



FSC-ADV-20-007-17 DRAFT FOR CONSULTATION

From FSC-DIR-20-007 EN FSC Directive on FSC Forest Management Evaluations

ADVICE-20-007-17	Applicable National and Local Laws and Regulations
Normative reference	FSC-STD-01-001 V4-0 (2004) FSC-STD-60-002 V1-0 (2009) FSC-STD-20-002 V3-0 (2009)
Effective date	01 March 2013 Amended XXXX No Forest Stewardship Standard -either approved by FSC or CB-adapted- shall be used after this date without the application of this Advice Note.
Approval	Approved by the FSC Board of Directors at their 56th meeting in USA on 01 April 2011 to ensure alignment of CW standard with legality legislation around the world, including the EUTR and the US Lacey Act. The amended Advice note was approved by the FSC Policy and Standards Director on XXXX.
Background	Criterion 1.1 of the FSC Principles and Criteria (V4-0) states that “Forest management shall respect all national and local laws and administrative requirements”. National Standards are required to include a list of the national and local forest laws and administrative requirements which apply in the country or region in which the standard is to be used. Given recent development with government legality initiatives, such as the US Lacey Act and EU Timber Regulation, it is important that the scope of the list of laws required by FSC is clear and consistent with the definition of “applicable legislation” as outlined in such regulations.
Advice	1. Prior to main/re-evaluation and surveillance audits after 01 March 2013, Certification Bodies shall use Table 1 (below) to compile a list of applicable legislation to be evaluated for each country where they operate. 2. The Certification Bodies shall consider existing national lists from approved FSC National Forest Stewardship Standards, Certification Body Adapted Standards and other reputable sources in order to compile the list. 3. Certification Bodies shall apply this list in relation to the evaluation of Forest Management Operations to the applicable Forest Stewardship Standard when evaluating Criterion 1.1 and any other Criteria where existing legislation requires compliance of a Forest Management Operation. Any legal requirements that have not been previously evaluated shall be evaluated in the next audit after the effective date.
Table 1:	
Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements.	
1. Legal rights to harvest	
1.1 Land tenure and	Legislation covering land tenure rights, including customary rights as well as



management rights	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 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.
3.2 Protected sites and species	Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats.
3.3 Environmental requirements	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.
3.4 Health and safety	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).



3.5 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 personal involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association.
4. Third parties' rights	
4.1 Customary rights	Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.
4.2 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.
4.3 Indigenous peoples rights	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.
5. Trade and transport NOTE: This section covers requirements for forest management operations as well as processing and trade.	
5.1 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.
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).
6. Due diligence/care procedures	
6.1 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 etc.