



**FSC Guidance for
Risk Assessment for CW Category 1 (Illegally harvested wood) using the
“Minimum list of applicable laws, regulations and nationally-ratified international
treaties, conventions and agreements”**

What is this document to be used for?

This document has been developed to support Certificate Holders and FSC-accredited Certification Bodies in assessing the risk for Category 1 of Controlled Wood, according to the indicator 1.1 of Annex 2 of the standard FSC-STD-40-005 (V2-1):

1.1 Evidence of enforcement of logging related laws in the district

The scope of logging related laws is defined by “**Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements**”, introduced by FSC-DIR-40-005, ADVICE 19 with the effective date 01 March 2014 (included also in Annex 1 to this document).

NOTE: This document is not a part of FSC’s normative framework.

Risk assessment process

The process of risk assessment for indicator 1.1 shall include 2 steps:

1. Identification of logging related laws, and
2. Assessment of their enforcement.

Below you will find more details about each step.

1. Identification of logging related laws for the district under assessment.

Identification of logging related laws shall be based on the “Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements” (Annex 1 to this document; FSC-DIR-40-005-19).

This task requires identification which laws described in the “Minimum list ...” apply to the district under assessment.

Please note that all criteria/sub criteria in the table are generic and only applicable if they are legally regulated within the country of origin. If no legislation exists covering the issues below, there is no risk of legal violations and the risk can be classified as low.

How to identify the applicable laws?

There are 2 possibilities:

- a) Use the draft list of applicable legislation uploaded on [Global Forest Registry](#) (GFR) under 'Related files' for Category 1:
 - click on the country your district is located in – you should now see a new window including name of the country and preliminary risk assessment for CW categories (and indicators);
 - draft list of applicable legislation is available under 'Related files' like on the image below:

Germany

Officially approved by FSC. Mandatory for chain of custody certified companies with Controlled Wood in their FSC certificate scope


[Legality](#) | [Traditional and civil rights](#) | [High conservation value forests](#) | [Conversion](#) | [GMO trees](#)

Country related files (1)

 [FSC-CWRA-007-DEU.pdf](#)
 FSC Controlled Wood Risk Assessment for Germany

1. Legality

Related files (1)

 [Draft list of applicable legislation Germany.pdf](#)
 Draft list of applicable legislation to consider for legality related risks as extracted from national FSC FM standards, interim FSC FM standards and other relevant information sources.

The district of origin may be considered low risk in relation to illegal harvesting when all the following indicators related to forest governance are present.

1.1 Evidence of enforcement of logging related laws in the district

Justification
 Germany enjoys well established forest legislation across all of the federal states. The legislation is applied reliably with respect to the legality of forest wood harvesting measures. The legality of wood harvesting measures is provided for by the legislation, and is implemented at the administrative level.

Source

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- b) Identify applicable laws for the districts for which GFR does not provide a 'Draft list' of applicable legislation'

NOTE (1): In 2013 FSC has provided 'Draft lists' for 76 countries.

NOTE (2): Following sources may be used for legality framework identification:

- National Forest Management standards or interim Forest Management standards produced by FSC accredited certification bodies, where they exist;
- Outcomes of Voluntary Partnership Agreements (VPAs) with the EU, that contains identifications and an evaluation of national forest related legislation.

2. Assessment of law enforcement in the district under assessment.

Law enforcement shall be assessed using publically available sources of information. Standard FSC-STD-40-005 already provides exemplary sources of information to be used for category 1 assessment. Additionally, during risk assessment other sources may be used, e.g. sources recommended below:

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- Government reports and assessments of compliance with related laws and regulations;
- Independent reports and assessments of compliance with related laws and regulations, e.g. the Royal Institute of International Affairs: www.illegal-logging.org;
- Stakeholder and expert consultation outcomes of NRA development processes (where ongoing);
- Transparency International http://www.transparency.org/policy_research/surveys_indices/cpi for Transparency International indices;
- World Bank Worldwide Governance Indicators: info.worldbank.org/governance/wgi/sc_country.asp;
- Justice tribunal records;
- Chatham House: <http://www.illegal-logging.info/>;
- Forest Legality Alliance: <http://www.forestlegality.org/>;
- Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- Public summaries of FSC forest management certification reports published at info.fsc.org (information on legal areas where non-compliances have been identified during the certification process are likely to be also applicable to non-certified operations);
- Public summaries of other 3rd party forest legality certification/verification systems.

NOTE: Relevance and validity status of the above mentioned sources needs to be checked for use in the risk assessment.

How to evaluate valuable sources of information for law identification and law enforcement for risk assessment?

Sources used in the risk assessment process shall enable anyone to reach the same risk level conclusion. The sources may include FSC endorsed Forest Management standards and interim Forest Management standards that include an annex with a list of applicable legislation within the country covered by the standard. This list can be a good starting point, but shall be used with caution as it might not be updated or cover all relevant aspects.

For Countries that have entered a Voluntary Partnership Agreement (VPA) with EU it might be possible to use information from the VPA process.

Furthermore; reports, webpages and other sorts of reliable material published or run by NGO's or other organizations working within forestry legality are also good starting points. The WWF/TRAFFIC "Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex" country report is one example of such a source.

In cases where reliable statistics and general information sources do not exist, the legality framework enforcement may be evaluated by consulting experts within the area.



Annex 1 Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements

Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements	
1. 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.
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.
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.
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.
2. Taxes and fees	
2.1 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.
2.2 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).
2.3 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.
3. Timber harvesting activities	
3.1 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



	<p>falling 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.</p>
3.2 Protected sites and species	<p>Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats.</p>
3.3 Environmental requirements	<p>Covers legislation related to environmental impact assessment in connection with 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, and environmental requirements for forest machineries.</p>
3.4 Health and safety	<p>Legally required personal 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).</p>
3.5 Legal employment	<p>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 personal involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association.</p>
4. Third parties' rights	
4.1 Customary rights	<p>Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.</p>
4.2 Free prior and informed consent	<p>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.</p>
4.3 Indigenous peoples rights	<p>Legislation that regulates the rights of indigenous 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.</p>
5. Trade and transport	
<p>NOTE: This section covers requirements for forest management operations as well as processing and trade.</p>	
5.1 Classification of species, quantities,	<p>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</p>



qualities	reduce/avoid payment of legality prescribed taxes and fees.
5.2 Trade and transport	All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation.
5.2 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 personal 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.
5.4 Custom regulations	Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).
5.5 CITES	CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention).