienated land or State Land).

Malaysia has not ratified ILO convention 169 on indigenous and tribal peoples. There are numerous court cases and allegations that commercial plantations had encroached on, or were introduced into, land claimed as indigenous customary land rights/title, without the community's knowledge or without complying the principles of free, prior and informed consent (see list of cases below). Furthermore, there is no legal definition or understanding or concept of 'traditional territories' (Nicholas 2010; Nicholas et al. 2010).

While a positive development is traceable in the Malaysian court system, this road to justice oftentimes requires vast amounts time and resources not in the possession of a marginalized community like the Orang Asli of Peninsular Malaysia (Nicholas 2010; Nicholas et al. 2010).

The issue of indigenous rights is less of an issue for plantations on alienated land since land claims are normally over areas that are still covered by natural forest (NEPCon Expert Consultation 2015).

The legal ambiguity mentioned above has caused multiple conflicts, consequently generating several high-profile cases of violation of customary rights, which have ended in the Malaysian High Courts.

- *Koperasi Kijang Mas v Kerajaan Negeri Perak*

Important case from the Ipoh High Court, where it was decided that the Orang Asli had exclusive rights to the forest produce in approved Orang Asli areas. An important point here was that these rights were in force despite the land only being approved for reserve and not yet gazetted (Nicholas, 2010, pp. 7-8)

- *Adong bin Kuwau & Ors v State Government of Johor*

Case from 1997 in the Johor High Court, where compensation was awarded 52 Jakuns for loss of ancestral lands. Despite not holding an official title to the land, the Johor High Court recognized the customary rights of the Jakuns to use the land. Hence, the case implied that aboriginal peoples have right to hunt and gather on lands other than those reserved for indigenes (Nicholas, 2010, p. 8)

- *Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors*

In 2002, the Shah Alam High Court ruled that the Temuans had propriety rights over their customary lands and thus should be compensated according to the rules of the Land Acquisition Act 1960. The Temuans had been evicted from their land to make way for a highway to the Kuala Lumpur International Airport in 1995 (Nicholas, 2010, pp. 9-10). This

case set an important precedent and received a lot of media attention because the defendants were both private companies, Selangor State and the Federal Government.

In general, the disputes between the Orang Asli and the State- and Federal governments have been solved in the courts and the decisions of the courts seems to be respected by both parties. As accounted for above, it seems that the courts have been favourable to the Orang Asli. However, a court case is both protracted and expensive and consequently oftentimes out of reach for the Orang Asli, who are both few and politically disorganized (Weiss, 2006).

Based on the risk of violating customary rights (which can include third parties, indigenous peoples or traditional peoples' rights), the risk is considered Specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.13.6. Risk designation and specification

Specified risk

1.13.7. Control measures and verifiers

- Documents or records of consultations with local communities for any land or rights dispute resolutions.
- The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in a given case.
- Newspaper reviews and interviews can be part of the set of verifiers to assess the situation.
- Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.

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

- Aboriginal Peoples Act 1954. Available at: <http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf> [Accessed 12 September 2018].
- National Forestry Act 1984. Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk [Accessed 12 September 2018].
- National Land Code. Available at: <http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf> [Accessed 12 September 2018].

1.14.2. Legal authority

-
- N/A

1.14.3. Legally required documents or records

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- N/A

1.14.4. Sources of information

Non-Government sources

- Hoare, A. (2015). *Illegal Logging and Related Trade - The Response in Malaysia*. [online]. A Chatham House Assessment. Chatham House, London. Available at: <https://www.chathamhouse.org/publication/illegal-logging-and-related-trade-response-malaysia> [Accessed 12 September 2018].

Malaysia Timber Certification Council (2012), 'Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)', Principles 3 (on indigenous peoples' rights) and 4 (on local community relations and workers' rights).

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1.14.5. Risk determination

Overview of Legal Requirements

There is no legal provision which compels for a free, prior and informed consent process in Peninsular Malaysia (JAKOA, 2016).

Risk Conclusion

N/A

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

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

1.15.1. Applicable laws and regulations

- Federal Constitution of Malaysia 1963 - [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf) [Accessed 12 September 2018].
- UN Declaration on Rights of Indigenous Peoples 2007. Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Accessed 12 September 2018].
- Land Acquisition Act 1960 - <http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf> [Accessed 12 September 2018].
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- National Land Code. Available at: <http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf> [Accessed 12 September 2018].
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Accessed 12 September 2018].
- Aboriginal Peoples Act 1954. (Sections 6, 7, 8, 10, 13 and 19) Available at: <http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf> [Accessed 12 September 2018].
- National Forestry Act 1984. (Sections 19, 28, 33, 34, 40 and 62) Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk [Accessed 12 September 2018].

1.15.2. Legal authority

- State Forestry Department
- State Land Office
- Department of Orang Asli Affairs (JAKOA)
- Ministry of Rural Development - Department of Orang Asli Development (JAKOA) - Government agency overseeing the affairs of the Orang Asli "... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service" (Federal Constitution, Article 8(5)).
- Ministry of Home Affairs - The National Registration Department (NRD) - Responsible for the registration of important events of all Malaysians, including birth, adoption, marriage, divorce and death. NRD also distributes Identification Cards and determines citizenship status.

1.15.3. Legally required documents or records

- Gazettal record of permanent reserved forest (PRF)
- Concessionaires' agreements
- Forest harvest license
- Entry permits
- Road permits
- Use permits
- Maps of aboriginal reserves/area/customary land area/inhabited place

Records of land reserved for aboriginal peoples and natives.

- Records of areas predominantly or exclusively inhabited by aboriginal peoples or natives
- Decisions of the Civil Courts pertaining to legal or customary title, tenure or use rights
- Evidence of any dispute and land claims

1.15.4. Sources of information

Non-Government sources

- Adong bin Kuwau & Ors v Kerajaan Negeri Johor [1998] 2 MLJ 158 (Court of Appeal); Superintendent of Land & Surveys Miri Division & Anor v Madeli bin Salleh (suing as Administrator of the Estate of the deceased, Salleh bin Kilong) [2008] 2 MLJ 677 (Federal Court).
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1.15.5. Risk determination

Overview of Legal Requirements

Peninsular Malaysia is inhabited by the Orang Asli, who is "... the most impoverished and marginalized community in Malaysia" (Subramaniam, 2015, p. 73). The Orang Asli enjoys two statuses: Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples (Nicholas, 2010). The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite of this constitutional and statutory protection, the Orang Asli faces difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia (PM), the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas.

In addition, the Orang Asli cannot obtain individual titles to their land and thus occupies the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land. The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004). In addition to the issues of land access, the Aboriginal Peoples Act 1954 transfers many administrative duties and rights of the Orang Asli to the Federal- and State governments, including the right to determine whether a person is Orang Asli, appointment of Orang Asli heads (Batin) and restriction of any material whether written or photographic deemed harmful by the relevant government (Subramaniam, 2015, p. 80). Consequently, the term Orang Asli places both makes their identity, leadership and ethnicity as a state responsibility (Subramaniam, 2015).

There exists a legal ambiguity in relation to the Orang Asli, as the legal framework on the one side provides recognition and protection on the special status of indigenous communities, while also affording incontestable power over land matters to the State authority as well as a paternalistic transfer of rights away from the Orang Asli. Consequently, while there exists little doubt of the encroachment of land development projects on customary Orang Asli land, both the Federal- and State governments oftentimes operate within the law to make these concessions. However, the Orang Asli's customary right to land is increasingly recognized by the High Courts in Malaysia, which have ruled in favour of the Orang Asli in many disputes (Nicholas, 2010, pp. 7-9). No court rulings have so far led to a change in legislation.

An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the Orang Asli is in contradiction with Malaysia's international moral obligations.

In Peninsular Malaysia, the Permanent Reserved Forest belongs to the State government where State Forestry Department is responsible for managing the area. The Forestry

Department is responsible for maintaining records or maps of the area inhabited by indigenous people outside or inside the forest reserved area.

Under the National Forestry Act 1984, the respective State Forestry Director ensures that areas gazetted as Aboriginal Reserves and Aboriginal Areas are excluded from areas planned for harvesting. However, these areas may be allowed to be harvested with prior consent of the Jabatan Kemajuan Orang Asli, Malaysia (JAKOA; Department of Orang Asli Development, Malaysia) and subsequent approval of the State Authority concerned. In addition, Indigenous people are allowed to collect forest produce for their own consumption. Licences and permits must contain provisions to ensure resources are not diminished and affirm the rights and interests of aboriginal peoples and natives on the land.

About Indigenous Peoples, the schedules of the National Land Code (which applies only to Peninsular Malaysia) make reference to Indigenous areas and Indigenous reserves, requiring any dealings relating to such areas to make note of the number and date the areas were gazetted as such (e.g. Sch I, Form 5B).

Description of Risk

According to Chatham House, 'Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by the forestry department; for this reason, they are not taken into account in the issuance of licences or subsequent management plans.

Despite legal recognition, there are numerous examples where the customary rights of indigenous peoples have been violated, with many cases filed in the civil courts. As a result, a number of judicial decisions have been taken to integrate customary law into the modern legal framework. However, the policy and legislative reforms necessary to implement those decisions have not been made. This has implications for the legality of timber harvested from land where indigenous peoples claim their customary land rights.' (Hoare, 2015, p. 13).

There have been cases of Orang Asli's claims to customary lands not being marked or identified in the cadastral maps of the Department of Survey and Mapping Malaysia or the Jabatan Ukur dan Pemetaan Malaysia (JUPEM). This has meant that these claims have not been taken into account when, e.g., a new plantation is to be licensed.

The Department of Orang Asli Development (JAKOA) has admitted having insufficient resources to deal with applications for gazettal, and applications have been found not to be forwarded to the right departments, and have thus not been processed.

Furthermore, many Orang Asli witnesses – whose villages were included in logging concession areas within forest reserves – have testified that logging licensees had destroyed their sacred areas and old grave sites that had existed for generations, thus, eliminating evidence of their continued occupation in the area (HRCM 2013).

Some mechanisms are in place for the resolution of disputes but these deal mostly with disputes between holders of customary rights. The village development and security committees provide a mechanism for resolving conflicts over property rights at the village

level. For disputes between communities and licence holders and/or the Government, resolution can be sought through the courts or mediators. Such conflicts are widespread. The Indigenous in Peninsular Malaysia are supported by NGOs, and cases are continually being filed in the courts (IWGIA 2015; HRCM 2013).

Conflicts in forest reserves have decreased since 2012, since forest management has been more engaged with people. This has not been the case when large-scale conversion is taking place.

The issue of indigenous rights is less of an issue for plantations on alienated land since land claims are normally over areas that are still covered by natural forest.

The legal ambiguity mentioned above has caused multiple conflicts, consequently generating several high-profile cases of violation of customary rights, which have ended in the Malaysian High Courts.

- Koperasi Kijang Mas v Kerajaan Negeri Perak

Important case from the Ipoh High Court, where it was decided that the Orang Asli had exclusive rights to the forest produce in approved Orang Asli areas. An important point here was that these rights were in force despite the land only being approved for reserve and not yet gazetted (Nicholas, 2010, pp. 7-8)

- Adong bin Kuwau & Ors v State Government of Johor

Case from 1997 in the Johor High Court, where compensation was awarded 52 Jakuns for loss of ancestral lands. Despite not holding an official title to the land, the Johor High Court recognized the customary rights of the Jakuns to use the land. Hence, the case implied that aboriginal peoples have right to hunt and gather on lands other than those reserved for indigenes (Nicholas, 2010, p. 8)

- Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors

In 2002, the Shah Alam High Court ruled that the Temuans had propriety rights over their customary lands and thus should be compensated according to the rules of the Land Acquisition Act 1960. The Temuans had been evicted from their land to make way for a highway to the Kuala Lumpur International Airport in 1995 (Nicholas, 2010, pp. 9-10). This case set an important precedent and received a lot of media attention because the defendants were both private companies, Selangor State and the Federal Government.

In general, the disputes between the Orang Asli and the State- and Federal governments have been solved in the courts and the decisions of the courts seems to be respected by both parties. As accounted for above, it seems that the courts have been favourable to the Orang Asli. However, a court case is both protracted and expensive and consequently oftentimes out of reach for the Orang Asli, who are both few and politically disorganized (Weiss, 2006). Based on the risk of violating the customary rights of the Indigenous people, the risk is considered Specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.15.6. Risk designation and specification

Specified risk

1.15.7. Control measures and verifiers

- Documents or records of consultations with local communities for any land or rights dispute resolutions.
- The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in a given case.
- Newspaper reviews and interviews can be part of the set of verifiers to assess the situation.
- Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.

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

- State Forest Rules: Second schedule (premium rate), Third schedule (royalty rate), Fourth schedule (forest premium and cess), Fifth schedule (liquidated damages)
- National Forestry Act 1984. Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk [Accessed 12 September 2018].

1.16.2. Legal authority

- State Forestry Department

1.16.3. Legally required documents or records

- Records of payments made by company
- Removal pass
- Delivery notes

1.16.4. Sources of information

Government sources

- forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: <http://www.forestry.gov.my/index.php/en> [Accessed 12 September 2018].

Non-Government sources

- Expert consultation conducted by NEPCon, 2015

1.16.5. Risk determination

Overview of Legal Requirements

The State Forest Rules govern the classification of the timber for harvest (Expert consultation conducted by NEPCon, 2015). The Removal Pass shall carry a record of the type/species and volume of produce. The classification shall be included in the removal licence (FORM 5).

In the PRF, the following is required:

- i. a record, with details of trees felled in each licensed area, is checked at the forest checking station, which is operated by the respective forest authorities, and the

record is verified against the details pertaining to the tree tag number, species and number of logs per tagged tree recorded in the tree tagging record. The forest checking station staff will check to ensure that the total volume of logs harvested is within the permitted limit. In addition, monitoring of the forest checking station will be conducted through reporting and random checking by the enforcement team.

- ii. Each log is stamped with Property Mark by the licensee (in the licensed area) which specifies its origin and ownership prior to the removal from the licensed area to the designated forest checking station.
- iii. Revenue/Royalty Mark - upon assessment and payment of royalty at the forest checking station, each log is stamped with the revenue/royalty mark by the respective forest authorities.
- iv. Issuance of Removal Pass - to be issued subject to inspection and confirmation on the above procedures. A removal pass contains information on license number of logging area, logging license holder, details of the logs (i.e. log number, species, length, diameter, volume), conveyor registration number and destination of logs. One Removal Pass is issued for each conveyer of logs at the forest checking station.
- v. Logs in transit are subject to random checking by the forestry authority to ensure that the details of logs being transported are as recorded in the accompanying removal pass. The consignment will be detained for further investigation if any infringement or irregularities are detected. Logs in transit are not allowed to be stored temporarily once the removal pass is issued.

In State Land and Alienated Land, only the following steps are required (relevant to this indicator):

- i. Each log is stamped with Property Mark by the licensee (in the licensed area) which specifies its origin and ownership prior to the removal from the licensed area to the designated forest checking station.
- ii. Revenue/Royalty Mark - upon assessment and payment of royalty at the forest checking station, each log is stamped with the revenue/royalty mark by the respective forest authorities.

Issuance of Removal Pass - to be issued subject to inspection and confirmation on the above procedures. A removal pass contains information on license number of logging area, logging license holder, details of the logs (i.e. log number, species, length, diameter, volume), conveyor registration number and destination of logs. One Removal Pass is issued for each conveyer of logs at the forest checking station. The Removal Pass is a legal and controlled document printed only by Government-approved agency/company. The quantity of logs received by the mills as recorded in the Removal Pass will also be kept and maintained by the mills. The mills are required to keep a log book containing information on logs stored and processed in these mills.

The Removal Pass is also required for timber from any other commercial felling operation but trees from other areas (such as from stateland, alienated land or timber from clearfelling operations) does not usually have unique serial numbers.

Both the Removal Pass and Exchange Removal Pass can be inspected at forest operator premises. A copy of the Removal Pass is retained by the relevant FCS. The custodians of the

Removal Passes are the primary processing mills. Value-adding processing mills that usually source their already-processed timber supplies (such as sawn timber or plywood) from primary processing mills do not possess the Removal Passes.

These classification requirements do not currently apply to plantation timber.

Description of Risk

According to the experience of the authors of this report, and the experts consulted in its preparation, while there is a theoretical risk of miss-classification of rubberwood (for example to launder other timber), there has been no evidence detected that this is a risk in practice. The incentive for under-declaration is low for rubberwood (since no royalty relates to this species) and miss-classification of species is relatively easy to detect (important to take into consideration that the supply chain for rubberwood does not interact with supply chain from other forest species).

The risk for timber from selective logging in forest reserves from the six states with MTCS certification is also considered low since it is regularly audited under the MTCC scheme (Expert consultation conducted by NEPCon, 2015). There are known cases where the MTCS has been revoked, and as such we have taken a precautionary approach to the five states where there are non-MTCS certified concessions in the PRF and have designated them as specified risk

However, the risk for timber from clear-felling inside forest reserves or timber from State Land/Alienated Land (other than rubberwood) is risk specified as the practice for classifying logs are often less accurate applied for logs from clear-felling areas. Royalties are still required, but the practice opens up for the possibility of false classification and because of lack of payment of royalties (see indicator 1.5 Payment of royalties and harvesting fees for more details) (Expert consultation conducted by NEPCon, 2015).

Risk Conclusion

Not applicable for Industrial Timber Plantations.

'Low risk' for rubberwood and for selective logging in forest reserves of the six states under MTCS certification. Threshold (1) is met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

'Specified risk' for the rest of the country. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.16.6. Risk designation and specification

Specified risk (*) for logs from clearfelling on Permanent Forest Reserve, State Land and Alienated Land, N/A for industrial plantations.

(*) Specified Risk for PRF in 5 out of 11 states, Low for the remainder of the PRF.

1.16.7. Control measures and verifiers

- Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges.

- Volumes, species and qualities given in sales and transport documents shall match the paid fees.
- Classification of species, volumes and qualities shall match the royalties and fees paid.
- Harvesting permit should verify origin. If timber originates from cleared areas royalty stamps on logs should be verified.
- Verification of the Removal Pass to ensure that the species and volumes are indicated with royalty payment correctly.

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

- State Forest Rules (Rules 16, 17 & 19)
- Director General of Forestry Directive JH/126 Jld. 2(6) dated 21 April 2010
- National Forestry Act 1984. Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk [Accessed 12 September 2018].

1.17.2. Legal authority

- State Forestry Department

1.17.3. Legally required documents or records

- Certificate of incorporation of company
- Removal pass
- Delivery notes
- Occupation permits for mills

1.17.4. Sources of information

Government sources

- mtib.gov.my (N.Y.) *Application For TLAS Licence Via Online*. [online]. MTIB. Available at: http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2141%3Aapplication-for-mytlas-licence-via-online&catid=1 [Accessed 12 September 2018].

Non-Government sources

- Hoare, A. (2015). *Illegal Logging and Related Trade - The Response in Malaysia*. [online]. A Chatham House Assessment. Chatham House, London. Available at:

<https://www.chathamhouse.org/publication/illegal-logging-and-related-trade-response-malaysia> [Accessed 12 September 2018].

- Expert consultation conducted by NEPCon, 2015

1.17.5. Risk determination

Overview of Legal Requirements

Timber tracking systems are used only for logs harvested from permanent reserved forests. Peninsular Malaysia has a paper-based tagging system and a Removal Pass system to trace logs from the forests to the mills. The Removal Pass system is integrated into the States' revenue collection system (Hoare 2015).

The company must be registered as a business entity and lorries and other transport vehicles must also be registered with relevant agencies/authorities as appropriate. This can be verified by reference to the certificate of incorporation of the company, consultation with the Ministry of Transport (regarding licences for commercial vehicles) and the Forestry Departments.

In Peninsular Malaysia, logs that are felled for commercial purposes are inspected for payment of royalties and Forestry Department cess at the Forest Checking Stations (FCS) manned by State Forestry Department officials. Once payment is made, a Removal Pass is issued for each lorry load. The Removal Pass carries a record of the type/species, volume of produce, and the payments made. The licensee must ensure that all logs transported from the FCS to the mills are accompanied by a Removal Pass or Exchange Removal Pass. An Exchange Removal Pass is issued by the relevant State Forestry Department in cases where the load has been inspected during transit (such as for transshipment of logs between states) or for a load transported from one mill to another.

Logs from selective logging within forest reserves are hammer-marked and tagged with serial numbers so it is possible to trace the logs back to stump. The Removal Pass is a legal and controlled document printed only by Government-approved agency/company. The quantity of logs received by the mills as recorded in the Removal Pass will also be kept and maintained by the mills. The mills are required to keep a log book containing information on logs stored and processed in these mills.

The Removal Pass is also required for timber from any other commercial felling operation but trees from other areas (such as from stateland, alienated land or timber from clearfelling operations) does not usually have unique serial numbers so tracing back to stump is not possible.

Any lorry transporting logs unaccompanied by a Removal Pass is considered illegal.

Both the Removal Pass and Exchange Removal Pass can be inspected at forest operator premises. A copy of the Removal Pass is retained by the relevant FCS. The custodians of the Removal Passes are the primary processing mills. Value-adding processing mills that usually source their already-processed timber supplies (such as sawn timber or plywood) from primary processing mills do not possess the Removal Passes.

The Malaysian Timber Legality Assurance System (MYTLAS) has been developed and is being implemented in Peninsular Malaysia, where it is managed by the Malaysian Timber Industry Board (MTIB). It uses the same paper-based tagging and Removal Pass systems for the

verification of origin and legality required for export licences. The system has been operational since February 2013. It is not obligatory but is being presented to industry as a tool to help those exporting to the EU to meet the due diligence requirements of the EU Timber Regulation (EUTR) (Hoare, 2015).

Description of Risk

As the Removal Passes are paper documents, this makes the process of tracking timber slow and cumbersome but is generally considered to be well implemented apart from timber from the clearance of rubber plantations for which the system is seldom (if ever) applied. (Hoare 2015).

The manual Removal Pass system is robust and can prevent massive fraud that could result from a centralized electronic system (Expert consultation conducted by NEPCon, 2015).

Original records or documents are kept by Forest managers/Land owners and copy by SFD

Despite the holes in the paper-based tracking system, it is generally considered well-implemented (Hoare 2012, Expert consultation conducted by NEPCon, 2015).

While there are no specific reports of illegalities or issues associated with the issuance of removal passes, given the risks identified in associating with the payments of royalties (1.5 and 1.16), a precautionary approach has been taken to this indicator.

The risk is therefore considered specified for all sources

Risk Conclusion

'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.17.6. Risk designation and specification

Specified risk

1.17.7. Control measures and verifiers

- Requirements related to transport means (e.g. trucks) shall always be followed
- Species and product types shall be traded legally.
- Required trade permits shall exist and be documented.
- All required transport documents shall exist and be documented.
- Volume, species and qualities shall be classified according to legal requirements.
- Documents related to transportation, trade or export shall be clearly linked to the specific material 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

- Income Tax (Advance Pricing Arrangement) Rules 2012. Available at: <http://www.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf> [Accessed 12 September 2018].
- Income Tax (Transfer Pricing) Rules 2012. Available at: <http://www.hasil.gov.my/pdf/pdfam/MalaysianTransferPricingGuidelines2012.pdf> [Accessed 12 September 2018].
- Malaysia Income Tax Act, 1967. Available at: <http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm> [Accessed 12 September 2018].

1.18.2. Legal authority

- Inland Revenue Board Malaysia

1.18.3. Legally required documents or records

There are no specific transfer pricing documentation requirements in the MITA, the general provision in the MITA (specifically Section 82) requires taxpayers to maintain appropriate documentation to support their transactions. Such records must be retained for a period of seven years and include:

- Company details – Ownership structure, company organisational chart and operational aspects of the business;
- Transaction details – Summary of the related party transactions, pricing policy, price breakdown, terms of the transaction, economic conditions at the time of the transaction and any independent comparable transactions; and
- Determination of arm's-length price – Selection of pricing methodology, functional analysis and comparability analysis.

1.18.4. Sources of information

Government sources

- hasil.gov.my (2012) Transfer Pricing Guidelines 2012. [online]. IRBM. Available at: <http://www.hasil.gov.my/pdf/pdfam/MalaysianTransferPricingGuidelines2012.pdf> [Accessed 12 September 2018].

Non-Government sources

- deloitte.com (2012). Malaysia International Tax and Business Guides by Deloitte. [online]. Available at: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-malaysiaguide-2016.pdf> [Accessed 12 September 2018].

- deloitte.com (2012). *Malaysia Country Highlight Deloitte*. [online]. Available at: <https://dits.deloitte.com/#Jurisdiction/37> [Accessed 12 September 2018].
- eoi-tax.org (2012). Malaysian Advance Pricing Arrangement Guidelines. [online]. Available at: <http://www.eoi-tax.org/jurisdictions/CA#agreements> [Accessed 12 September 2018].
- Global Witness (2013). Inside Malaysia's shadow state. March 19: <https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state> [Accessed 12 September 2018].
- pwc.com (2012). International transfer pricing. [online]. Report by PriceWaterhouseCoopers. Available at: <https://www.pwc.com/gx/en/international-transfer-pricing/assets/pwc-international-transfer-pricing-2012.pdf> [Accessed 12 September 2018].
- The Malaysian digest (2013). [online] Available at: <http://malaysiandigest.com/news/174742-lawyers-in-taib-video-expose-to-face-police-probe-answer-misconduct-charges.html>

1.18.5. Risk determination

Overview of Legal Requirements

Malaysia has exchange of information relationships with 73 jurisdictions through 73 DTCs and 1 TIEA (eoi, 2012).

In Malaysia, Multinational Enterprises involved in transfer pricing must be able to provide adequate, documented proof to support their transfer pricing policies. Under the self-assessment system, the taxpayer is responsible for clearing any alleged non-compliance with transfer pricing legislation. A general anti-avoidance provision under subsection 140(1) of the Income Tax Act 1967 (ITA as amended) empowers the Director General (DG) to disregard certain transactions which he believes have the direct or indirect effect of altering the incidence of tax, and make adjustments as he thinks fit, to counteract the effects of such transactions. Section 140 will also be applied in the adjustment of transfer prices. Section 140 allows the DG to disregard transactions believed not to be at arm's length and make the necessary adjustments to revise or impose tax liability on the persons concerned. Under subsection 140(6), the said non-arm's length dealings include transactions between persons one of whom has control over the other and between persons both of whom are controlled by some other person.

Upon a tax audit or enquiry, taxpayers must substantiate that their transfer prices have been determined in accordance with the arm's length principle as prescribed under the Transfer Pricing Rules 2012 and Guidelines. Control measures or factors that trigger the Inland Revenue Board (IRB) to carry out a transfer pricing audit include outstanding tax enquiries, sustained losses, use of tax havens, fluctuations in profits from year to year, third-party information and instances where a company has not been tax audited in the past six years.

Recently, the Malaysian IRB issued a new requirement relating to transfer pricing in the Corporate Income Tax Return Form ('Form') for 2014. This new 'check-the-box' disclosure as to whether transfer pricing documentation has been prepared is a sign of the increasing focus and scrutiny on transfer pricing matters by the IRB, in particular whether mandatory

documentation requirements have been met. Previously, taxpayers were required to disclose whether transfer pricing documentation had been prepared only if they received a Form MNE 1/2011 ('Form MNE') from the IRB.

As the IRB is intensifying its efforts on transfer pricing through audits, this revision to the Form can be seen as a further indicator of transfer pricing being an area of priority now and in the imminent future. Not satisfying the IRB's mandatory requirements carries substantial tax risks that an appropriate analysis and documentation exercise can help avoid.

Description of Risk

To date, no legal cases concerning transfer pricing have been decided by the Malaysian courts. However, a few cases have recently gone to court and are awaiting hearing. Most of the cases involving disputes on transfer pricing issues have been settled out of court, and the details have not been published.

Since the transfer pricing guidelines were issued in Malaysia in July 2003, the MIRB has set up a team at its head office that specialises in transfer pricing audits. This has been further enhanced with the establishment of separate transfer pricing teams in the various tax audit assessment branches of the MIRB across the country. Most of the tax officers have experience handling tax investigations and tax audits. The officers are continually updating their knowledge through dialogues with other tax administrations in the region, in addition to participating in training conducted by foreign and international tax authorities/bodies, such as the OECD (Deloitte 2012, Deloitte 2012a).

In 2013, Global Witness exposed the occurrence of transfer pricing amongst forestry companies with ties to the former Sarawak Chief Minister Taib (Global Witness 2013). The exposé focused on the sale of forested land in Malaysia to foreigners and highlighted the existence of strategies to avoid real property gains tax by under-declaring the true value of and having the full value transferred offshore. The case is not directly linked to sale of timber but provides an indication of unlawful price manipulation can occur within the forest sector.

The case took place in Sarawak, but as the legal requirements are the same in all of Malaysia and the general level of corruption in Malaysia indicates a risk that transfer pricing also could take place in any Malaysian State.

Based on the limited available information, a precautionary approach has been used to find this indicator specified risk. *Risk Conclusion*

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.18.6. Risk designation and specification

Specified risk

1.18.7. Control measures and verifiers

- Determine if the company has any subsidiary operating in a known tax haven.
- Review internal invoicing to determine whether the prices used were comparable to market prices.

- Review transfer pricing documentation to prove market price-based transactions.

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

- Malaysian Timber Industry Board (Incorporation) Act, 1973 (Act 105). Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20105%20-%20Malaysian%20Timber%20Industry%20Board%20Incorporation%20Act.pdf> [Accessed 12 September 2018].
- Customs Acts 1967 [Act 235]. Available at: <https://simplymalaysia.files.wordpress.com/2011/10/act-235-customs-act-1967.pdf> [Accessed 12 September 2018].
- Customs Export Prohibition Order (1998). Available at: http://www.vertic.org/media/National%20Legislation/Malaysia/MY_Customs_Prohibition_Exports_Order_Schedule3.pdf [Accessed 12 September 2018].
- Customs Import Prohibition Order. Available at: [http://www.env.go.jp/recycle/yugai/reg/pua_20121231_P.U.%28A%29490-LaranganImportFinal\[Warta311212\].pdf](http://www.env.go.jp/recycle/yugai/reg/pua_20121231_P.U.%28A%29490-LaranganImportFinal[Warta311212].pdf) [Accessed 12 September 2018].
 - Schedule 1 – Goods that are absolutely prohibited from import. Included in this list are logs, wood in the rough, roughly squared wood, and baulks from Indonesia.
 - - Schedule 2, Part 1 – Goods that are prohibited from import to Malaysia except under licence. Included in this list are logs, wood in the rough, roughly squared wood, baulks, sawn timber, plywood, veneered panels, and Bacau poles/piles from all countries (other than Indonesia).
- Wood-based Industries Act, 1984. Available at: [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20314%20-%20Wood-based%20Industries%20\(State%20Legislatures%20Competen.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20314%20-%20Wood-based%20Industries%20(State%20Legislatures%20Competen.pdf) [Accessed 12 September 2018]. Companies Act, 1965. Available at: <https://www.ssm.com.my/acts/fscommand/CompaniesAct.htm> [Accessed 12 September 2018].

1.19.2. Legal authority

- Malaysian Timber Industry Board (MTIB)
- Royal Malaysian Customs

1.19.3. Legally required documents or records

Export

- Timber export (logs) license issued by MTIB

- Certificate of Registration (Form 9)- Register with the Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia)
- Records of cess account in MTIB for log, sawn timber, plywood, moulding, veneer, particleboard/chipboard and block board
- Removal pass issued by Forestry Department for imported log
- Custom export declaration form
- Grading summary
- Record on custom clearance
- Good/Consignments inspection report
- Bill of lading
- Invoice
- Customs form K2

Import

- Import licence issued by MTIB for logs
- Removal pass (for logs) from FD
- Customs Department K1 form
- Customs Department K3 form as appropriate (within Malaysia)

1.19.4. Sources of information

Government sources

- mtib.gov (N.Y.) Malaysian Timber Industry Board. [online]. Available at: <http://www.mtib.gov.my> [Accessed 12 September 2018].
- customs.gov.my(N.Y.) Royal Malaysian Customs Department. [online]. Available at: <http://www.customs.gov.my> [Accessed 12 September 2018].

Non-Government sources

- Expert consultation conducted by NEPCon, (2015).
- New Straits Time, (2017). MTIB intercepts illegal shipment of round logs worth RM500,000. Available: <https://www.nst.com.my/news/crime-courts/2017/10/289059/mtib-intercepts-illegal-shipment-round-logs-worth-rm500000>, [Accessed 12 September 2018].
- UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Malaysia_Assessment_-_09.pdf, [Accessed 12 September 2018].

1.19.5. Risk determination

Overview of Legal Requirements

According to the MTIB website, the import procedure for timber and timber products:

1. Malaysian Timber Industry Board (MTIB) are authorised by the Royal Malaysian Customs (RMC) to issue import licence for logs (including poles), Baulks (sawn timber measuring 60 square inches in cross-sectional area and above), mangroves piles, plywood including similar laminated wood and sawn timber under the Customs Act 1967, Second Schedule, Part I, Item 2, Customs (Prohibition of Imports) Order 2017 P.U.(A) 103 gazetted on 31 March 2017 and enforced on 1 April 2017. This procedure is in line with the gazettment of the Malaysian Timber Industry Board (Incorporation) Act 1973 [Act 105] on 15 March 2012.
2. Applicants must fill-in the Application Form for Import that can be downloaded from the MTIB website: www.mtib.gov.my or obtain the Form from the nearest MTIB Regional/State offices.
3. Working hours for MTIB Headquarters and MTIB Regional/State office:
4. All importers must be registered with MTIB in accordance to Act 105. For registration, the importer must attach the following documents:
 - a. copy of Business Registration Certificate (Form D) under the Business Registration Act 1956 and Business Licence (Form B); or A copy of the Memorandum and Articles of Association, a copy of Form 24 (List of Shareholders) and a copy of Form 49 (List of Board of Directors).
 - b. For an applicant who is a sole proprietorship business/partnership, a copy of Bank Account Statement for the three-consecutive months (latest) that has been approved are required to support registration.

For the importation of logs (including poles) and Baulks (item no. 5 - 8 apply).

5. Importers are required to submit:
 - a. Completed Application Form for Import;
 - b. Copies of sales agreement/supply contract made with oversea suppliers and certified by the Malaysian Embassy in the respective countries (Thailand, Laos, Cambodia, Vietnam, Singapore, Papua New Guinea, Solomon Islands, Timor Leste) or the authorities/bodies/agencies recognised by the government of the respective country (Myanmar, Philippines); and
 - c. Letter of Oath that has been approved.
6. Complete applications will be tabled to the Import & Export Committee Meeting. If approved, MTIB will issue a Letter of Approval to import for a period of one year from the date of letter issued.
7. Upon receiving the Letter of Approval, the import company can apply for import licence to any of the MTIB Regional/State offices and bring together the Approval Letter, original Certificate of Origin/Form D from the valid exporting country, invoice, packing lists and bill of lading.
8. Importers must comply with the other agency regulations, that is enforced by the Department of Agriculture which requires an import permit (except plywood) for purpose of quarantine inspection and verification of the Phytosanitary Certificate and

to provide timber scientific name; and obtained approval from the State Forestry Department for issuance of Forest Removal Replacement Pass.

For the importation of mangrove piles and plywood including similar laminated wood and sawn timber (item no. 9 - 11 apply)

9. Importers are required to submit:

- a. Completed Application Form for Import; and
- b. Letter of Oath that has been approved.

10. MTIB will process the Application Form and documents received. If all are in order and completed, the application will be approved. MTIB will issue a Letter of Approval to import for a period of one year from the date of letter issued.

11. Upon receipt of the Letter of Approval, the import company can apply for an import licence to any of the MTIB Regional/State offices and bring together the Approval Letter with the following documents:

- a. For the importation of plywood including similar laminated wood and sawn timber shall be accompanied with the original copy of Certificate of Origin /Form D from the valid exporting country, invoice, packing lists and bill of lading. MTIB will conduct physical inspection at the entry point or port and validation with MTIB stamp on the import licence.
- b. For the importation of mangrove piles shall be accompanied by an invoice/manifest/payment receipt/packing lists/other information from the exporting country, if any, for reference. MTIB will conduct physical inspection randomly at any time desired on mangrove piles consignment at the entry point or port and validation with MTIB stamp on the import licence.

12. Starting 1 July 2017, MTIB enforced the requirement for certifying on legality source on import of timber and timber products whereby any one of the documents are required to be presented during physical inspection besides other documents mentioned in item 11(a) that is:

- a. CITES Permit; or
- b. FLEGT licence; or
- c. Certificate of Timber Certification (PEFC, MTCS); or
- d. Certificate of Voluntary Legality Scheme; or
- e. Legality Document issued by recognised Agency/Body/Association related: or
- f. Self-Declaration recognised by a Competent Third Party; or
- g. Copy of Customs Declaration from exporting country.

13. For imports involving endangered wood species listed in the Third Schedule of Act 686, a CITES export permit from the exporting country must be submitted in advance to MTIB for confirmation from the relevant permit issuing country before MTIB issues CITES import permit.

14. Importers must apply for physical inspection at the nearest MTIB Regional/State offices where the timber consignment enters. MTIB will conduct physical inspection at the entry point or port and validation with MTIB stamp on the import licence.
15. The validity of import licence is 60 days from the date issued.
16. The Customs will ensure that all requirements and regulations have been complied before giving clearance into Peninsular Malaysia and Federal Territory (Kuala Lumpur and Labuan).
17. Any businesses and enquiries related to importation can be forwarded to MTIB Headquarters and MTIB Regional/State offices

Timber and timber products requiring import licence Customs (Prohibition of Imports) Order 2017, Second Schedule, Part I, Item 2 [P.U.(A) 103 dated 31 March 2017]

- Logs; wood in the rough, if stripped of its bark or merely roughed down; wood roughly squared or half-squared but not further manufactured; and baulks (44.03)
- Poles and piles of Bakau (*Rhizophora* spp) (4403.99.90 00)
- Sawntimber (44.07)
- Plywood, veneered panel and similar laminated wood (44.12)

Malaysia does not grant import permits for logs and large scantlings and squares (LSS) from Indonesia.

Export procedure for timber and timber products

1. Malaysian Timber Industry Board (MTIB) are authorised by the Royal Malaysian Customs (RMCD) to issue export licence for timber and timber products under the Customs Act 1967, Second Schedule, Item 6, Customs (Prohibition of Exports) Order 2017 P.U.(A) 102 gazetted on 31 March 2017 and enforced on 1 April 2017. This procedure in line with the gazette of the Malaysian Timber Industry Board (Incorporation) Act 1973 [Act 105] on 15 March 2012.
2. Exporters registered with MTIB will be issued User ID code and Password to enable them to apply for export licence via on-line through website MTIB Core System: www.mtib.gov.my/mcs.
3. Applicants must fill-in all details required (mark * must be filled), payment of cess and send via on-line to MTIB Headquarters or any MTIB Regional/State office without submitting the supporting documents hardcopy (packing list, invoice, kiln drying / preservative timber certificate and grading summary).
4. MTIB will review and approved, if completed, or not approved the export licence via on-line. Exporters will receive each approved or unapproved export licence on the exporters application screen.
5. Export licence issued by MTIB are computer generated and no signature are required.
6. The validity of export licence is 60 days from the date issued.
7. For each export licence approved, exporters must state the date for physical inspection to MTIB Checking Station near the export exit point. Exporters must

ensure their timber consignment are ready for inspection and submit the relevant supporting documents on the date of inspection.

8. MTIB will carried out physical inspection randomly on the export licence and declaration of timber consignment as follows:
 - a. For export licence inspected, MTIB will carried out physical inspection at the timber consignment site and inspection result will either be approved or unapproved and for consignment that are offended will be acted.
 - b. Consignment that are approved will be stamped "Telah Diperiksa" and exporter will proceed for declaration to the Customs.
 - c. For export licence that are not inspected will be approved and stamped "Diluluskan Tanpa Pemeriksaan Fizikal ". Exporter can proceed for declaration to the Customs.
9. For timber and timber products that are subjected to MTIB special approval such as Rubberwood sawn timber export quotas; timber product quotas for endangered timber species listed under the CITES international trade regulation; export of rattan, coconut trunk, oil palm trunk and plantation log; participation at international exhibition; market exploration; and timber products for research purpose (R&D), exporter must refer to MTIB Headquarter Kuala Lumpur. MTIB will explained to the exporter on the export procedures and regulations be followed.
10. For export of wooden furniture products, except for export to the European Union, are postponed from MTIB export licence requirement. Exporter can proceed directly with the Customs for exportation of wooden furniture products.
11. For exportation of timber and timber products, including wooden furniture products, listed under TLAS scope for the European Union market, exporter is still subject to the current export procedure that is registration requirement, apply for MTIB export licence with MYTLAS licence and undergoes MTIB physical inspection. The whole processes can be made via on-line through MCS.
12. Any businesses and enquiries related to exportation can be forwarded to MTIB Headquarters and MTIB Regional/State offices.

List of timber and timber products requiring export licence - Customs (Prohibition of Exports) Order 2017, Second Schedule, Item 6 - [P.U.(A) 102 dated 31 March 2017]

1. Bamboo 1401.10.00 00
2. Rattans 1401.20
3. Fuel wood, wood in chips or particles; sawdust and wood waste and scrap 44.01
4. Wood charcoal 4402.90.90 00
5. Logs (including baulks and roughly squared) 44.03
6. Hoopwood 44.04
7. Wood wool; Wood flour 4405.00
8. Railways or tramway sleepers 44.06
9. Sawn timber 44.07

10. Veneer sheets 44.08
11. Moulding 44.09
 - a. Particleboard 44.10
 - b. Fibreboard 44.11
 - c. Plywood, veneered panel and similar laminated wood 44.12
 - d. Densified wood 4413.00.00 00
12. Wooden frames 4414.00.00 00
13. Packaging cases, boxes, crates, drums and similar packing, cable drum, pallets, box pallets and other load boards, pallet collars of wood 44.15
14. Cask, barrels, vats, tub and other coopers' products of wood, including staves 4416.00.10 00 4416.00.90.00
15. Tools, tool bodies, tool handles, broom and brush bodies and handles, of wood; shoe last and trees, of wood 4417.00.10 00 4417.00.20.00, 4417.00.90.00
16. Builders joinery and carpentry, of wood 44.18
17. Tableware and kitchenware, of wood 4419.11.00 00 4419.12.00 00 4419.19.00 00 4419.90.00 00
18. Wooden article of furniture not falling in chapter 94 4420.90.10 00
19. Other articles of wood 44.21
20. Wood pulp 47.01, 47.02, 47.03, 47.04, 47.05, 47.06
21. Prefabricated buildings, of wood 9406.10.90 00

Note: For code product 9401.52.00 00, 9401.53.00 00, 9401.61.00 00, 9401.69.10 00 and 9401.69.90 00 (Seats of bamboo or rattan and other seats, with wooden frames) and 9403.30.00 00, 9403.40.00 00, 9403.50.00 00, 9403.60.10 00 and 9403.60.90 00 (Wooden furniture) are temporarily postponed until further notice. However, companies are encouraged to register with MTIB as Exporter to access facilities to export furniture under the relevant customs code as mentioned.

The cess rate for timber and timber products Timber Cess Order 2000 can be found at http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2439%3Aexport-procedure-for-timber-and-timber-products&catid=214%3Aregistration-and-licensing&Itemid=340&lang=en

The MTIB is responsible for the registration of individuals who wish to perform any of the following activities or functions in the timber industry: exporters; importers; suppliers; graders; processors; traders; operators; or jetty operators. Should an individual perform any of these activities without being registered with the MTIB, they risk imprisonment for up to three years or a fine not exceeding 250,000 Malaysian ringgits, or both (UNODC 2017).

The MTIB also has the power to refuse registration, as well as suspend, cancel or refuse to renew any previous registration. Any person who wishes to export timber is required to declare their intentions before the exportation occurs. Failing to do so may incur a penalty of

imprisonment of up to two years or a fine not exceeding 100,000 Malaysian ringgits, or both (UNODC 2017).

The MTIB has about 130 personnel engaged in a law enforcement capacity who enjoy powers similar to police. The extent of these powers is found in Part IVA of the Malaysian Timber Industry Board (Incorporation) Act of 1973 (Act 105), and include arrest, search and seizure and the power to enter premises with or without a warrant (UNODC 2017).

Description of Risk

Malaysia receives timber from 3rd country as long as export documents are in place and without requiring proof of legal origin. When this timber enters the supply chain and is processed into secondary products there is a possibility that an export license can be issued for products that could have an illegal origin. However, international trade in timber from Malaysia is generally well regulated and there is only a low risk that the Malaysian custom regulations have been violated (Expert consultation by NEPCon 2015).

An October 2017 report from the New Straits Times states that 'MTIB intercepts illegal shipment of round logs worth RM500,000'. The article claims that Malaysian Timber Industry Board (MTIB) has revealed that it foiled an attempt in August to smuggle 10 containers filled with 133 round logs of the banned keruing species, worth RM500,000. MITB director-general Datuk Jalaluddin Harun said the logs, en route from Pahang to India, were seized at Westports Malaysia in Port Klang on Aug 22."

The 2017 report from the UNODC contains a number of observations relevant to this indicator:

- Port Klang is Malaysia's largest port [...] figures prominently in the seizures of large quantities of wildlife products. Between 2011 and 2014 the port was the subject of two Malaysian Anti-Corruption Commission (MACC) investigations into corruption. (These investigations were not specifically related to wildlife or forest crime cases but do indicate the presence of some officials complicit in illicit activities). [...] It stands to reason that some of the corrupt customs officials previously investigated by the MACC in relation to other offences (between 2011 and 2014), or others working at the port at that time, may have played a role in facilitating the importation and re-export of wildlife products into and from Malaysia during that period.
- Corruption has plagued the Royal Malaysian Customs Department (RMCD) over the last several years and is something that the Department has shown it is committed to addressing. All customs officers take an oath and sign a pledge committing to integrity, as all government agencies are required to do. All civil servants (including customs officers and their spouses) must also declare personal assets every five years as well as any trip abroad. At the start of every shift, customs officers must declare how much money is being carried on their person, and it is checked again at the end of the shift. Supervisors can also make spot checks during a shift to ensure compliance. There is an RMCD Internal Disciplinary Board that conducts an initial assessment of any allegations made against customs officers.
- Cases can also be started by MACC, and the RMCD supports these investigations. There are also integrity officers from the MACC that are seconded within the Customs Department. Internationally, RMCD requests for assistance and information sharing are conducted under the Regional Intelligence Liaison Office of the World Customs

Organization (WCO) with other countries (for example the United States, Korea, or Turkey).

- Domestically, Customs has good cooperation with domestic wildlife agencies, notably Perhilitan, FDS, and SWD, and with other agencies such as the MACC, RMP and MTIB. Intelligence on environmental crime is disseminated to other agencies on a case-by-case or ad-hoc basis.
- Most of the identified illegal trade cases undertaken by the MTIB relate to trans-shipments and imports of timber. From 2012 to 2017, the MTIB investigated 34 cases related to prohibited imports, of which 22 cases related to the illegal imports/trans-shipments of CITES-listed timber species. Despite having the necessary provisions within the Act, none of these investigations resulted in a period of imprisonment, with all being resolved by way of administrative sanction.
- According to the MTIB, the majority of timber imported into or exported from Malaysia is in the form of furniture, and to a lesser extent, whole logs. Primary export destinations include the US, EU, Japan and to a lesser extent China. Most of the timber imported into Malaysia is from China and Indonesia.
- It is surprising that in Malaysia there are more wildlife cases before the courts than forestry cases. [...] This could be because the MTIB has not yet commenced any prosecutions that resulted in court action for timber cases. It will be interesting to see if these numbers change now that Sabah and Sarawak will be taking over the role of the MTIB within their jurisdictions.
- Shortcomings of MTIB:
 - Prison terms for forestry offences are not applied
 - Regulatory agency with little law enforcement experience
 - No intelligence unit
 - No formal law enforcement training
 - No central CHIS system
 - Does not use advanced investigative methodologies
 - Challenges with identification of nonnative CITES-listed species
- The Malaysian Legislators and Courts have shown themselves to be innovative and in touch with the needs of the environment. They are to be congratulated for the strength of judgement that sees those engaged on transnational and domestic wildlife crime feeling the full weight of the law
- The Customs Department has 709 officers working in the Enforcement Division posted throughout the country, handling all tasks relating to law enforcement. Customs officers are well trained and educated, with senior officers requiring a bachelor's Degree as a minimum requirement for employment.
- At this moment, the overall effectiveness of Malaysia's effort to address the international aspect is questionable. Despite many seizures there is very little to show in the way of arrests, prosecutions and convictions. There has also never been a controlled delivery of any of the shipments seized by the RMCD. Seizures of a finite wildlife resource will not

prevent or stop wildlife trafficking. In the absence of arrests, seizures alone may in fact do more harm than good.

Based on the analysis provided in the UNODC report, and applying a precautionary approach, the risk for this indicator has been evaluated as specified.

Risk Conclusion

This indicator has been evaluated as specified risk. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.19.6. Risk designation and specification

Specified 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

- International Trade in Endangered Species Act 2008 (Act 686) Available at: [http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International Trade in Endangered Species Act 2008.pdf](http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International%20Trade%20in%20Endangered%20Species%20Act%202008.pdf) [Accessed 12 September 2018].
- Customs Act 1967 [Act 235] Available at: <https://simplymalaysia.files.wordpress.com/2011/10/act-235-customs-act-1967.pdf> [Accessed 12 September 2018].
- Customs (Prohibition of Exports) Order 2012 Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_LaranganExport.pdf [Accessed 12 September 2018].

1.20.2. Legal authority

- Malaysian Timber Industry Board (MTIB)

1.20.3. Legally required documents or records

- CITES permit/license

1.20.4. Sources of information

Government sources

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1.20.5. Risk determination

Overview of Legal Requirements

Malaysia acceded to CITES in 1977. The export of goods made from Ramin or Karas/Gaharu (Agar) wood and Dalbergia is governed by CITES Commercial Regulations under Appendix II (CITES Checklist).

As the Management Authority for timber species in Peninsular Malaysia, MTIB is responsible for the issuance of export, import and re-export permits for the CITES listed timber species: Ramin or Karas/Gaharu wood originating from Malaysia. The Ministry of Natural Resources and Environment (NRE) is the Scientific Authority under CITES. To legally export either Ramin or Karas wood, operators will need to work with these bodies. For the export of Ramin, a CITES export permit application must be made directly to MTIB and NRE, while for Agarwood products/Karas (either woodchip or Agarwood oil), exports are subject to the approval of the company quota, made in advance. States apply for export quotas of Agarwood/Karas before applying for the CITES permit. Other operators wanting to import and re-export products made with these materials from these trees will need a similar permit to re-export before these goods reach their final destinations.

Description of Risk

Importing countries have contacted the MTIB to verify the authenticity of the CITES documents, and thereby several of cases of false CITES permits have been detected, which shows that there is a risk of fraud with CITES permits for products originating from Malaysia (Expert consultation by NEPCon 2015).

According to the 2017 UNODC report:

Malaysia is one of eight countries identified by CITES as being of “primary concern” and heavily implicated in the illegal trade in ivory.

All seized wildlife and timber products are handled in accordance with the provisions of relevant legislation and the Enforcement Standing Instructions. Any timber seized in Malaysia is measured, marked, recorded and photographed, and put into secure storage that only the investigating officer can access. A similar system exists for wildlife seizures.

Even though capacity-building programmes have been conducted to identify CITES-listed timber species, customs officers still need to contact the MTIB to conduct joint inspections of timber cases.

Most of the identified illegal trade cases undertaken by the MTIB relate to trans-shipments and imports of timber. From 2012 to 2017, the MTIB investigated 34 cases related to prohibited imports, of which 22 cases related to the illegal imports/trans-shipments of CITES-listed timber species. Despite having the necessary provisions within the Act, none of these investigations resulted in a period of imprisonment, with all being resolved by way of administrative sanction. According to the MTIB, most of timber imported into or exported from Malaysia is in the form of furniture, and to a lesser extent, whole logs. Primary export destinations include the US, EU, Japan and to a lesser extent China. Most of the timber imported into Malaysia is from China and Indonesia.

The risk is considered Specified due to the risk of using false CITES certificates.

Risk Conclusion

This indicator has been evaluated as specified risk for all CITES species. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.20.6. Risk designation and specification

Specified risk for all CITES species

1.20.7. Control measures and verifiers

The authenticity of CITES permits should be verified by MTIB. MTIB can be contacted by email.

1.21. Legislation requiring due diligence/due care procedures

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

1.21.1. Applicable laws and regulations

N/A

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

N/A

1.21.5. Risk determination

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

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

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

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

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

TIMBER SOURCE TYPES IN MALAYSIA

Forest type	Region / Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest	National	Permanent forest Reserve - FM	State	State (via private concession)	Harvest permit or license	1a. Timber from this source includes timber from "natural forest" (i.e. selective logging) management areas
						1b. Timber from this source originates in areas of natural forest being cleared as part of a timber plantation concession (i.e. concession for the clearance of natural forest for conversion to monoculture timber plantations)
		Permanent forest reserve – Protected area	State	State	Harvest permit or license	2. Generally no timber sourcing is permitted from protected areas (including National Parks and Wildlife Sanctuaries)
		State land	State	State (harvesting permit)	Harvest permit or license	3. Permits for clearance of natural forest are given to private companies who have the rights to log the area but do not have ownership rights to the land (the land is zoned for possible future use for agriculture, housing, etc. but no private title to the land has yet been issued)
		Alienated land	Private	Private	Harvest permit or license	4. Permit for clearance of natural forest for private use (this almost always results in the forest being cleared for non-forest use such as agriculture)
Timber plantations	National	Alienated land	Private	Private	Harvest permit or license	5. Native or exotic timber species (e.g. Acacia, Eucalyptus, Latex Timber Clones Rubberwood) from timber plantations are seldom established on private land (this land is usually more profitably used for

						growing oil palm or rubber primarily for latex – not primarily for timber)
		State land	State	State (Harvesting permit)	Harvest permit or license	6. Timber plantations are very rarely established on state land. However, timber plantations established on forest reserves that have since been excised and have had their status changed to “state land” could have timber plantations on them
		PFR	State	State (Via private concession)	Harvest permit or license	7. Timber plantations (e.g. Acacia, Eucalyptus, Latex Timber Clones Rubberwood) are often established in forest reserves.
Agricultural areas (e.g. rubber plantations)	National	Alienated land	Private	Private	Harvest permit or license	8. Timber from private “agricultural” estates mainly consists of rubberwood from rubber plantations that are being cleared for oil palm or for another rotation of rubber (i.e. grown primarily for latex and not primarily for timber)
		State land	State	State (harvesting permit)	Harvest permit or license	9. Similarly to (8), timber from agriculture on stateland includes rubberwood harvested from rubber plantations
		Permanent forest reserve	State	State (Harvesting permit)	Harvest permit or license	10. Very occasionally, there are small agricultural rubber plantations (i.e. planted primarily for latex) in PFR that can be harvested for their timber the same was as in (7)



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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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