

Timber Legality Risk Assessment Vietnam

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COUNTRY RISK
ASSESSMENTS



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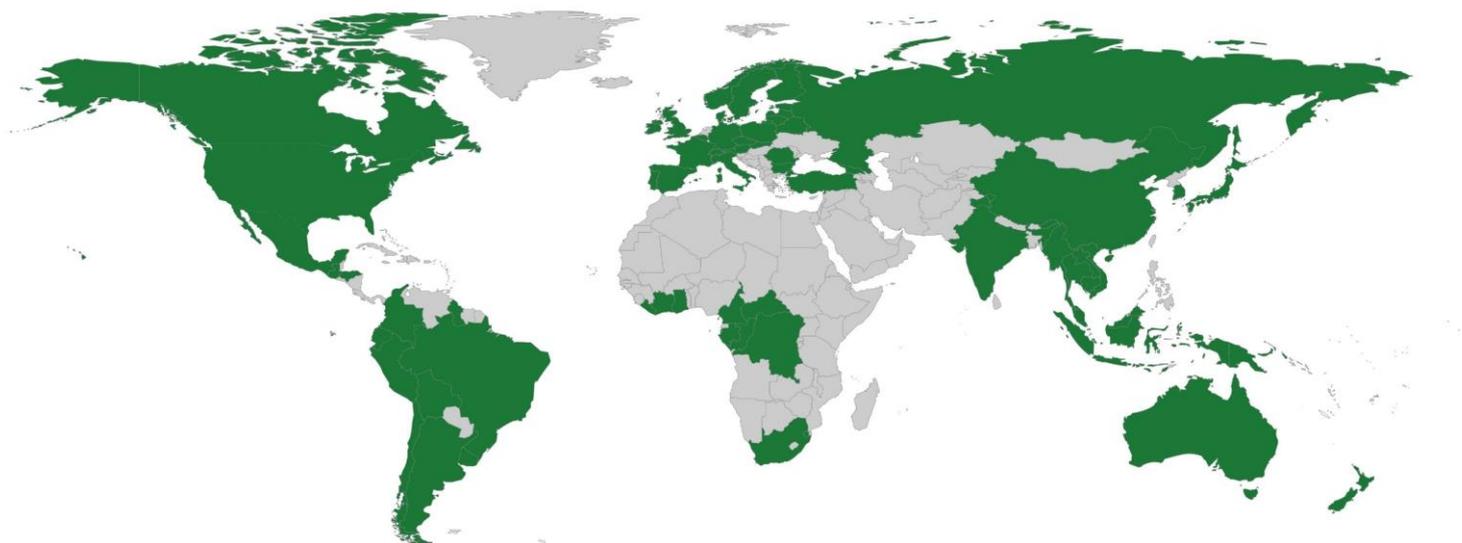
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A. Introduction

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

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



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

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

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

B. Overview of legality risks

Timber Risk Score: 40 / 100 in 2017

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

- Specified risk for 11 sub-categories.
- Low risk for 5 sub-categories.
- Low risk for 2 of the three source types in two sub-categories
- No legal requirements for 5 sub-categories.

The Timber Risk Score for Vietnam is 40 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities and trade and transport.

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

- Land-use certificates are corruptly awarded (Sub-category 1.1).
- Local people/communities have not been properly issued land use certificates, and therefore, do not have secure land use rights land use-rights (1.1).
- Land-use rights are revoked by the government without adequate compensation (1.1).

For **Taxes and Fees**, there is a risk that private FMEs do not pay Value Added Taxes (1.6) as well as income and profit taxes (1.7). Officials rarely require a tax invoice, and there is no central database facilitating control by the relevant authority. There is a common understanding amongst Vietnamese people that there are high levels of corruption amongst tax officials.

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

- Non-compliance with requirements of environmental impact assessment regulations due to weak implementation, monitoring and enforcement (1.10).
- Non-compliance with health and safety regulations because of the high prevalence of occupational injuries, unsafe working conditions and lack of PPE for workers.
- Employees working without contracts and/or not being paid the legally required salaries (1.10).
- Risk that employers do not have the proper certificates to conduct work.

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

- Non-compliance with requirements related to transportation of timber because of the lack of obtaining legally required documents or licenses (1.17).
- Risk of tax evasion related to offshore trading and transfer pricing (e.g. risk of companies posting losses to avoid paying taxes) (1.18)
- Risk of illegal trade in timber and smuggling of CITES species due to inadequate legal framework, poor enforcement and corruption (1.20).

Timber source types and risks

There are two timber source types found in Vietnam. Plantations are the primary source of timber in Vietnam. Restrictions are in place that require all natural forests to be FSC Certified to be a legal source of timber. 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 within plantation sources based on the ownership of the forests.

Plantations	<p>Timber from plantation forests: Forests are either</p> <ul style="list-style-type: none"> • State/publicly owned; • Household owned; or • owned by private companies (local or international). <p>These production forests are managed by State Forestry Companies; The Army; Households; or Private companies (Local or international). Forest land allocation documents, Forest management plans, Approved harvesting plans (quantity, size, types of products) and a Harvesting permit in plantation forest is required. Logging permits relating to plantations are similar for organisations; but households fill in only the forest products claim table and submit to the Commune People's Committees for approval.</p>
FSC Certified timber from Natural forests	<p>State owned production forests, managed by State forestry companies (SFCs). As per a government decree, only FSC certified timber is legal from natural forests in Vietnam (NB: Only two SFC's are certified).</p>

This matrix summarizes the findings of the timber legality risk assessment set out in this report. The key legality risks identified in this report relate to:

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

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

C. Overview of the forest sector in Vietnam

The forestry sector in Vietnam contributed US\$1.4 billion to the economy in 2006, which is approximately 2.4% of the country's GDP. The forest sector is growing as Vietnam becomes a major international manufacturing country. Forest management is governed by the 1991 Law on Forest Protection and Development, last amended in 2004. Under the Law, the Ministry of Agriculture and Rural Development (MARD) is responsible for managing Vietnam's forest protection and development campaign. MARD works closely with other ministries, including: Ministry of Natural Resources and Environment (MONRE), the Ministry of Public Security and the Ministry of Defence.

Forest management in Vietnam is highly centralized. The Vietnamese constitution provides the fundamental and highest level law of the land. All laws and policies are issued by the government and the National Assembly. Vietnam has a legal framework to address illegal logging, but unauthorized harvesting and trading are ongoing, with recent research by Chatham House and NGOs reporting that in reality Vietnam's legislative framework and implementation to tackle illegal trade is seriously lacking. According to Chatham House, there are an estimated 30,000 to 50,000 reported forest violations per year. According to contacted stakeholders, 30% of harvested timber does not come from plantations (as is commonly reported) but from 'scattered sources' such as fields, gardens, abandoned land, land not used by its owner, from roadsides, etc.

The key pieces of legislation are the 2004 Law on Forest Protection and Development (based on the 1991 Forest Resources Protection and Development Act) and the Land Law of 2003. The Forest Protection and Development Law bans unplanned and unpermitted timber logging. The Land Law classifies forest as agricultural land, divided into three main types: production forest, protection forest, and special use forest (i.e., protected areas). Vietnam has a number of laws and regulations requiring sustainability in forest operations, including management plans. Approximately 72% of Vietnam's forested area is publicly owned. Deforestation in Vietnam is largely driven by infrastructure improvements to support a rapidly developing economy, and to make room for agricultural cultivation to support rural communities, which make up 71.7% of the population.

In December 2014, the Prime Minister signed Decision No. 2242/QĐ-TTg approving the scheme strengthening the management of exploitation of timber of native forests for the period 2014–2020. This Scheme is aimed at improving the quality of native forest and developing high quality production forests eligible for sustainable exploitation to meet the demand for natural timber for domestic consumption and gradually replace imported timber.

In 2010, about 6.4 million m³ of roundwood equivalent (RWE) was needed to support Vietnam's growing wood processing industry. Of this supply, 1.6 million m³ originated from domestic supply. Vietnam imported 4-5 million m³ RWE, or 80% of the total raw material needed for its wood processing sector (Nguyen Ton Quyen, 2009a). Wood imported to Vietnam comes from 600 different vendors from 26 different countries and territories (August 2010 data). In 2007, the import value was US\$996 million, roughly 39.8% of the total export value. By 2010, this figure had increased to US\$1.1 billion, but only 32.35% of the export value (Nguyen Ton Quyen, 2011; EFI 2011).

The Vietnamese Government imposed a logging ban on natural forest in 1993. The logging ban is still in force for natural forest, protection forest and special-used forest.

Illegal logging continues to be a problem in Vietnam. There are an estimated 30,000 to 50,000 reported forest violations per year and, despite a legal framework, enforcement is weak. According to Transparency International's 2016 Corruption Perceptions Index, which measures perceived levels of public sector corruption in countries around the world using a score of 0–100 (where 0 is highly corrupt and 100 is completely clean), Vietnam is ranked 113th out of 177 countries assessed. It scored a corruption index of 33, meaning it has a high perception of corruption..

The World Bank compiles a set of governance indicators for all world economies known as the Worldwide Governance Indicators (WGI). The WGI country reports are based on the six following aggregate governance indicators: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. Countries are ranked (percentile rank model) for each of the six governance indicators on a scale from 0 to 100 where 0 corresponds to lowest rank and 100 corresponds to highest rank (better governance). In 2015, Vietnam got the following ranks out of 100:

- Voice and Accountability: 10.84;
- Political Stability and Absence of Violence: 48.57;
- Government Effectiveness: 55.29;
- Regulatory Quality: 33.69;
- Rule of Law: 46.15 and Control of Corruption: 39.42.

In Vietnam three forest types are used according to the forest classification system:

1. Special-used forests, over 2.0 million hectares (14.9% of the total area of the national forest)
2. Protection forest: Accounting for 4.7 million hectares (33.4% of the country's forest area)
3. Production forests: 7.0 million ha (50% of the country's forest area) forest ownership rights, forest use rights belong to various economic elements in society.
 - a. State ownership: forests under the management of state-owned enterprises such as corporations, companies and forestry companies. The economic sectors are running forestry business as army, police
 - b. Collective economic sectors as communities, cooperatives,
 - c. Individual ownership as household, households group, private companies.

Consultation with in-country experts was carried out throughout the drafting of this assessment from 2015-2016, including face to face consultation meetings held in Hanoi in 2015. Broad range of experts were consulted, including representatives from Non-government organisations, civil society organisations, a number of Vietnamese Government Ministries, enterprises and wood associations, provincial governments and international organisations working in the timber legality sector in Vietnam. Due to confidentiality issues, the experts consulted have not been named specifically in this report.

Additional sources:

- Chatham House, 2014, *Trade in Illegal Timber – The Response in Vietnam*, https://indicators.chathamhouse.org/sites/files/reports/CHHJ2362_Vietnam_Logging_Research_Paper_FINAL.pdf
- FAO, 2015, *Forest Resource Assessment 2015 – Vietnam*. <http://www.fao.org/countryprofiles/index/en/?iso3=VNM>
- Forestlegality.org, 2014, *Risk Tool*, <http://www.forestlegality.org/risk-tool/>
- ITTO, 2015, *Biennial review and assessment of the world timber situation 2013-2014*, http://www.itto.int/annual_review/
- USITC, 2010, *ASEAN: Regional Trends in Economic Integration, Export Competitiveness, and Inbound Investment for Selected Industries*.

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

- Land Law 2013 ('New Land Law') - Articles 32, 33, 34, 35, 48, 49, 50, 51. Available at: http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en
- Decree 45/2014/ND-CP dated 15 May 2014 on land use levy collection. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-43-2014-ND-CP-huong-dan-thi-hanh-Luat-Dat-dai-vb230680.aspx>
- Circular No. 76/2014/TT-BTC of the Ministry of Finance dated June 16, 2014. guiding some articles of Decree No. 45/2014/ND-CP on land use levy collection. Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=174753
- Decree No. 46/2014/ND-CP dated May 15, 2014 of the Vietnam Government regulating the collection of land rent and water surface rent. Available at: http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=174329
- Circular No. 35/2011/TT-BNNPTNT dated 20th May 2011 Providing guidance the implementation of timber and non-timber forest product harvesting and salvaging - Clause 4, Article 3. Available at: <http://vndoc.com/thong-tu-so-35-2011-tt-bnnptnt-huong-dan-thuc-hien-khai-thac-tan-thu-go-va-lam-san-ngoai->
- Circular 77/2014/TT-BTC dated 16/6/2014 of the Ministry of Finance (VN) guiding some articles of Decree No. 46/2014/ND-CP on land rental, collection of water surface rent. Available at: http://chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&page=21&mode=detail&document_id=174752 <http://thuvienphapluat.vn/archive/Nghi-dinh-163-1999-ND-CP>
- Decree 163/1999/ND-CP on allocating and leasing of forestry land to organizations, households and individuals for stable and long-term forestry purposes. Articles 4, 5, 6, 9, 10 and 17.
- Decree 135/2005/ND-CP dated November 8th, 2005 on the allocation of agricultural land, productive forest land and land aquaculture infrastructure in state-run

agricultural farms and forestry farms. Articles 6, 8, 9 and 11. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-135-2005-ND-CP-giao-khoan-dat-nong-nghiep-rung-san-xuat-co-mat-nuoc-nuoi-trong-thuy-san-trong-nong-lam-truong-quoc-doanh-vb5331.aspx>

- Joint Circular No. 07/2011/TTLT-BNNPTNT-BTNMT dated January 29th, 2011 by Ministry of Agriculture and Rural Development and the Ministry of Natural Resources and Environment, providing guidance forest allocation and lease. Articles 5, 9 and 11. Available at: [http://congbao.chinhphu.vn/loi-dung-van-ban-so-07-2011-TTLT-BNNPTNT-BTNMT-\(6801\)](http://congbao.chinhphu.vn/loi-dung-van-ban-so-07-2011-TTLT-BNNPTNT-BTNMT-(6801))
- Law on Forest Protection and Development 2004. Available at: http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=18584
 - Article 31 requires registration of forest use rights, and the ownership rights of the plantation as productive forest; however, it does not cover native forest.
 - Article 27.28 stipulates the change of purpose for forest use. There are only two competent authorities eligible to make a decision - they are the Prime Minister and the Chairman of Provincial People's Committee. Provincial authorities have the power to allow change to a part or whole of a forest with a previously established purpose.
- Decree 23/2006/ND-CP dated March 3rd 2006 on the implementation of the Law on Forest Protection and Development. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-23-2006-ND-CP-thi-hanh-Luat-Bao-ve-va-phat-trien-rung-vb9593.aspx>
- Circular 38/2007/TT-BNN dated 24/4/2007 - With guidance on the order and procedures for allocation and lease of forests to, or recovery of forests from, organizations, households, individuals and village population communities. Clauses 4, 5, Section II and Clause 2, Section III. Available at: <http://www.kieclam.org.vn/Desktop.aspx/News/Giao-rung-Quan-ly-nuong-ray/Thong-tu-382007TT-BNN-ngay-2542007>
- Circular 87/2009/TT-BNN PTNT dated 31/12/2009 by MARD guiding on design, use and selection of timber. Available at: <http://www.chinhphu.vn/portal/page/portal/chinhphu/bonganh/bonongnghiepvaphattriennongthon/vanban?orgId=16&title=V%C4%83n+b%E1%BA%A3n+quy+ph%E1%BA%A1m+ph%C3%A1p+lu%E1%BA%ADt&classId=1&view=detail&documentId=153646>
- Circular 01/2012/TT-BNNPTNT dated January 4th, 2012 by the Ministry of Agriculture and Rural Development listing lawful forest products and describing inspection of the origin of forest products. Available at: <http://www.moit.gov.vn/vn/Pages/ChiTietVanBan.aspx?vID=11997>
- Decree No. 02/CP dated 15/01/1994 of the Government to allocate forest land to organizations, households and individuals for long-term use; to replace Decree 163/1999/ND-CP of the Government Affairs: lease of forest land to organizations, households and individuals for stable, long-term forestry purposes - Articles 5, 11, 13, 14. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-2-CP-ban-Quy-dinh-ve->

[viiec-giao-dat-lam-nghiep-cho-to-chuc-ho-gia-dinh-ca-nhan-su-dung-on-dinh-lau-dai-vao-muc-dich-lam-nghiep-vb38711.aspx](http://thuvienphapluat.vn/archive/viec-giao-dat-lam-nghiep-cho-to-chuc-ho-gia-dinh-ca-nhan-su-dung-on-dinh-lau-dai-vao-muc-dich-lam-nghiep-vb38711.aspx)

- Enterprise Law 2014 - Articles 24, 25: the conditions relating to business certificate registration and content of certificates. Available at: <http://thuvienphapluat.vn/archive/Luat-Doanh-nghiep-2014-vb259730.aspx>
- Decree 43/2010/ND-CP dated April 15, 2010 on business registration. Articles 5, 6, 7, 8, 10, 11, and 29. Available at: http://www.hapi.gov.vn/ngoho-donh-so-432010ndcp-ngay-1542010-cua-thu-tuong-chinh-phu-ve-dang-ky-doanh-nghiep_p363t139.aspx
- Decree 85/2007/ND-CP dated May 25th, 2007 of the Government detailing the implementation of some articles in the Tax administration law (details the implementation of a number of articles of the Law on Tax Administration applicable to the management of taxes, charges, fees, land and water surface rents, land use levy, revenue collected from the exploitation of mineral resources and other revenues of the state budget, the collection of which is managed by tax administration agencies according to law.) Articles 7, 8, 10, 11, 13, 14 and 15. Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=75058
- Decree 124/2008/ND-CP dated 11/12/2008 of the Government detailing and guiding the implementation of some articles of the Law on Enterprise Income Tax. Articles 5 and 11. Available at: http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=81476
- Decree 50/2010/ND-CP dated May 14, 2010, detailing and guiding a number of articles of the Law on Royalties. Available at: http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=25350
- Circular 23/2014/TT-BTNMT on certificates of land use rights and ownership rights over houses and other assets attached to land. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-23-2014-TT-BTNMT-Giay-chung-nhan-quyen-su-dung-dat-so-huu-nha-o-tai-san-khac-gan-lien-dat-vb236488.aspx>
- Circular 30/2014/TT-BTNMT regarding land allocation, land lease and changes to the purpose of land use, land acquisition. Articles 3, 4 and 8. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-30-2014-TT-BTNMT-ho-so-giao-cho-thue-chuyen-muc-dich-su-dung-thu-hoi-dat-vb239132.aspx>
- Decree 43/2013/ND-CP dated on May 10th, 2013. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-43-2013-ND-CP-huong-dan-Dieu-10-Luat-cong-doan-quyen-trach-nhiem-vb186878.aspx>

1.1.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD), VNFOREST is implementing agency
- Ministry of Environment and Resources

- Local Authorities (provincial level): Department of Agriculture and Rural Development (DARD), Forest Protection Department (FPD)

1.1.3. Legally required documents or records

For households, one of the following:

- Land use rights certificate (Red Book)
- Decision on land allocation
- One of the types of papers on land use rights as required in Clause 1, Article 50, Land Law 2003
- For Organisations (State forestry companies, private forestry companies, other economic organisations), in addition to one of the above, business registration certificate

1.1.4. Sources of information

Government Sources

- moj.gov.vn (2005). *Constitution (document) made by the National Assembly. e.g. Business Law*. [online]. Available at: http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=16744 [Accessed 13 December 2016]

Non-government Sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2013). *Worldwide Governance Indicators - Vietnam 1996–2013*. [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]
- Saunders, J. (2014). *Trade in Illegal Timber - The Response in Vietnam* (A Chatham House Assessment). [online]. Chatham House London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2362_Vietnam_Logging_Research_Paper_FINAL.pdf [Accessed 5 January 2015]
- Forest Trends (2013). *Forest Trends Information Brief No. 7 February 2013 - Small-Scale Illegal Logging in Vietnam: Implications for FLEGT and REDD+*. [online]. Available at: http://www.forest-trends.org/documents/files/doc_3341.pdf [Accessed 6 February 2015]
- To Xuan, P & Canby, K. (2011). *Baseline Study 3: Vietnam - Overview of Forest Governance and Trade*. [online]. Forest Trends for FLEGT Asia Regional Programme April 2011. Available at:

<http://www.euflegt.efi.int/documents/10180/23308/Baseline+Study+3,%20Vietnam/73bea271-0a2e-4ecb-ac4e-f4727f5d8ad9> [Accessed 6 February 2015]

- To, XP & T. Sikor (2008). *The Politics of Illegal Logging in Vietnam* (Working Paper 05 DEV Working Paper Series). [online]. The School of Development Studies, University of East Anglia, UK. Available at: http://www.uea.ac.uk/polopoly_fs/1.74014!dev%20wp%2005%20sikor%202008.pdf [Accessed 6 February 2016]
- To Xuan Phuc & Tran Huu Nghi (2014). *Forest Land Allocation in the Context of Forestry Sector Restructuring: Opportunities for Forestry Development and Uplands Livelihood Improvement*. [online]. Tropenbos International Viet Nam and Forest Trends. Available at: http://www.forest-trends.org/documents/files/doc_4826.pdf [Accessed 6 February 2016]
- Buhmann, K. & I. Nathan (2013). Plentiful forests, happy people? The EU's FLEGT approach and its impact on human rights and private forestry sustainability schemes. [online]. *Nordic Environmental Law Journal*, Vol. 4 (2). pp. 53–82. Available at: http://www.rightsandresources.org/documents/files/doc_6056.pdf [Accessed 13 December 2016]
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.1.5. Risk determination

Overview of Legal Requirements

The Land Law of 2003¹³ governs the powers and responsibilities of the State as the representative of the public land for the people. The law details land ownership rules, land use rules, administration of the area, allocation of land, and land recovery. Forests and forest land in Vietnam are managed by the Government.

According to the Forest Protection Department (FPD) (December 2013) of the Ministry of Agriculture and Rural Development (MARD) and To and Canby (2011), the key forest user groups and their characteristics are:

1. State forest companies (SFCs) currently manage around 1.9 million ha of forest, 73% of which (1.4 million ha) is natural forest, and the remaining 27% is plantation forest. Companies must hold a valid land use title, supported by one of the following: Land Use Certificate issued by the provincial Department of Natural Resources and Environment (DONRE); a document of company establishment endorsed by the Provincial People's Committee; a signed Decision issued by Provincial People's Committee on land allocation; or a Contract of land use right transfer agreement.
2. Forest management boards (FMBs) belonging to the state currently manage more than 4.7 million ha, primarily special-used and protection forests for protection and conservation purposes. About 88% are natural forests, and the remaining 12% are plantation forests.
3. Individual households have been allocated about 3.4 million ha, 50% of which (1.7 million ha) are natural forest, and the remaining 50% are plantation. More than 1 million households are involved in these programs; many (but not all) have received land use certificates with clear rights and duty to the land and forests.

4. Commune People's Committees (CPCs) manage around 2.3 million ha, most of which (1.8 million ha) are natural forests. Owing to the lack of staff and capacity, CPCs are often unable to effectively manage these areas. 'Open access' issues are common. Despite Government efforts to allocate these areas to other forest user groups, delays have been caused by a lack of budget for allocation processes and weak collaboration between Ministries.
5. Groups and community organizations such as farmer unions, women and youth groups, manage 524,477 ha of forest, 96% of which are natural forest. None of the community organizations have received land use certificates; and nor have most of the groups; thus their rights to the land have not been formalized.

Forest users who conduct business activities in the forest for profit, are considered enterprises who are subject to requirements relating to production and procedures, tax declaration and fees according to business law. Over the past 15 years the land law and business law have changed on several occasions, meaning that many individuals and businesses are confused about the exact requirements to which they are subjected.

Allocation of land-use rights:

Article 24(3) of the Forest Protection and Development Law of 2004 lays out the Production Forest assignment principles. The State will assign natural forests and plantation forests without levies to any households or individuals living on the land. For economic organizations, these levies will be assigned. The Government is responsible for prescribing in detail how the assignment of production forests is to occur (FLA, 2015). Article 25 assigns the leasing authority between States and the national Government. The State shall lease production forests to domestic economic organizations with an annual rental payment for forestry production. The State also has authority to lease plantation forests; leases may be given to overseas Vietnamese, foreign organizations and individuals with a lump-sum rental payment for the whole lease term or with an annual rent payment (FLA, 2015). Natural forest can be allocated, but people have limited control because the forest still belongs to the Government. When a road is built on that land, no compensation is given to the people.

For the "with-charge" allocations, the land-use-right and forest-use-right certificates are subject to different fee collections based on the area of allocation. These fees are related to costs for measurements.

Note that there is a logging ban in force for natural forest, protection forest and special-used forest.

Description of risk

- Corruption in the issuance of allocation: The cost of the services for issuing certificates can make the officers and organizations granting certificates (Red Book) prolong the process as they await payment. This leads to lobbying and bribery by applicants. This risk is common throughout the country.
- The process for obtaining licenses for production and business, forest planting activities and forest harvesting is very complex and there is a lack of transparency.
- There are frequently issues with areas of land allocated to State Enterprises that do not have the capacity to administer this land. In these instances, local communities

commence using the land, planting trees or crops, for example, then issues of ownership arise when the state attempts to reclaim the land at a later date. This has caused long disputes, with the outcome usually in favour of the encroachers.

- Lack of tenure rights for local people, and overlapping land rights. 'Large areas of production forest have been allocated to individual households, state forest companies, and local communities. However, many of them have not been granted land use certificates thus their legal status to the land has not been formalized thus constraining them from entering into economic transactions related to land.' (To and Canby, 2011).

Revocation of land-use rights:

When the State decides to revoke a land-use-right and/or forest-use-right, a compensation amount is decided. The amount of compensation is decided by the Provincial People's Committee, and is done so without consultation with the recipient of the revoked right. This issue is becoming increasingly problematic in relation to decisions around the conversion of land to other uses. Land-use-rights and forest-use-rights are frequently being revoked to re-allocate land for conversion. Currently the risk of this occurring is so high that many local people have instigated lawsuits, complaints and claims of corruption. Recent media reports state that 70-80% of complaints made to Government from citizens relate to the field of land allocations. e. g. Tien Lang enforcement case or Van Giang (Hung Yen) Duong Noi (Hanoi) (<http://vtc.vn/toan-can-h-vu-cuong-che-tien-lang-chan-dong-ca-nuoc.59-0.html>).

There are generally fewer issues associated with land tenure in plantations (Expert Consultation 2015-16).

There is a general risk of corruption in Vietnam Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Risk Conclusion

Based on the general risk of corruption in Vietnam, as well as the specific information above, the risk for this indicator has been assessed as Specified.

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.

1.1.6. Risk designation and specification

Specified risk

1.1.7. Control measures and verifiers

- Every household or State forestry companies should physically possess the land-use certificate or land lease agreement to demonstrate their land-use right to the land.

The land-use certificate or land lease agreement should cover the correct area. The land-use certificate or land lease agreement shows the area of land covered and is approved and signed off by the Local Authority.

- If the land-use certificate (so called as Red Book) was issued prior to 2000, the land measurements and borders may not be included. Although the pre-2000 Red Books still constitute legal proof of land-use rights, care should be taken when relying on them as proof of land use rights as there is an increased risk of conflicting land-use rights where the borders are uncertain.
- A forest owner must pay for a copy of the Red Book, so there are instances where small landowners or households cannot afford to pay for their Red Book and it is kept in the District Office. In these cases, the forest owner should still have a 'Decision' from the District Staff which shows they have a Red Book for that land.
- The local tax department will have the records of land tax receipts.
- To verify whether there are conflicting land-use claims to a forest area, stakeholder consultation on the ground should be carried out. This should include discussions with the Local Authorities.
- To verify the Business registration certificate: check document is still valid, authentic with DPI/HEPZAs or PPC signature and stamps.

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

- Decree 01/CP dated 04/01/1995 of the Government. Articles 1, 2, 6, 8, 11.

1.2.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Natural Resources and Environment (MONRE)
- Local Authorities: Provincial Department of Agriculture and Rural Development (DARD), Provincial Department of Natural Resources and Environment (DONRE)

1.2.3. Legally required documents or records

For households, one of the following:

- Land use right certificate (Red Book)
- Decision on land allocation
- One of the types of papers on land use rights as required in Clause 1, Article 50, Land Law 2003

For organisations:

- in addition to one of the above, business registration certificate

1.2.4. Sources of information

Non-Government sources

- To Xuan Phuc & Tran Huu Nghi, 2014. Forest Land Allocation in the Context of Forestry Sector Restructuring: Opportunities for Forestry Development and Uplands Livelihood Improvement. Tropenbos International Viet Nam and Forest Trends. June 2014. Accessed 6 February 2015 at <http://www.forest->
- Transparency International's Corruption Perceptions Index 2016 - <http://www.transparency.org/country/VNM>
- Forest Legality Alliance, 2015. Risk Tool - Vietnam. Accessed 5 February 2015 at <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management>.
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCo in Vietnam from 2015-2016.

1.2.5. Risk determination

Overview of Legal Requirements

Although not technically concessions, the law in Vietnam allows for land allocation contracts (which follow Decree 01 CP) and land use right transfer contracts (which follow the Land Law).

An allocation contract permits a citizen to establish a forest or undertake other forestry activities on the land of state-owned forest company. These contracts are called assignment contracts, and the the use right is retained by the forest company.

This contract-based allocation of forests and forest lands between forest companies and local people is based on civil law (To & Tran, 2014). Organizations with a land use right may transfer rights wholly or partly to partners or households with validation and conditions. Households or individuals who have land use rights can transfer those rights to organizations or other households under a voluntary contract with terms and conditions, which may or may not need to be determined by the Commune People's Committee or notary.

Households: The State Forest Management Organization has the right contract with households and villages for land use rights and forest use rights under Decree 01/1999. The people or organizations have the right to use the land can make a concession to others through a contract or commitment. This contract can be confirmed by the Commune People's Committee (CPC). The land use concession royalty is not regulated by

law. Forest state enterprises or state business organizations delegate powers relating to land use rights and forest rights to households or group of households by valid contract with payment or partial payment of the profits.

To be legal, these contracts must be witnessed and stamped by the Local Authority (the law does not specify whether this should be at the Commune or District level).

Description of Risk

In the past, this type of sale by contract was prohibited, but amendments to the Land Law in 2013 have allowed transfer by witnessed contract. According to the Land Law, contracts must be witnessed by the District Authority. Contracts signed prior to this amendment were deemed to be legal, and people could bring these old contracts to the District Authority to have them legalized.

There is a risk that people would not have the contracts witnessed as required by law, but there is no evidence that this is a widespread or systemic issue (Expert discussion in Vietnam 2015-16).

In each district, a copy of the contracts is retained by the District Authority, who makes reports to the Ministry of Natural Resources and Environment (MONRE). It is therefore possible to verify the legality of the contract.

Risk Conclusion

This indicator has been evaluated as low risk. 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.

1.2.6. Risk designation and specification

Low risk

1.2.7. Control measures and verifiers

None

1.3. Management and harvesting planning

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

1.3.1. Applicable laws and regulations

- Law on Forest Protection and Development 2004. Available at: http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=041183&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL

- Section 2. Forests assignment, lease and recovery, change in purpose of forest use.
- Articles 22, 24, 25 and 28. Right competent authority decision.
- Article 44. Trading, transportation, export, import, temporary import for re-temporary export for re-import and transit of forest plants and animals.
- Circular No. 01/2012/TT-BNNPTNT - Article 9. Available at: http://www.vietnamforestry.org.vn/view_news.aspx?nid=400
- Circular No. 42/2012 TT-BNNPTNT - Article 1 (amendment No. 01). Available at: http://kiemlamthainguyen.gov.vn/upload/medias/cat2_1384575185.doc
- Decree 23/2006/ND-CP dated 3/3/2006 of the Government on the implementation of the Law on Forest Protection and Development. Article 49. Available at: <http://thuvienphapluat.vn/archive/Nghi-dinh-23-2006-ND-CP-thi-hanh-Luat-Bao-ve-va-phat-trien-rung-vb9593.aspx>
- Circular 35/2011/TT-BNNPTNT dated on 20/5/2011 on guiding the implementation of harvesting and salvage of timber and non-timber forest products. Article 5: forest management planning; Article 6: harvesting planning. Article 7, Article 18, Article 20, Article 24. Available at: <http://vndoc.com/thong-tu-so-35-2011-tt-bnnptnt-huong-dan-thuc-hien-khai-thac-tan-thu-go-va-lam-san-ngoai>
- Decision 186/2006/QD-TTg of August 14, 2006, Promulgating the regulation on forest management. Available at: <http://luatduonggia.vn/quyet-dinh-186-2006-qd-ttg-ngay-14-thang-8-nam-2006>
 - Chapter III Management of protection forest
 - Chapter IV Management of production forest; Article 39 Exploitation of forest products in natural production forests; Article 40 Exploitation of forest products in planted production forests.
- Circular 87/2009/TT-BNNPTNT dated 31/12/2009 of MARD on guiding the implementation of selective timber harvesting approach in native forests. Article 24 and Article 25. Available at: <http://www.dienban.gov.vn/Default.aspx?tabid=107&NewsViews=1087>
- Circular No. 38/2014 - BNN of planning QLRBV guiding plan for sustainable forest management. Available at: http://tongcuclamnghiep.gov.vn/Media/AuflaNews/Attachment/TT_38.pdf

1.3.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Vietnam Forest Corporation (VINAFOR)
- Commune Peoples' Committee (CPC)

1.3.3. Legally required documents or records

For organisations:

- Sustainable Forest Management Plan
- Decision on approving Sustainable Forest Management Plan issued by Provincial Department of Agriculture and Rural Development (DARD)
- Decision on approving Forest Regulation Plan issued by DARD

For households:

- Decision on approving Harvesting Plan of District People's Committee (DPC)

The following harvesting documents should also be available for organisations:

- Harvesting Plan written by forest title holder or harvesting entities
- Harvesting Plan area map made by forest title holders or harvesting entities;
- List of trees marked for harvesting made by forest title holder or harvesting agency
- Minutes on appraising the Harvesting Plan in the field which is made by consulting firm
- Decision on approving Harvesting Plan dossier of DARD (for Organisations) and DPC (for households)
- Forest Harvesting Permit issued by DARD (for organisations) and DPC (for households)
- Forest title and checking-and-acceptance record of harvesting timber that is developed by District FPD

In addition to those listed above, for plantation forests invested by own capital or supported by the State and some salvage harvesting, silvicultural harvesting and harvesting timber from plantations in home gardens, farms and dispersed trees, a Harvesting registration form made by forest title holders and a Table of products to be harvested should also be available.

1.3.4. Sources of information

Government Sources

- Kiemlam.org (2014). *Hành vi vi phạm lâm luật tính từ đầu năm đến tháng 3 năm 2014* (Acts of violation of forest laws since the beginning of the year to March 2014). [online]. Available at: <http://www.kiemlam.org.vn/Desktop.aspx/List/Hanh-vi-vi-pham-Luat-BV-va-PT-rung/> [Accessed 13 December 2016]

Non-Government sources

- WWF (n.d.). *WWF GFTN Guide to Legal & Responsible Sourcing*. [online]. WWF The Global Forest & Trade Network (GFTN). Available at: http://sourcing.gftn.panda.org/files/PDF/legal_documentation_vietnam.pdf [Accessed 5 February 2015]
- Sikor, T. & P.X. To (2011). Illegal Logging in Vietnam: Lam Tac (Forest Hijackers) in Practice and Talk. *Society & Natural Resources*, Vol. 24 (7), 688–701. Available at: <http://www.tandfonline.com/doi/abs/10.1080/08941920903573057> [Accessed 13 December 2016]

1.3.5. Risk determination

Overview of Legal Requirements

For forest managers/harvesting companies with State investment, the company should have approved harvest plans and maps. Management and harvest plans may only be developed by registered organizations: the Forest Inventory and Planning Institute (FIPI), technical Forestry Colleges (FC), licensed State Forestry Companies (SFCs) and local organizations with prescribed business licenses. In cases where the company borrows, with interest, from the government, harvesting plans are approved by either DARD (for companies belonging to the province) or Vietnam Forest Corporation (VINAFOR) with subsequent MARD approval (GFTN, undated).

Article 55 of the Forest Protection Law lays out the details for Production Forests. State-owned forestry companies often outsource to private contractors the requirement to carry out forest inventories and forest management planning, so their management capacity is not enhanced. The service consulting firms have a strong understanding of the management of land resources and forest resources planning while the forest owners do not necessarily have a complete understanding. Forestry companies often hire professional services organizations (FIPI) to carry out the forest inventory and planning over the medium term (5 years).

Note that there is a logging ban in force for natural forest, protected forest and special purpose forest.

Description of Risk

Because management plans must be approved by DARD, and are developed by experts, the process for developing the plans is quite rigorous and well adhered to. Implementation of management plans is monitored by local rangers. There is an allowance for a 15% deviation from the management plan. After each harvest, the ranger must approve the volumes and will mark each log with a hammer mark to show that it has been approved.

Risk Conclusion

This indicator has been evaluated as low risk. 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.

1.3.6. Risk designation and specification

Low risk

1.3.7. Control measures and verifiers

None

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

- Circular 35/2011/TT-BNNPTNT dated on 20/5/2011:
 - Article 4 stipulates forest objectives, and forest products to be harvested;
 - Article 7 and Article 16: regulation of harvest licensing procedures for native forests;
 - Article 8: harvest licensing procedures for concentrated plantation forests by the State budget capital and grant budget;
 - Article 9: harvest licensing procedures for concentrated plantation forests by self-investment capital;
 - Articles 18 and 19: harvest licensing procedures for plantation forests.

1.4.2. Legal authority

Natural forest:

- Provincial Department of Agriculture and Rural Development (DARD)

Plantation:

- District People's Committee (DPC)

Note:

- Plantations, where are invested by companies/ households by themselves, are not required submitting timber harvesting design documents to authority agencies for approving.

1.4.3. Legally required documents or records

For rubber wood:

- Decision on liquidating rubber completed by organisations
- Harvesting registration form completed by households

For salvage timber:

- Decision on approving environmental assessment report of MARD or Provincial People's Committee (PPC) for projects that change purposes for forest use: 5ha or

more for watershed protection forests, wave-breaking protection forests, special use forests; 10ha or more for natural forests; 50ha or more for other types of forests.

- Document on accepting environmental protection commitment of DPC or Commune People's Committee (CPC) for the projects that change the purposes for forest use and have areas smaller than the area regulated
- Decision on approving Measure on compensation for site clearance.
- Document of Prime Minister or People's Committee (for organisations) or DPC (for households) on allowing forest conversion for changing forest use;
- Document of PPC on assigning the harvesting operation (organisations only)
- Harvesting Plan written by forest title holder or harvesting agency (organisations only)
- Map of harvesting area produced by forest title holder or harvesting entities (organisations only)
- Decision on approving Harvesting Plan dossier issued by DARD (organisations only)
- Harvesting permit issued by DARD (organisations only)
- Table of products to be harvested of by forest title holder (household only)
- Validating minutes of residential forest rangers or commune forest rangers (households only)
- Harvesting registration form completed by households

Plantation - own investment & state support:

- Harvesting registration form completed by forest title holder
- Table of products to be harvested completed by forest title holder (household);
- Harvesting Plan completed by forest title holder or harvesting agency (for households, only the tentative volume estimated by forest title holder)
- Harvesting area map made by forest title holder or consulting firm (organisation)

Plantation forests invested by State budget, grant:

- Harvesting Plan area map created by forest title holder or harvesting entities
- Harvesting Plan map made by forest title holder or consulting firm
- Decision on approving Harvesting Plan dossier of DARD or the line agency (for organisations) or DPC (for households)
- Harvesting permit issued by DARD, the line agency (for organisations) or DPC (for households)

1.4.4. Sources of information

Non-Government sources

- Sikor, T. & P.X. To (2011). Illegal Logging in Vietnam: Lam Tac (Forest Hijackers) in Practice and Talk. *Society & Natural Resources*, Vol. 24 (7), 688–701. Available at: <http://www.tandfonline.com/doi/abs/10.1080/08941920903573057> [Accessed 13 December 2016]
- TalkVietnam.com, 2013. Corrupt forest rangers jailed over illegal logging scheme. Available online at < <https://www.talkvietnam.com/2013/02/corrupt-forest-rangers-jailed-over-illegal-logging-scheme/>>, accessed 20 January 2017.
- United Nations Office for Drugs and Crime, 2013. Criminal Justice Responses to the Illegal Trade in Timber in Vietnam. Available online at < https://www.unodc.org/documents/southeastasiaandpacific//Publications/wildlife/CJS_Response_-_VIETNAM_01_13_Dec_201.pdf>, accessed 20 January 2017.
- Vietnambreakingnews.com, 2013. Corrupt forest rangers jailed over illegal logging scheme. Available at < <https://m.vietnambreakingnews.com/2013/12/corrupt-forest-rangers-jailed-over-illegal-logging-scheme/>>, accessed 20 January 2017.
- Viet Nam News, 2011. Corrupt rangers threaten forests. Available online at <<http://vietnamnews.vn/opinion/219173/corrupt-rangers-threaten-forests.html>>, accessed 20 January 2017.
- Thai Son, Thanh Nien News, 2015.
- Vietnamese forest rangers caught taking bribes from timber company. Available online at < <http://www.thanhniennews.com/society/vietnamese-forest-rangers-caught-taking-bribes-from-timber-company-46775.html>> , accessed 20 January 2017.
- Ai Chau, Thanh Nien News, 2014. Vietnam forest ranger arrested for bribery investigation. Available online at < <http://www.thanhniennews.com/society/vietnam-forest-ranger-arrested-for-bribery-investigation-29443.html>>, accessed 20 January 2017.
- Transparency International’s Corruption Perceptions Index 2016 - <http://www.transparency.org/country/VNM>
- Forest Legality Alliance, 2015. Risk Tool - Vietnam. Accessed 5 February 2015 at <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management>.
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.4.5. Risk determination

Overview of Legal Requirements

There is a logging ban in force for natural forest, protection forest and special-used forest.

Circular 35 provides full instructions for the issuance of harvesting permits:

Department of Agriculture and Rural Development (DARD) issues 10 types of permits for different organizations (forest users);

District People's Committee (DPC) issues three types of permits to households and communities; and

Commune People Committee (CPC) approves seven types of applications for forest exploitation (these applications do not require a harvesting permit).

The District-level People's Committee grants harvesting permits for individuals, whereas the DARD grants harvesting permits for organizations. Households – who plant trees on their own land and do not have any external investment or loans – do not need a harvesting permit prior to harvesting those trees. Some households who do not have the capacity to deal with the harvesting permit procedure will enter into an arrangement with a harvesting company, who will obtain the necessary harvesting permits on behalf of the householders.

Research Institutes who hold the land for scientific purposes will obtain a harvesting permit from the Ministry or their own Associations; however the Association is not a state authority and cannot issue harvesting permits.

The two largest corporations (Vietnam Forest Corporation (VINAFOR) and Vietnam Paper Corporation (VINAPACO)) are also special cases. The VINAFOR obtains its permit from the MARD - VNFOREST and the VINAPACO from the Ministry of Industry and Commerce.

Forest rangers closely monitor the harvesting process. A copy of the harvesting permit must be provided to the rangers prior to commencing harvesting activities to enable them to monitor the activity and ensure legal volumes are cut. Data for all trees harvested is checked, and logs are stamped by the forest rangers. Records of stamping are maintained by the Forest Protection Department (FPD) for natural resource tax assessment and to provide proof of origin.

Description of Risk

Incidents of illegal harvesting, involving bribery of forest rangers, have been reported (TalkVietnam.com, 2013, United Nations Office for Drugs and Crime, 2013, Vietnambreakingnews.com, 2013. Viet Nam News, 2011, Thai Son, Thanh Nien News, 2015, Ai Chau, Thanh Nien News, 2014). According to Sikor and To (2011), forest rangers in Vietnam abused their enforcement powers to facilitate illegal timber trade, deriving personal profits from it. These reports are intermittent, but consistent.

There is a general risk of corruption in Vietnam Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

There appear to be fewer reports in the most recent year, but given the known risks associated with corruption and bribery in Vietnam, a specified risk has been found in this indicator.

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

None

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

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

1.5.1. Applicable laws and regulations

- Law on Royalties 45/2009 / QH12 of November 25, 2009. Available at: http://cucthue.angiang.gov.vn/index.php?option=com_attachments&task=download&id=534
 - Chapter 2 of the Royalties bases, in Article 7 Royalties rates
 - Section V: The rate of production of native forest products.
- Decree 50/2010/ND-CP dated 14/5/2010 with specifications and guidance on some articles relating to the Natural Resource Tax Law. The taxable forests are divided into 8 species groups each with their own tax rates. Available at: <http://www.luatthue.net/2014/03/nghi-dinh-so-50-2010-nd-cp.html>
- Decision 2242/QD-TTg PROVING THE SCHEME FOR STRENGTHENING THE MANAGEMENT OF EXPLOITATION OF TIMBER OF NATIVE FORESTS FOR THE PERIOD 2014–2020. Available at: http://www.vietnamforestry.org.vn/mediastore/fsspco/2015/01/20/2242_QD-TTg_111214_CP_EN.pdf

1.5.2. Legal authority

- Natural forest: Local Tax Office registers revenue tax to businesses, households, communities for payment of royalties and harvesting fees
- General Department of Tax - Ministry of Finance
- Plantation: N/A

1.5.3. Legally required documents or records

- Receipts of paid taxes and fees according to the unity form of the Ministry of Finance
- Check receipts for fees paid relating to management plan, harvesting plan, EIA design & VAT

1.5.4. Sources of information

Non-Government sources

- Le, D.T. (2015). *Analysis of State Forestry Companies with Emphasis on Sustainable Natural Forest Management - Case Studies from the Central Highlands, Vietnam. Doctoral Dissertation*. [online]. Institute of International Forestry and Forest Products, Technische Universität Dresden, Tharandt. Available at: https://scholar.google.pt/citations?view_op=view_citation&hl=en&user=ae-thRMAAAAJ&citation_for_view=ae-thRMAAAAJ:0EnyYjriUFMC [Accessed 13 December 2016]
- Transparency International's Corruption Perceptions Index 2016 - <http://www.transparency.org/country/VNM>
- Forest Legality Alliance, 2015. Risk Tool - Vietnam. Accessed 5 February 2015 at <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management>.
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.5.5. Risk determination

Overview of Legal Requirements

The tax on using natural resources is applied to forest products in natural forests only. Note that there is a logging ban in force for natural forest, protection forest and special-used forest. The Law on Royalties provides for the payment of royalties on the exploitation of Vietnamese natural and mineral resources. The Law describes the natural resource output used for royalty calculation, royalty-liable prices and royalty rates. Royalty payers must register, declare, calculate and pay royalties under the Law on Tax Administration. The Law further defines cases in which royalty payers may be considered for exemption from, or reduction of, payable royalties. Stumpage fees (or so called as standing tree tax or standing tree charge) is nowadays still regulated in some provinces in Central Highlands such as Gia Lai, Kon Tum, Lam Dong, and Dak Nong (Le, 2015).

Forest prices are described under Article 33 of the Forest and Development Law of 2004. The Government is responsible for prescribing the principles and methods for determining the prices for forests of all kinds. Once the Government has set the principles and method, the Provincial/District People's Committees set specific prices for forests in their respective localities. Prices will be formulated when required by law; when they are necessary for auction of forest use rights over production forests; etc. When bidding for forest rights occurs, the winning bid must be higher than the Government-set price.

Description of Risk

There is a risk of tax avoidance, but this risk is low as there are no serious known cases about this over a long period of implementation. In one case in the Khanh Hoa province, an enterprise harvested *Fokienia* trees (a species subject to a high tax rate) but to avoid tax claimed to harvest *Pinus* trees; and the authority did not discover this for a year. There are also reports that species which occur both in native forests and in plantation forests are wrongly declared as originating in plantations so that owners can avoid their tax obligations. There is risk of illegal declaration of either timber species or the total timber volume as a means of avoiding taxes.

Forest owners generally comply with other requirements for the payment of environment-related taxes and fees. The Government promotes the participation of households or group of households in the forestry sector by reducing several types of tax and/or exempting households from paying them. The high tax on the use of natural resources – based on the Prime Minister's policy to stop the exploitation of timber of native forests nationwide while enhancing and strengthening the leadership of authorities at all levels in forest protection (Decision 2242/QD-TTg) – is (according to the public press) not subject to a high risk of corruption.

Because each harvesting activity is reviewed by a forest ranger, the risk described for this category will occur only if the forest ranger cannot correctly identify the timber. As the rangers are trained foresters, they are likely to be able to correctly identify the species.

Risk Conclusion

As the tax on using natural resources is applied to forest products in natural forests only and there is a logging ban in force for natural forest, protection forest and special-used forest, this indicator is not applicable.

1.5.6. Risk designation and specification

N/A

1.5.7. Control measures and verifiers

None

1.6. Value added taxes and other sales taxes

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

1.6.1. Applicable laws and regulations

- Law 32/2013/QH13 dated June 19, 2013 of the National Assembly on amending and supplementing some articles of the Law on Enterprise Income Tax. Available at: <http://vbqppl.mpi.gov.vn/en-us/Pages/default.aspx?itemId=e8b872a9-079d-42fd-be10-368935dbaf6e&list=documentDetail>
- Decree 218/2013/ND-CP dated 20/12/2013: specifications and guidance relating to business income tax
- Circular 78/2014/TT-BTC guidance on implementation of business income tax

1.6.2. Legal authority

- General department of tax - Ministry of Finance (MOF)

1.6.3. Legally required documents or records

- Receipts of paid value added taxes

1.6.4. Sources of information

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2015). *Worldwide Governance Indicators - Vietnam 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]

1.6.5. Risk determination

Overview of Legal Requirements

VAT applies to many forest products. Where the products become a traded good, the VAT tax will apply. The tax rate varies depending on the product, but ranges from 5 to 10%. Where corruption occurs in relation to VAT, a common scenario is underpayment of official taxes with a percentage of the difference paid to the official to overlook the underpayment. The requirements relating to VAT only apply to private entities, and are not applicable to forests owned by government entities or households.

Description of Risk

Risks relating to forests assigned to private entities as the requirements do not apply to forests owned by government-entities or households, they only apply to private entities:

The tax management system in Vietnam relies on self-reporting and evaluations of compliance are generally done of the self declarations only. Audits are relatively infrequent, weakening the system (FLA, 2015)

There are a number of chances for corruption to occur within the tax department. Based on feedback obtained from contacted stakeholders, there is a common understanding amongst Vietnamese people that there are high levels of corruption amongst tax officials. Where corruption occurs in relation to VAT, a common scenario is underpayment of official taxes with a percentage of the difference paid to the official to overlook the underpayment.

Cash is commonly used to make tax payment, meaning there is no oversight from banks and no official record of the payment.

Commonly officials do not require a tax invoice and do not collect tax invoices.

There is no central database for control by the control entity.

There is a general risk of corruption in Vietnam Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and

Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Risk Conclusion

Based on the available information, the risk for this indicator has been assessed as Specified for privately owned forests. 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.

This indicator is not applicable to household- and Government-owned forests.

1.6.6. Risk designation and specification

Specified Risk for forests managed by private companies

N/A for forest managed by publicly owned companies and for forests managed by households.

1.6.7. Control measures and verifiers

- Detecting corruption and the payment of bribes is very difficult. In addition to obtaining the necessary proof of payment of taxes (see below list), it is also possible to seek confirmation from authorities about the usual rates of VAT that should have been paid.
- Sales documents shall include applicable sales taxes.
- Receipts for payment sales taxes shall exist.
- Crosschecking that the volumes, species and qualities given in sales and transport documents match the fees paid is as option, but frequently these documents may also have been falsified.
- Verify that the harvested species, volumes and qualities match the sales documents.
- Authorities may be able to confirm that an operation is up-to-date in payment of applicable sales taxes. Consultation with financial authorities can verify that all required 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

- Law 32/2013/QH13 dated June 19, 2013 of the National Assembly on amending and supplementing some articles of the Law on Enterprise Income Tax. Available at: <http://vbqppl.mpi.gov.vn/en-us/Pages/default.aspx?itemId=e8f95ed6-0c35-4522-9d94-4c3e25b104c8&list=documentDetail>

- Decree 218/2013/ND-CP dated 20/12/2013 specification and guiding on business income tax. Available at: <http://www.download.com.vn/docs/download/nghi-dinh-so-218-2013-nd-cp/77902>
- Circular 78/2014/TT-BTC guiding on implementation of business income tax. Available at: <http://ketoanthuocien.com/kien-thuc-huong-dan-thue-thu-nhap-doanh-nghiep>

1.7.2. Legal authority

- Authority at all levels and local financial sector
- General Department of Tax - Ministry of Finance (MOF), Provincial Department of Tax

1.7.3. Legally required documents or records

- Receipts for payment of business income tax

1.7.4. Sources of information

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2013). *Worldwide Governance Indicators - Vietnam 1996–2013*. [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016

1.7.5. Risk determination

Overview of Legal Requirements

Every private enterprise must pay two types of income tax. Business legislation changes rapidly and in Vietnam is progressing towards a more free market approach; and the risk is therefore decreasing. Many changes have taken place in the transformation period from the central-planned economy to a market economy (changes have taken place six times in 10 years: 1990, 1992, 1998, 2000, 2003, 2006). However, many businesses are avoiding tax by claiming the lowest possible profit. The logging, transport and wood processing export sectors are still high-risk and need further oversight and guidance from the authorities.

Description of Risk

Risks relating to privately owned forests only, the requirements described do not apply to household- and Government-owned forest :

The tax management system in Vietnam relies on self-reporting and evaluations of compliance are generally done of the self declarations only. Audits are relatively infrequent, weakening the system (FLA, 2015)

There are a number of opportunities for corruption to occur within the tax department. There is a common understanding amongst Vietnamese people that there are high levels of corruption amongst tax officials (feedback provided by experts consulted during the preparation of this report). Where corruption occurs in relation to income tax, a common scenario is underpayment of official taxes with a percentage of the difference paid to the official to overlook the underpayment.

Cash is commonly used to make tax payments, meaning there is no oversight from banks and no official record of the payment.

Commonly officials do not require tax invoices and do not collect tax invoices.

There is no central database facilitating control by the relevant authority.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Risk Conclusion

Based on the available information, the risk for this indicator has been assessed as Specified for privately owned forests. 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 household- and state-owned forests.

1.7.6. Risk designation and specification

Specified Risk for forests managed by private companies

Not applicable for forest managed by publicly owned companies and for forests managed by households.

1.7.7. Control measures and verifiers

- Detecting corruption and the payment of bribes is very difficult. In addition to obtaining the necessary proof of payment of taxes (see below list), it is also possible to seek confirmation from authorities about the usual rates of income tax that should have been paid.
- Receipts/records for payment of income taxes shall exist.
- Authorities may be able to confirm that operation is up-to-date in payment of applicable income taxes.

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

- Circular 35/2011/TT-BNNPTNT dated 20/5/2011 on guiding the implementation of harvesting and salvage of timber and non-timber forest products. Available at: <http://www.download.com.vn/docs/download/thong-tu-so-35-2011-tt-bnnptnt-huong-dan-thuc-hien-khai-thac-tan-thu-go-va-lam-san-ngoai-go/55074>
- Circular 70/2011/TT-BNNPTNT dated 24th October, 2011 of MARD amendments and supplements to Circular 35/2011/TT-BNNPTNT dated 20th May, 2011 guiding on exploitation and making full use of timber and NTFPs. Available at: http://vietnam-redd.org/Upload/Download/File/70_2011_TT-BNNPTNT_0010.pdf
- Circular 87/2009/TT-BNNPTNT dated 31st December 2009 of MARD guiding on design, use and selection of timber. Available at: http://vietnam-redd.org/Upload/Download/File/87_2009_TT-BNNPTNT_5331.pdf
- The guideline of FAO Reduced Impact Logging (RIL) published by Vietnam Forestry Administration in 2007; on pages 45, 46, and 47 on opening roads.
- Forestry sector norm 14/92, 1993. This norm describes an applied silviculture technique facilitating measurement of wood and bamboo production forest. Available at: http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10578
 - Part 1, Article 4: the objective of harvesting native forests;
 - Article 13 minimum tree harvestable size classes;
 - Article 14: the intensity of harvesting;
 - Article 15: harvesting cycle;
 - Article 16: tree marking techniques
 - Section 2: plantation clear cutting;
 - Article 18: permitted harvesting age;
 - Article 20: permissible harvesting area;

- Section 3: clear felling and retention of seed trees;
- Article 19: clear felling on steep sites;
- Article 30: harvesting approach, pre- and post-harvest monitoring.

1.8.2. Legal authority

- Department of Forest Protection (FPD) - Ministry of Agriculture and Rural Development (MARD)
- Natural forest: Forest is managed SFC, harvesting design needs to be approved by DARD.
- Plantation: Plantation is managed by SFC that SFC is not invested, harvesting design needs to be approved by DARD. Whereas, plantation is managed by SFC that SFC is invested, harvesting design is approved by themselves.

1.8.3. Legally required documents or records

- Records of the user's manual, the timber logging process, form of applied silvicultural technique measures etc. Issued and amended several times since 1958 until the Circular 35/2011 was issued.
- All boundaries for harvested areas must be clearly marked on maps (harvesting plans are at 1:5000 scale) and verified in field.

Natural forest:

Data for all logs harvested must be checked, and logs stamped, by the district FPD. Cross-check and subsequent stamping occurs at the log yard; records are maintained at the district FPD to provide proof of origin and for tax assessment purposes. For all areas harvested the company must be in possession of an approved post-harvest inspection report.

The potential risks we see at natural forest harvesting can be:

- tree marking, tree selection during pre-harvesting inventory may not be done properly;
- trees were cut may not be the ones marked.
- hammer mark after logging may not be done properly for all log
- risk of clear felling and retention of seed trees;
- post harvesting monitoring may not be done properly

Plantation:

Forest owners decide on their own harvesting design. The forest owners need to send the application to CPC for harvesting registration. Within 10 days, if the CPC has no feedback, the forest owners are allowed to harvest the plantation as designed.

1.8.4. Sources of Information

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2013). *Worldwide Governance Indicators - Vietnam 1996–2013*. [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]
- Tran, T. V. (2013). *Sustainability impact assessment (SIA) of alternative forest- wood supply chains (FWSCs): A case study from Vietnam*. [online]. Freiburg: Albert-Ludwig-University of Freiburg. Available at: file:///C:/Users/Anne-Mette/Downloads/Tran_2013_SIA_of_FWSCs_in_Vietnam.pdf [Accessed 14 December 2016]
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.8.5. Risk determination

Overview of Legal Requirements

Natural forest: Forest owner must have an approved forest management plan or sustainable forest management plan. Logging quota is set by the government. Based on that, DARD will allocate specific logging quota to forest owner. With natural forests prior to harvest, a harvesting plan must be prepared to submit to DARD for approval and getting harvesting permit. After cutting, logs are extracted to log landing. In log landing, data for all trees harvested is checked, and logs are stamped by the forest rangers. Records of stamping are maintained by the district FPD for natural resource tax assessment and to provide proof of origin. For all areas harvested the forest owner must be in possession of an approved post-harvest inspection report. The forest owner and DARD conduct an evaluation to measure actual harvest versus harvest plan.

Plantation: the forest owners need to prepare an application specifying area and volume, seek approval from CPC, after 3-10 days the harvesting starts, claim the volume of harvest. The households who live in remote areas usually do not have enough capacity to complete the harvest application; thus they usually request that the buyer or broker do this. The CPC does not have any authority over the broker or buyers.

Description of Risk

The silvicultural requirements must be included in the application for the harvesting permit. If this information is not included, a permit will not be issued.

The potential risks we see at natural forest harvesting can be:

- tree marking, tree selection during pre-harvesting inventory may not be done properly;
- trees cut may not be the ones marked.
- hammer mark after logging may not be done properly for all log

- risk of clear felling and retention of seed trees;
- post harvesting monitoring may not be done properly

As there is currently a complete logging ban in place in natural forests, the risks for this indicator are not relevant at this time.

According to expert input into the drafting of this report, and extensive consultation with experts in Vietnam in 2015-15, the potential risks in the natural forest are not present in plantations.

Risk Conclusion

This indicator has been evaluated as low risk for plantations. 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.

This indicator is N/A for natural forests.

1.8.6. Risk designation and specification

Natural forest: N/A

Plantations: Low risk

1.8.7. Control measures and verifiers

None

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

- Circular 38/2014 / TT-BNN November 3, 2014 P6 Criteria 6.1, 6.2 and P9 conservation plan relating to high conservation value zones established and managed by State, businesses, and communities. Available at: http://tongcuclamnghep.gov.vn/Media/AuflaNews/Attachment/TT_38.pdf
- Decree 117/2010/ND-CP date December 24, 2010 of the Government on organization and management of special use forests. This forest type is focused on biodiversity conservation and special activities; Article 11 relates to the establishment of conservation areas. Available at: <http://luatduonggia.vn/nghi-dinh-117-2010-nd-cp-ngay-24-thang-12-nam-2010>
- Decree No. 32/2006 / ND-CP dated 30/3/2006 on the management of flora and fauna, including rare species in Appendix 1A, 1B, 2A, 2B and animals which harvesting is prohibited and restricted. Provision 1 and 2, Article 6; Provision 2 and 3, Article 5 on

management of endangered and precious forest fauna and flora species. Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=15193

- Decision 186/2006 / QD-TTg dated 14/8/2006 of the Prime Minister on regulations on forest management, in which Chapter IV specifies the management of production forests, including protection of forest conservation areas and prohibited plant species. Available at: <http://luatduonggia.vn/quyet-dinh-186-2006-qd-ttg-ngay-14-thang-8-nam-2006>
- Decree No. 82/2006/ND-CP, 10 August 2006 on management of export, import, re-export, introduction from the sea, transit, breeding, rearing and artificial propagation of endangered species of precious and rare wild fauna and flora. Available at: http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=052509&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL
- Decision No. 54/2006/QD-BNN, 05 July 2006 publicizing a list of wild plant and animal species in Annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- Decision No. 40/2005/QD-BNN, 07 July 2005 on promulgating the regulation of harvesting of timber and other forest products.

1.9.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)

1.9.3. Legally required documents or records

N/A

1.9.4. Sources of Information

Non-Government sources

- N.N. Phuong and S.A. Dembner (n.d.). *Improving the lifestyles of people in protected areas of Viet Nam*. [online]. FAO. Available at: <http://www.fao.org/docrep/v2900e/v2900e05.htm> [Accessed 23 April 2015]
- Forest Trends (2011). *Baseline Study 3: Vietnam: Overview of Forest Governance and Trade*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Baseline+Study+3,%20Vietnam/73bea271-0a2e-4ecb-ac4e-f4727f5d8ad9> [Accessed 14 December 2016]
- Sun Mountain International and the Cadmus Group, Inc. (2013). *Vietnam Tropical Forests and Biodiversity Assessment - 2013*. [online]. US Foreign Assistance Act, Section 118/119 Report August, 2013. Available at: [https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%202015Oct2013%20\(Public%20Version\).pdf](https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%202015Oct2013%20(Public%20Version).pdf) [Accessed 9 September 2015]

- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015].
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.
- 'Illegal logging cuts down national park'. 30th November 2015. Viet Nam News. Article can be accessed at: <http://vietnamnews.vn/environment/279204/illegal-logging-cuts-down-national-park.html#wKsJFvuXWdj3pWL.97>
- 'Illegal logging, smuggling found in protected Central Highlands forest'. 21st March 2017. Viet Nam News. <http://vietnamnews.vn/environment/373183/illegal-logging-smuggling-found-in-protected-central-highlands-forest.html#Rk1rWzUdViupugPS.97>
- Country Profile & Vietnam's Fifth Convention on Biodiversity National Report. <https://www.cbd.int/countries/profile/default.shtml?country=vn#measures>

1.9.5. Risk determination

Overview of Legal Requirements

There is currently a logging ban in Vietnam for harvesting in natural forest, protected forest and special purpose forest. The Law on Forest Protection and Development and other legal documents specifying conservation of nature (including biodiversity) apply only to special-use forests (national parks, nature reserves, species conservation areas, historic parks, cultural sites). The production forests are not subject to requirements for protection activities. In the Law on Forest Protection, there is mention of protecting species and sites in production forests; however there is no circular or decree which elaborates how this should be carried out. Harvesting companies must identify endangered animal and plant (including timber) species within the forest management unit (FMU) and comply with relevant provisions for their protection or exploitation, as appropriate.

The management of protected areas is coordinated by the Forest Protection Department (FPD) within the MARD. Forest management boards of protected areas (FMBs) belonging to the state currently manage more than 4.7 million ha, primarily special-used and protection forests for protection and conservation purposes. About 88% are natural forest, and the remaining 12% are plantation forests. FMBs receive central government budget allocations and, in many cases, contract local people to implement protection and conservation activities (EFI 2011, FPD 2013).

The most difficult task related to the conservation and management of Viet Nam's national parks and nature reserves now results from the presence of settlements of local (often tribal) populations, most of whom were already in these areas before their designation as reserves. These local populations are generally poor, isolated communities, who practice shifting agriculture, subsistence hunting and forest product exploitation for survival and thereby often conflict with conservation objectives (Sun Mountain International and the Cadmus Group, Inc. 2013).

Conservation of high value forest in production forest category: Since 1998, Vietnam started to approach sustainable forest management and forest certification process; and

high conservation value forest (HCV) protection is suggested to regulate in production forests for forest owners who want to promote FSC certification.

Vietnam has regulations to ensure conservation in special-used forests. Around the special-used forests there is a buffer zone to further ensure that the special-used forests are not encroached upon.

Description of Risk

Vietnamese law stipulates separation of forest conservation (special-used forest) from production forests and protection forests. There are high levels of Government oversight of the special-use forests, and the Government has invested significant resources in this. There are specific legal sanctions that apply to illegal harvesting in special-used forests. There are a small number of cases of illegal harvesting in the special-use forests, with these offenders usually apprehended by the forest rangers.

Instances of illegal harvesting in the special-use forests are published in the newspaper as well as on the website of the FPD.

Vietnam's 5th National CBD report identifies that illegal logging and road construction are linked to habitat degradation and fragmentation. It also cites that population growth may lead to uncontrolled deforestation linked to the need of many people clearing land for farming and livestock. Furthermore, the Global Forest Watch Intact Forest Landscape loss map layer from 2000 to 2013 indicates IFL loss in all existing IFL areas in Vietnam and loss of one whole IFL areas during this period. The loss in two of these IFLs areas where in national parks which indicates the IFL loss was due to illegal logging. As there is a logging ban in place in natural forests, except for those certified under an internationally recognized certification system, the risk as considered low for natural forests.

Plantations, do not occur in protected areas, therefore there is a low risk for this category for Plantations.

Risk Conclusion

This indicator has been evaluated low risk. 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.

1.9.6. Risk designation and specification

Low risk

1.9.7. Control measures and verifiers

None

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

- Circular 38/2014 / TT-BNN. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-38-2014-TT-BNNPTNT-huong-dan-Phuong-an-quan-ly-rung-ben-vung-vb257190.aspx>
- Decree 29/2011 / ND-CP dated 04/08/2011 that requires environmental impact assessments for native forest harvesting of areas 50ha or more and plantations of 200 hectares or more. Articles 12, 18, 19, 29, 32 and 33. Available at: <http://vea.gov.vn/en/laws/Legal Document/Pages/DecreeNo292011.aspx>
- TT26 / 2011 / TT-BTNMT dated 18/7/2011 of the TN_MT providing details about the strategic environmental assessment, environmental impact and commitment BVMY. Available at: <http://www.thuviengiadinh.com/ung-dung/mau-van-ban/thong-tu-26-2011-tt-btnmt-huong-dan-nghi-dinh-29nd-cp-ve-lap-bao-cao-danh-gia-tac-dong-moi-truong-bckbvm#axzz3QJuMvFZN>
- Circular No. 20 / VBHN - MARD dated 05/06/2014 with guidance on the implementation of selective harvesting of timber from native forests, incorporating environmental requirements of Circular 87/2009 and decision No. 40 QD-BNN. Available at: <http://tongcucthuy-san.gov.vn/b-van-ban-phap-luat/thong-tu-so-16-vbhn-bnnptnt-ngay-15-thang-4-nam-2014-cua-bo-nong-nghiep-va-phat-trien-nong-thon-ve-quan-ly-giong-thuy-san/>
- Decree 32/2006 / ND-CP dated 30/5/2006, Appendix 1A and 2A: species protected from exploitation, mining restrictions. Annex 1B, 2B: banned animal exploitation and mining restrictions. Provisions 1 and 2, Article 6; Provisions 2 and 3, Article 5 on management of endangered and precious forest fauna and flora species. Available at: <http://tongcuclamnghip.gov.vn/nghi-dinh/nghi-dinh-32-2006-nd-cp-ngay-30-3-2006-cua-chinh-phu-ve-quan-ly-thuc-vat-rung-dong-vat-rung-nguy-cap-quy-hiem-a639>
- Decree 18/2015/ND-CP dated 14 February 2015 - This Decree promulgates environmental protection planning (EPP), strategic environmental assessment (SEA), environmental impact assessment (EIA) and/or environmental protection plans of the Law on Environment protection. <http://thuvienphapluat.vn/van-ban/EN/Tai-nguyen-Moi-truong/Decree-No-18-2015-ND-CP-environmental-protection-planning-strategic-environmental-assessment/268489/tieng-anh.aspx>
- Decree 19/2015/ND-CP DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LAW ON ENVIRONMENTAL PROTECTION. Available at: <http://thuvienphapluat.vn/archive/Decree-No-19-2015-ND-CP-detailing-the-Law-on-Environmental-Protection-vb268680.aspx>

1.10.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Natural Resources and Environment (MONRE)

- Department of Forestry

1.10.3. Legally required documents or records

Environmental Impact Assessment (if required):

- Decision on approving environmental impact assessment report of Provincial People's Committee for projects harvesting 200ha or more.
- Plantation - own investment & state support
- Decision on approving environmental impact assessment report issued by Ministry of Agriculture and Rural Development (MARD) or Provincial People's Committee (PPC) for projects harvesting 200ha or more;
- Document on accepting the environmental protection commitment issued by District People's Committee (DPC) or Commune People's Committee (CPC) for projects harvesting less than 200ha
- Decision on approving environmental impact assessment report issued by PPC for projects harvesting 50ha or more in plantation forests
- Document on accepting the environmental protection commitment issued by DPC or CPC for projects harvesting less than 50ha in plantation forests.
- EIA report (EIAR) from MONRE confirming that all EIA requirements were met.

Pollution:

- Certificate on satisfactory environmental standards (covering the organisation of business, production and services implementation, and waste management) and check the working minutes of inspectors and supervisors regarding the company's implementation of the law on environmental protection

1.10.4. Sources of information

Non-Government sources

- Sun Mountain International and the Cadmus Group, Inc. (2013). *Vietnam Tropical Forests and Biodiversity Assessment - 2013*. [online]. US Foreign Assistance Act, Section 118/119 Report August, 2013. Available at: [https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%2015Oct2013%20\(Public%20Version\).pdf](https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%2015Oct2013%20(Public%20Version).pdf) [Accessed 9 September 2015]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- Jennifer C. Li, (2008). *Environmental Impact Assessments in Developing Countries: An Opportunity for Greater Environmental Security?* (Working paper No. 4). [online]. USAID and FESS. Available at: <http://www.fess-global.org/workingpapers/eia.pdf> [Accessed 9 September 2015].
- Expert consultation conducted by NEPCo in Vietnam from 2015-2016.

1.10.5. Risk determination

Overview of Legal Requirements

The Law on Environmental Protection (2005) establishes the provisions for environmental protection in Vietnam, but primarily applies to natural forests. There is currently a logging ban in Vietnam for harvesting in natural forest, protection forest and special-used forest.

It is possible to verify that the company holds a certificate of satisfactory environmental standards (for organization of business, production and services implementation, and waste management) and to check the working minutes of inspectors and supervisors regarding the company's implementation of the law on environmental protection.

An approved environmental impact assessment (EIA) with the Ministry of Natural Resources and Environment (MONRE) is required for forest operations. It must be signed and valid for all areas of licensed operation. Refer Decree No. 29/2011/ND-CP (2011): EIAs are required if the company is harvesting the following:

- Watershed forests, coastal protection forests, and special-use forests with an area of 20 hectares or more;
- Other native forests with an area of 200 hectares or more for approved land-use conversion, and
- Forest plantations with an area of 1000 hectares or more.

Note: EIA is only required for the forest that to be converted to non-forestry uses or other purposes.

Decree No. 18/2015/ND-CP requires that all projects in the industrial parks, high-tech parks, industrial zones, commercial areas, trade villages and other manufacturing areas must go through environmental impact assessment. This new regulation is comprehensive and includes independent cross-checking and verification mechanisms. Based on this regulation, once an application has been approved, it is proof that all prescriptions are met.

For small sites, oversight is carried out at the provincial level. For the larger sites, compliance monitoring is carried out by the MONRE. Project approvals will not be given without the required impact assessment. EIA in the forest sector is usually carried by specialist consultants because forest owners themselves do not have the necessary expertise.

There is an expert committee that reviews the EIAs prior to the project approvals being awarded. If the committee is not satisfied with the EIA, field observations are carried out.

In fact, only forest owners, who want their forests to be certified, need to have an EIA to be conducted in order to meet the requirement of FSC FM standard.

Description of Risk

According to Li (2008), "the main problem with the EIA process in Vietnam is that government officials and project proponents are involved only in the initial approval phase. The same level of official interest is not present in the implementation phase or when remedial measures are needed after a project gains approval."

According to Sun Mountain International and the Cadmus Group, Inc. et al. (2013), the principal elements of Vietnam's poor environmental governance include "weak implementation, monitoring and enforcement of environmental impact assessment regulations".

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and

Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

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

- Check regulations held by the forest organization - verify that these regulations cover the EIA.
- On site verification to ensure the environmental requirements are being complied with in practice.

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

- The guideline of FAO Reduced Impact Logging (RIL) published by Vietnam Forestry Administration in 2007; page 60 on labour safety;
- Labour Law 2002, 2007, amended 2013. Available at: <http://www.boluatlaodong.com/>
- Social Insurance Law 2006 - Articles 2, 15, 10, 80, 81. Available at: <http://www.download.com.vn/docs/download/thong-tu-huong-dan-to-chuc-thuc-hien-cong-tac-an-toan-ve-sinh-lao-dong-trong-co-so-lao-dong/53353>
- Decision 49/2008/QĐ-BNN dated March 27th, 2008, List of pesticides banned, restricted and permitted for use in Vietnam. Available at: <http://www.niengiamnongnghiep.vn/index.php?self=article&id=2564>
- Article 15 in Circular 01/2011/BLDTBXH-BYT
- Health Insurance Law 2008 - Article 12. Available at: http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?mode=detail&document_id=81142
- Decree 45/2013/ND-CP Hanoi, May 10th 2013 DECREE ELABORATING A NUMBER OF ARTICLES OF THE LABOUR CODE ON HOURS

- Circular 04/2004/TT-BCA of Ministry of Public Security describes requirements relating to fire safety and prevention.
- Circular 14/1998/TTLT of Ministry of Labour, Ministry of Health and Vietnam Labour Federation, Section 3, point 3.1(a and b), all enterprises must establish a department or person in charge of health care within the enterprise, and be in attendance during all working hours.
- Circular 09/2000/BYT of the Ministry of Health dated on April 28, 2000, provides guidance on health care for workers in medium and small enterprises.
- Circular 13/BYT-TT dated 24/10/1996 of the Ministry of Health
- Circular 27/2013/TT-BLDTBXH providing for Occupational Safety and Hygiene Training
- Circular 37/2005/TT-BLDTBXH dated December 29, 2005 Guidelines for Occupational Safety and Health Training Circular No. 36/2012/TT-BLDTBXH of December 28, 2012, on the supplementation of the list of arduous, toxic, dangerous works, and extremely arduous, toxic, and dangerous works
- Joint circular No.40/2011/TTLT-BLDTBXH-BYT of December 28,2011, defining the adverse working conditions and job categories that are not carried out by female employees, female employees who are pregnant or nursing children under 12 months old
- Decree No. 45/2013/ND-CP of May 10, 2013, elaborating a number of articles of the labour code on hours of work, hours of rest, occupational safety and occupational hygiene
- Circular 05 / 2012 / TT - BLDTBXH of national technical standards for safety lifting equipment issued by the Ministry of Labour - Invalids and Social Affairs (MOLISA)
- Directive 10/2008/Ct-Ttg on Strengthening the Implementation of Labour Protection, Occupational Safety
- Circular No. 06/2014/TT-BLDTBXH dated March 6, 2014, regulations on occupational safety inspection of machinery, equipment, and supplies with strict requirements for occupational safety under the management of the Ministry of Labour - Invalids and Social Affairs (MOLISA)
- Circular No. 05/2014/TT-BLDTBXH dated March 6, 2014, promulgating lists of machinery, equipment and supplies relating to the strict requirements for labour safety
- Circular No. 04/2014/TT-BLDTBXH dated February 12, 2014, guiding implementation of regulations on personal protective equipment
- Circular No. 33/2011/TT-BLDTBXH of November 18, 2011, provides guidance as to the implementation of regulations on working time and rest time for laborers doing seasonal jobs and processing export goods under orders
- Circular 01/2011/BLDTBXH-BYT. Available at: <http://vndoc.com/thong-tu-huong-dan-to-chuc-thuc-hien-cong-tac-an-toan-ve-sinh-lao-dong-trong-co-so-lao-dong/download>

1.11.2. Legal authority

- Specialized Agency of land management, forestry
- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Labour, Invalids and Social Affairs (MOLISA),
- Ministry of Health (MOH)

1.11.3. Legally required documents or records

- The enterprise must have the following:
 - Labour hygiene plan written by the enterprise
 - Social insurance books for employees whose contracts are for 3 months or more
 - Health insurance for employees whose contracts are for 3 months or more
 - Unemployment insurance for employees whose contracts are for a term of 12 months or more
 - Payroll records that demonstrate the payment of monthly social insurance; monthly health insurance and monthly unemployment insurance.

1.11.4. Sources of information

Government sources

- Ministry of Labour, Invalids and Social Affairs (MOLISA) (n.d.). *Statistics on the number of people caught in occupational accidents* (note that at the time of viewing the statistics were not displaying). [online]. Available at: <http://www.molisa.gov.vn/en/Pages/Home.aspx> [Accessed 14 December 2016]
- Department of Work Safety. Website available at: <http://antoanlaodong.gov.vn/catId/Pages/Home.aspx> [Accessed 14 December 2016]

Non-Government sources

- International Labour Organization [ILO] (2015). *Viet Nam enters a new phase in occupational safety and health*. [online]. ILO. Available at: http://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_379007/lang--en/index.htm [Accessed 9 September 2015]
- Buhmann, K. & I. Nathan (2013). Plentiful forests, happy people? The EU's FLEGT approach and its impact on human rights and private forestry sustainability schemes. [online]. *Nordic Environmental Law Journal*, Vol. 4 (2). pp. 53–82. Available at: http://www.rightsandresources.org/documents/files/doc_6056.pdf [Accessed 13 December 2016]
- State Department 2012, 2011 Country Reports on Human Rights Practices: Vietnam, Washington D.C: State Department.
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.11.5. Risk determination

Overview of Legal Requirements

There are health and safety requirements in Vietnam relating both to safe practices in harvesting as well as safe use and maintenance of safety equipment. There are also training requirements for the use of all equipment used in forestry activities. The laws also detail requirements for the use of Personal Protective Equipment (PPE). For example, people using chainsaws must also wear personal protective equipment such as approved shoes and goggles. In nurseries, training is also necessary for the use of dangerous chemicals such as pesticides.

Each forest owner must keep a record of training and provide this information to the forest department who monitors the training. The Provincial labor unions carry out annual checks on the forest owners to verify that they are complying with the training and PPE requirements.

Description of Risk

Implementation and enforcement of the legal requirements is reported to be inadequate (Buchman and Iben 2013).

Occupational injuries are a problem, with many incidents caused by machinery (Buchman and Iben 2013).

Working conditions are particularly harsh and hazardous in small- and medium-sized enterprises, with many entities not legally classified as "organizations" conforming to governmental occupational health and safety regulations. An "organization" includes: State forestry companies, private forestry companies, other economic organization. (State Department 2012).

Frequently the requirements to wear PPE are not observed by the workers due to particular circumstances, for example working in high temperatures. According to input from forestry experts in Vietnam, there is a risk that a requirement for the worker to be responsible for their own PPE and training is included in contracts, and this is contrary to the law.

Inspections show that health and safety requirements are frequently not observed by owners and employees.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

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

- Check the employment contracts for the employees held by the forest company - verify that these contracts cover the training and PPE requirements.
- Ask the relevant Union for results of annual inspections for the company.
- On site verification of workers to ensure the PPE and training requirements are being complied with in practice.

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

- Labour Code 2007 stipulates requirements relating to employees and employers for vocational training in Article 20.23, working age in Articles 119, 120, 123 (Labour Code 10/2012/QH13 dated 18/6/2012). Available at: <http://www.boluatlaodong.com/>
- Social Insurance Law 2006 - Chapter XII, Articles 140–151. Available at: <http://www.download.com.vn/docs/download/thong-tu-huong-dan-to-chuc-thuc-hien-cong-tac-an-toan-ve-sinh-lao-dong-trong-co-so-lao-dong/53353>
- The terms of the labour contract shall comply with Decree 43/2013 / ND-CP dated 10/05/2013. Available at: <http://luatminhkhue.vn/labour-1/decreed-no-43-2013-nd-cp.aspx>
- Labour Code 2012 - Article 16, Article 148. Available at: http://chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&page=1&mode=detail&document_id=163542
- Trade Union Law 2012 - Article 5. (Union law 2012/QH13) 20/6/2012. Available at: <http://vndoc.com/luat-cong-doan-2012/download>

1.12.2. Legal authority

- MOLISA/DOLISA
- Trade union office of province or city
- Social Security Office of province or city

1.12.3. Legally required documents or records

For organisations:

- Labour contract
- Existence of trade union - Employee's name is included in the list of trade union fee payments
- Labour safety plan made by employing agency
- Social insurance payment - Payroll of employing agency demonstrating the payment amount for monthly social insurance
- Health insurance payment - Payroll of employing agency demonstrating the payment amount for monthly health insurance
- Unemployment insurance - Payroll of employing agency demonstrating the payment amount for monthly unemployment insurance

1.12.4. Sources of information

Non-Government sources

- Vnexpress.net (24 October 2014). 7 chủ doanh nghiệp bỏ trốn với 8 tỷ đồng nợ lương (7 business owners fled with 8 billion owed wages). [online]. *VN Express*. Available at: <http://vnexpress.net/tin-tuc/thoi-su/7-chu-doanh-nghiep-bo-tron-voi-8-ty-dong-no-luong-3097836.html> [Accessed 9 September 2015]
- Vnexpress.net (18 November 2014). Nhiều doanh nghiệp TP HCM nợ bảo hiểm xã hội gần 40 tỷ đồng (Many businesses HCMC Social Insurance owe almost 40 billion). [online]. *VN Express*. Available at: <http://vnexpress.net/tin-tuc/thoi-su/nhieu-doanh-nghiep-tp-hcm-no-bao-hiem-xa-hoi-gan-40-ty-dong-3108510.html> [Accessed 9 September 2015]
- Vnexpress.net (6 December 2015). Chính phủ yêu cầu Vinaconex giải quyết nợ lương (Government asked Vinaconex resolve unpaid wages). [online]. *VN Express*. Available at: <http://kinhdoanh.vnexpress.net/tin-tuc/doanh-nghiep/chinh-phu-yeu-cau-vinaconex-giai-quyet-no-luong-3003753.html> [Accessed 9 September 2015]
- Dantri.com.vn (4 June 2015). Gần 100 công nhân tập trung trước trụ sở Liên đoàn Lao động đòi quyền lợi (Nearly 100 workers gather in front of the Labour Confederation headquarters assertion). [online]. *Dan Tri*. Available at: <http://dantri.com.vn/xa-hoi/gan-100-cong-nhan-tap-trung-truoc-tru-so-lien-doan-lao-dong-doi-quyen-loi-1055627.htm> [Accessed 9 September 2015]
- Duthaonline.quochoi.vn (n.d.). Thực hiện Luật Công đoàn: Nặng hình thức - nhẹ nội dung (Implementation of Trade Union Law: Severe forms - light content). [online]. *Du Tha Online*. Available at: http://duthaonline.quochoi.vn/DuThao/Lists/TT_TINLAPPHAP/View_Detail.aspx?ItemID=89 [Accessed 9 September 2016]
- Quang Tri (4 April 2015). Cần có giải pháp thiết thực bảo vệ sinh mạng, quyền lợi của công nhân-lao động (Need practical solutions protect the lives and interests of workers labor). [online]. Quang Tri Online. Available at:

<http://www.baoquangtri.vn/default.aspx?TabID=82&modid=385&ItemID=93379>
[Accessed 9 September 2016]

- Transparency International's Corruption Perceptions Index 2016 - <http://www.transparency.org/country/VNM>
- Forest Legality Alliance, 2015. Risk Tool - Vietnam. Accessed 5 February 2015 at <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management>.
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCo in Vietnam from 2015-2016.

1.12.5. Risk determination

Overview of Legal Requirements

The Labor Code stipulates the requirements for employees, vocational training, minimum working age, and the rights of the workers. It also sets the hours for the working day, and the retirement age (in plantation or natural forest). The Social Insurance Law requires that employers have adequate social insurance for their staff. The terms of the labour contract shall comply with Decree 43/2013; with and the Trade Union Law 2012 stating that everyone can be a member of the trade union and employers must allow their staff to join. Every employee of a state-owned company must join a trade union.

Description of Risk

There are frequent violations of the employment law on both sides:

- Not all workers have contracts as required by law.
- Equipment is not adequate because the contract normally state that workers have to organize it themselves.
- Employers do not have the right certificate for the type of work.
- Some cannot pay even a basic salary for employees.
- The agreement between the employers and the trade union exists in theory only.

There are numerous reports of non-compliance, but not for the forest sector. According to statistics, over 6,000 labour accidents occur annually, killing hundreds of people. In 2014 in particular, labour accidents increased, with 6709 cases throughout the country, 630 of which were fatal. Compared with 2013, the number of accidents increased by 14, the number of fatal incidents increased by 56. The main reason for these high levels of incidents is reportedly the poor protection provided to workers, with working conditions not guaranteed to meet set standards. Many owners want to fast-track activities and require their workers to work day and night to reduce costs at various stages, and also ignore state occupational safety provisions. According to the Vietnam Social Insurance, by the end of February 2015, there were more than 260,000 enterprises with social security debts amounting to over 11,400 billion VND. Almost 2,800 companies have been sued in court for an amount owing of 6,800 billion VND. Although there have been many court judgments where payments have been ordered, many companies cannot afford to pay the debts, or intentionally delay the payment of benefits.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

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

- Social insurance office/department (at provincial or district level) should be able to provide a copy of the social insurance records for the forest company. Verify that the company has the requisite social insurance for their workers.
- Check the employment contracts for the employees held by the forest company - verify that these contracts cover the training and PPE requirements.
- Ask the relevant Union for results of annual inspections for the company.
- On site verification of workers to ensure the employment conditions are observed in practice.

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

- Decision 178/2001 / TTg dated November 12, 2001 on the beneficiary rights and obligations of households and individuals who have been allocated, leased or loaned forests and forest lands. (Chapter 3 benefits and obligations of households and individuals contracted by the state to protect, regenerate, zone off and plant forests). Available at: Available at: <http://policy.mofcom.gov.cn/blank/entflaw!fetch.action?libcode=flaw&id=37c43690-cdc5-4450-9116-389d74ac633c>
- Approved National SFM standards in 2014. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-38-2014-TT-BNNPTNT-huong-dan-Phuong-an-quan-ly-rung-ben-vung-vb257190.aspx>
- Land Law 2013. Available at: http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/view
- Article 27 of the Land Law 2013 recognizes the availability of state land for ethnic minorities in accordance with regional cultural customs. There are policies to create conditions for ethnic minority people to engage in agricultural production in local areas.

1.13.2. Legal authority

- Ministry for Agriculture and Rural Development (MARD)

1.13.3. Legally required documents or records

N/A

1.13.4. Sources of information

None

1.13.5. Risk determination

Overview of Legal Requirements

Despite the laws listed under applicable laws and regulations, they do not constitute formal recognition of customary rights in Vietnamese law.

Description of risk

Indigenous peoples' religious freedoms are respected, and they have priority in relation to land conditions. Some customs and community management that has proven inappropriate is gradually being replaced by legislation.

Risk Conclusion

As there is no formal recognition of customary rights, this indicator has been assessed as not applicable.

1.13.6. Risk designation and specification

N/A

1.13.7. Control measures and verifiers

None

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

N/A

1.14.2. Legal authority

N/A

1.14.3. Legally required documents or records

N/A

1.14.4. Sources of information

Non-Government sources

- To et al. (2013). *MÃU THUÃN ĐẤT ĐAI GIỮA CÔNG TY LÂM NGHIỆP VÀ NGƯỜI DÂN ĐỊA PHƯƠNG* (Land conflict between State Forestry Companies and local people). [online]. Hanoi: Forest Trends. Available at: http://www.forest-trends.org/documents/files/doc_4840.pdf [Accessed 7 December 2015]

1.14.5. Risk determination

N/A - Vietnamese government is considering to apply the FPIC in REDD+ projects (To et al. 2013)

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

14% of the population of Vietnam is divided between 50 ethnic groups (Oanh, 2012).

The Law on Cultural Heritage in 2001 recognizes the traditional practices of ethnic peoples and the Land Law of 2004 allows for the allocation of land to communities (IWGIA, 2012). The Land Law 2013 recognizes the availability of state land for ethnic minorities in accordance with regional cultural customs.

The Government of Vietnam does not yet recognize ethnic groups as indigenous people, hence "ethnic minority" as the common term used by the Vietnamese government to refer to indigenous peoples (IWGIA, 2012). Along with the absence of legislations that define ethnic minorities as a distinct group of people, Vietnam lacks legal recognition of their customary rights to land and other natural resources; as a matter of fact, the aforementioned Land Law does not actually give formal governance powers over land (Truong and Genotiva, 2010).

As such, this category has been evaluated as not applicable.

1.15.2. Legal authority

N/A

1.15.3. Legally required documents or records

N/A

1.15.4. Sources of information

Non-Government sources

- Oanh, L. T. (2012). Socialist Republic of Vietnam, Country Technical Note on Indigenous People's Issues
- <http://www.ifad.org/english/indigenous/pub/documents/tnotes/vietnam.pdf>
- International Work Group for Indigenous Affairs (IWGIA) (2012). The indigenous world: Vietnam. Retrieved from: http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2012/vietnam_iw_2012.pdf.
- Truong, L. T., Genotiva, O. M. (2010). Recognizing Ethnic Minorities Customary Land Rights in Vietnam and the Philippines. Retrieved from: <http://landportal.info/resource/customary-land-rights/recognizing-ethnic-minorities-customary-land-rights-vietnam-and-phili>
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.15.5. Risk determination

N/A

1.15.6. Risk designation and specification

N/A

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- Decision 2198 /CNR dated 26/11/1977 by Ministry of Forestry adding a number of species in the South of Vietnam and increasing the total number to 354 species. Available at:
http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=1582
- Article 7, Circular No. 35/2011/2012/TT-BNNPTNT. Available at:
<http://www.dienban.gov.vn/Default.aspx?tabid=107&NewsViews=1087>
http://www.vietnamforestry.org.vn/view_news.aspx?nid=710
- Article 24, Article 25, Circular No. 87/2009/TT-BNNPTNT; and Article 9 Circular No. 01/2012/TT-BNNPTNT. Available at:
<http://www.dienban.gov.vn/Default.aspx?tabid=107&NewsViews=1087>
- Articles 7, 8 Decision No. 44/2006/QĐ-BNN
- Articles 9 and 79 Circular No. 01/2012/TT-BNNPTNT. Available at:
http://www.vietnamforestry.org.vn/view_news.aspx?nid=400
- Article 1, Circular 42/2012/TT-BNNPTNT. Available at:
http://kiemlamthainguyen.gov.vn/upload/medias/cat2_1384575185.doc

1.16.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)

1.16.3. Legally required documents or records

- There are 8 timber groups under Vietnamese law, and timber harvested must be classified and recorded in accordance with the requirements for the relevant group.
- Species which are within the prohibited or limited harvest groups (1A and 2A), must be recorded on the entry and exit books of for all warehouses, and the bill of lading of processed goods.
- Roundwood with the large end diameter $\geq 25\text{cm}$ and length $\geq 1\text{m}$ and timber sawn, shaped into slab in forest with length of $\geq 1\text{m}$, thickness $\geq 5\text{cm}$ and width $\geq 20\text{cm}$

(exceptions being timber that is rare, precious and endangered) must have hammer marks placed on the timber, and the following documents must be in place:

- Packing list
- Minutes of placing forest hammer marks
- Harvested timber that does not require hammer marks must still be accompanied by a packing list.

1.16.4. Sources of information

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2015). *Worldwide Governance Indicators - Vietnam 1996–2015* [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]

1.16.5. Risk determination

Overview of Legal Requirements

Timber in Vietnam forests is divided into 8 groups by species, physical characteristics and density, with a total of 204 species for use in industry, trade and transport. This classification system has been used for 50 years in accordance with Decree 10 CP dated April 26, 1960. Roundwood with large end diameter $\geq 25\text{cm}$ and length $\geq 1\text{m}$ and timber sawn, shaped into slabs in forest with length of $\geq 1\text{m}$, thickness $\geq 5\text{cm}$ and width $\geq 20\text{cm}$ must have hammer marks placed on the timber. Roundwood harvested with large end diameter $\geq 25\text{cm}$ and length $\geq 1\text{m}$ timber sawn, shaped into slab in forest with length $\geq 1\text{m}$, thickness $\geq 5\text{cm}$ and width $\geq 20\text{cm}$ (exceptions being timber that is rare, precious and endangered) must have hammer marks placed on the timber.

Description of Risk

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Due to corruption level there is a risk of fraud (according to experts consulted in the preparation of this report)– to increase value and reduce taxes – in timber classification. Measures, including a trade ban on timber and administrative sanctions, have decreased the frequency of these violations. Despite the general risk of corruption in Vietnam,

numerous experts consulted in the preparation of this report advised that the risk is not high in relation to the bribery of forest rangers (expert consultation 2015-16).

Because each harvesting activity is reviewed by a ranger, the risk described for this category will occur only if the ranger cannot correctly identify the timber. As the rangers are trained foresters, they are likely to be able to correctly identify the species. Subsequently, the risk for this indicator has been assessed as Low.

Risk Conclusion

This indicator has been evaluated as low risk. 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.

1.16.6. Risk designation and specification

Low risk

1.16.7. Control measures and verifiers

None

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

- Circular 35 / 2011/TT-BNNPTNT dated 20/5/2011 on guiding the implementation of harvesting and salvage of timber and non-timber forest products, this circular stipulates the format of the deliverable voucher-cum-internal transport, car order and value-added invoice. In addition to enterprise-related regulations, additional management and supervision methods may exist in relation to harvesting, transportation, loading, storage etc. Available at: http://www.vietnamforestry.org.vn/view_news.aspx?nid=710
- Circular 01/2012/TT-BNNPTNT - Clause 1, Article 12 - regulations on legal forest product dossier, Article 13, Article 14, Article 17, Article 18. Available at: http://www.vietnamforestry.org.vn/view_news.aspx?nid=400
- Decision No. 44/2006/QĐ-BNN dated 1/6/2006 on rangers' hammer marks - Articles 7 and 8. Available at: http://www.moj.gov.vn/vbpbq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=15866
- TT 42/2012/TT-BNNPTNT dated 21/8/2012 on some changes and additions to TT01 - Article 1. Available at.

http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=27975

In addition, for Organisations:

- Enterprise Law - Articles 24, 25 on issuing business registration certificates. Available at: <http://thuvienphapluat.vn/archive/Luat-Doanh-nghiep-2014-vb259730.aspx>
- Decree 43/2010/NĐ-CP - Articles 5, 6, 7, 8 and 29, Chapter IV on business registration. Available at: http://www.hapi.gov.vn/ngho-donh-so-432010ndcp-ngay-1542010-cua-thu-tuong-chinh-phu-ve-dang-ky-doanh-nghiep_p363t139.aspx
- Investment Law 2005 on legal investment enterprises. Available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=29555

Regulations on handling confiscated timber:

- Decree 17/2010/NĐ-CP dated 04/03/2010, Guidance for asset auctions. Available at: <http://luatduonggia.vn/nghi-dinh-117-2010-nd-cp-ngay-24-thang-12-nam-2010>
- Circular 215/2012/TTBTC dated 10/12/2012 on treatment of illegal asset after criminal cases. Available at: <http://www.moit.gov.vn/vn/Pages/ChiTietVanBan.aspx?vID=12783>
- Decree 137/2006/NĐ-CP - dated 14/11/2006 Article 16, on management of nationalized asset. Available at: <http://taichinhcujut.daknong.gov.vn/index.php?language=vi&nv=download&op=Vanban-Trung-uong/Nghi-dinh-137-2006-Nd-CP>
- Circular 23/2010-TT-BTP Guidance for auctions following Decree 17 above. Available at: http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=26019
- Circular 01/2012/TT-BNNPTNT - Article 16 on legal forestry products. Available at: <http://www.moit.gov.vn/vn/Pages/ChiTietVanBan.aspx?vID=11997>
- Decision No.44/2006/QĐ-BNN - dated 1/6/2006 Articles 7, 8 on rangers' hammer marks. Available at: <http://kiemlamthainguyen.gov.vn/?page=news2&code=detail&idc=43&id=477>
- Decision 107/2007/QĐ-BNN - dated 31/12/2007 Article 1 adding explanation about hammer marks in QD 44 for imported logs. Available at: http://www.kiemlam.org.vn/Download.aspx/0C64678E1CE746679A09AB14CCCB8481/1/QD_sua44.doc
- Circular No. 37/2014/TT-BCT dated October 24, 2014 of the Ministry of Industry and Trade on suspending the business of temporary import for re-export of round timber, sawn timber from native forests of Laos and Cambodia. The business of temporary import from Laos and Cambodia to re-export to the third country of round timber, sawn timber from native forests of HS 44.03 and HS 44.07 shall be suspended from December 8, 2014 until new provisions have been promulgated.

1.17.2. Legal authority

- Department of Forest Protection - Ministry of Agriculture and Rural Development (MARD)
- Ministry of Industry and Trade (MOIT)

1.17.3. Legally required documents or records

Legal right for timber transport and trade:

- Business Registration Certificate that covers timber transportation, trade and which is issued by Provincial-level Business Registration Division (**)
- Contract or agreement on timber transportation (**)

Carriers must possess valid license documents:

- Vehicle registration year and vehicle type
- Vehicle load capacity
- Documents stating that vessel or truck is company or contractor owned
- Two licenses are required as issued by the Transportation Agency and the Public Security Agency for each vessel or truck operated by the company or individual. Organisations and individuals operating vessels or trucks for transporting forest products from the forest must have relevant licenses.

Timber harvested, salvaged from domestic native forests:

- Value Added Tax Invoice from Ministry of Finance (in situations where timber is purchased from organisations)
- Packing list - completed by timber owners, validated by Commune People's Committee (in situations where timber is purchased from households) or completed by timber owners and validated by District Forest Protection Department (in situations where timber is purchased from organisations)
- Minutes of placing forest hammer marks completed by residential forest rangers
- Packing list generated by harvesting entities or timber owners, validated by local/residential forest rangers

Timber from plantation forests:

- Value Added Tax Invoice as required by Ministry of Finance (if purchasing timber from organisations)
- Packing list produced by forest title holders or timber owners
- Minutes of placing forest hammer marks completed by residential forest rangers.
- Packing list completed by harvesting entities, validated by residential forest rangers.

Imported timber, timber products that have not been processed domestically:

- Value Added Tax Invoice as required by Ministry of Finance (if purchasing timber from organisations)
- Packing list generated by timber owner and validated by District Forest Protection Department

- Minutes on placing forest hammer marks made by District Forest Protection Department
- Packing list validated by District Forest Protection Department

Confiscated timber:

- Value Added Tax Invoice as required by Ministry of Finance (if purchasing timber from organizations)
- Packing list made by timber owner and validated by District Forest Protection department.
- Minutes on placing forest hammer marks completed by District Forest Protection department
- Packing list validated by District Forest Protection Department

Processed timber, timber products that are harvested in native forests; imported timber; confiscated timber:

- Value Added Tax Invoice as required by Ministry of Finance (if purchasing timber from organisations)
- Packing list (applicable only to organisations)
- Packing list generated by timber owner (for enterprises of good compliance) (applicable only to organizations)
- Packing list generated by timber owner, validated by District Forest Protection Department (for enterprises with poor record of compliance) (applicable only to organisations)
- Packing list completed by timber owners, validated by District Forest Protection Department (applicable only to households)
- Minutes on placing forest hammer marks made by District Forest Protection Department
- Packing list completed by forest title holders and validated by District Forest Protection Department

1.17.4. Sources of information

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank (2015). *Worldwide Governance Indicators - Vietnam 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Accessed 5 February 2015]

- Expert consultation conducted by NEPCon in Vietnam from 2014-2016.

1.17.5. Risk determination

Overview of Legal Requirements

To move forest products through Vietnam, clear evidence of documents and licenses for all enterprises involved in timber product transportation should be available to authorities. Transportation companies and individuals must be licensed to transport timber. Conformation can be obtained through the company and with the provincial Department of Transport, which keeps a copy of the transportation licenses. Guidance on issuing registration details to the transportation vehicles can be found in Circular No 01/2007/TT-BCA (C11).

Organizations and individuals operating vessels or trucks for transporting forest products must have relevant licenses and documents, which are: the vehicle registration (year and vehicle type); the vehicle load capacity; and documentation stating that the vehicle is company-owned. Two licenses are required for each vehicle operated by the company: one from the Transportation Agency and one from the Public Security Agency. Transportation companies and individuals must be licensed to transport timber. Conformation can be obtained through the company and with the provincial Department of Transport, which keeps a copy of the transportation licenses.

Promulgating the regulation of inspection and control of forest products, the company must provide log transport details to the processing/manufacturing centre using the correct documentation. Timber records must follow the MARD format. The Forest Protection Department (FPD) should have stamped the logs to certify origin; if logs are not subject to FPD stamping, they should have a certificate from the district FPD. Alternatively, a Commune People's Committee certificate should be available for timber from plantations or from scattered trees. Documents are issued before the logs leave the forest management unit, or at the time of state auction.

Timber consignment paperwork must be complete and current during transportation.

Description of Risk

According to the FPD, the number of violations related to the transportation of and trade in timber has gradually decreased – from 20,106 in 2008 to 14,300 in 2012 (Consultation with FPD 2014). Similarly, the volume of timber seized during the transport, purchase or sale of timber decreased from 44,112 m³ in 2008 to 35,556 m³ in 2012. Most of the transportation- and trade-related violations involved wood that had been domestically sourced, while the volume of timber imports is negligible.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Given the still high rates of non-compliance with this requirement, the risk for this indicator has been assessed 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.

1.17.6. Risk designation and specification

Specified risk

1.17.7. Control measures and verifiers

- License registration - Transportation companies and individuals must be licensed to transport timber. A copy of the license registration is housed at the provincial Department of Transport.
- Carriers must possess valid license documents:
- Vehicle registration (year and vehicle type)
- Vehicle load capacity
- Documents stating it is a company owned/contractor vessel or truck
- Two licenses are required as issued by the Transportation Agency and the Public Security Agency for each vessel or truck the company or individual operates. Organizations, individuals operating vessels or trucks for transporting forest products from the forest must have relevant licenses.
- Evidence to show legal process: transportation, delivery bills, list of products, time, volume, places, types and quality of material
- Check the border-crossing points.
- Products shall be correctly classified (species, quantities, qualities etc.) on sales documents, custom declarations and other legally required documents
- Evidence shall be provided upon request (photographs or labeling)
- Physical control where it should be verified that the present material is equivalent to what has been invoiced and marked.

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

- Circular 66/2010/TT-BTC dated 22 April 2010 ('Circular 66'). Available at: http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=25406
- Circular 201/2013/TT-BTC dated 20 December 2013. Available at: <http://www.moit.gov.vn/vn/pages/ChiTietVanBan.aspx?vID=13922>
- Decree 40/2007/ND-CP - provides guidelines on the Customs valuation for import duties in the case where buyers and suppliers are considered related parties with respect to capital participation, management, business relationships and family relationships. Available at: http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=14405
- The guidelines for the application of Mutual Agreement Procedures (MAP) under Circular 205/2013/TT-BTC dated 24 December 2013. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-205-2013-TT-BTC-huong-dan-Hiep-dinh-tranh-danh-thue-hai-lan-Viet-Nam-voi-cac-nuoc-vb217929.aspx>

1.18.2. Legal authority

- General Department of Taxation
- The various departments within the GDT that are presently handling transfer pricing matters are the Policy, Tax Reform and Modernisation Department, the Inspectorate (i.e. Inspection Department) and the International Cooperation (i.e. the International Taxation Department).

1.18.3. Legally required documents or records

Corporate taxpayers with related party transactions need to comply with the following:

- Complete and submit the annual disclosure of inter-company transactions in the prescribed form (Appendix 1-GCN/CC) – Form 01, which is the disclosure of related party transactions which is required to be submitted annually together with the company's tax finalisation return; and
- to prepare and maintain contemporaneous transfer pricing documentation to support the 'arm's length' nature of their inter-company transactions.
- The transfer pricing documentation must be prepared at the time of the related party transactions and shall be updated during the performance of the transactions. Also, this documentation must be submitted to the tax authority within 30 working days upon the tax authority's request.

1.18.4. Sources of information

Non-Government sources

- Lexology.com (2014). *Vietnam transfer pricing landscape in 2014: a "half-time" review*. [online]. Available at:

<http://www.lexology.com/library/detail.aspx?g=583c43b9-71cf-4da2-ae52-78c3851a908b> [Accessed 17 December 2016]

- PWC (2012). PKN/TCDR Alert Vietnam - Tax authorities to ramp up tax and transfer pricing (A Transfer Pricing Publication). [online]. Available at: http://www.pwc.com/en_GX/gx/tax/newsletters/pricing-knowledge-network/assets/pwc-Vietnam-transfer-pricing-audits.pdf [Accessed 16 February 2015]
- KPMG (2013). *Transfer Pricing in Vietnam*. [online]. KPMG. Available at: <https://www.kpmg.com/VN/en/IssuesAndInsights/ArticlesPublications/Documents/Tax/Transfer%20Pricing-web%20secured.pdf> [Accessed 16 February 2015]
- Tran Dong Binh (2014). *Transfer pricing audits: assessment or adjustment. Vietnam Investment Review*. [online]. Vietnam Investment Review. Available at: <http://www.vir.com.vn/transfer-pricing-audits-assessment-or-adjustment.html> [Accessed 16 December 2016]
- PWC (n.d.). *International Transfer Pricing Summary for Vietna*. [online]. Available at: <http://www.pwc.com/gx/en/international-transfer-pricing/assets/vietnam.pdf> [
- Doanh Nhan (20 April 2015). *Điểm danh đại gia ngoại dính "lùm xùm" chuyển giá* (Foreign giants roll sticky "messy" transfer pricing). [online]. Available at: <http://tbdn.com.vn/diem-danh-nhung-dai-gia-ngoai-dinh-quot-lum-xumquot-chuyen-gia-n4782.html> [Accessed 9 September 2015]
- Thanh Nien (15 April 2014). *Hàng loạt doanh nghiệp FDI chuyển giá, trốn thuế* (A series of FDI transfer pricing and tax evasion). [online]. Accessed 9 September 2015. Available at: <http://www.thanhvien.com.vn/kinh-te/hang-loat-doanh-nghiep-fdi-chuyen-gia-tron-thue-83030.html> [Accessed 9 September 2016]
- Kinhdoanhnet (21 April 2015). *Metro chuyển giá, trốn thuế hơn 500 tỷ đồng?* (Metro transfer pricing and tax evasion of more than 500 billion?). [online]. Available at: http://kinhdoanhnet.vn/tin-tuc/xa-hoi/metro-chuyen-gia-tron-thue-hon-500-ty-dong_t114c13n19648 [Accessed 9 September 2016].
- Transparency International's Corruption Perceptions Index 2016 - <http://www.transparency.org/country/VNM>
- Forest Legality Alliance, 2015. Risk Tool - Vietnam. Accessed 5 February 2015 at <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management>.
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.18.5. Risk determination

Overview of Legal Requirements

The Vietnamese transfer pricing regulations under Circular 66 are modelled on the Organization for Economic Co-operation and Development (OECD) Guidelines. Circular 66 adopts the arm's-length principle and the transfer pricing methods set out in the OECD Guidelines.

The number of transfer pricing audits of companies in various industries has been rising since the release in 2010 of Vietnam's revised transfer pricing regulations (Circular 66/2010/TT-BTC). The first four months of 2014 resulted in tax adjustments of VND 759 billion (approximately USD 36 million). These adjustments arose from 20 audits, mostly in the textile and leather industries. As a consequence, approximately VND 230 billion (USD 11 million) in additional tax was levied and VND 12 billion (USD 571,000) of compliance penalties were applied.

Persistent loss-making entities are still easy targets for transfer pricing scrutiny. However, specific industries that have been recently targeted include electrical equipment manufacturing, real estate and construction companies, as well as companies in export processing zones. It has also been reported that automotive companies will be investigated.

To date, no legal cases concerning transfer pricing have been decided by the courts. Any cases involving disputes relating to transfer pricing issues have so far been settled out of court and the details have not been published.

Description of Risk

Formally, no industry or transactions are classified as particularly high risk from the transfer pricing audit or investigation perspective (PWC 2012). However, companies producing high-value goods and having significant, related party transactions (such as in automobile and motorbike manufacturing and related parts manufacturing) would likely be a high-risk industry (PWC 2012). In practice, a company that posts continuous losses (e.g. for three continuous years) and/or large companies with significant, related party transactions are likely to be challenged by the tax authorities, in particular where the company carries out business with related parties located in a tax havens (PWC 2012).

In 2015, The Ministry of Finance conducted a number of inspections of the financial industry and detected 'many violations' relating to transfer pricing (Kinhdoanhnet 2015). After two months of inspections, the financial industry found many violations in business, request handling, arrears paid into the state budget of 507 billion. Of these, the most notable violations of foreign retail giants are transfer pricing activities related to transactions with the parent company in Germany. Total losses unreasonable that Metro had to drop after the inspection is 335 billion (Kinhdoanhnet 2015). The results of a thematic inspection of the tax on the transfer price has been described as really "shocking" as there are hundreds of businesses (DN) foreign investment (FDI) in the country who are continuously showing losses and tax evasion, with the amount of arrears/reimbursements up to a trillion VND.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Although the reports reviewed here do not mention a specific risk for the forest sector, given the reports of the high level of risk across Vietnam, this indicator has been assessed 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.

1.18.6. Risk designation and specification

Specified risk

1.18.7. Control measures and verifiers

- Determine if the company has any affiliates/subsidiaries in known tax havens (see <http://www.financialsecrecyindex.com/>).
- Obtain copies of the annual disclosure of inter-company transactions in the prescribed form (Appendix 1-GCN/CC) and contemporaneous transfer pricing documentation to support the arm's-length nature of their inter-company transactions.
- Review any transactions that have taken place between the company you are purchasing from and the affiliate in the known tax haven.
- Can information be obtained relating to prices at which similar transactions have been entered into by unrelated parties. How do those prices compare?
- Were the profits from this particular deal reasonable?

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

- Article 7 of the Circular 88/2011 / TT-MARD dated 28/12/2011. Available at: <http://www.fistenet.gov.vn/b-van-ban-phap-luat/thong-tu-huong-dan-thuc-hien-nghi-111inh-so-12-2006-n111-cp-ngay-23-01-2006-cua-chinh-phu-quy-111inh-chi-tiet-thi-hanh-luat-thuong-mai-ve-hoat-111ong-mua-ban-hang-hoa-quoc-te-va-cac-hoat-111ong-111ai-ly-mua-ban-gia-cong-va-qua-can-hang-hoa-voi-nuoc-ngoai-trong-linh-vuc-nong-nghiep-lam-nghiep-va-thuy-san/>
- Decree 12/2006 / ND-CP dated 23/01/2006. Articles 8 and 9. Available at: http://moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=16803
- Circular 194/2010 / TT-BTC - Paragraph 1 of Article 11 or Circular 196/2012 / TT-BTC - Article 8 - dated 11/15/2012 of the Ministry of Finance on electronic Customs procedures for export and import trade goods (e-customs procedures). Available at: <http://www.customs.gov.vn/Lists/VanBanPhapLuot/ViewDetails.aspx?ID=5836> and <http://www.customs.gov.vn/Lists/VanBanPhapLuot/ViewDetails.aspx?ID=6608>
- Circular 01/2012/TT-BNNPTNT of January 4, 2012. Articles 11 and 12. Available at: <http://www.moit.gov.vn/vn/Pages/ChiTietVanBan.aspx?vID=11997>
- Decree 154/2005/NĐ-CP - Articles 7, 8, 9 on procedures to report to Customs department. Available at: http://www.moj.gov.vn/vbpg/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=16971
- Circular 128/2013/TT-BTC dated 10/9/2013 on import tax. Available at: <http://www.customs.gov.vn/Lists/VanBanPhapLuot/ViewDetails.aspx?ID=6957>
- Decree 187/2013/NĐ-CP dated 20/11/2013 on implementation of international trading law. Available at: <http://www.customs.gov.vn/Lists/VanBanPhapLuot/ViewDetails.aspx?ID=7089>
- Circular 40/2013/TT-BNNPTNT dated 5/9/2013 at Appendix I, II, III on list of species included in international agreement on trading endangered wild species, part H on

plants. Available at: <http://thuvienphapluat.vn/archive/Thong-tu-40-2013-TT-BNNPTNT-Danh-muc-dong-thuc-vat-hoang-da-nguy-cap-vb207245.aspx>

- Circular 13/2014 /TT-BTC Prescribing customs procedures for goods processed with foreign traders and Circular 116/2008/TT-BTC Guiding customs procedures for goods processed for foreign traders. These 2 circulars work together with Circular 194/2010 / TT-BTC. Producer import material must report inputs, outputs, CF, stocktaking and material stock balance because import tax applied to material is zero. Available at: <http://haiquanbinhduong.gov.vn/EN/vanban/TT13.2014.doc> and <http://www.lawfirm.vn/?a=doc&id=1458>

1.19.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Finance (MOF)

1.19.3. Legally required documents or records

Imports

Legal import Dossier:

- Declaration for imported timber products validated by Customs;
- Sales contract;
- Trading invoice;
- Bill of lading (or other shipping document of equivalent value in accordance with legal regulations);
- Packing list of imported forest products
- CITES Permit of export country for the case of timber under Appendix I, II of CITES.
- Import Permit issued by Viet Nam's Ministry of Industry and Trade (for timber imported from Cambodia).

Phyto-sanitation:

- Notification paper on exemption from quarantine for timber and timber products subject to quarantine exemption in accordance with legal regulations
- Quarantine certificate issued by Viet Nam's Quarantine Authority

Log identity linked to timber documents:

- Record of placing forest hammer marks completed by residential forest rangers.
- Packing list validated by residential forest rangers

Legal tax dossiers:

- Dossier on declaration of import, export tax (for organisations involved in import and export)

Tax payment records:

- Import, export tax receipt or payment note if tax is paid by bank transfer

Export:

Legal export Dossier:

- Customs clearance declaration for export timber products made by exporter (original)
- Packing list of forest products for export
- Packing list of forest products harvested from plantation forest
- Packing list of unprocessed exported timber forest products which are legally imported.
- Packing list of processed timber harvested from domestic native forests.
- Packing list of processed forest products which are derived from imported timber, addressing confiscated timber
- Packing list of forest products for processing, trading entities complying with State regulations
- Packing list of forest products for processing, trading entities violating State regulations on dossiers of forest products or not fully complying with State regulations
- Sales contract or other papers of equivalent legal value
- Permit of CITES Monitoring Authority of Viet Nam for products made from timber under Appendix II of CITES.

Phyto-sanitation:

- Quarantine certificate issued by Viet Nam's Quarantine Authority in situations where the certificate is a requirement of the import country

Legal tax dossiers:

- Dossier on declaration of import, export tax (for organizations involved in import and export)

Tax payment records:

- Import, export tax receipt or payment note if tax is paid by bank transfer
- Sales contract (for timber, and exported timber products subject to export tax)
- Export invoice (for timber, exported timber products subject to export tax)
- Packing list

1.19.4. Sources of information

Government sources

- See Decision No. 1565/QĐ -BNN-TCLN. Available at:
http://vietnamforestry.org.vn/mediastore/fsspco/2013/07/31/Decision_1565QD-BNN-TCLN
- MARD_Approval_Forestry_restructure.pdf. 25 <http://vietnam-redd.org/Web/Default.aspx?tab=newsdetail&zoneid=107&subzone=157&itemid=719&lang=en-US>.

Non-government sources

- World Trade Organization [WTO] (2013). *Trade Policy Review - Report by the Secretariat Vietnam*. [Online]. Available at: http://www.wto.org/english/tratop_e/tpr_e/s287_e.pdf [Accessed 9 September 2015]
- Buhmann, K. & I. Nathan (2013). Plentiful forests, happy people? The EU's FLEGT approach and its impact on human rights and private forestry sustainability schemes. [online]. *Nordic Environmental Law Journal*, Vol. 4 (2). pp. 53–82. Available at: http://www.rightsandresources.org/documents/files/doc_6056.pdf [Accessed 13 December 2016]
- Sun Mountain International and the Cadmus Group, Inc. (2013). *Vietnam Tropical Forests and Biodiversity Assessment - 2013*. [online]. US Foreign Assistance Act, Section 118/119 Report August, 2013. Available at: [https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%2015Oct2013%20\(Public%20Version\).pdf](https://www.usaid.gov/sites/default/files/documents/1861/Vietnam118_119FinalDraft%2015Oct2013%20(Public%20Version).pdf) [Accessed 9 September 2015]
- World Bank (2010). *Socialist Republic of Vietnam: Forest Law Enforcement and Governance*, Washington DC: The World Bank.
- Transparency.org (2016). *Transparency International's Corruption Perceptions Index 2014*. [online]. Available at: <http://www.transparency.org/country/#VNM> [Accessed 13 December 2016]
- Forest Legality Alliance (2015). *Risk Tool - Vietnam*. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/vietnam#tab-management> [Accessed 5 February 2015]
- World Bank, 2015. Worldwide Governance Indicators - Vietnam 1996–2015. Accessed 27 April 2017 at <http://info.worldbank.org/governance/wgi/index.aspx#reports>
- Expert consultation conducted by NEPCon in Vietnam from 2015-2016.

1.19.5. Risk determination

Overview of Legal Requirements

domestic natural forests in Vietnam (Circular No. 12/2006/ND-CP).

Any enterprise interested in exporting goods must hold the relevant legal business registration certificates and import and export licenses to operate, including a business registration certificate (awarded by the District People's Committee for household businesses, or the provincial Department of Planning and Investment for organizational business-enterprises); tax code; and import and/or export license (issued by the Ministry of Trade). Export documents must be up-to-date and correct. Valid documents must include: the bill of lading; packing lists for the sawn timber or wood products; and chain-of-custody records indicating the origin of logs used to produce wood products.

Exports are highly encouraged in Vietnam. Therefore taxes are levied only on certain commodities, mainly natural resources such as minerals and forest products. Export taxes range from 0 to 45%. However, there are a number of policies and regulations issued to regulate and promote wood processing and exports. Changes in government

policies and regulations, however, have been frequent. In 2008, Vietnam removed its 5–10% export tax levied on timber and wooden products.

Customs officials at Vietnam's major importing ports and border points are given training on how to implement new policies, including timber import and export controls. As of May 2010, the General Department of the Customs Legal Department has been responsible for that training, which is considered to be of reasonably good quality. According to the FPD, the number of violations related to the transportation of and trade in timber has gradually decreased – from 20,106 in 2008 to 14,300 in 2012. Similarly, the volume of timber seized during the transport, purchase or sale of timber decreased from 44,112 m³ in 2008 to 35,556 m³ in 2012. Most of the transportation- and trade-related violations involved wood that had been domestically sourced, while the volume of timber imports is negligible. This is because imports are deemed legal as long as they have met Vietnam's import requirements, which are minimal. First, the import duty for logs is zero, so there is no risk of tax evasion. Second, although imported timber must be accompanied by paperwork demonstrating the completion of the exporting country's customs procedures (a certificate of origin, a purchase agreement, and, where relevant, a certificate of plant quarantine) these documents are not systematically validated; and it is not clear if they would be able to provide evidence of legal origin even if they were subject to such validation.

Description of Risk

Various in-country sources suggest that the illegal timber trade still occurs in some parts of Quang Binh, Ha Tinh and Nghe An provinces, which are on the Vietnam–Lao PDR border, and that most of that trade is in precious species that are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is reported that logs are transported to timber-craft villages to produce furniture, primarily for domestic use but also for export to China. The Vietnamese government provides no data on CITES infractions or seizures.

Customs is a sector with reportedly one of the biggest corruption risks and most legislation handling in Vietnam. Violations in the timber trade are not as frequent or serious as drug trafficking, trade of wild animals and plants, but it is still an area of high risk. There is a daily risk of corruption and the biggest cases often involve high level officials so they are frequently ignored.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

Weak forest governance in neighboring countries coupled with a strong market demand from Vietnam's wood-processing industry for cheap products motivates illegal trade, and corruption of Customs and other government officials permits illegal timber trade to persist (World Bank 2010). According to Sun Mountain International (2013), illegal cross-border traffic is possible in Vietnam because of poor Customs enforcement in

ports, airports and along the nation's porous borders and it is driven by the high profits that the illegal trade in plants and animals generates.

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

- Products shall be correctly classified (type, custom code, species, quantities, qualities, etc.).
- All required import and exports permits shall be in place.
- The licensing procedures for export of produced forest products include: registration, declaration, tax, commodity contracts and design shall be in place for the importer:
 - Check the document has been signed correctly
 - Monitoring the quality and volume of signed

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

- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)
- Decree 187/2013 / ND-CP of the Government dated 20.11.2013. Available at: http://www.itpc.gov.vn/investors/how_to_invest/law/Decree_No.187_2013/mldocument_view/?set_language=en
- Circular 04/2014 / TT-BCT dated 01.27.2014 of the Ministry of Industry and Trade guiding some content regulation. Available at: http://www.dncustoms.gov.vn/web_english/english/btc/04_TT_BCT_27_01_2014.htm
- Decree No. 32/2006 dated 30/3/2006 regarding forest vegetation management, endangered wildlife, including appendix of rare groups IA, IB, 2A, 2B depending on the extent of prohibited or restricted commercial use. Available at: <http://tongcuclamnghiep.gov.vn/nghi-dinh/nghi-dinh-32-2006-nd-cp-ngay-30-3-2006-cua-chinh-phu-ve-quan-ly-thuc-vat-rung-dong-vat-rung-nguy-cap-quy-hiem-a639>

1.20.2. Legal authority

- Ministry of Finance

1.20.3. Legally required documents or records

- Permit of CITES Monitoring Authority of Viet Nam for products made from timber under Appendix II of CITES

1.20.4. Sources of information

Non-Government sources

- Aphis.usda.gov. (2010). *CITES I-II-III Timber Species Manual*. [online]. United States Department of Agriculture (USDA). Available at : http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/cites.pdf [Accessed 20 December 2016]
- Checklist.cites.org. (n.d.). Checklist of CITES Species. [online]. CITES Secretariat. Available at : [http://checklist.cites.org/#/search/country_ids\[\]=245&cites_appendices\[\]=I&cites_appendices\[\]=II&cites_appendices\[\]=III&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en](http://checklist.cites.org/#/search/country_ids[]=245&cites_appendices[]=I&cites_appendices[]=II&cites_appendices[]=III&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en) [Accessed 20 December 2016]
- Speciesplus.net. (n.d.). Website contain information on all species listed in the appendices of CITES. [online]. Speciesplus. CITES Secretariat. Available at: <http://www.speciesplus.net/> [Accessed 20 December 2016]
- Cites.org (n.d.). CITES Country Profile: Viet Nam. [online]. CITES Secretariat. Available at : <http://www.cites.org/eng/cms/index.php/component/cp/country/VN> [Accessed 20 December 2016]
- Vbpl.vn (n.d.). Establishing the CITES Management Authority of Vietnam (transl.). [online]. Available at : <http://vbpl.vn/tw/Pages/vbpgen-toanvan.aspx?ItemID=4320&Keyword=CITES> [Accessed 20 december 2016]
- United States Department of the Interior (2013). U.S. Fish & Wildlife Service Notice Letter: CoP16 Listing of Dalbergia spp. [online]. Washington: United States Department of the Interior – Fish and Wildlife Service. Available at: <https://www.fws.gov/international/pdf/letter-rosewood-and-ebony-2013.pdf> [Accessed 20 December 2016]

1.20.5. Risk determination

Overview of Legal Requirements

Vietnam ratified the Convention in 1994. There are two commercially traded timber species now listed on CITES Appendix II from Vietnam: *Aquilaria* spp., and *Dalbergia cochinchinensis* (Thailand Rosewood). These Appendix-II listings are NOT a ban on trade. To conduct international commercial trade in these listed species, it is necessary to

ensure all the proper CITES documentation from the exporting or re-exporting country is compiled and accurate.

Aquilaria spp: Harvest and trade of *Aquilaria crassna*, the main Vietnamese species, has been banned since 1992. However, Vietnam also has several plantations of *Aquilaria crassna*, the products from which are legal to trade with proper CITES permits.

According to the Environmental Investigation Agency (EIA), *Dalbergia cochinchinensis*: Listed in 2013, Thailand Rosewood is found in Cambodia, Thailand, Lao PDR and Vietnam. This valuable wood has been subject heavy unchecked illegal logging in the Dangrek Mountains between Cambodia and Thailand. The logs cut on the Cambodian side are usually smuggled into Thailand by the hundreds. It is also listed as vulnerable in Vietnam by the IUCN Red List. Being highly valued in the wood carving and furniture industries, the Vietnamese population of this species is also threatened.

Description of Risk

The risks associated with the trade of CITES species are concentrated on the trade in wildlife parts such as ivory, rhino horn which are traded through Vietnam. For these products there is a considerable risk of corruption (according to stakeholders consulted in the preparation of this report). Although the reports of significant issues associated with the trade of CITES species don't usually focus on the trade of timber species, Vietnam does not have effective policies to curb smuggling of endangered CITES species, including timber species.

There is a general risk of corruption in Vietnam. Transparency International's 2015 Corruption Perceptions Index ranked Vietnam 113th out of 177 countries assessed and scored a corruption index of 33, meaning it has a high perception of corruption.

The 2015 World Bank Worldwide Governance Indicators (WGI) gave Vietnam the following ranks out of 100: Voice and Accountability: 10.84; Political Stability and Absence of Violence: 48.57; Government Effectiveness: 55.29; Regulatory Quality: 33.69; Rule of Law: 46.15 and Control of Corruption: 39.42.

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

1.20.6. Risk designation and specification

Specified risk

1.20.7. Control measures and verifiers

- All cross border-trade of CITES-listed species shall be documented and accompanied by required export, import and re-export certificates issued by competent authorities (CITES Management Authorities). Note that there is a risk that permits have been obtained fraudulently.

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

Decision 47/1999/QD-BNN-KL issuing the Regulations on inspection, transportation, production and business of timber and forests products; articles in decision. Available at: <http://thuvienphapluat.vn/archive/Quyet-dinh/47-1999-QD-BNN-KL-vb80034t17.aspx>

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

None

1.21.5. Risk determination

The Vietnamese government and the European Union (EU) announced the start of formal negotiations for a Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) on 18 August 2010. The aim of this Agreement is to ensure the legality of timber products entering the EU market, while at the same time it could help in maintaining and expanding the export of timber and timber products from Vietnamese enterprises, which will be subject to the changing EU market requirement as of March 2013.

In June 2017, the VPA agreement between the EU and Vietnam was signed.

In addition, VNFOREST is preparing for development of the Timber Legality Assurance System (TLAS). At the beginning of 2012, Circular No. 01/2012/TT-BNNPTNT in the document bundle of legal forest products and examination of forest product origin was approved by MARD, as an important part of the TLAS legal system (<http://bit.ly/KRnH61>).

1.21.6. Risk designation and specification

N/A

1.21.7. Control measures and verifiers

None

Annex I. Timber source types

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

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

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

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

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

TIMBER SOURCE TYPES IN VIETNAM

Forest type	Ownership	Legal Land Classification	Management regime	License / Permit Type	Description of source type
Natural forest	State owned	Production forest	State forestry companies (SFCs)	Must be FSC certified (NB: Only two SFC's are certified).	Source only where FSC certified (NB: Only two SFC's are certified).
Plantation forest	State owned; Household owned; or owned by private companies (local or international)	Production forest	State Forestry Companies; The Army; Households; or Private companies (Local or international)	Forest land allocation documents Forest management plans Approved harvesting plan (quantity, size, types of products). Harvesting permit in plantation forest Logging permits relating to plantations are similar for organisations; but households fill in only the forest products claim table and submit to the Commune People's Committees for approval.	Plantation timber



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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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