

Timber Legality Risk Assessment Myanmar

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COUNTRY RISK
ASSESSMENTS



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B. Overview of legality risks

Timber Risk Score: 0 / 100 in 2017

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

- **Specified risk for 19 sub-categories.**
- **Low risk for 0 sub-categories.**
- **No legal requirements for 2 sub-categories.**

The Timber Risk Score for Myanmar is 0 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights, and trade and transport.

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

- Land legal status and land use conflict due to overlapping or misalignment of land classification in areas with unofficial land status (1.1)
- Forest areas are illegally converted to agriculture due to existing unofficial land claims and possibility to illegally encroach to forest areas (1.1).
- Harvest permits are assigned illegally, because of high overall corruption level in Myanmar, lack of transparency and openness in the process of selecting of contractors and allocation of contracts to contractors (1.2, 1.4)
- Legal land status and management rights are not properly controlled, because security status of the area does not permit union state authorities inspections
- Management plans are not implemented in the forest (1.3)

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

- Payments of royalties, harvesting fees, and taxes are avoided (1.5 – 1.7)
- Harvest fees are not paid, when harvesting is conducted for the purpose of land development (1.5)
- The royalty system does not function in areas where state union control over resources is limited (1.5)

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

- Forest management laws, regulations and rules are violated (1.8)
- Protected species and areas are illegally logged or poached (1.9)
- Environmental requirements are not followed (1.10)
- Health and safety requirements are neglected (1.11)
- Employment requirements are violated and forced labour is used (1.12)

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

- Conflicts over land resources occur and customary rights are not respected through classification of land (1.13)
- Ethnic conflict involving indigenous peoples is present (1.15)

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

- Documentation describing trade and transport of timber, classification of grades, species, and volumes, are falsified (1.16, 1.17)
- Transport or trade documents are filled in incorrectly/corruptly (1.17)
- Prices are manipulated and offshore accounts/tax havens are used (1.18)
- Logs and timber products are exported illegally (1.19)
- CITES-listed species are illegally harvested and traded (1.20)

Timber source types and risks

There are two timber source types found in Myanmar. 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 two of these source types and found that if legislation is in place for the specific source type, the risk is the same.

Permanent Forest Estate

Reserved Forest, Public Protected Forest, and Unclassified Forest within the Permanent Forest Estate. Harvesting requires an Extraction permit.

Unclassified Forest under conversion to other land use

Land under the jurisdiction of the Ministry of Agriculture and Irrigation (MOAI), and trees under the jurisdiction of the Forest Department of MOECAAF (Ministry of Environmental Conservation and Forests)

A permit from the Forest Department Is needed to clear trees.

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

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

C. Overview of the forest sector in Myanmar

LAND CLASSIFICATION: In Myanmar there is a fundamental misalignment between land use and land administration, and primary and secondary forests and long fallows shifting cultivation are the main anomalies. Myanmar's land is classified into: 1. urban municipal areas (under SLRD municipal jurisdiction); 2. settled agriculture (under Ministry of Agriculture and Irrigation (MAI) jurisdiction); 3. Permanent Forest Estate (or PFE) (under Ministry of Environmental Conservation and Forests jurisdiction); and lastly the problematic 'Unclassified Forests / Land at disposal of government / Vacant, Fallow and Virgin land' where the land is under the jurisdiction of the Ministry of Agriculture and Irrigation (MOAI), but any trees are under the jurisdiction of the Forest Department of MOECF (Ministry of Environmental Conservation and Forests).

FOREST CATEGORIES: Myanmar covers 67.66 million ha (mha). Permanent agriculture is estimated to cover 12.44 mha (SLRD). The Permanent Forest Estate is estimated at 19.78 mha (FD 2010). Within this, Reserved Forests are the major category (12.18 mha). Protected Public Forests (PPF) cover 4.09 mha and Protected areas 3.51 mha. Reserved forests have detailed management planning, whereas PPF are not managed for intensive timber production but for local needs. (*Note - It is impossible to find definitive data on land category extent as different departments give data with large margins of discrepancy.) 'Unclassified forests' (UF) are those forest areas which the Forest Department has never gazetted as forests, so remain under jurisdiction of the MAI, although the Forest Department and its contractors extract timber from them on an ad hoc basis.

FOREST OWNERSHIP: all ownership of land in Myanmar is vested in the government. Management of some village forest areas has been granted to local Community Forest User Groups.

FOREST PERMIT TYPES: The Forest Department is responsible for management of forest areas; they grant one year extraction permits to extract specified quantities and types of timber to Myanmar Timber Enterprise (MTE). MTE in turn may subcontract the extraction to private sector companies. The permit requires the agent to deliver the timber to the (normally MTE-managed) depot for auction. Payment is calculated based on extraction costs and transport.

TIMBER HARVESTING REGULATION PROTOCOL & AUTHORITY: Trees for felling are marked by FD. Felled logs are then checked at the skidding site and hammer marked by FD and MTE or subcontractor staff. Logs may be inspected at FD checkpoints in transit. Logs are then checked against the permit by FD staff on arrival at the (normally MTE-managed) depot. According to Modified Procedure – which is applied in conflict areas – logs are only checked at the depot against extraction permit [National Code of Forest Harvesting 1999).

TRANSPARENCY & CORRUPTION: According to the Corruption Perceptions Index 2013 from Transparency International, 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) Myanmar is ranked 157th out of 177 countries assessed. It has scored a corruption index of 21, meaning it has a perception of very high corruption. Myanmar has performed consistently poorly on Transparency International's Corruption Perceptions

Index. Forestry has been one of the sectors most affected by corruption, with illegal logging and cross-border trade accounting being a major driver for deforestation in the country (Forest Legality Alliance 2015).

World Bank compiles a set of governance indicators, Worldwide Governance Indicators (WGI), for all world economies. The WGI country reports are based on six aggregate governance indicators. 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). Myanmar's rank for 2013 was: Voice and Accountability 6.6/100, Political Stability and Absence of Violence 13.3/100, Government Effectiveness 4.3/100, Regulatory Quality 5.3/100, Rule of Law 10.9/100, and Control of Corruption 12.4/100.

Myanmar established an Anti-Corruption Law and Anti-corruption Commission to address transparency and illegality issues. The Commission is to be an independent body of respected staff, separate from the legislative, administrative and judicial branches of the government. Similarly, the Commission's members cannot be affiliated with state-owned companies, anyone who has declared bankruptcy or those who have been previously charged with corruption. According to the current law, a finding of corruption will result in a maximum 15 year sentence for politicians. Other authorities can serve up to 10 years for a violation, and others can serve up to seven years (FLA 2015).

Additional sources:

- FAO. 2015. Country Report – Myanmar. Global Forest Resources Assessment 2015. <http://www.fao.org/3/a-az283e.pdf>
- Mongabay.com. N.Y. Myanmar forest information and data. 2011 Update. Tropical rainforests: Deforestation rates tables and charts. <http://rainforests.mongabay.com/deforestation/2000/Myanmar.htm>
- Oxfordbusinessgroup.com. N.Y. Myanmar balances forestry exports with presentation. The report – Myanmar 2016. https://www.oxfordbusinessgroup.com/analysis/conserving-resource-economy-opens-myanmar-seeks-balance-forestry-exports-preservation#report_launcher
- Timbertradeportal.com. 2016. Myanmar. <http://www.timbertradeportal.com/countries/myanmar/>

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

- Forest Policy (1995)
- Forest Law (1992): Chapters IV, V, and VI. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Forest Rules (1995)
- The Vacant, Fallow and Virgin (VFV) Lands Management Law (2012). Available at: http://www.forestlegality.org/sites/default/files/country_documents/Vacant%20Fallow%20and%20Virgin%20Lands%20Management%20Law_Myanmar_0.pdf
- Community Forestry Instructions (1995)

1.1.2. Legal authority

- PERMANENT FOREST ESTATE & UNCLASSIFIED FOREST: Ministry of Environmental Conservation and Forestry - Forestry Department. However, land in Unclassified Forest ('Vacant, Fallow and Virgin' and agricultural land) is under jurisdiction of Ministry of Agriculture and Irrigation

1.1.3. Legally required documents or records

- Timber Extraction Contract (for contractors)
- Extraction Permit
- FD approved Forest management plan
- Hammer mark registration records
- Pre-harvest survey and marking books

1.1.4. Sources of information

Non-Government sources

- Eia-international.org (2012). *Appetite for destruction - China's trade in illegal timber*. [online]. Available at: <http://www.eia-international.org/wp-content/uploads/EIA-Appetite-for-Destruction-lo-res.pdf>

- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>
- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
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- ITTO (2004). *Tropical Forest Update*. Volume 14, Number 1, 2004, p13.
- Karhl, F., Weyerhaeuser, H., and Su, Y. (2004). *Navigating the Border: An Analysis of the China-Myanmar Timber Trade*. [online]. China and forest trade in the Asia-pacific region: implications for forests and livelihoods. Forest Trends. Available at: http://www.forest-trends.org/documents/files/doc_120.pdf
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- Roy, R. D. (2005). *Traditional Customary Laws and Indigenous Peoples in Asia*. [online]. Minority rights group international. Available at: <http://minorityrights.org/publications/traditional-customary-laws-and-indigenous-peoples-in-asia-april-2005>
- Springate-Baginski, O. and Than, M. M. (2011). *Community Forestry in Myanmar: Some field realities*. [online]. Available at: <http://www.burmalibrary.org/docs13/CF+Myanmar+report+-+FUG+case+studies-op75-red.pdf>
- Stibig, H-J., Stolle, F. Dennis, R. and C. Feldkötter (2007). *Forest Cover Change in Southeast Asia - The Regional Pattern*. [online]. European Commission Joint Research Centre. Available at: <http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/477/1/eur%2022896%20forest%20change%20pattern%20se-asia.pdf>
- Tint, Springate-Baginski and Gyi (2011). *Community forestry in Myanmar – progress and potential*. [online]. ECCDI. Available at: <http://www.burmalibrary.org/docs13/Community+Forestry+in+Myanmar-op75-red.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: 10th Session of the UPR Working Group, January 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf

- UPI (2012). *Myanmar in a deforestation crisis*. [online]. Available at: http://www.upi.com/Science_News/2012/08/22/Myanmar-in-deforestation-crisis/UPI-50031345670650/ [Accessed 26 May 2013]
- Woods, K. and Canby, K. (2011). *Baseline Study 4, Myanmar. Overview of Forest Law Enforcement, Governance and Trade*. [online]. The European Forest Institute. Available at: http://www.burmalibrary.org/docs15/Forest_Trends-Overview_of_Forest_Law_Enforcement-en-red.pdf
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1.1.5. Risk determination

Overview of Legal Requirements

All land in Myanmar is by definition owned by the state. However, certain rights to management of forest land can be granted to communities or private companies.

The forest law provides the ability for people to extract forest products from forest land (Reserve Forest and Protected Public Forest) on a non-commercial scale without a permit (Ch. VI, 17). Commercial extraction requires a permit, but in reality all extraction is vested in the Myanmar Timber Enterprise (MTE).

Description of Risk

The main risk related to land tenure and management rights are considered to be where:

1. the security status of the area does not permit union state control of resources (e.g. Kachin State)
2. areas where overlapping land classifications mean that the legal classification of the land category and the legal use of the land is conflicting (e.g. mining, infrastructure establishment, plantation establishment, pipeline establishment, conversion for agriculture etc.).
3. unofficial land claims and shifting cultivation: forest areas may be converted to agriculture against the law in cases where people illegally encroach on forest areas. The timber from such areas may enter the log supply.

It is, however, important to distinguish jurisdiction and management processes over forests: biophysical forests may be on legal forest estate land (where the legal status has been settled by FD), but many biophysical forests are not on 'forest land' as they were not 'settled' and are therefore, by default, not under FD purview but under Ministry of Agriculture and VFV jurisdiction].

Risk Conclusion

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's

Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.1.6. Risk designation and specification

Specified risk

1.1.7. Control measures and verifiers

- In areas with land ownership conflicts, consultation with neighbours, local communities and others shall confirm that land tenure rights are clear. Where grievances are not resolved in this way a due legal process is necessary and harvesting must desist until owner information is obtained.
- A valid and approved forest management plan shall exist and be placed in the public domain
- Contractors shall have a valid timber extraction contract covering the relevant area of extraction.
- Timber extraction shall be verified to be carried out under a valid Timber Extraction Permit.
- Inspections of the harvesting site shall confirm that harvesting takes place within property limits (including felling, transport and log landings).
- Timber shall not be extracted from areas under civil conflict, where the territorial jurisdiction of the state is not validated by citizens, but is contested. (To extract valuable resources under such conditions can be interpreted as a hostile act of war.)
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law (1992):
 - Chapter V "Establishment of Forest Plantation", Section (13), (14), (15) and
 - Chapter VI "Permission of Extraction of Forest Produce", Section 18.
 Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
 - Community Forestry Instructions (1995), Section (12), (13) "Duration of land lease for the establishment of community forest"
 - Forest Rules (1995), Chapter 3.
 - Myanmar Citizens Investment Law (1994)
 - Foreign Investment Law (2012), Section 31 - The commission may permit the investors to lease the land or to use land for the term actually required based on the categories of business, industrial business or agricultural, livestock breeding business and investment volume up to 50 years in the first instance. Available at: http://export.gov/thailand/static/Foreign%20Investment%20Law_Latest_eg_th_055_982.pdf
 - Foreign Investment Rule (2013) - Chapter V, Section 30, 49, 50, and 54 (a) and (b).
- 1.2.2. Legal authority**
- Ministry of Environmental Conservation and Forestry
- 1.2.3. Legally required documents or records**
- Timber Extraction Contract (for contractors)
 - FD approved Forest management plan
 - Hammer mark registration records
 - Pre-harvest survey and marking books
- 1.2.4. Sources of information**
- Non-Government sources*
- Eia-international.org (2012). *Appetite for destruction - China's trade in illegal timber*. [online]. Available at: <http://www.eia-international.org/wp-content/uploads/EIA-Appetite-for-Destruction-lo-res.pdf>
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- Stibig, H-J., Stolle, F. Dennis, R. and C. Feldkötter (2007). *Forest Cover Change in Southeast Asia - The Regional Pattern*. [online]. European Commission Joint Research Centre. Available at: <http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/477/1/eur%2022896%20forest%20change%20pattern%20se-asia.pdf>
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1.2.5. Risk determination

Overview of Legal Requirements

Since all forest land is owned by the state and the extraction rights are given directly and exclusively to MTE, the overall risk that the license to operate in a concession is illegal is relatively limited. However, in areas where the security situation has limited state control of forest and other land (such as Kachin and Shan states) the situation must be described as highly unstable and very little confidence in the legality of harvesting operations should be assumed.

Description of Risk

Again it is important to distinguish the 'forest estate' (under jurisdiction of MOECAF/forest department) from ecological forest, some of which is not 'settled' as forest estate, but is under administrative jurisdiction of MAI. A major source of timber is from conversion of these physical forest areas under the MAI for agricultural plantations, where the harvesting processes are opaque and likely to be very 'high risk'.

When considering that approximately 50% of all harvest activities are carried out by sub-contractors to MTE, the question of sub-contracting procedures shall also be considered. As there is virtually no system for providing transparency and openness in MTE's process for allocating contracts to contractors, the process must be considered high risk for corruption. This is a key risk that should be considered in all cases where harvesting activities are sub-contracted to harvesting contractors.

Additional risk relates to direct illegal logging inside Reserved forest as well as uncontrolled logging in conflict areas outside the direct control of the Union Government.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk conclusion

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

1.2.6. Risk designation and specification

Specified risk

1.2.7. Control measures and verifiers

- Proper legal procedures for obtaining Timber Extraction Permit shall be followed.

- Valid concession license agreements shall exist.
- The process of obtaining concessions shall follow an open and transparent process based on clear criteria and be confined to eligible organisations.
- Independent stakeholder consultation shall confirm that legal procedures for obtaining concession licenses have been followed.
- There shall be evidence that the granting of extraction rights or subcontracting of extraction has been conducted without corruption.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Myanmar Forest Policy (1995)
- Forest Law (1992) - Chapter IV - Section 11, (c), Section 4, Chapter II, Chapter 4, section 28, 31 and 33, and Chapter 5. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- National Code of Forest Harvesting (2000)
- Management Plan Manual (1996)
- Forest Rules (1995), Chapter 3
- Standing Order for Subordinates (1959)
- Working Plans Manual (1938)
- Departmental Instructions for Forest Officers (1955) - Timber Extraction Permit between MTE and sub-contractors
- MTE Extraction Manual, D.I, Section (165), State Timber Board Act (1950).

1.3.2. Legal authority

- Ministry of Environmental Conservation and Forestry, District Forest Department.

1.3.3. Legally required documents or records

- Approved management plan,
- Instruction for tree selection,
- Operational Extraction plan (MTE Form AC)

- Completion report by FD (post harvest)
- Timber Extraction Contract (for contractors)

1.3.4. Sources of information

Non-Government sources

- Castrén, T. (2010). *Timber trade and wood flow–study – Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase I). Available at: <http://www.mekonginfo.org/assets/midocs/0002331-environment-timber-trade-and-wood-flow-study-myanmar.pdf>
- Eia-international.org (2012). *Appetite for destruction - China's trade in illegal timber*. [online]. Available at: <http://www.eia-international.org/wp-content/uploads/EIA-Appetite-for-Destruction-lo-res.pdf>
- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Nay San Lin (2006). *Assessment of impacts of harvesting practices on teak bearing forests in the east Bago Yoma of Myanmar*. MSc. thesis.
- Oberndorf, R.D. (2012). *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*. Food Security Working Group's Land Core Group.
- Tint, Springate-Baginski and Gyi (2011). *Community forestry in Myanmar – progress and potential*. [online]. ECCDI. Available at: <http://www.burmalibrary.org/docs13/Community+Forestry+in+Myanmar-op75-red.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- Woods, K. and Canby, K. (2011). *Baseline Study 4, Myanmar. Overview of Forest Law Enforcement, Governance and Trade*. [online]. The European Forest Institute. Available at: http://www.burmalibrary.org/docs15/Forest_Trends-Overview_of_Forest_Law_Enforcement-en-red.pdf
- World Bank (2013). *Worldwide Governance Indicators - Myanmar 1996-2013*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- Zaw, U. K, (2003). *Current State of the Development and Implementation of the National Code of Harvesting Practices in Myanmar*. [online]. Available at: http://www.rinya.maff.go.jp/code-h2003/PART_4/U_Kin_Zaw.pdf

1.3.5. Risk determination

Overview of Legal Requirements

Ten-year forest management plans shall be formulated based on the extrapolation of annual inventory data, from which annual management plans are prepared.

National level inventory data obtained from Planning and Statistics Department are used for District level forest management plans; however, the inventory has been conducted and administered by the local forest officers in the past. If these data are not available, a 'one shot' inventory is conducted at the Township and District level to formulate management plans.

There are clear indications that the forest management planning (done by FD) is often based on limited information from the field, and low quality data on growth and yield. Also the production figures outlined in the annual allowable cut (AAC) are not always adhered to. Also the timber extraction itself (done by MTE) is often done with little regard to the management plan.

Description of risk

In areas where control over resources is exercised by the FD, there are indications that the forest management planning is carried out. However, limited incentives, lack of capacity and inadequate salaries lower staff motivation and this seems to affect the quality of the management plans. Also the data available on growth and forest composition is very limited.

Also there are significant risks that the management plans are not in fact implemented in the forest due to the lack of capacity of the FD and the fact that MTE is responsible for all timber extraction and does not have responsibility to implement the remaining forest management activities.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the significant risk that management plans are based on faulty data, are not prepared as required and are not adequately implemented in the forest – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.3.6. Risk designation and specification

Specified risk

1.3.7. Control measures and verifiers

- Approved forest management plans shall exist for the FMU where the harvesting is taking place.
- Forest management plans shall contain all legally required information and procedures.

- Annual operating or harvesting plans shall be in place and approved by legally competent authorities.
- Annual operating or harvesting plans shall contain information and procedures, according to all legal requirements.
- The contents of the operating and harvesting plans shall be consistent with approved forest management plans.
- Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required.
- Harvesting restrictions shall be identified in management plans and maps if legally required.
- Harvesting inventories shall be conducted according to legal requirements.
- Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field.
- Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process and be free of corrupt practices.
- The contents of the management plan shall be technically sound and consistent in meeting legal requirements.
- All documentation to be up-to-date, relating explicitly to spatial mapping of the forest estate which may be triangulated on the ground, and placed in the public domain for third party scrutiny.
- Clear evidence that corruption has not impacted the supply chain, where relevant.
- Village Forest Management plan: includes information on areas allocated for smallholding tree plantations, age of plantations, planted tree species.
- Plantation management plan for registered plantation: includes information on location of parcels allocated for logging in current year, age structure and planted species.
- Field inspection shall confirm plans are in accordance with legal requirements and maps correspond to actual delineation on the ground.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law (1992) - Chapter VI "Permission of Extraction of Forest Produce", Section 17, 18 (a) and 21. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Departmental Instructions for Forest Department
- Forest Rules (1995) - Chapters 3, 4, 5, 45, 46 and 47.
- State Timber Board Act (1950)
- Environmental Conservation Law (2012)
- Myanmar Timber Enterprise (MTE) Extraction Manual - Chapter I
- Standing Orders for Extraction Staff

1.4.2. Legal authority

- Ministry of Environmental Conservation and Forestry
- Forest Department and District Forest department

1.4.3. Legally required documents or records

- Harvest Permit
- Approved harvesting plan,
- Instruction for tree selection,
- Registration of marking hammers
- Completion report by FD (post-harvest)
- Selection Marking Report with Marking Note Books
- MTE hammer marking and timber extraction control forms
- Records of joint measurement by FD and MTE
- Harvesting Monitoring Report
- Timber Extraction Contract (for contractors)

1.4.4. Sources of information

Non-Government sources

- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>

- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Nay San Lin (2006). *Assessment of impacts of harvesting practices on teak bearing forests in the east Bago Yoma of Myanmar*. MSc. thesis.
- Springate-Baginski, O. and Than, M. M. (2011). *Community Forestry in Myanmar: Some field realities*. [online]. Available at: <http://www.burmalibrary.org/docs13/CF+Myanmar+report+-+FUG+case+studies-op75-red.pdf>
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- Woods, K. and Canby, K. (2011). *Baseline Study 4, Myanmar. Overview of Forest Law Enforcement, Governance and Trade*. [online]. The European Forest Institute. Available at: http://www.burmalibrary.org/docs15/Forest_Trends-Overview_of_Forest_Law_Enforcement-en-red.pdf
- World Bank (2013). *Worldwide Governance Indicators - Myanmar 1996-2013*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- Zaw, U. K. (2003). *Current State of the Development and Implementation of the National Code of Harvesting Practices in Myanmar*. [online]. Available at: http://www.rinya.maff.go.jp/code-h2003/PART_4/U_Kin_Zaw.pdf

1.4.5. Risk determination

Overview of Legal Requirements

As MTE has been granted the responsibility for extracting all timber in the state forest, they hold a general permit to extract timber in Reserve Forests. MTE may sub-contract extraction to contractors. It is estimated that sub-contractors are responsible for approximately 50% of all official timber harvesting.

Description of Risk

It is estimated that sub-contractors are responsible for approximately 50% of all official timber harvesting. There is no transparent process for MTE to select contractors. This opens up the potential for corruption and cronyism.

As a result, company quality assurance is not guaranteed, and providing sub-contracts to the companies is likely to result in harvesting from different compartments and different timber species; which in turn results in undesired outcomes and violation of the AAC sustained yield.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.4.6. Risk designation and specification

Specified risk

1.4.7. Control measures and verifiers

- Field visits to verify that harvesting is carried out within permitted boundaries.
- Harvesting and extraction permits (license or similar legal document governing the harvesting of forest resources) shall exist.
- Harvesting limits shall be clearly defined in the forest management plan.
- Authorities shall confirm the validity of harvesting permit.
- Stakeholder consultation shall confirm that a harvesting permit has been issued according to the relevant laws and regulations by the legally designated competent authority.
- There shall be evidence to document that the harvest permit has been issued without the use of corruption
- Field inspection shall confirm that harvesting takes place within limits given in the harvesting permit.
- Field inspection shall confirm that information regarding area, species, volumes and other details given in the harvesting permit are correct and within limits prescribed in the legislation.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCo believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law (1992), Sections 20(b), 21(c), 22, and 49. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Departmental Instructions for Forest Officers (DI),
- Environmental Conservation Law 2012, Section 16. Available at: http://www.forestlegality.org/sites/default/files/country_documents/Environmental%20Conservation%20Law%20No%209%2012%20%282012%29_Myanmar_0.pdf
- MTE Extraction Manual and Standing Orders,
- Forest Management Plan Section 9.10.15.

1.5.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.5.3. Legally required documents or records

- MTE hammer marking forms
- Form Forest S18/Teak
- Form Forest S18/non-teak
- MTE form D
- Records of joint measurement by FD and MTE
- Harvesting Monitoring Report
- Form C and D (joint measuring forms at landing)

1.5.4. Sources of information

Non-Government sources

- Deloitte (2014). *Tax Alert - Changes of tax laws to reduce tax evasion and illegal trade in Myanmar*. [online]. April 2014. Available at: http://www.forestlegality.org/sites/default/files/country_documents/FINAL_Tax%20Alert_April_2014_Myanmar_0.pdf
- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>

- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- Woods, K. and Canby, K. (2011). *Baseline Study 4, Myanmar. Overview of Forest Law Enforcement, Governance and Trade*. [online]. The European Forest Institute. Available at: http://www.burmalibrary.org/docs15/Forest_Trends-Overview_of_Forest_Law_Enforcement-en-red.pdf
- World Bank (2013). *Worldwide Governance Indicators - Myanmar 1996-2013*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.5.5. Risk determination

Overview of Legal Requirements

Royalties must be paid for all timber extraction operations.

Description of Risk

In timber extraction operations carried out in areas where government maintains control of resources, there seem to be relatively well-established systems for royalty payments. However, corruption at all levels in the forest sector means that avoidance of payment of royalties is a significant risk. Cases have also been noted where logs are harvested illegally and the royalty hammer marks re-used for other logs that have been illegally harvested.

In addition, the royalty payment system obviously does not function in conflict areas where the Union Government has no or limited control of resources. Also timber harvested illegally for purposes of land development may not have been subject to royalty payments.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.5.6. Risk designation and specification

Specified risk

1.5.7. Control measures and verifiers

- Log Marking books confirming the payment of royalties shall be consistent with the logs (Royalty Mark).
- Joint measuring forms verify the logs' measurement and markings (Forms C and D).

- Royalty hammer marks and two rows of serial numbers on logs shall be correctly applied and verified by reference to records.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- The Commercial Tax Law (1990). Available at: <http://tax.mofcom.gov.cn/tax/taxfront/en/article.jsp?c=30125&tn=3&id=be203f282bb948ab9eb10f816afdc9e2>

1.6.2. Legal authority

- Internal Revenue Department (IRD)

1.6.3. Legally required documents or records

- Tax receipts and invoices

1.6.4. Sources of information

Government sources

- Internal Revenue Department (IRD) - <http://www.mof.gov.mm/en/content/internal-revenue-department>

Non-Government sources

- Htet Naing Zaw (2013). *28 Tax Revenue Officials Implicated in Corruption Case*. [online]. The Irawaddy 18 July 2013. Available at: <http://www.irrawaddy.org/corruption/28-tax-revenue-officials-implicated-in-corruption-case.html>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- World Bank (2014). *Myanmar Enterprise Survey 2014: Early Findings*. [online]. Available

at: <http://www.ifc.org/wps/wcm/connect/19541f80461149509ea1bf9916182e35/Myanmar+Enterprise+Survey+2014.pdf?MOD=AJPERES>.

1.6.5. Risk determination

Overview of Legal Requirements

There is no value-added tax in Myanmar. Commercial tax is levied as a turnover tax on goods and services. The commercial tax is an additional tax upon certain commercial transactions, but it has not been expanded to the concept of a value-added tax. It applies only to the specific transactions listed in the Commercial Tax Law.

Description of Risk

The level of corruption in Myanmar implies significant risk that taxes are not being paid as required.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

This indicator has been evaluated as specified risk, based on a precautionary approach.

1.6.6. Risk designation and specification

Specified risk

1.6.7. Control measures and verifiers

- Consultation with financial authority to verify that all required income and profit taxes have been paid.
- Tax receipts and invoices shall be consistent with materials and volumes.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCo believes that the risk of illegality can generally not be mitigated to a negligible level. Payment receipt (certificate)

1.7. Income and profit taxes

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

1.7.1. Applicable laws and regulations

- Income Tax Law. Available at: <http://www.mof.gov.mm/sites/default/files/incometaxlawenglish.pdf>
- Myanmar Companies Act (CA)

- The Commercial Tax Law (1990) Available at: <http://tax.mofcom.gov.cn/tax/taxfront/en/article.jsp?c=30125&tn=3&id=be203f282bb948ab9eb10f816afdc9e2>

1.7.2. Legal authority

- Internal Revenue Department (IRD)

1.7.3. Legally required documents or records

- Tax receipts and invoices

1.7.4. Sources of information

Government sources

- mof.gov.mm (N.Y.) *Internal Revenue Department (IRD)*. [online]. Available at: <http://www.mof.gov.mm/en/content/internal-revenue-department>

Non-Government sources

- Htet Naing Zaw (2013). *28 Tax Revenue Officials Implicated in Corruption Case*. [online]. The Irawaddy 18 July 2013. Available at: <http://www.irrawaddy.org/corruption/28-tax-revenue-officials-implicated-in-corruption-case.html>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- World Bank (2014). *Myanmar Enterprise Survey 2014: Early Findings*. [online]. Available at: <http://www.ifc.org/wps/wcm/connect/19541f80461149509ea1bf9916182e35/Myanmar+Enterprise+Survey+2014.pdf?MOD=AJPERES>.

1.7.5. Risk determination

Overview of Legal Requirements

An enterprise established under the Myanmar Companies Act, an entity established under the Myanmar Foreign Investment Law (MFIL), and a registered Myanmar branch of a foreign entity that enjoys incentives under the MFIL, are all subject to income tax at 25%. A registered Myanmar branch of a foreign entity that does not enjoy incentives under the MFIL, and other non-resident entities, are subject to income tax at the higher rate of 35%.

The tax year follows the fiscal year, starting 1 April and ending 31 March. The annual tax return must be filed with the Internal Revenue Department by 30 June of the following income year. If a business is dissolved, an income tax return must be filed within one month from the time the business was discontinued. Tax returns for capital gains under

the income tax law are to be submitted within one month after the capital asset was disposed of. In addition taxpayers are required to file tax returns for withholding tax, commercial tax and individual income tax on a monthly or quarterly basis.

Commercial tax is levied as a turnover tax on goods and services. The commercial tax is an additional tax upon certain commercial transactions, but it has not been expanded to the concept of a value-added tax. It applies only to the specific transactions listed in the Commercial Tax Law.

Description of Risk

The level of corruption in Myanmar implies significant risk that taxes are not being paid as required.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.7.6. Risk designation and specification

Specified risk

1.7.7. Control measures and verifiers

- Evidence that income tax derived from logging has been paid. Where discrepancies between actual and declared export volumes are consistently apparent, the evident lack of enforcement requires sanctions against responsible individuals in the financial authorities for complicity in crime.
- Consultation with financial authority to verify that all required income and profit taxes have been paid. Where evidence of tax evasion is made public, authorities must enforce laws and sanction offenders.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- MTE Extraction Manual,
- Standing Orders for Extraction Staff of MTE,
- National Code of Forest Harvesting (2000),
- Forest Law (1992). Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Forest Rules
- Departmental Instruction Section 165,
- Forest Management Plan Section 4.1, Sections 9.1 to 9.5

1.8.2. Legal authority

- Ministry of Environmental Conservation and Forestry,
- District Forest Department.
- MTE

1.8.3. Legally required documents or records

- Boundary maps
- Selection marking report
- Harvesting monitoring report
- Operational Extraction plan (MTE Form AC)
- Felling and Log registers (MTE form B and C)

1.8.4. Sources of Information

Non-Government sources

- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>
- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>

- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Nay San Lin (2006). *Assessment of impacts of harvesting practices on teak bearing forests in the east Bago Yoma of Myanmar*. MSc. thesis.
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- Zaw, U. K. (2003). *Current State of the Development and Implementation of the National Code of Harvesting Practices in Myanmar*. [online]. Available at: http://www.rinya.maff.go.jp/code-h2003/PART_4/U_Kin_Zaw.pdf

1.8.5. Risk determination

Overview of Legal Requirements

In Myanmar the responsibility of forest management and timber extraction are completely separate activities, divided between the FD and MTE respectively. This institutional arrangement obviously imposes artificial separation between different aspects of forest management and timber harvesting. This separation creates the risk that harvesting practices do not generally meet the regulations since incentives to follow harvest restrictions are skewed.

Description of Risk

It has been observed, even in relatively well-managed forests, that harvesting restrictions and regulations are not followed.

It is concluded that the risk that forest management laws, regulations and rules are being violated in the forest is significant.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's

Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.8.6. Risk designation and specification

Specified risk

1.8.7. Control measures and verifiers

- The area shall be demarcated on harvest maps and on the ground.
- AAC shall be adhered to.
- All trees selected for harvesting shall be marked by the FD.
- No trees without appropriate FD marks shall be logged.
- Harvesting restrictions shall be followed in the field.
- Logs shall be marked with Revenue mark (Akauk)
- Field verification shall confirm that felling techniques follow the harvesting plan and instructions (avoid felling on adjacent trees, avoid damage to residual stand, avoid damage to trees being felled, exercise proper scaling and bucking).
- Skidding shall be carried out to the prescribed Measuring Point (MP).
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law 1992, Section 8B "Declaration of reserved trees". Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- The Protection of Wildlife and Conservation of Natural Areas Law 1994.
- National Code of Forest Harvesting (2000)
- MTE extraction manual
- MOECA, Forest Department, Notification 583/94: Section 3C, Section 15.

- Environmental Conservation Law 2012. Available at: http://www.forestlegality.org/sites/default/files/country_documents/Environmental%20Conservation%20Law%20No%209%2012%20%282012%29_Myanmar_0.pdf

1.9.2. Legal authority

- Ministry of Environmental Conservation and Forestry,
- Wildlife and Nature Conservation Division (NWDC),
- District Forest Department.
- National Commission on Environmental Affairs (NCEA)

1.9.3. Legally required documents or records

- Completion report of Harvesting (Form AJ)

1.9.4. Sources of Information

Non-Government sources

- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>
- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>
- Clarke, J. E. (2010). *Biodiversity and protected areas Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase I). available at: <http://www.mekonginfo.org/assets/midocs/0002035-environment-biodiversity-and-protected-areas-myanmar.pdf>
- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Nay San Lin (2006). *Assessment of impacts of harvesting practices on teak bearing forests in the east Bago Yoma of Myanmar*. MSc. thesis.
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- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights

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Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf

- UPI (2012). *Myanmar in a deforestation crisis*. [online]. Available at: http://www.upi.com/Science_News/2012/08/22/Myanmar-in-deforestation-crisis/UPI-50031345670650/ [Accessed 26 May 2013]
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- Wyler, L. S. (2008). *Burma and Transnational Crime*. [online]. CRA report for Congress. Available at: <http://www.fas.org/sqp/crs/row/RL34225.pdf>
- Zaw, U. K. (2003). *Current State of the Development and Implementation of the National Code of Harvesting Practices in Myanmar*. [online]. Available at: http://www.rinya.maff.go.jp/code-h2003/PART_4/U_Kin_Zaw.pdf

1.9.5. Risk determination

Overview of Legal Requirements

The Protection of Wildlife and Conservation of Natural Areas Law defines protected areas and animal species that are found in Notification 583/94. National Forest Policy 1995 has among its goals, "to strengthen wildlife management through the establishment of a network of national parks, wildlife reserves and sanctuaries". A further goal is to expand the existing protected area system (see below) to encompass 5% of land area, and ultimately 10%.

Description of Risk

Clarke (2010) lists the following main threats to species and protected area conservation:

- Political instability: Separatist movements render some areas of the country unmanageable. This has hampered progress in designating additions to the protected area system and in enforcing existing legislation. For example, Brunner et al. (1998) reported tensions between central government and the Karen National Union over protected area declarations in Karen State.
- Public indifference: Rural inhabitants in general are not in sympathy with government attempts to manage protected areas and conserve biodiversity, or are completely unaware of why these initiatives are being taken. Many groups are antagonistic towards any government action.

- Encroachment on forests: Encroachment leading to loss of habitat is widespread, including inside wildlife protected areas, the reason being to open land for permanent or shifting cultivation.
- Unsustainable harvesting: Increasing pressure is placed on forests, including protected wildlife areas, by demands for firewood and other non-timber forest products. Poaching is a major problem in many areas. Wild animals are harvested for local consumption and to support a lucrative cross border trade, chiefly with China.
- Logging: Forests are under increasing pressure through demands for timber. Most protected wildlife areas have suffered or are suffering damage from logging. A switch in recent years towards logging evergreen dipterocarp forest threatens moist tropical forest; and intensified teak removal threatens biodiversity in mixed deciduous forest. Unsustainable harvesting in the dry central zone has led to severe deforestation but the most northerly forests are reported to be virtually intact.
- Inadequate protected areas: Generally, it is considered that the protected areas in Myanmar are too small to contain viable populations of protected species.
- Inadequate management resources: The Forest Department's Nature & Wildlife Conservation Division (NWCD) has insufficient financial and manpower resources and equipment to manage existing protected areas and guard against encroachment, poaching and gathering of non-timber forest products.

It is concluded that legally protected species and areas are generally at high risk of logging or illegal poaching or destruction of habitat. Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.9.6. Risk designation and specification

Specified risk

1.9.7. Control measures and verifiers

- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.
- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed.
- Nature protection regulations relating to protected areas, set-aside areas, protected species and hunting restrictions shall be followed.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Policy (1995)
- Forest Law (1992). Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Forest Rules (1995)
- National Code of Forest Harvesting (2000)
- MTE extraction manual
- Management Plan Section 9.7
- Departmental instructions for control of forest encroachment
- National Biodiversity Strategy and Action Plan (NBSAP). Available at: <http://www.cbd.int/doc/world/mm/mm-nbsap-01-en.pdf>

1.10.2. Legal authority

- District Forest Department

1.10.3. Legally required documents or records

- Forest Management Plan
- Harvesting Plan
- Exploration Report (MTE Form AC)
- Field inspection reports

1.10.4. Sources of information

Non-Government sources

- FAO (2009). *Myanmar forestry outlook study*. [online]. Working Paper No. APFSOS II/WP/2009/07. Available at: <http://www.fao.org/docrep/014/am252e/am252e00.pdf>

- FAO (2010). *Global Forest Resource Assessment 2010*. [online]. Country Report Myanmar. Available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
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- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Nay San Lin (2006). *Assessment of impacts of harvesting practices on teak bearing forests in the east Bago Yoma of Myanmar*. MSc. thesis.
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: 10th Session of the UPR Working Group, January 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf
- UPI (2012). *Myanmar in a deforestation crisis*. [online]. Available at: http://www.upi.com/Science_News/2012/08/22/Myanmar-in-deforestation-crisis/UPI-50031345670650/ [Accessed 26 May 2013]
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- Zaw, U. K. (2003). *Current State of the Development and Implementation of the National Code of Harvesting Practices in Myanmar*. [online]. Available at: http://www.rinya.maff.go.jp/code-h2003/PART_4/U_Kin_Zaw.pdf

1.10.5. Risk determination

Overview of Legal Requirements

There is no requirement to carry out EIA in Myanmar forest law. However, the National Code of Forest Harvesting does include guidelines for carrying out pre-harvest management zoning as well as pre-harvest planning (tree selection and marking, buffer zone demarcation, infrastructure planning, skid track location, and directional felling).

The Forest Policy has as the first policy imperatives:

3.1 Protection – Safeguarding soils, water catchments, ecosystems, biodiversity and plant and animal genetic resources, scenic reserves and national heritage sites.

3.2 Sustainability – Managing the forests to ensure in perpetuity the level of benefit both tangible and intangible for the present and future generations. It also implies the maintenance and rational use and enhancement of the forest resources base to ensure ecological resilience and its contribution to socio- economic growth on a continuous basis.

Also the Policy contains direct reference to improved protection and management related to environmental issues (5.2 and 6.2). These objectives to manage forests in a sustainable and environmental responsible way are also reflected in the Forest Law (Chapter IV). However, although forest management is aimed at conserving the environment (including soil and water) the requirements of the Law and the Forest Rules are not legally enforceable.

Description of Risk

Concrete forest management rules related to environmental protection are only found in the National Code of Forest Harvesting and included as sections in the template for forest management plans. In principle the Code does provide a very useful framework for managing forest and harvest operations in an environmental responsible way; however, the Code has not been promulgated as a requirement, and must therefore be considered a guideline only. Therefore it is difficult to evaluate the specific risk of environmental regulations in forest management.

Nonetheless the fact that the Forest Policy and the Forest Law have such strong focus on environmental protection must be considered when evaluating risks of legal violations. Forest management practices that are believed to be in violation of the policy and law imperatives, must be considered to be illegal. It is therefore considered that the Code of Forest Harvesting should be treated as a reference when evaluating environmental practices in forest activities, and used as a reference to verify conformance.

Based on reports of environmental destruction and unsustainable harvest practices in Myanmar, the general risk of corruption in Myanmar and the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013, the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.10.6. Risk designation and specification

Specified risk

1.10.7. Control measures and verifiers

- An appropriate Management Plan shall be in place and approved by the legally competent authority.
- Requirements for pre-harvest planning shall be followed.
- Harvesting operations shall follow the Code of Harvesting and the Management Plan
- Over-logged areas shall have been excluded from harvesting.
- Trees not marked for felling shall not be cut.
- Buffer zones shall be demarcated on the ground and restrictions followed.
- Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Occupational Health and Safety Law
- National Code of Forest Harvesting (2000)
- MTE extraction Manual. Available at:
http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=MMR

1.11.2. Legal authority

- Ministry of Labour
- Ministry of Environmental Conservation and Forestry

1.11.3. Legally required documents or records

- Forest management Plan

1.11.4. Sources of information

Government sources

- Ministry of Labour, Immigration and Population (MOL). Available at:
<http://www.mol.gov.mm/en/>

Non-government sources

- ILO (2014). *National profile on occupational safety and health: Myanmar*. [online]. International Labour Organization. Available at: http://www.ilo.org/safework/areasofwork/national-occupational-safety-and-health-systems-and-programmes/WCMS_242224/lang--en/index.htm
- Mmtimes.com (2012). *Myanmar to draft first labour safety law*. [online]. Myanmar Times. Available at: <http://www.mmtimes.com/index.php/national-news/3625-myanmar-to-draft-first-labour-safety-law.html>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: 10th Session of the UPR Working Group, January 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf
- UPI (2012). *Myanmar in a deforestation crisis*. [online]. Available at: http://www.upi.com/Science_News/2012/08/22/Myanmar-in-deforestation-crisis/UPI-50031345670650/
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.11.5. Risk determination

Overview of Legal Requirements

The only reference to requirements for health and safety in the forest sector has been found in the National Code of Forest Harvesting and the MTE extraction manual section 10. The Code contains a number of safety-related requirements, such as safety equipment to be used in the forest etc.

Description of Risk

Little information has so far been available about the working conditions of Myanmar forest workers, but the issue has to be considered a significant risk given evidence from other sectors such as production in factory settings, where health and safety issues have been raised as a problem. Key issues include neglect of basic safety protocols in felling and skidding, and hearing damage due to lack of simple ear protection in factories.

The Forest Law and Rules do not mention health and safety.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

- All safety and health regulations shall be followed and all required safety equipment shall be used.
- Interviews with staff and contractors shall confirm that legally required protection equipment is required/provided by the organisation.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Social Security Law (2012) (draft)
- Minimum Wages Act 2013
- Settlement of labour dispute law (2012)
- Leave and Holiday Act (1951)
- Workman's Compensation Act (1923)
- Employment and Training Act (1950)
- Labour Organisation Law No. 7 (2011)

- Labour organisation rules (2011)
- Settlement of labour dispute rules (2012)
- Employment Restriction Act. 1959
- Employment and Training Act. 1950
- Factories Act. 1951. Available at:

http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=MMR

1.12.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.12.3. Legally required documents or records

- Employment contracts

1.12.4. Sources of information

Non-Government sources

- Inthesetimes.com (2011). *Burma's New Labor Law: Built to fail or shifting toward democracy?* [online]. In These Times. Available at:

http://inthesetimes.com/working/entry/12430/burmas_new_labor_law_built_to_fail_or_shifting_toward_democracy/
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http://www.ilo.org/safework/areasofwork/national-occupational-safety-and-health-systems-and-programmes/WCMS_242224/lang--en/index.htm
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.12.5. Risk determination

Overview of Legal Requirements

Recent changes have indicated progress in the development of legal frameworks related to employment. Myanmar has had a poor track record involving forced labour and the use of convict labour.

The ILO has recently lifted the remaining restrictions on Myanmar (<http://www.irrawaddy.org/archives/37901>). However, rights activists say forced labour remains a major problem in many of Myanmar's border states, where clashes continue to break out between ethnic armed groups and the government's army despite ceasefire agreements.

Description of Risk

In southeast Myanmar's Karen State, rights groups report, forced labour has been imposed by the Border Guard Force (BGF), which is controlled by the government's army. Earlier this year, residents in two villages in Papun District were forced to gather building materials for BGF soldiers, serve as messengers, perform sentry duties and complete domestic duties in the army camp, according to a report released in April by the Karen Human Rights Group.

In east Myanmar's Shan State, rights groups also cite continuing forced labour at the hands of government soldiers and ethnic minority militias. In April, after clashes in March despite a ceasefire, hundreds of internally displaced persons were reluctant to leave temporary settlement camps because they feared forced labour, according to a report by Radio Free Asia.

In the past year, reports of forced labour have also come out of Kachin State, Chin State, Arakan State and other border states.

The ILO acknowledges that despite progress, forced labour continues in Myanmar and has urged its member states to provide financial support to improve working conditions in the country. In June 2013, the ILO pledged to continue working with Myanmar's government toward the goal of eliminating all forms of forced labour by 2015, and to monitor working conditions as foreign companies rush in to take advantage of what is widely seen as one of the world's last untapped markets.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.12.6. Risk designation and specification

Specified risk

1.12.7. Control measures and verifiers

- All workers are employed according to regulations and required contracts are in place.
- Persons involved in harvesting activities shall be covered by obligatory insurances.
- Persons involved in harvesting activities shall hold required certificates of competence for the functions they carry out.
- At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in hazardous work.
- Stakeholders shall confirm that there is no forced or compulsory labour associated with harvesting activities.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law (1992) Section 15, 17 and 20. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Forest Rule Chapter 5 (Sections 45 and 46)
- Community Forestry Instructions (1995) - 5(e),
- Management Plan, Sections 9.3.2.2 and 9.4.2.2 "People Participation in Forest Management Planning"
- Land policy (forthcoming)

1.13.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.13.3. Legally required documents or records

- Land Use Certificates; Forest User Group certificate; customary land use evidence (may be verbal); and documentation of benefit sharing

1.13.4. Sources of information

Non-Government sources

- GlobalWitness.org (2003). *A Conflict of Interests The uncertain future of Burma's forests*. [online]. A Briefing Document by Global Witness. October 2003. Available at: <http://www.globalwitness.org/library/conflict-interest-english>
- Oberndorf, R.D. (2012). *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*. Food Security Working Group's Land Core Group.
- Roy, R. D. (2005). *Traditional Customary Laws and Indigenous Peoples in Asia*. [online]. Minority rights group international. Available at: <http://minorityrights.org/publications/traditional-customary-laws-and-indigenous-peoples-in-asia-april-2005>
- Springate-Baginski, O. and Than, M. M. (2011). *Community Forestry in Myanmar: Some field realities*. [online]. Available at: <http://www.burmalibrary.org/docs13/CF+Myanmar+report+-+FUG+case+studies-op75-red.pdf>
- Thaug, T., L. (2007). *Identifying conservation issues in Kachin State. Myanmar The state, community and the environment*. Australia National University.

- Tint, Springate-Baginski and Gyi (2011). *Community forestry in Myanmar – progress and potential*. [online]. ECCDI. Available at: <http://www.burmalibrary.org/docs13/Community+Forestry+in+Myanmar-op75-red.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.13.5. Risk determination

Overview of Legal Requirements

Customary rights are, to some extent, recognised in forest law by allowing extraction of forest products on a non-commercial scale without permission.

The rights to extract forest products rests with the state, villagers can be given permission to extract only limited amounts of produce and never Teak trees.

Apart from extraction of forest products from reserved forests, it is a fact that large areas classified as Forest Reserve are actually inhabited and farmed either permanently or by shifting cultivation by local people who may be long-term residents of the area or recently moved there. This fact is a major issue in Myanmar and relates to overlapping and inadequate land classification.

The Community Forest (CF) Instructions provide options for villagers to resume control – in a more formal way – of resources that they are already using. However, implementation has so far been relatively limited and results vary greatly. There are many examples showing that CF rights are being violated, especially to make way for industrial land development.

In Myanmar, for large villages (more than 50 households) within an area classified as Reserve Forest or Public Protected Forest/Protected Area with paddy land, the housing

area would be de-gazetted and reclassified as Settlement Land under the authority of the General Administration Department, and the paddy land would be de-gazetted and be reclassified as Farmland (land use certificates issued and land registered); while any other agricultural land or forest land that the villagers utilize could come under a CF arrangement. This is according to a recently enacted presidential instruction/guideline.

Description of Risk

For forest areas being used for agriculture, development or reclassification – where such areas are under the authority of the General Administration Department (variously described as unclassified forest, public forest, or virgin land) – regulations seem to be unclear; and associated procedures are not transparent. Apparently different objectives and interests of MOECA and MOAI result in conflicts over land resources. However, under the VFV law the community could request that the land they are using be reclassified as farmland, or it could be classified as forestland and MOECA could let them come under a CF arrangement as part of the land use planning process. Again, this seems to be a grey area because there is no clear process for this type of land use planning, and there are competing interests between sectoral ministries.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.13.6. Risk designation and specification

Specified risk

1.13.7. Control measures and verifiers

- Stakeholder consultation shall confirm that customary rights are observed during harvesting activities (This is likely to be universally unattainable until the issue of lack of land tenure security is properly addressed through implementation of a fair, future land policy.)
- Observations shall conform that community forestry rights are not being violated (if applicable).
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Policy (1995)
- Community Forestry Instructions (1995),
- Forest Rule (1995), Chapter (2) "Constitution of Reserved Forest and Declaration of Protected Public Forest"
- Forest Law (1992). Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf

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

- GlobalWitness.org (2003). *A Conflict of Interests The uncertain future of Burma's forests*. [online]. A Briefing Document by Global Witness. October 2003. Available at: <http://www.globalwitness.org/library/conflict-interest-english>
- Oberndorf, R.D. (2012). *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*. Food Security Working Group's Land Core Group.
- Roy, R. D. (2005). *Traditional Customary Laws and Indigenous Peoples in Asia*. [online]. Minority rights group international. Available at: <http://minorityrights.org/publications/traditional-customary-laws-and-indigenous-peoples-in-asia-april-2005>
- Springate-Baginski, O. and Than, M. M. (2011). *Community Forestry in Myanmar: Some field realities*. [online]. Available at: <http://www.burmalibrary.org/docs13/CF+Myanmar+report+-+FUG+case+studies-op75-red.pdf>
- Thaug, T., L. (2007). *Identifying conservation issues in Kachin State. Myanmar The state, community and the environment*. Australia National University.
- Tint, Springate-Baginski and Gyi (2011). *Community forestry in Myanmar – progress and potential*. [online]. ECCDI. Available at: <http://www.burmalibrary.org/docs13/Community+Forestry+in+Myanmar-op75-red.pdf>
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>

- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: 10th Session of the UPR Working Group, January 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.14.5. Risk determination

Overview of Legal Requirements

The Forest Policy clearly states as an objective (5.10): 'To enlist people's participation in forest sector development activities in order to provide "people-based development" and also create public awareness and mass motivation for protection and conservation of forests.' However minimal legal framework has been established to attain this.

The Forest Rules include requirements for the Forest Settlement Officer to announce the establishment of new (or affirmation of existing) Reserve Forest areas to the public within 30 days from the establishment. Stakeholders then have 90 days to submit any claims. The Rules however do not mention any requirements for Free, Prior and Informed Consent (FPIC).

Myanmar was one of 144 states that endorsed the United Nations Declaration on the Rights of Indigenous Peoples in September 2007. Article 32 is about Indigenous Peoples' rights to Free, Prior and Informed Consent (FPIC): "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories...". Article 10 about forcible relocation of Indigenous people, and the need for FPIC and Article 26 about land rights, are also relevant articles for Indigenous peoples in Myanmar.

Description of Risk

Earth Rights International (ERI) campaigns director Paul Donowitz has been quoted in the Irrawaddy online newspaper:

"The concept of Free, Prior, and Informed Consent (FPIC), which is gaining acceptance as a best practice in extractive developments, is totally absent in [Myanmar] ... There has not been one legitimate example of a company practicing FPIC in [Myanmar], where the recent norm has been local communities informed that pipelines, mines, dams, and special economic zone projects will be displacing them just prior to their displacement." (Source: <http://www.irrawaddy.org/archives/35446>)

Risk Conclusion

Although the concept of FPIC is not implemented in Myanmar, there is also no law requiring this, therefore there can be no risk related to this category. The risk rating has therefore been assigned as Not Applicable (N/A).

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

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

1.15.1. Applicable laws and regulations

- Forest Law (1992) Section 15 and 17 "by which description of rights and privileges given to local communities/ Indigenous People when reserved forest or protected public forest has to be constituted". Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- Community Forestry Instructions (1995),
- Management Plan, Sections 9.3.2.2 and 9.4.2.2 "People Participation in Forest Management Planning"
- Constitution of the Republic

1.15.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.15.3. Legally required documents or records

- No specific documentation at present. In future potentially constitutional reform for federal devolution of resource governance; Land policy

1.15.4. Sources of information

Non-Government sources

- GlobalWitness.org (2003). *A Conflict of Interests The uncertain future of Burma's forests*. [online]. A Briefing Document by Global Witness. October 2003. Available at: <http://www.globalwitness.org/library/conflict-interest-english>
- Oberndorf, R.D. (2012). *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law*. Food Security Working Group's Land Core Group.

- Roy, R. D. (2005). *Traditional Customary Laws and Indigenous Peoples in Asia*. [online]. Minority rights group international. Available at: <http://minorityrights.org/publications/traditional-customary-laws-and-indigenous-peoples-in-asia-april-2005>
- Springate-Baginski, O. and Than, M. M. (2011). *Community Forestry in Myanmar: Some field realities*. [online]. Available at: <http://www.burmalibrary.org/docs13/CF+Myanmar+report+-+FUG+case+studies-op75-red.pdf>
- Thaug, T., L. (2007). *Identifying conservation issues in Kachin State. Myanmar The state, community and the environment*. Australia National University.
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.15.5. Risk determination

Overview of Legal Requirements

Myanmar has high ethnic diversity, officially containing 135 major ethnic groups and seven ethnic minority states, in addition to seven divisions populated mainly by the Burmese majority.

The main ethnic groups living in the seven ethnic minority states of Myanmar are the Karen, Shan, Mon, Chin, Kachin, Rakhine and Karenni. Other main groups include the Nagas, who live in north Myanmar and are estimated to number about 100,000, constituting another complex family of Tibetan–Burmese language sub-groups. To these long-established minorities should be added more recent arrivals, who now constitute

substantial numbers in the country, such as the Indians, Pa-O, Wa, Kokang, Palaung, Akha, Lahu, etc.

Within the Constitution of Myanmar, there is reference to the recognition of different ethnic groups– referred to as 'National Races' (Article 22a). There are no provisions, however, specifically tailored to protect these National Races in terms of policies implemented by the Government.

While the constitution distinguishes between legislatures at different levels (states, regions, and self-administered zones) the system of the executive is unified. In other words, the executive at every level is subject to the overriding authority of the President. Another element is the presence of the Tatmadaw at every level. These factors centralize control over ethnic states.

Description of Risk

There are no laws or regulations that recognise Indigenous Peoples' rights to own or manage forest resources according to Indigenous law or rules. Therefore the risk of violation of Indigenous Peoples' legal rights is not applicable since they have none.

However, it should be emphasised that ethnic conflict is commonplace in Myanmar; and is one of the reasons for the number of violent conflicts that are still ongoing in some regions of the Union. Although Indigenous Peoples' rights are not well protected by law, it is still considered that a significant risk exists of armed conflict or violation of human rights. The risk related to the rights of Indigenous Peoples must therefore be considered to be significant.

Risk Conclusion

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

1.15.6. Risk designation and specification

Specified Risk

1.15.7. Control measures and verifiers

- Granting sub-contracts to log and or convert forests in conflict/contested areas (e.g. under 'modified procedure') must be stopped. If and when conflicts are resolved, stakeholder consultation shall confirm that Indigenous Peoples' established rights are not being violated.
- Cases of apparent criminal activities of Tatmadaw individuals (e.g. facilitating and bribe-seeking from illegal logging) must be subject to criminal investigation.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- MTE Extraction manual (1936) and Standing orders and DI for forest officers, Myanmar Selection System, Management Plan, Section 2.3 "Forest Resource Base". Inspect the logs from felling to delivering to measuring points by hammer marks of FD and MTE timber harvesting forms
- Standing Orders for Extraction Staff Chapter 11, Classification of Grade (star), Chapter 13, Hardwood Extraction "Classification of species and group"
- Management Plan, Section 2.3 "Forest Resource Base"

1.16.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.16.3. Legally required documents or records

- Joint measuring forms (Form C and Form D)
- Trucking slips (Form D)
- Completion report (Form AJ)
- Deport registers (Form AT/AU, Form AO)
(see Timber Harvest Work Flow tab)

1.16.4. Sources of information

Non-Government sources

- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
- UPI (2012). *Myanmar in a deforestation crisis*. [online]. Available at: http://www.upi.com/Science_News/2012/08/22/Myanmar-in-deforestation-crisis/UPI-50031345670650/ [Accessed 26 May 2013]
- UNPO (2011). *Myanmar: Unrepresented Nations and People's Organization (UNPO)*. [online]. Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: 10th Session of the UPR Working Group, January 2011.

Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/UNPO_UnrepresentedNationsandPeople'sOrganization_eng.pdf

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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.16.5. Risk determination

Description of Risk

Documentation related to movement of timber and classification of grades, species and volumes is an area particularly vulnerable to corruption since approval of the different types of documents often requires approval or verification by several different entities – all of which could have an interest in rent seeking (i.e. when a company, organization or individual uses their resources to obtain an economic gain from others without reciprocating any benefits back to society through wealth creation).

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.16.6. Risk designation and specification

Specified risk

1.16.7. Control measures and verifiers

- Products shall be correctly classified (species, quantities, qualities etc.) on sales documents, Customs declarations and other legally required documents.
- Evidence shall be provided upon request (photographs or labelling).
- Physical control including verification that the present material is equivalent to what has been invoiced and marked.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – the risk of illegality can generally not be mitigated to a negligible level.

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

- Forest Law (1992), Departmental Instructions of FD and MTE. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf
- MTE Extraction Manual (1936), Chapter 2 "Transportation by train"
- Standing Orders, Chapter 9, Departmental Instructions of FD and MTE

1.17.2. Legal authority

- Ministry of Environmental Conservation and Forestry

1.17.3. Legally required documents or records

- Removal pass
- Joint measuring forms (Form C and Form D)
- Trucking slips (Form D)
- Completion report (Form AJ)
- Deport registers (Form AT/AU, Form AO)
- Specification list/Measurement/packing list (see Timber Harvest Work Flow tab)

1.17.4. Sources of information

Non-Government sources

- Castrén, T. (2010). *Timber trade and wood flow-study – Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase I). Available at: <http://www.mekonginfo.org/assets/midocs/0002331-environment-timber-trade-and-wood-flow-study-myanmar.pdf>
- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
- Transparency International (2014). *Corruption Perception Index 2013 - Myanmar*. [online]. Available at: <http://www.transparency.org/country#MMR>
- U4 Expert Answer (2012). *Overview of corruption in Burma (Myanmar)*.
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.17.5. Risk determination

Overview of Legal Requirements

The Forest Act, Section 39(1)(b), prohibits the import, export, collection or moving of any forest produce without prior written permission from the forest authorities. The Act contained specific rules for the transport of timber, the establishment of sawmills, duty on forest produce, and the seizure of cattle or elephants trespassing in a reserved forest. Penalties under the Act include: imprisonment for a term that may extend to six months, or a fine, or both.

Legislation and regulations for harvesting and transportation of forest products are in place, with the Forest Department carrying out legality verification of timber and monitoring and inspection of harvesting practices, including checking log hammer marks against official documents at the depot, critical control points and wood processing factories. Although the system is implemented, the actual log transport and ownership transfer processes and regulations are complex and involve multiple transactions and controls, which opens the door to corruption and human error.

Description of Risk

This category is considered to be especially susceptible to the risk of corrupt behaviour and the risk that transport or trade documents are filled in corruptly must be considered as significant.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.17.6. Risk designation and specification

Specified risk

1.17.7. Control measures and verifiers

- Required trade permits shall exist and be documented.
- All required transport documents shall exist and be documented.
- Volume, species and qualities shall be classified according to legal requirements.
- Documents related to transportation, trade or export shall be clearly linked to the specific material in question.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCo believes that the risk of illegality can generally not be mitigated to a negligible level.

1.18. Offshore trading and transfer pricing

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

1.18.1. Applicable laws and regulations

- Income Tax
- There are currently no transfer pricing regulations and rulings in Myanmar.
- Forest Law (1992). Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf

1.18.2. Legal authority

- Internal Revenue Department (IRD)

1.18.3. Legally required documents or records

N/A

1.18.4. Sources of information

Non-Government sources

- Castrén, T. (2010). *Timber trade and wood flow–study – Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase

I). Available at: <http://www.mekonginfo.org/assets/midocs/0002331-environment-timber-trade-and-wood-flow-study-myanmar.pdf>

- Forest Certification Committee of Myanmar (2013). *Timber Harvesting and traceability verification in Myanmar*.
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- World Bank (2011). *Worldwide Governance Indicators - Myanmar 1996-2011*. [online]. Available at: <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>

1.18.5. Risk determination

Overview of Legal Requirements

There is no explicit penalty for transfer pricing assessments, nor is there an explicit penalty for not having transfer pricing documentation. However, for tax shortfalls in general, a penalty not exceeding 10% of the tax may be imposed. In Myanmar, the tax return filed annually with the tax authority will be reviewed by the IRD before an assessment is made. Once the final assessment letter is issued, the taxpayer can settle the amount of tax assessed by the IRD. The IRD retains the right (backdated for three years) to reassess the company, but this period can be extended where any tax evasion is suspected. However, there is no precedent case where the IRD has revisited the company with the Myanmar Investment Commission (MIC) permit.

Description of Risk

Information has been gathered indicating that companies in Myanmar practice a system whereby timber products are being sold to foreign buyers at a lower rate than the actual price (the price is manipulated); while the real (and higher) price is transferred to accounts in other countries, such as Singapore. The offshore accounts are then allegedly used as 'black' money for payments of bribes.

Risk Conclusion

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

1.18.6. Risk designation and specification

Specified risk

1.18.7. Control measures and verifiers

- If illegal in the country of the supplier or sub-supplier, the products shall not have been traded through countries known as 'tax havens'.
- There shall be no illegal manipulation in relation to transfer pricing.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCo believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- Myanmar Customs Act,
- Control of Export and Import Acts,
- Forest Law 1992. Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf

1.19.2. Legal authority

- Ministry of Environmental Conservation and Forestry, Ministry of Revenue

1.19.3. Legally required documents or records

- Export Licence
- Certified letter from the FD for exporting wood products
- Export declaration from Customs
- Certificate of Myanmar Origin
- Fumigation Report
- Phytosanitary Certificate

1.19.4. Sources of information

Non-Government sources

- Castrén, T. (2010). *Timber trade and wood flow–study – Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase I). Available at: <http://www.mekonginfo.org/assets/midocs/0002331-environment-timber-trade-and-wood-flow-study-myanmar.pdf>
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1.19.5. Risk determination

Overview of Legal Requirements

The Forest Act, Section 39(1)(b), prohibits the import, export, collection or moving of any forest produce without prior written permission from the forest authorities. The Act contained specific rules for the transport of timber, the establishment of sawmills, duty

on forest produce, and the seizure of cattle or elephants trespassing in a reserved forest. Penalties under the Act include: imprisonment for a term that may extend to six months, or a fine, or both.

Legislation and regulations for harvesting and transportation of forest products are in place, with the Forest Department carrying out legality verification of timber and monitoring and inspection of harvesting practices, including checking log hammer marks against official documents at the depot, critical control points and wood processing factories. Although the system is implemented, the actual log transport and ownership transfer processes and regulations are complex and involve multiple transactions and controls, which opens the door to corruption and human error.

All wood is considered legal if it has the stamps of the state-owned Myanmar Timber Enterprise (MTE) under the Ministry of Environmental Conservation and Forests (MOECAF) and is exported via Yangon's seaports. Requiring wood exports to move through Yangon was designed to withdraw timber revenue away from illegal timber traffickers based in border regions where the state had little or no control. This has increased volumes of timber exported via Yangon. This move has helped the Government capture more timber revenue.

Description of Risk

Through reports of illegal export of timber from Myanmar, it is clear that risks exist that logs and timber products are exported illegally without the required Customs approvals, or with approval obtained corruptly. The risk must be considered significant.

Given the general risk of corruption in Myanmar, the poor ranking of Myanmar in both Transparency International's Corruption Perceptions Index and the World Bank's Worldwide Governance Indicators 2013 – and the specific risks identified here – the risk for this category has been assessed as Specified.

Risk Conclusion

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

1.19.6. Risk designation and specification

Specified risk

1.19.7. Control measures and verifiers

- Products shall be correctly classified (type, Customs code, species, quantities, qualities, etc.).
- Customs seal on containers shall not have been tampered with.
- FD approval for export shall be valid.
- All required export permits and letters shall be in place.
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

- The Protection of Wildlife and Conservation of Natural Areas Law,
- Forest Department, Notification 583/94: Section 3 and Section 15.
- Forest Law (1992). Available at: http://www.burmalibrary.org/docs15/1992-SLORC_Law1992-08-Forest_Law-en.pdf

1.20.2. Legal authority

- Ministry of Environmental Conservation and Forestry,
- Forest Department

1.20.3. Legally required documents or records

- CITES permit

1.20.4. Sources of information

Non-Government sources

- Castrén, T. (2010). *Timber trade and wood flow–study – Myanmar*. [online]. Regional Environmental Technical Assistance 5771 Poverty Reduction & Environmental Management in Remote Greater Mekong Subregion (GMS) Watersheds Project (Phase I). Available at: <http://www.mekonginfo.org/assets/midocs/0002331-environment-timber-trade-and-wood-flow-study-myanmar.pdf>
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1.20.5. Risk determination

Overview of Legal Requirements

Myanmar became a party to CITES in 1997. The following CITES species are available in Myanmar:

- *Taxus wallichiana* aka Himalayan Yew, is listed under Appendix II of CITES, with all plant parts and derivatives considered applicable – except seeds and pollen and finished products packaged and ready for retail trade. The small evergreen tree is listed as being endangered on the IUCN Red List; with its status being attributed to overexploitation particularly for its leaves and bark which are used to produce the anti-cancer drug paclitaxel. This tree is found in Myanmar, but there are currently no trade restrictions there.
- *Rauwolfia serpentin* (commonly known as Serpentine Root, Snakewood, Snake-root Devil-pepper, Rauwolfia Root, Serpentine Wood or Sarpaganda) is a flowering tree species known for its medicinal properties although it is not a commercially important species in the context of the timber trade. The species is listed under Appendix II of CITES, with all plant parts and derivatives considered applicable except seeds and pollen and finished products packaged and ready for retail trade.

Description of Risk

Although Myanmar acceded to CITES in 1997, there is ample evidence of a thriving wildlife trade between Myanmar and each of China, Thailand and India. Reports of trade in species of plants and animals listed within the CITES Appendices are frequent in Myanmar. The risk that plants and animals are traded illegally is considered a definite

one. Mong La town, Eastern Shan is beyond the jurisdiction of Myanmar Government authorities and is a notorious illegal wildlife trade centre.

Risk Conclusion

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

1.20.6. Risk designation and specification

Specified risk

1.20.7. Control measures and verifiers

- All cross-border trade of CITES-listed species shall be documented and accompanied by required export, import and re-export certificates issued by competent authorities (CITES Management Authorities).
- Clear evidence that corruption has not impacted the supply chain, where relevant.

NOTE: Given the widespread and systemic issues with timber legality in Myanmar – even where these verifiers can be complied with – NEPCon believes that the risk of illegality can generally not be mitigated to a negligible level.

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

There is no legislation covering Due Diligence/due care procedures in relation to timber in Myanmar

1.21.2. Legal authority

NA

1.21.3. Legally required documents or records

NA

1.21.4. Sources of information

NA

1.21.5. Risk determination

NA

1.21.6. Risk designation and specification

NA

1.21.7. Control measures and verifiers

NA

Annex I. Timber source types

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

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

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

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

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

TIMBER SOURCE TYPES IN MYANMAR

Forest type	Region / Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural	Country	Permanent Forest Estate; Reserved Forest; Public Protected Forest; Unclassified Forest	State	State	Extraction Permit	Permanent Forest Estate
			State	State	FD permit to clear trees	Unclassified Forest under conversion to other land use



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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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