

# Timber Legality Risk Assessment Viet Nam

Version 2.0 | 13 December 2021



COUNTRY RISK  
ASSESSMENTS



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## A. Introduction

This Timber Legality Risk Assessment for Viet Nam analyses the risk of sourcing timber from illegal harvesting and transport areas. Preferred by nature has been working on risk assessments for timber legality, in partnership with several organizations, since 2007.

### Version history

Version 1.2: Published November 2017

Version 2.0: Published 13 December 2021

### Overview of methodology

Preferred by Nature would like to recognize the enormous contribution our consultants working in Viet Nam have performed in connection with this report. Their involvement has been invaluable in obtaining the latest information across the broad range of timber legality issues presented in this report. Preferred by Nature's country, risks assessments are constantly evolving, and by retaining local experts, we are confident the advice expressed in this report is truthful and reliable.

The risk assessments are developed with local forest legality experts and use an assessment methodology jointly developed by FSC and Preferred by Nature. A detailed description of the method can be found on the [Preferred by Nature Sourcing Hub](#).

### Interviews with experts

The list of experts is not included in the risk assessment. However, all experts are known to Preferred by Nature.

Version 1.2: Stakeholder consultation May 2017.

Version 2.0: Expert consultation 18-31 May 2021

Interviews were conducted with six in-country experts throughout the drafting of this assessment from 18-31 May 2021 via emails. A broad range of experts was consulted, including representatives from non-government organizations, civil society organisations, and international organisations working in the timber legality sector in Viet Nam. Due to confidentiality issues, the experts consulted have not been explicitly named in this report, but the complete list of experts is known to Preferred by Nature.

### Public consultation

Online public consultation on the Sourcing Hub: 10 November – 10 December 2021

## B. Overview of legality risks

**Timber Risk Score:** 6 / 100 in 2021

This report contains an evaluation of the risk of illegality in Viet Nam for 5 categories and 21 sub-categories of law and the supply chain. We found:

- Specified risk for 15 sub-categories
- Low risk for 1 sub-category
- No legal requirements for 5 sub-categories

The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities, and trade and transport.

For **Legal rights to harvest**, there is the risks that:

- The risk that required land-use right certificate or proof of legal right to harvest the forest is lacking (1.1).
- Risk of disputes/conflicts over the forest between State Forest Companies and local communities (1.1).
- The risk of forest allocation and contracting to wrong contractors, using forest land for inappropriate purposes (1.2).
- The risk is a lack of equity, transparency, and accountability, leading to long delays and corrupt practices (1.2).
- The risk is that land measurements and borders are not included in the lease contracts (1.2).
- The risk is a lack of SFM plans and approval by the appropriate authority as legally required (1.3).
- The risk that the forest owner does not implement the SFM plan (1.3)
- The harvest of plantations established with the State's funds may not follow the required procedures, and the harvest dossier is not in place (1.4).

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

- Risk of evading tax by minimizing taxable income compared to actual income through reducing revenue or increasing costs or both when making tax declarations (1.7).

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

- The risk is that timber in the protected area is illegally harvested and enters the commercial supply chain (1.9).
- The forest owners do not have and implement a Fire prevention and fighting plan (1.10).
- The forest owners do not have the SFM plan approved by the appropriate authority as legally required; if it is in place, it is not implemented (1.10).
- The safe working procedures and measures are not in place, and the employers do not provide the safety training, chemical use training or inadequate training for the employees, safety cards, the workers are without personal protective equipment or unqualified personal protective equipment, the insurance for occupational accidents and occupational diseases (1.11)
- Lack of labour contract for the workers, lack of insurances for workers, child labour, overtime work (1.12)

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

- The risk of incorrect quantity on the packing list to avoid the corporate income tax and profit tax (1.16, 1.17)
- Risk of offshore trading and transfer pricing, especially related to trade with FDI companies/corporations from the tax heaven countries (1.18)
- Risk of illegal import of timber from Laos and Cambodia (1.19)
- Illegal harvest from the natural forest of CITES species, CITES permits have been obtained fraudulently (1.20)

For **Supply chain transparency and traceability**, there is a risk that:

- High complexity of timber supply chain from Viet Nam (1.22)
- The Forest Product Entry and Exit Book are not completed comprehensively (1.22)
- Low traceability system in the supply chain (1.22)

## Timber source types and risks

There are three timber source types found in Viet Nam. Plantations are the primary source of timber in Viet Nam.

Knowing the "source type" that timber originates from is helpful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ within plantation sources based on the ownership of the forests.

### Plantations

Timber from plantation forests:

- State-owned
- Private company owned (local or international)
- Individuals/Households owned

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

Legal Category	Sub-Category	Plantations owned by		
		State	Private company	Individuals/ Households
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified	Specified
		Low for rubberwood		
	1.2 Concession licenses	Specified	Specified	Specified
	1.3 Management and harvesting planning	Specified	Specified	N/A
		N/A for rubberwood	N/A for rubberwood	
1.4 Harvesting permits	Specified	Specified	Specified	
Taxes and fees	1.5 Payment of royalties and harvesting fees	N/A	N/A	N/A
	1.6 Value-added taxes and other sales taxes	N/A	N/A	N/A
	1.7 Income and profit taxes	Specified	Specified	N/A
Timber harvesting activities	1.8 Timber harvesting regulations	Low	Low	Low
	1.9 Protected sites and species	Specified	Specified	Specified
	1.10 Environmental requirements	Specified	Specified	Specified
	1.11 Health and safety	Specified	Specified	Specified
	1.12 Legal employment	Specified	Specified	Specified
Third parties' rights	1.13 Customary rights	N/A	N/A	N/A
	1.14 Free prior and informed consent	N/A	N/A	N/A
	1.15 Indigenous/traditional peoples rights	N/A	N/A	N/A
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified	Specified
	1.17 Trade and transport	Specified	Specified	Specified

	1.18 Offshore trading and transfer pricing	Specified	Specified	Specified
	1.19 Custom regulations	Import: Specified	Import: Specified	Import: Specified
		Export: Low risk for all source types	Export: Low risk for all source types	Export: Low risk for all source types
	1.20 CITES	Specified	Specified	Specified
Diligence/du care procedures	1.21 Legislation requiring due diligence/du care procedures	Specified	Specified	Specified
	1.22 Supply chain transparency and traceability	Specified	Specified	Specified



## C. Overview of the forest sector in Viet Nam

The forestry sector in Viet Nam contributed USD 12.5 billion to the economy in 2020<sup>1</sup>. The forest sector is growing as Viet Nam becomes a major international manufacturing country.

### Forest classification types

Regarding forest classification, the 2013 Land Law classifies *forest land* as a type of agricultural land. *Forests* (including natural forests and planted forests) are divided into three main types based on the primary purpose of use: special-use forests, protection forests, and production forests.

- *Special-use forests* are used mainly for conservation of nature, specimens of the national forest ecosystems and forest biological gene sources, for scientific research; protection of historical and cultural relics and landscapes; in service of recreation and tourism in combination with contributing to environmental protection. Special-use Forest may include national parks, nature reserves, habitat/species conservation areas, protected landscapes, forest for research, scientific experiments, national botanical gardens, and national forest seed orchards.
- *Protection forests* are used mainly to protect water sources and land, prevent erosion and desertification, restrict natural calamities, and regulate climate, thus contributing to environmental protection. Protection forest may include watershed protection forest, community water source protection forest, border protection forest, wind, and sand shielding forest; wave shielding protection forest and sea encroachment preventing forest; and
- *Production forests* are used mainly to produce and trade timber and non-timber forest products in combination with protection, contributing to environmental protection.

According to the statistical data from the Ministry of Agriculture and Rural Development, 2020<sup>2</sup>, the areas of each type of forest as of 2020 are as below:

- Special-used forests: 2,173,231 hectares (2,081,425 ha are natural forests and 91,805 are planted forests)
- Protection forest: 4,685,504 hectares (4,070,519 ha are natural forests and 614,985 are planted forests)
- Production forests: 7,818,480 hectares (4,127,240 ha are natural forests and 3,691,240 are planted forests)

### Ownership and use rights of the forest resources

Regarding forest ownership, the Law on Forestry (2017) has institutionalized the concept of forest ownership (Article 7); accordingly, two categories of forest ownership are defined:

- (i) forest under the ownership of the entire people (publicly owned) for which the State is the owner's representative, which includes:
  - a. natural forest.
  - b. planted forest wholly invested by the State; and

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<sup>1</sup> Viet Namnews (2020). *Wood exports to hit US\$12.5 billion in 2020*. Available at: <https://VietNamnews.vn/economy/833925/wood-exports-to-hit-uss125-billion-in-2020.html> [Accessed 04 May 2021].

<sup>2</sup> Decision 1558/QĐ-BNN-TCLN dated 13 April 2021, on Announcement of forest area status nationwide in 2020. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quyet-dinh-1558-QĐ-BNN-TCLN-2021-cong-bo-hien-trang-rung-toan-quoc-nam-2020-470677.aspx> [Accessed 12 May 2021]

- c. planted forests revoked by the State donated or granted forest, or other cases of other planted forest ownership transferred following legal provision.
- (ii) planted production forests under the ownership of organizations, households, individuals, local communities, which includes:
  - a. planted forest invested by organizations, individuals, and local communities; and
  - b. forest donated, granted by, or inherited from other forest owners in compliance with legal provisions.

Besides, the new Law on Forestry (2017) defines "forest owner" as either an organization or a household, an individual or a local community to whom the State allocates or leases forest/ land for afforestation, restoration, development of forest by their own, who is transferred, donated, inherits a forest following legal provisions. There are 7 types of forest owners: (1) Special-use forest management boards, protection forest management boards, (2) Economic organizations including enterprises, cooperatives, and cooperatives unions, and other economic organizations established and operating following legal provisions, except those referred to in Clause 7 of this Article, (3) People's armed forces units that are allocated forests (below referred to as armed units), (4) Forestry related science and technology, training and vocational education organizations, (5) Domestic households and individuals, (6) Residential communities, and (7) Foreign-invested enterprises that are leased land by State for planting production forests. According to law, forest owners can use forests allocated or leased to them and own planted production forests recognized by competent state agencies. And they are responsible for managing, protecting, developing, and sustainably using forests and fulfilling their financial and other obligations according to law.

As of 2020<sup>5</sup>, of the country's 14,677,215 ha of forests, natural forests account for about 10,279,185 ha (70.03 percent), with the rest being planted forests, mostly for timber. Regarding their management, around 2,940,484 ha (20.03 percent) of the forests are managed by Communal People's Committees (CPCs). At the same time, the remaining have been allocated to groups such as forest management boards (35.48 percent), households/individuals (21.76 percent), economic organizations (except foreign-invested enterprises) (11.73 percent), village communities (7.95 percent), forestry-related science and technology, training and vocational education organizations (1.62 percent), armed units (1.28 percent) and foreign-invested enterprises (0.15 percent). This means that the private institutions of households and communities currently manage only just over 29 percent of forests, with the rest being dominated by state organizations.

### How the forest is governed

Forest administrative management in Viet Nam is highly centralized. The Viet Nam constitution provides the fundamental and the highest-level law of the land. The government and the National Assembly issue all laws and policies. Currently, the forest management is governed by the new Law on Forestry of Viet Nam, which was issued in 2017 and came into force on 1 January 2019, replacing the 2004 Forest Protection and Development Law (FPDL)<sup>3</sup>. The new forestry law aims to improve forest governance, clarify the rights and responsibilities of different forest owners, provide for more extensive ownership for forest investors, and safeguard the rights of local communities to their spiritual or sacred forests. It will

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<sup>5</sup> Decision 1558/QĐ-BNN-TCLN dated 13 April 2021, on Announcement of forest area status nationwide in 2020. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quyết-dinh-1558-QĐ-BNN-TCLN-2021-công-bo-hiện-trang-rung-toàn-quốc-nam-2020-470677.aspx> [Accessed 12 May 2021]

<sup>3</sup> Law on Forestry 2017. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Law-16-2017-QH14-on-forestry-375845.aspx>

formalize the Payment for Forest Environmental Services (PFES) system policies and sustainable forest management and certification and restructure state management in the forestry sector<sup>4</sup>.

Under the Law on Forestry, the Ministry of Agriculture and Rural Development (MARD) is the focal point in performing the state management of forestry. Currently, the Viet Nam Administration of Forestry (VNFOREST) is the agency under MARD, advising and assisting MARD in state management tasks on forestry and managing and instructing public service activities under their management scope. MARD works closely with other ministries, including the Ministry of Natural Resources and Environment (MONRE), the Ministry of Public Security and the Ministry of National Defence in forest management and protection, and preventing and combating illegal activities about forestry. There is also a hierarchical system from the central to the provincial, district, and communal levels to guide and oversee the implementation and compliance of the legislation.

Deforestation in Viet Nam is largely driven by infrastructure improvements to support a rapidly developing economy and to make room for agricultural cultivation to support rural communities, which make up 65.6% of the population<sup>5</sup>. Viet Nam had a total loss of 9.3% (625,810 ha) of the primary forest between 2001-2018. The total loss of primary forest was approximately 28,632ha/year between 2001 and 2010 and 46,014ha/year between 2011 and 2018<sup>6</sup>. Further underlying causes are poor governance, lack of tenure rights for local communities, ineffective enforcement of laws, and increasing market demand for crops and monoculture products<sup>7</sup>.

The Viet Nam Government has been imposing a partial logging ban in natural forests since 1993. The logging ban aims to minimize forest degradation and prevent the conversion of natural forest land to other uses. Although there have been different stages and methods of implementation so far, the logging ban is still in force and has been institutionalized in the new Law on Forestry. In 2016, the Prime Minister extended the ban to include FSC-certified forests in the Central Highlands, a deforestation hotspot. On January 12th, 2017, the Party Central Committee issued Directive No. 13-CT/TW on strengthening the leadership of the Party at all levels in forest management, protection, and development. In this Directive, emphasis is given to the restriction of forest conversion (except those projects that serve either national defence and security or other special purposes decided by the Government); the logging ban on the country's natural forest is active.

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<sup>4</sup> RECOFTC 2018, *Assessing forest governance in Viet Nam: Identifying key challenges and interventions to strengthen governance*. [https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf\\_vn\\_v5\\_print.pdf](https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf_vn_v5_print.pdf). [Accessed 12 May 2021]

<sup>5</sup> MOLISA Portal 2019, *Viet Nam has a population of more than 96.2 million people, making it the 15th most populous country in the world*. <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=29769> [Accessed 12 May 2021]

<sup>6</sup> Mongabay, *Deforestation statistics for Viet Nam*. [https://rainforests.mongabay.com/deforestation/archive/Viet\\_Nam.htm](https://rainforests.mongabay.com/deforestation/archive/Viet_Nam.htm) [Accessed 12 May 2021].

<sup>7</sup> RECOFTC 2018, *Assessing forest governance in Viet Nam: Identifying key challenges and interventions to strengthen governance*. [https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf\\_vn\\_v5\\_print.pdf](https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf_vn_v5_print.pdf) [Accessed 12 May 2021]

Despite the logging ban in natural forests, there have been thousands of reported cases<sup>8</sup> of rampant illegal logging, especially in the Central Highlands and even in national parks<sup>9</sup>. This is mainly due to ineffective law enforcement and weak monitoring systems<sup>10</sup>.

According to Transparency International's 2020 Corruption Perceptions Index, which measures perceived levels of public sector corruption in countries around the world using a score of 0–100 (where 0 is highly corrupt and 100 is very clean), Viet Nam is ranked 104<sup>th</sup> out of 180 countries assessed. It scored a corruption index of 36, meaning it has a high perception of corruption<sup>11</sup>. Viet Nam has performed consistently poorly on Transparency International's Corruption Perceptions Index, although there has been some improvement given Viet Nam ranked 123 out of 176 countries in 2012.

The World Bank compiles a set of governance indicators for all world economies known as the Worldwide Governance Indicators (WGI). The WGI country reports are based on the six following aggregate governance indicators: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. Countries are ranked (percentile rank model) for each of the six governance indicators on a scale from 0 to 100 where 0 corresponds to lowest rank and 100 corresponds to the highest rank (better governance). The score is given on a range from -2.5 - + 2.5. In 2019, Viet Nam got the following score and ranking:

	Score (-2.5 - +2.5)	Ranking (Percentile rank)
Voice and Accountability	- 1.38	11.82
Political Stability and Absence of Violence	0.13	53.81
Government Effectiveness	0.04	53.85
Regulatory Quality	-0.26	41.83
Rule of Law	-0.02	53.37
Control of Corruption	-0.51	34.13

<sup>8</sup> Truong Quang Hoang; Pham Nguyen Thanh; Le Van Lan (2107). *Forest governance in Viet Nam: A literature review*. [https://loggingoff.info/wp-content/uploads/2017/11/27.-Report\\_FG-lit-review\\_final-pdf.pdf](https://loggingoff.info/wp-content/uploads/2017/11/27.-Report_FG-lit-review_final-pdf.pdf) [Accessed 31 October 2021]

<sup>9</sup> Vnexpress (2019). *Viet Nam authorities probe illegal logging in world-famous national park*. <https://e.vnexpress.net/news/news/Viet-Nam-authorities-probe-illegal-logging-in-world-famous-national-park-3907680.html> [Accessed 12 May 2021]

<sup>10</sup> RECOFTC (2018), *Assessing forest governance in Viet Nam: Identifying key challenges and interventions to strengthen governance*. [https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf\\_vn\\_v5\\_print.pdf](https://data.opendevelopmentmekong.net/dataset/254876cc-5d2c-47ad-b284-8bf2d21b80e2/resource/e5672030-9f32-4879-a4a6-858878f5e3f3/download/v4mf_vn_v5_print.pdf) [Accessed 12 May 2021]

<sup>11</sup> Transparency International (2020). *Corruption Perception Index 2020*. <https://www.transparency.org/en/cpi/2020/index/vnm>. [Accessed 12 May 2021].

Comparing data from 2009, 2014 and 2019 Viet Nam has generally improved on the Score and rank of their governance indicators, except for Control of Corruption, where Viet Nam scores slightly lower than in 2009. Based on the score of the WGI we find Viet Nam to have a middle-low overall governance.

Given a high perception of corruption and middle-low overall governance, the risk of corruption on the forest sector is high, especially in the payment of forest environmental services (PFES), logging and conversion of forest use and forest land<sup>12</sup>. Corruption in forestry takes different forms: the participation and benefits from illegal timber logging and trading of state officials or the conversion of forest land usage to create personal benefits. Although Viet Nam has the legal framework and tools to control corruption, the lack of a monitoring system and transparent management tools for related forest resources leaves room for corruption. This also leads to most forestry-related complaints are about conflicts in land-use rights.

### Timber harvest and imports

Wood sourced from Viet Nam forests mostly originates from plantations. According to MARD (2019), the Viet Nam "mass" plantation forests (i.e., not including scattered trees) produced about 16 million m<sup>3</sup> of logs in 2019, which is mainly used for processing by the domestic industry. Species most used in forest plantations are Acacia (*Acacia* spp.), Eucalyptus (*Eucalyptus* spp.)<sup>13</sup>, and rubber.

Viet Nam imported more than 448 species of timber from over 100 countries and territories in 2020. In 2020, Viet Nam's wood processing industry imported round wood and sawn wood equivalent to nearly 5 million cubic meters<sup>14</sup>.

### Rubberwood in Viet Nam

Rubberwood is a major source of timber in Viet Nam. The amount of domestic rubberwood in Viet Nam meets more than 95% of the demand for rubberwood materials and about 6% - 14% of the total demand for timber from plantations in Viet Nam. Rubberwood also contributed up to 22% of total timber and timber products exports from Viet Nam in 2019<sup>15</sup>.

The rubber tree in Viet Nam is classified as a multi-purpose plant grown on forest land and other agricultural land<sup>16</sup>. In 2019, the total rubber plantation area was approximately 941.3 thousand ha, 23.7% of which is on forest land, and the rest 76.3% is on another agricultural land<sup>17</sup>. Domestically harvested rubberwood originates from four producers: the state-owned Viet Nam Rubber Group (VRG); enterprises managed by Provincial People's Committee (PPC); households; and private companies.

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<sup>12</sup> Truong Quang Hoang; Pham Nguyen Thanh; Le Van Lan (2107). *Forest governance in Viet Nam: A literature review*. [https://data.opendevelopmentmekong.net/en/library\\_record/forest-governance-in-Viet-Nam-a-literature-review](https://data.opendevelopmentmekong.net/en/library_record/forest-governance-in-Viet-Nam-a-literature-review) [Accessed 12 May 2021]

<sup>13</sup> The Timber Trade Portal (2020), Viet Nam. <https://www.timbertradeportal.com/countries/Viet-Nam/> [Accessed on 29th August 2021]

<sup>14</sup> Tô Xuân Phúc, Cao Thị Cẩm, Trần Lê Huy (2020). Viet Nam imports timber materials: Risk control according to Timber Legality Assurance System <https://goviet.org.vn/upload/aceweb/content/Ban%20tin%20cap%20nhat%20NK%20go%20tron%20va%20xe%20thao%20nd%20102.pdf> [Accessed 12 May 2021]

<sup>15</sup> Tran Thi Thuy Hoa (2020), National Assessment of Rubber wood producers and mills in Viet Nam. Available at: <https://www.vra.com.vn/hoat-dong/tai-lieu-hoi-thao-ky-thuat-du-an-thuc-day-su-tuan-thu-he-thong-dam-bao-go-hop-phap-trong-nganh-cao-su-viet-nam.12963.html>. [Accessed 03 Jun 2021].

<sup>16</sup> MARD, Decision 2855/QĐ-BNN-KHCN dated 17 September 2008 announcing rubber as a multiple purpose tree.

<sup>17</sup> Tran Thi Thuy Hoa (2020), National Assessment of Rubber wood producers and mills in Viet Nam. Available at: <https://www.vra.com.vn/hoat-dong/tai-lieu-hoi-thao-ky-thuat-du-an-thuc-day-su-tuan-thu-he-thong-dam-bao-go-hop-phap-trong-nganh-cao-su-viet-nam.12963.html>. [Accessed 03 Jun 2021].

Among those, households (approximately 284 thousand households) are managing about 479.6 thousand ha of rubber plantations. In contrast, the other 461.7 thousand ha are managed by organizations (state-owned enterprises, private enterprises, and foreign direct investment (FDI) enterprises). The largest area of rubber plantations is managed by VRG (290,500 ha in 2019) and other state-owned enterprises (80.8 thousand ha in 2019). Private and FDI enterprises are managing the other 90.4 thousand ha of rubber plantations.

From 2016 to 2020, the annually harvested rubberwood was around 4.84 million m<sup>3</sup> per year, and households contributed 28.2% to the total harvest. It is estimated that the annual supply of rubberwood for the period 2021-2025 will be 3.54 million m<sup>3</sup> per year, based on the age of rubber plantations in the whole country.

Regarding the legality of rubberwood, Viet Nam has no formal guidance in ensuring the legality of rubberwood. However, it is expected that the transportation, processing, and import/export of rubberwood/rubberwood products must comply with the same regulations relevant to other kinds of plantation timber. With harvesting of rubberwood, since rubber trees can be planted on either agricultural land or forest land (both are classified as a type of agricultural land), only the areas of plantation on forest land are required to comply with relevant legal requirements on forestry.

#### **Viet Nam – EU VPA:**

Viet Nam and the EU began negotiating the Voluntary Partnership Agreement (VPA) in November 2010. In November 2016, Viet Nam and the EU agreed in principle on the content of the VPA. On 11 May 2017, they initiated the VPA to indicate that both Parties confirm that the wording contained in the document is the wording they agreed. Viet Nam and the EU signed the VPA in October 2018. The Agreement entered into force in June 2019, after both Parties ratified it<sup>18</sup>.

In November 2019, Viet Nam issued a Government Decision (no. 1624/QĐ-TTĐ) approving the plan for implementation of the VPA. As such, Viet Nam is revising and developing new legislation to realize the commitments of the VPA. The legislation will need to be implemented by developing new legal elements and building capacity to operate the system.

The first piece of the new legislation is Decree 102/2020/ND-CP, dated 11 September 2020, on Viet Nam Timber Legality Assurance System, which came into force on 31<sup>st</sup> October 2020. This is the core component of a VPA, which will ensure that timber products are verified legal according to specified requirements for all stages of the supply chain, from the forest or the point of import to the point of final sale or export. It is expected that there will be further new circulars and instructions to develop a fully functioning timber legality assurance system to meet the VPA requirements. When Viet Nam's timber legality assurance system is fully working as described in the Viet Nam-EU VPA, Viet Nam will issue FLEGT licenses for timber bound for the EU. With the VPA process, Viet Nam will benefit from improved forest governance and promoted trade in legal timber from Viet Nam to the EU.

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<sup>18</sup> EU FLEGT Facility (2020). Background: The Viet Nam-EU Voluntary Partnership Agreement. [https://www.euflegt.efi.int/background-Viet\\_Nam](https://www.euflegt.efi.int/background-Viet_Nam). [Accessed 12 May 2021]

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary land rights as well as management rights that include the use of legal methods to obtain tenure rights and management rights. Management rights related to other rights than land and land management is covered under 1.13 (Customary Rights) and 1.15 (Indigenous/traditional people's rights)

This indicator also covers legal forest management business registration and tax registration, including relevant legal required licenses (Industrial business and tax registration are covered under 1.22). The 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. 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

##### 1.1.1. Applicable laws and regulations

- Land Law 2013, Articles 52 to 60, and Section 2 on Agricultural land. <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Luat-dat-dai-2013-215836.aspx>
- Decree 43/2014/ND-CP dated 15 May 2014, guiding the implementation of some articles in the Land Law. <http://thuvienphapluat.vn/archive/Nghi-dinh-43-2014-ND-CP-huong-dan-thi-hanh-Luat-Dat-dai-vb230680.aspx>
- Circular 76/2014/TT-BTC dated 16 June 2014, guiding some articles of Decree No. 45/2014/ND-CP on land use levy collection. [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=174753](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=174753)
- Decree 46/2014/ND-CP dated 15 May 2014, regulating the collection of land rent and water surface rent. [http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=174329](http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=174329)
- Circular No. 27/2018/TT-BNNPTNT dated November 16, 2018 on management and tracing of forest products. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>
- Circular 77/2014/TT-BTC dated 16 June 2014, guiding some articles of Decree No. 46/2014/ND-CP on land rental, collection of water surface rent. [http://chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&\\_page=21&mode=detail&document\\_id=174752](http://chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=21&mode=detail&document_id=174752)
- Law on Forestry 2017, Articles 14, 15, 16, 17, and 23. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Law-16-2017-QH14-on-forestry-375845.aspx>
- Investment Law 2020, Articles 23, 37, 38, 39, 40, 41. <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Luat-Dau-tu-so-61-2020-QH14-321051.aspx>
- Enterprise Law 2020, Article 27 and 28. <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Luat-Doanh-nghiep-so-59-2020-QH14-427301.aspx>

- Circular 78/2014/TT-BTC dated 18 June 2014, guiding the implementation of the Government's Decree 218/2013/ND-CP, detailing and guiding the implementation of the law on enterprise income tax. <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Thong-tu-78-2014-TT-BTC-huong-dan-218-2013-ND-CP-thi-hanh-Luat-Thue-thu-nhap-doanh-nghiep-236976.aspx>
- Decree 50/2010/ND-CP dated 14 May 2010, detailing and guiding a number of articles of the Law on Royalties. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Decree-No-50-2010-ND-CP-detailing-and-guiding-a-number-of-articles-of-the-Law-o/108829/tieng-anh.aspx?tab=1>
- Circular 23/2014/TT-BTNMT dated 19 May 2014 on certificates of land use rights and ownership rights over houses and other assets attached to land. <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Thong-tu-23-2014-TT-BTNMT-Giay-chung-nhan-quyen-su-dung-dat-so-huu-nha-o-tai-san-khac-gan-lien-dat-236488.aspx>
- Circular 30/2014/TT-BTNMT dated 02 June 2014, on applications for land allocation, lease, repurposing and expropriation. Articles 3, 4 and 8. <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Thong-tu-30-2014-TT-BTNMT-ho-so-giao-cho-thue-chuyen-muc-dich-su-dung-thu-hoi-dat-239132.aspx>

#### 1.1.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD), Viet Nam Administration of Forestry (VNFOREST) is the implementing agency
- Ministry of Natural Resources and Environment
- Local Authorities (Provincial level): Department of Agriculture and Rural Development (DARD), Forest Protection Department (FPD), District People's Committee

#### 1.1.3. Legally required documents or records

For households, one of the following is required:

- Decision on land allocation (before 15/10/1993)
- Decision on land allocation, forest allocation (from 15/10/1993 to 1/7/2004)
- Land use rights certificate (Red Book) (from 15/10/1993 to date)
- Decision on land allocation (from 15/10/1993 to date)
- Decision on land leasing (from 15/10/1993 to date)
- Decision on forest allocation together with land allocation, land leasing (from 2011 to date)
- Decision on forest allocation
- Forestry book\*
- One of the types of papers on land use rights as stipulated in Article 100 Land Law 2013\*
- Confirmation of the Commune People's Committee that land is currently used and free to dispute subject to the cases regulated in Article 101 Land Law 2013\*
- Forest protection contracts with other holders\*

For Organisations (State forestry companies, private forestry companies, other economic organizations): In addition to one of the above (except the ones with \*, which do not apply to organizations), one of the following documents are required:

- Business registration certificate



- Investment registration certificate (for foreign investors or enterprises in which foreign investors hold 51% of charter capital)
- Business registration certificate (for enterprise operating in industrial parks, export processing zones)

#### 1.1.4. Sources of information

##### Government Sources

- Communist Party of Viet Nam Online Newspaper (2020). *Issuance of land use right certificates reached more than 97.36%*. Available at: <https://dangcongsan.vn/xa-hoi/cap-giay-chung-nhan-quyen-su-dung-dat-dat-hon-97-36-547011.html> [Accessed 04 May 2021]
- Nhandan.com.vn (2017). *Hơn 282 nghìn ha rừng và đất rừng quy hoạch cho lâm nghiệp ở Tây Nguyên đang bị tranh chấp (More than 282 thousand ha of forest and forest land planned for forestry in the Central Highlands are disputed)*. Available at: <https://nhandan.com.vn/tin-tuc-kinh-te/hon-282-nghin-ha-rung-va-dat-rung-quy-hoach-cho-lam-nghiep-o-tay-nguyen-dang-bi-tranh-chap-287733/> [Accessed 04 May 2021]

##### Non-government Sources

- Viet Namnews.vn (2016) *Hotline opens to prevent corruption in land use certificate issuance*. Available at: <https://VietNamnews.vn/society/295732/hotline-opens-to-prevent-corruption-in-land-use-certificate-issuance.html> [Accessed 04 May 2021]
- World Bank, Embassy of Denmark, Embassy of Sweden (2011). *Recognizing and Reducing Corruption Risks in Land Management in Viet Nam*. Available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/918551468322441320/recognizing-and-reducing-corruption-risks-in-land-management-in-Viet-Nam>. [Accessed 31 Oct 2021]
- Forest Legality Alliance (2014). *Risk Tool - Viet Nam*. [online]. Available at: <https://forestlegality.org/risk-tool/country/Viet-Nam#tab-management> [Accessed 24 November 2020]
- World Bank (2020). *Worldwide Governance Indicator*. Available at: [https://dataviz.worldbank.org/views/WGI2020\\_25Sept2020\\_ExternalPublish/TableView?:embed\\_code\\_version=3&:embed=y&:loadOrderID=0&:display\\_spinner=no&:showAppBanner=false&:display\\_count=n&:showVizHome=n&:origin=viz\\_share\\_link](https://dataviz.worldbank.org/views/WGI2020_25Sept2020_ExternalPublish/TableView?:embed_code_version=3&:embed=y&:loadOrderID=0&:display_spinner=no&:showAppBanner=false&:display_count=n&:showVizHome=n&:origin=viz_share_link) [Accessed 24 November 2020]
- Phuc To, Wolfram Dressler, Sango Mahanty (2017). *REDD+ for Red Books? Negotiating rights to land and livelihoods through carbon governance in the Central Highlands of Viet Nam*. Available at: <https://www.forest-trends.org/wp-content/uploads/imported/To%20et%20al%20-%20REDD+%20for%20Red%20Books%20-%20published%20.pdf>. [Accessed 04 May 2021]
- Andrew Wells-Dang, Pham Quang Tu, Ngo Van Hong (2016). *Reform of State-Owned Enterprises and Ethnic Minority Land Tenure Security in Viet Nam*. Available at: <https://data.VietNam.opendevelopmentmekong.net/vi/dataset/c-i-cach-doanh-nghi-p-lam-nghi-p-nha-nu-c-va-b-o-v-quy-n-s-d-ng-d-t-c-a-dan-t-c-thi-u-s-vi-t-nam/resource/16c68a31-8623-4de5-95b7-196bd7a4cdfd>. [Accessed 04 May 2021]
- To et al. (2013). *Mau thuẫn đất đai giữa Công ty Lâm nghiệp và người dân địa phương (Forest land conflicts between State Forest Enterprises and local communities)*. Available at: [https://www.forest-trends.org/wp-content/uploads/imported/2013\\_03\\_Forest\\_Land\\_Conflicts\\_RR\\_Vn\\_On\\_FT\\_Template.pdf](https://www.forest-trends.org/wp-content/uploads/imported/2013_03_Forest_Land_Conflicts_RR_Vn_On_FT_Template.pdf). [Accessed 04 May 2021]

- Thomas Sikor and To XP. (2014). *Conflicts in Viet Nam's forest areas: Implications for FLEGT and REDD+*. Available at: [https://www.forest-trends.org/wp-content/uploads/imported/4.5Sikor\\_To.pdf](https://www.forest-trends.org/wp-content/uploads/imported/4.5Sikor_To.pdf). [Accessed 04 May 2021]

#### 1.1.5. Risk determination

##### *Overview of Legal Requirements*

According to the Constitution of Viet Nam, regarding "land ownership," land (including forests, rivers and lakes, water sources, and underground natural resources) belongs to the entire people, with the State acting as the owner's representative and uniformly managing land. The State shall hand over "land use rights" to land users following the Land Law. The State can allocate land use rights to land users in one of the following forms:

- Decision on land allocation without the collection of land use levy and allocation of land with the collection of land use levy.
- Decision on a lease of land with annual rental payment and lease of land with one-off rental payment for the entire lease period.
- Recognition of land use rights.

In Viet Nam, the land is collectively owned by people and administered by the government on their behalf. Therefore, under such a system, tenure rights in Viet Nam are essentially *usufruct* rights, meaning that right holders may use land, but cannot own it. The state grants use rights through a "land-use right certificate" (LURC), which entitles holders to sell, rent, exchange, mortgage, and bequeath their use rights and to exclude others from the land. Users may also legally acquire use rights through lease, inheritance, or grant from a family member and purchase. LURCs are necessary for formal state recognition of a user's rights and for secured tenure, formal land transactions, access to formal credit, and legal protection of land-use rights.

Viet Nam has complex land institutions regarding land tenure rights and management rights, which date back to the 1950s. The land was not formally nationalized until the 1980 Constitution, and the first so-called "Land Law" in Viet Nam was not passed until 1988. The second Land Law was passed in 1993—a fuller version that expanded upon the 1988 law. Since then, the 1993 Land Law has been amended four times: in 1998, 2001, 2003, and 2013. With the evolution of the land policy of Viet Nam in different periods, there are several types of legally required documents that can be used as evidence for legal land use rights and forest use rights. Some of them introduced under previous regulations may still be valid according to the current Land Law of 2013.

Land-use right certificate (usually known as the "Red book") was introduced through the Land Law of 1993. Since 1993, the issuance of land use rights certificates has been progressively extended to all land users and all categories of land throughout the country. That process is still underway, and there are some circumstances in which legal forest land users have not yet been granted land use rights certificates. In this situation, several alternative evidence may apply and can be used to demonstrate legal land use rights and legal forest use rights. Such alternatives include decisions on land allocation; decisions on forest allocation; decisions on forest land allocation; decisions on forest allocation combined with land allocation; decisions on land leasing; decisions on contracting forest land; forest registration books; and written confirmation from the Commune People's Committee that the land is currently used and is not subject to any dispute.

According to the Land Law 2013 (Article 105), the Provincial People's Committees are responsible for granting certificates of land use rights to organizations, religious establishments, overseas Viet Nam, foreign-invested enterprises which implement investment projects, and foreign organizations with diplomatic functions. Provincial People's Committees may authorize the Department in charge of Natural resources and Environment of the same level to grant the certificates of land use rights and ownership of houses and other land-attached assets. On the other hand, district-level People's Committees are responsible for granting the certificates of land use rights (or the Red book) to

individuals and communities and to overseas Viet Nam that are eligible to own houses associated with land use rights in Viet Nam.

Forest land is classified as a sub-category of agricultural land (Article 10, Land Law 2013). As with other land in Viet Nam, forest land is not subject to private ownership but rather belongs to the whole people and is managed by the State. However, entities, including households and organizations, can be allocated or lease forestland to use for up to 50 years. Such use rights can be inherited, transferred, and exchanged. The Land Law 2013 and Law on Forestry 2017 categorize all forestland as belonging to one of three functional categories (special-use, protection, and production) and establish principles and rules for each category's management, protection, development, and use.

With regards to forest ownership, the Law on Forestry 2017 has institutionalized the concept of "forest ownership" (Article 7) following the provisions in the 2013 Constitution; accordingly, two categories of forest ownership are defined (i) forests under the ownership of the entire people for which the State is the owner's representative, which includes: natural forest; planted forest wholly invested by the State; and planted forests revoked by the State, donated or granted forest, or other cases of other planted forest ownership transferred following legal provisions; and (ii) forests under the ownership of organizations, households, individuals, local communities including planted forest invested by organizations, individuals and local communities; and forest donated, granted by or inherited from other forest owners in compliance with legal provisions.

In summary, in Viet Nam, there are four types of ownership and use rights to the forest land and forest:

- Ownership of forest land – all land is publicly owned, with the State acting as the owner's representative.
- Land use rights – land is allocated or leased to land users by the State, and land users have land-use rights recognized by the State.
- Ownership of forest – two categories of forest ownership described above, and in short to be used in this risk assessment: State-owned and privately owned forest.
- Forest use rights - is the *forest owner's* right to exploit the utilities off and enjoy yields and profits from his/her/its forest.

With the new Law on Forestry 2017, "forest owner" is defined as either an organization or a household, an individual or a local community to whom the State allocates or leases forest; land for afforestation, restoration, development of forest by his/her own; who is transferred, donated, inherits a forest following legal provisions. There are 7 types of forest owners: (1) Special-use forest management boards, protection forest management boards, (2) Economic organizations including enterprises, cooperatives, and cooperatives unions, and other economic organizations established and operating following legal provisions, except those referred to in Clause 7 of this Article, (3) People's armed forces units that are allocated forests (below referred to as armed units), (4) Forestry related science and technology, training and vocational education organizations, (5) Domestic households and individuals, (6) Residential communities, and (7) Foreign-invested enterprises that are leased land by State for planting production forests. Forest owners have the right to use forests and own planted production forests recognized by competent state agencies following the law. And they are responsible for managing, protecting, developing, and using forests in a sustainable manner and fulfilling their financial and other obligations following the law.

According to Article 54, 135, 136, and 137 of Land Law 2013, and Article 14, 15, 16 of Law on Forestry 2017, for production purposes, planted production forest land can be allocated without forest use levy or leased with a one-off payment or annual rental payment by the State to economic organizations, households, and individuals.

According to Enterprise Law and Investment Law, forest owners who conduct business activities in the forest for profit are considered enterprises that are subject to requirements relating to

investment registration and business registration. (Please see Section 1.1.3 on legally required documents)

#### *Description of risk*

#### *Allocation/recognition of land-use rights*

- Up to 2019, the rate of land-use right certificate issuance reached 97,36%. This result helps to ensure the legal conditions for land users to exercise their legitimate rights and obligations following the land law (Government Source 1).
- However, it has been reported that there were long delays and corrupt practices by officials of the local land registration agencies while issuing land-use certificates. This leads to lobbying and bribery by applicants. This risk is common throughout the country (Non-governmental Source 1, 2).
- There are frequently issues with areas of land allocated to State Forest Companies that cannot administer this land. In these instances, local communities commence using the land, planting trees or crops, for example, issues of ownership arise when the State attempts to reclaim the land later. This has caused long-unsolved land disputes between State Forest Companies and surrounding communities (Government source 2).
- The spatial extent of conflicts over forest land is larger than that indicated by Viet Nam government statistics. The main reasons for conflicts include: (1) Unfair land distribution and utilization, (2) People lack productive land, (3) Increasing role of the commercial agriculture market, and (4) Local authorities lack an effective mechanism to address conflict. In addition, unclear demarcation of forestland boundaries in the field and lack of local participation has caused conflicts over forest use and management. (Non-government Source 6, 8)
- With rubber wood from plantations managed by Viet Nam Rubber Group (state-own enterprise), the plantations were established a long time ago (30-40 years ago), with clear boundaries and stable legal rights to the land allocated by the State at the time of establishment. The lands have been well-managed for rubber plantations. There has been no reported disputes or violations related to land-use and management right of those rubber plantations in Viet Nam. Consultation with legality experts in Viet Nam supports the view that risk related to land tenure is considered low for rubber plantations owned by the Viet Nam Rubber Group.
- Regarding business registration and tax registration, Preferred by Natures' Legality Consultant in Viet Nam has not experienced issues with forestry companies operating without a business license when conducting supply chain assessment. In addition, there is no further information via internet research that indicates issues of companies' lacking business registration certificates. Without a valid business license and a valid tax registration number, a company cannot issue a VAT invoice for customers. Business licenses can be verified online, via the website: <https://dangkykinhdoanh.gov.vn/en/Pages/default.aspx>

#### *Risk Conclusion*

Based on the generally high level of corruption, a low, middle score for governance, and the specific information above, the risk for this indicator has been assessed as Specified for all timber sources. One exception applies: Low risk for rubber wood from Viet Nam Rubber Group and their member companies.

#### **1.1.6. Risk designation and specification**

Low risk for rubber wood from Viet Nam Rubber Group and their member companies.

Specified risk for all other timber sources, as follows:

- a risk that required land-use right certificate or proof of legal right to harvest the forest (as listed in section 1.1.3) is lacking.
- risk of disputes/conflicts over the forest between State Forest Companies and local communities.

#### 1.1.7. Control measures and verifiers

*Risk that required land-use right certificate or proof of legal right to harvest the forest (as listed in section 1.1.3) is lacking*

##### Review documents and verify

The land-use right certificate or other equivalent documents should cover the actual area and be signed off by the Local Authority. The name of the forest owner on the land-use right document should correspond with other documents such as business license, invoice, packing list of forest products.

The following documents are required:

- Decision on land allocation (before 15/10/1993)
- Decision on land allocation, forest allocation (from 15/10/1993 to 1/7/2004)
- Land use rights certificate (Red Book) (from 15/10/1993 to date)
- Decision on land allocation (from 15/10/1993 to date)
- Decision on land leasing (from 15/10/1993 to date)
- Decision on forest allocation together with land allocation, land leasing (from 2010 to date)
- Decision on forest allocation
- Forestry book\*
- One of the types of papers on land use rights as stipulated in Article 100 Land Law 2013\*
- Confirmation of the Commune People's Committee that land is currently used and free to dispute subject to the cases regulated in Article 101 Land Law 2013\*
- Forest protection contracts with other holders\*

**\* Do not apply to organizations**

*Risk of disputes/conflicts over the forest between State Forest Companies and local communities*

##### Consultation

Verify whether there are conflicting land-use claims to a forest area, stakeholder consultation on the ground should be carried out. This should include discussions with local communities and the Local Authorities such as:

- Department of Agriculture and Rural Development (DARD)
- Forest Protection Department (FPD) District People's Committee

## 1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including the use of legal methods to obtain concession licenses. 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 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

- Land Law 2013, Articles 52 to 60, and Section 2 on Agricultural land. <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Luat-dat-dai-2013-215836.aspx>
- Decree 43/2014/ND-CP dated 15 May 2014 on guiding the implementation of some articles in the Land Law. <http://thuvienphapluat.vn/archive/Nghi-dinh-43-2014-ND-CP-huong-dan-thi-hanh-Luat-Dat-dai-vb230680.aspx>
- Circular 30/2014/TT-BTNMT dated 02 June 2014, on applications for land allocation, lease, repurposing and expropriation. <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Thong-tu-30-2014-TT-BTNMT-ho-so-giao-cho-thue-chuyen-muc-dich-su-dung-thu-hoi-dat-239132.aspx>
- Decree 168/2016/ND-CP dated 27 December 2016, on contracting forests, gardens and water surface areas in the special-use forest and protection forest management boards and in the State-owned Agriculture and Forestry One-Member Limited Liability Company.
- Law on Forestry 2017, Article 14, 15, 17, 23, 79, 80, 83, 85, and 89. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Law-16-2017-QH14-on-forestry-375845.aspx>
- Decree 156/2018/NĐ-CP, dated 16 November 2018, on guiding the implementation of some articles of the Law on Forestry, <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-dinh-156-2018-ND-CP-huong-dan-Luat-Lam-nghiep-379366.aspx>

### 1.2.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Natural Resources and Environment (MONRE)
- Local Authorities: Provincial People's Committee, Provincial and district-level Department of Agriculture and Rural Development (DARD), Provincial and district-level Department of Natural Resources and Environment (DONRE), district-level People's Committee, commune-level People's Committee.

### 1.2.3. Legally required documents or records

For organizations, households, or individuals, one of the following is required:

- Decision on land leasing (from 15/10/1993 to date)
- Decision on forest allocation together with land allocation, land leasing (from 2011 to date)
- Forestry book (only applicable to households)
- Forest protection contracts with other holders (only applicable to households)
- Decision on forest allocation/forest lease
- Forest lease contract

In the case planted protection forest in State Forest Companies are contracted to households or individuals for protection and development:

- Contract for forest protection and development between protection forest management board or State Forest Companies and households or individuals
- Map of the contracted area clearly shows the location, boundary, and status of the contracted area.
- Minutes of forest land hand-over

#### 1.2.4. Sources of information

##### *Government sources*

- National Assembly of Viet Nam (2014). Report on the supervision results of the implementation of policies and laws on land management and use in state-owned agricultural and forestry companies during 2004 - 2014. Available at: [http://quochoi.vn/content/vankien/Lists/DanhSachVanKien/Attachments/3134/B13.09.1\\_bc958%20gsat%20dung%20dat%20dai%20tai%20NLT.doc](http://quochoi.vn/content/vankien/Lists/DanhSachVanKien/Attachments/3134/B13.09.1_bc958%20gsat%20dung%20dat%20dai%20tai%20NLT.doc) [Accessed 04 May 2021]
- Thanhtra.com.vn (2021). Buông lỏng quản lý, sử dụng đất không đúng mục đích đất có nguồn gốc từ nông, lâm trường (Loose management and misuse of land originating from agriculture and forestry). Available at: <https://thanhtra.com.vn/thanh-tra/ket-luan-thanh-tra/buong-long-quan-ly-su-dung-dat-khong-dung-muc-dich-dat-co-nguon-goc-tu-nong-lam-truong-178845.html> [Accessed 04 May 2021]

##### *Non-Government sources*

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- Truong Quang Hoang, Pham Nguyen Thanh and Le Van Lang (2017), *Forest Governance in Viet Nam: A literature review*. Available at: [https://loggingoff.info/wp-content/uploads/2017/11/27.-Report\\_FG-lit-review\\_final-pdf.pdf](https://loggingoff.info/wp-content/uploads/2017/11/27.-Report_FG-lit-review_final-pdf.pdf) [Accessed 15 Jun 2021].

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

According to the 2017 Law on Forestry (Article 17), forest lease by the State means the State decides to assign forest use rights through a forest lease contract to an organization, a household, an individual that wishes to use the forest. The State may lease to organizations, households, and individuals' natural production forests and planted production forests with a one-off or annual rental payment for forestry production; agro-forestry and fishery practice; or eco-tourism, leisure, and recreation business.

The entities, who have the forests leased by the State, have rights and obligations for "forest owners" as stipulated in Articles 73, 74, 79, 83 in the Law. They also have the right to share benefits from the forests under forest lease contracts; to own trees, animals, and other assets associated

with the forests they have invested. Organizations shall make sustainable forest management plans and submit them to a competent State agency for approval and implement the approved plans.

Under the 2017 Law on Forestry, as the requirements in Decree 156/2018/NĐ-CP, the process of obtaining the lease contract is as follows:

- Every year, the district-level People's Committee (PC) must conduct an annual plan of forest allocation and forest lease, which shall be submitted to and approved by the Provincial PC.
- Based on that plan, the entities will submit a Form of request for land allocation, forest lease, land lease, or forest lease with required documentation to district-level PC (if they are individuals/households) or Provincial PC (if they are organizations).
- Once the request is approved, the PC (provincial or district-level) will issue a Decision on land allocation, forest allocation, or Decision on land lease forest lease to the applicant. In the case of land lease, forest lease, both sides (applicant and President of PC) will have to sign Forest Lease Contract after having the Decision.
- Because the forest allocation or lease must be accompanied by land allocation or lease, the forest allocation and the lease procedures will all be consistent and synchronized with the land allocation and land lease. For any mismatch between land allocation/lease and forest allocation/lease (for example, the household has been allocated forest land but has not been allocated forests on the land, or vice versa), the organizations, households, or individuals are responsible for working with relevant government agencies to complete the required dossiers for the land and the forest.
- According to Article 99 of the Land Law, The State shall grant a certificate of land use rights and ownership of houses and other land-attached assets for the people allocated land or leased land by the State. Therefore, the ones who have leased land by the State also have the red book.

So, in this case, since forest allocation and lease must be consistent and synchronized with the land allocation and land lease, the legally required documents for forest owners are like sub-category 1.1. As mentioned in 1.1.5, with the evolution of the land policy of Viet Nam in different periods, there are several types of legally required documents that can be used as evidence for legal land use rights and forest use rights, because some of them which were introduced under previous regulations may still be valid now. Therefore, there are several types of documents being listed as valid legally required records as above.

On the other hand, there is a situation in Viet Nam that forests, gardens, and water surface areas managed by Special-use Forest and Protection Forest Management Boards and State-owned Agriculture and Forestry One-Member Limited Liability Company can be contracted to individuals/households or local communities, which Decree 168/2016/NĐ-CP stipulates. The special-use forest and protection forest management authority can sign contracts with households, individuals, and local communities living in their managed forest area for protection and development of the forest (protection forest can be contracted to organizations). For planted protection forests that the contractor establishes under the contract terms and tenure, the contractor can enjoy the yields and profits from the concessions due to their investments after fulfilling all financial obligations to the State.

The procedure for contracting starts with the forest owner (Special-use Forest and Protection Forest Management Boards and State-owned Agriculture and Forestry One-Member Limited Liability Company) announcing the plan of contracting areas and eligible possible contractors at the head office of the forest owner and the commune-level PC. The households, individuals, and local communities who are interested can submit a request for contracting and a copy of residential documentation to the forest owner, who then decides on a list of chosen contractors. After that, both sides will negotiate and sign the contract, and the contracted area will be handover to the contractor.

*Description of Risk*



An issue with the contracted or lease forests is forest allocation and contracting to wrong contractors, using forest land for wrong purposes. Loss and waste of land and forest resources are quite common. Many agricultural and forestry companies do not strictly manage the process of land use after contracting, leading to the situation where contracted land is freely transferred or purchased or land use purpose is illegally changed. Due to the frequent changes in regulations and limited management capabilities of different competent authorities, the regulations on land management and use in state-owned agricultural and forestry companies have not been effectively enforced. (Government sources 1,2, and non-government sources 5,6).

As a result, like land tenure and management, the risks related to concession license or forest lease contract include lack of equity and transparency. In addition, lack of accountability during the contracting process leads to long delays in the process and corrupt practices by officials of the local authorities while processing the request to lease land/lease forest by the applicants. This also leads to lobbying and bribery by applicants. This risk is common throughout the country (non-government source 7).

There is a risk that the land measurements and borders may not be included regarding the lease contract. Therefore, care should be taken when relying on them as proof of land use/forest use rights as there is an increased risk of conflicting land-use rights where the borders are uncertain.

Based on the general risk of corruption, the low, middle score for governance, and the specific information above, the risk for this indicator has been assessed as Specified for all timber sources.

#### *Risk Conclusion*

This indicator has been evaluated as a Specified risk for all source types.

#### **1.2.6. Risk designation and specification**

Specified risk for all source types, as follows:

- the risk that forest allocation and contracting to wrong contractors, using of forest land for inappropriate purposes.
- the risk that a lack of equity and transparency, as well as lack of accountability, which leads to long delays and corrupt practices.
- the risk that land measurements and borders are not included in the lease contracts.

#### **1.2.7. Control measures and verifiers**

*Risk that forests allocation and contracting to wrong contractors, using of forest land for wrong purposes*

##### **Review documents and verify**

- Request for Contract for forest protection and development between protection forest management board or State Forest Companies and households or individuals and check for information of the contractor and contractee, as well as information on the rights and responsibilities of each party.

##### **Consultation**

Consultation with the local community may confirm that the forest was leased to the right and needed contractors, and they have been corrected using that forest as per its main purpose.

*Risk of the lack of equity and transparency, as well as lack of accountability in the contracting process, which leads to long delays and corrupt practices*

##### **Review documents and verify**

- Forest lease contract or Contract for forest protection and development

**Consult onsite** (Detecting corruption and the payment of bribes is very difficult thus onsite consultation is needed to address this risk)

- Consult local community to confirm that the contracting process was transparent and equitable

*Risk that lands measurements and borders are not included in the lease contracts*

**Review documents and verify**

- Contract for forest protection and development between Protection Forest Management Board (or State Forest Companies) and households/individuals. The contract should include information on land location, measurements, and borders.

### 1.3. Management and harvesting planning

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

#### 1.3.1. Applicable laws and regulations

- Law on Forestry 2017, Article 27-28 <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
- Circular No. 28/2018/TT-BNNPTNT on Sustainable Forest Management dated 16 November 2018, <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Thong-tu-28-2018-TT-BNNPTNT-quy-dinh-ve-quan-ly-rung-ben-vung-402853.aspx>
- Circular No. 27/2018/TT-BNNPTNT, dated 16 November 2018, on management and tracing of forest products. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>

#### 1.3.2. Legal authority

- Viet Nam Administration of Forestry - Ministry of Agriculture and Rural Development (MARD)
- Local Peoples' Committee at all levels (province, district, and commune)

#### 1.3.3. Legally required documents or records

For organizations:

- Sustainable Forest Management Plan
- Decision on approving Sustainable Forest Management Plan issued by Provincial People's Committee (except for the private organizations that self-invest on the plantation).
- Report on the results of the implementation of the SFM plan submitted to the District Department of Agriculture and Rural Development before 10<sup>th</sup> December annually.

N/A for households:

- Referred Article 15 of Circular 27/2018/TT-BNNPTNT, the forest owner, shall decide on the harvesting himself/herself. After the harvesting, the forest product owner shall make a packing list.

#### 1.3.4. Sources of information

##### *Government Sources*

- Approval of Plan for Sustainable Forest Management of Sao La species and habitat conservation management board – approved by Quang Nam Province's PC (2021), available at: <https://khubaotonsaolaquangnam.gov.vn/wp-content/uploads/2021/02/Quyet-dinh-phe-duyet-Phuong-an-QLRBV-Khu-bao-ton-loai-Sao-la-giai-doan-2021-2030.pdf> [Accessed 31 Oct 2021]
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##### *Non-Government sources*

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- CORENAM & PanNature (2020). *Conference: Policy, investment and sustainable management of the protection forest system in Viet Nam*. Available at: <https://nature.org.vn/vn/quan-ly-ben-vung-he-thong-rung-phong-ho/> [Accessed 05 Jun 2021]
- Expert consultation conducted by NEPCon in Viet Nam from 18-31 May 2021

#### 1.3.5. Risk determination

##### *Overview of Legal Requirements*

According to Article 27 of the Law on Forestry 2017, the responsibility to make and implement a sustainable forest management plan (SFM plan) is stipulated as follows:

- a. Forest owners being organizations (both State and privately owned) shall make and implement sustainable forest management plans.
- b. Forest owners being households, individuals, residential communities, or groups of households or individuals, are encouraged to make and implement sustainable forest management plans

For protection forests, the key contents in the sustainable forest management plan include a) Assessment of natural, socio-economic, national defence and security conditions; status quo of forest resources; b) Objectives and scope of sustainable forest management; c) The protection function of the forest; d) Forest management, protection, development, and use activities; e) Solutions and plan for implementation.

For production forests, key contents of sustainable forest management plan include a) Assessment of natural and socio-economic conditions; status quo of forest resources, production, and trading results; market impacts on the forest owner's activities; b) Objectives and scope of sustainable forest management; c) Forest management, protection, development, use, and forest products trade; d) Solutions and plan of implementation

The form of a sustainable forest management plan for forest owners being organized is provided in Appendix II to Circular 28/2018/TT-BNNPTNT.

According to Articles 10-13 of Circular 28/2018/TT-BNNPTNT, the approval on sustainable forest management plans shall be as follows:

- For forest owners, organizations that manage special-use forests under the Ministry of Agriculture and Rural Development: MARD shall approve.

- For forest owners being private economic organizations or households, individuals, and communities (who invest their own money to establish plantations): no approval required.
- For other organizational forest owners: Provincial People's Committee shall approve.

As required in Circular 28/2018/TT-BNNPTNT, forest owners must prepare and submit a report on the results of implementing their SFM plan to the District Department of Agriculture and Rural Development before 10<sup>th</sup> December annually.

Regarding rubber wood which can be grown on forest land and other agricultural land, the requirements for a sustainable forest management plan are only applicable to plantations established on forest land.

#### *Description of Risk*

This requirement on a sustainable forest management plan is specifically for forest owners being organizations. Since this is a new requirement under the new Law on Forestry, there has been no evidence of violation occurring. The research was based on interviews and reviewing several written sources (Government sources 1 and 2).

According to expert's feedback during expert consultation in May 2021, many Protection Management Boards could not make SFM plan (as Circular 28 stipulated) due to various reasons such as unclear red books, lack of budget to re-inventory their forest, or incapable technical skills.

#### *Risk Conclusion*

Since this is a new legal requirement (generally when there is a new legal requirement, a violation is more likely to occur at the initial stage after coming into force) and there's little evidence that identified laws are upheld, this indicator has been evaluated as Specified risk for State-owned and private company owned. The risk is that the forest owner does not have an SFM plan and approved by appropriate authority (if applicable), and in the case that the plan is in place, it may not be implemented by the forest owner.

This sub-category is N/A for households/individuals as there is no legal requirement.

### **1.3.6. Risk designation and specification**

#### **Households/individuals owned plantation: Not Applicable**

State-owned and private company-owned plantation: Specified risk (except rubber wood from non-forest land).

- Do not have SFM plan and approved by the appropriate authority as legally required.
  - And in the case that the plan is in place, it is not implemented by the forest owner.

### **1.3.7. Control measures and verifiers**

*The risk is a lack of Sustainable Forest Management Plan plans and approval by the appropriate authority*

#### **Review documents and verify**

- Verify that the Sustainable Forest Management Plan and the required approval are as followed:
  - Private company-owned plantations who invest their own money to establish plantations: no approval required
  - For other organizational forest owners (State-owned or private company owned plantations which were invested in by State's funds): Provincial People's Committee shall approve

*The risk that the forest owner does not implement the Sustainable Forest Management Plan plan*

#### Review documents and verify

- Request the report on the results of the implementation of their SFM plan, which is submitted to the District Department of Agriculture and Rural Development before 10th December annually. This document can be obtained from the forest owner

#### Consult

- Consult with the District Department of Agriculture and Rural Development on the compliance of the forest owner with the reporting responsibility

#### Onsite verification

- Consider conducting on-site evaluation at the forest level to verify legal compliance in implementing the SFM plan of forest owner.

## 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

- Law on Forestry 2017. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
- Decree 156/2018/NĐ-CP, dated 16 November 2018, on guiding the implementation of some articles of the Law on Forestry, <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-dinh-156-2018-ND-CP-huong-dan-Luat-Lam-nghiep-379366.aspx>
- Circular No. 27/2018/TT-BNNPTNT, dated 16 November 2018, on management and tracing of forest products. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>

### 1.4.2. Legal authority

#### Natural forest:

- Provincial Department of Agriculture and Rural Development (DARD)

#### Plantation:

- State's competent agency having the authority in approving investment fund for planting a forest
- Local Forest Protection authority

### 1.4.3. Legally required documents or records

**Natural forests:** No timber harvesting allowed.

No actual harvesting permit shall be in place. But there are requirements to have specific documents in place before harvesting. And some source types require approval before harvesting. See more below.

**Plantations (planted protection and planted production forests):** Only if the plantation was established with the State's funds, the harvest should be decided by the government agency, which was the approver for the budget funds to establish that plantation.

**Below are the harvest dossiers as required in Circular 27/2018/TT-BNNPTNT:**

**Harvesting of planted production forests which are owned and invested by private organization/individual**

- N/A.
- The forest owner shall decide on the harvesting himself/herself. After the harvesting, the forest product owner shall make a packing list.

**Main harvesting of wood from planted forests whose ownership is represented by the State:**

- Harvesting Plan prepared by forest owner or harvesting entities (Form No. 08, Circular 27/2018/TT-BNNPTNT) to be submitted to the authority that has approved the budget funds for forest planting for its decision and local forest protection authority for information and monitoring.
- Packing list by the forest product owner (form No.01/ Circular 27/2018/TT-BNNPTNT)

**Salvage harvesting of wood from planted forests whose ownership is represented by the State:**

- A copy of the decision on the conversion of forest use purposes or a copy of the silviculture project or scientific research program/project that has been approved.
- A report on location, area, and volume of forest products to be harvested is made using Form No. 07, Circular 27/2018/TT-BNNPTNT
- The forest owner shall submit the two documents above to the authority that has approved the budget funds for forest planting for its decision and the local forest protection authority for information and monitoring.
- Packing list by the forest product owner (form No.01/ Circular 27/2018/TT-BNNPTNT)

**Salvage collection of wood from planted forests whose ownership is represented by the State, the dossier includes:**

- A report on location, area, and volume of forest products to be harvested (form No.07, Circular 27/2018/TT-BNNPTNT) prepared by the forest owner to be submitted to the authority that has approved the budget funds for forest planting for its decision and local forest protection authority for information and monitoring.
- Packing list by the forest product owner (form No.01/ Circular 27/2018/TT-BNNPTNT)

**Harvesting of rubber wood in VRG or state-own enterprises:**

- Approved harvest plan called "Decision on Rubber plantation liquidation."

#### 1.4.4. Sources of information

*Government sources*

- Bao Nhan Dan (2021). *Xử lý nghiêm tình trạng phá rừng tự nhiên ở Bắc Kạn (Strictly deal with natural forest destruction in Bac Kan)*. Available at: <https://nhandan.com.vn/dieu-tra-qua-thu->

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- Bao Nhan dan (2020). *Ai "tháo then" cửa rừng Tây Nguyên? (Who "unbolted" the gate of the Central Highlands forest?)*. Available at: <https://nhandan.com.vn/cung-suy-ngam/ai-thao-then-cua-rung-tay-nguyen--616462/> [Accessed 04 May 2021]
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- Mongabay (2018). *Tracing the safeguards against illegal logging in Viet Nam*. Available at: <https://news.mongabay.com/2018/12/tracing-the-safeguards-against-illegal-logging-in-Viet-Nam/> [Accessed 04 May 2021]
- Vnexpress.net (2019). *Viet Nam authorities probe illegal logging in world-famous national park*. Available at: <https://e.vnexpress.net/news/news/Viet-Nam-authorities-probe-illegal-logging-in-world-famous-national-park-3907680.html> [Accessed 04 May 2021]
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### 1.4.5. Risk determination

#### Overview of Legal Requirements

Currently, in Viet Nam, there is a logging ban in force for a natural forest.

According to Article 59 on "Harvest of forest products in planted production forest" in the Law on Forestry, "forest owners may decide on the harvest of planted forests under their management. For forests planted with State's budget funds, forest owners shall prepare a dossier for forest product harvest and submit it to a competent State agency having the authority in approving a fund for its decision".

Regarding harvesting, the regulations define 3 types of harvesting: main harvesting, salvage harvesting and salvage collection. Salvage harvesting of timber means the harvesting of timber during the implementation of silvicultural measures, scientific research, and site clearance of projects upon conversion of forest use purposes. Salvage collection of timber means the collection of fallen or dead trees due to natural disaster; burnt, rotten or dry timber; and branches of timber remaining in forests.

Chapter II of Circular 27/2018/TT-BNNPTNT stipulates the harvesting dossier for the planted forest, in which it is divided into wood from planted forests whose ownership is represented by the State (state-owned and/or wholly invested by the State) or an organization/individual (privately owned and invested). Detailed procedures are as below:

- *For the main harvesting of planted forests whose ownership is represented by the State:* Forest owner or harvester shall prepare a Harvest plan (using Form 08 in the Circular 27/2018/TT-BNNPTNT) to the State competent agency for their decision. This plan shall also be submitted to

the local Forest Protection authority for information and monitoring during harvest. The forest owner must prepare a packing list after harvesting.

- *For salvage harvesting of planted forests whose ownership is represented by the State:* Forest owner or harvester shall prepare a Report on harvesting location, area and volume (using Form 07 in the Circular 27/2018/TT-BNNPTNT) and a copy of the Silviculture design dossier/training plan/research proposal or Decision on the conversion of forest use purposes to the State competent agency for their decision. These dossiers shall also be submitted to the local Forest Protection authority for information and monitoring during harvest. The forest owner must prepare a packing list after harvesting.
- *For salvage collection of planted forests whose ownership is represented by the State:* Forest owner or harvester shall prepare a Report on harvesting location and volume (using Form 07 in the Circular 27/2018/TT-BNNPTNT) to be submitted to the State competent agency for their decision. These dossiers shall also be submitted to the local Forest Protection Department for information and monitoring during harvest. The forest owner must prepare a packing list after harvesting.
- *For harvesting planted forests owned and invested by an organization/household/individual,* the forest owner shall decide on the harvesting himself/herself. The forest owner must prepare a packing list after harvesting.

In short, for the planted forest, either if it is state-owned or privately owned, if the plantation was established with the State’s funds, the harvest shall be decided by the government agency, which was the approver for the budget funds.

Please note that, for rubberwood from VRG or state-own enterprises, the approved harvest plan is called “Decision on Rubber plantation liquidation.”

*Description of Risk*

Illegal logging or illegal harvesting cases reported are mainly from natural forests, especially in the Central Highlands area. The media typically reports small-scale illegal logging perpetrated by poor villagers who invade government property containing natural forest with valuable timber. They can sell for money or people who need timber to build houses or clear forest land for cultivation. Corrupt forest protection officers are described as turning a blind eye on the villagers’ illegal practices. They collude with traders to perpetuate this trade in illegal timber for personal gain.

Since loggings in natural forests are prohibited, the main source of timber is from plantations.

The Law on Forestry 2017 has provided forest owners of plantations with great freedom to manage and use their forests. There have been very little information/few reports on illegal harvesting of planted forests. However, for plantations that were established with the State’s funds, although there is little evidence that identified laws are upheld, with the precautionary approach, there is a risk that the harvest of these plantations may not follow the required procedures. The harvest dossier is not in place.

The risk is not applicable for the planted forest, which is privately owned and invested by the private companies and individuals/ households, as there is no requirement on harvest permit/approval.

*Risk Conclusion*

This indicator has been evaluated as a 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 for all source types, if funded by the State:



- The harvest of plantation which was established with the State's funds may not follow the required procedures, and the harvest dossier is not in place.

#### 1.4.7. Control measures and verifiers

*Risk that harvests dossier is not in place for the harvest of plantations established with the State's Funds*

Clarify with the forest owner about the source of investment funds for their forest because the risk applies to state-funded plantations only.

##### Review documents and verify

The forest owner shall have the required harvest dossier. The information on forest owner, location, species, quantities, and quality between the harvest plan and the packing list of forest products should be tallied. Required documents are:

*Main harvesting of wood from planted forests whose ownership is represented by the State:*

- Harvesting Plan prepared by forest owner or harvesting entities (Form No. 08, Circular 27/2018/TT-BNNPTNT) to be submitted to the authority that has approved the budget funds for forest planting for its decision and local forest protection authority for information and monitoring.
- Packing list by the forest product owner (form No.01/ Circular 27/2018/TT-BNNPTNT)

*Salvage collection of wood from planted forests whose ownership is represented by the State, the dossier includes:*

- A report on location, area, and volume of forest products to be harvested (form No.07, Circular 27/2018/TT-BNNPTNT) prepared by the forest owner to be submitted to the authority that has approved the budget funds for forest planting for its decision and local forest protection authority for information and monitoring.
- Packing list by the forest product owner (form No.01/ Circular 27/2018/TT-BNNPTNT)

*Harvesting of rubber wood in VRG or state-own enterprises:*

- Approved harvest plan called "Decision on Rubber plantation liquidation."

##### Consultation

- Consultation with the local Forest Protection authority may confirm the validity of the information that the forest owner provided.

## 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 controlling the classification.

#### 1.5.1. Applicable laws and regulations

- Law on Royalties 45/2009/QH12 of 25 November, 2009 <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Law-No-45-2009-QH12-on-royalties-106232.aspx>
  - Chapter 2 of the Royalties bases, in Article 7 Royalties rates

- Section V: The rate of production of native forest products.
- Decree 50/2010/ND-CP dated 14 May 2010 with specifications and guidance on some articles relating to the Natural Resource Tax Law. <http://www.luatthue.net/2014/03/nghi-dinh-so-50-2010-nd-cp.html>

#### 1.5.2. Legal authority

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

#### 1.5.3. Legally required documents or records

- Receipts of paid taxes for natural forests according to the unity form of the Ministry of Finance
- Receipts for fees paid relating to the management plan, harvesting plan, EIA design & VAT
- None for plantations.

#### 1.5.4. Sources of information

N/A

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

The tax on using natural resources is applied to forest products in natural forests only. Note that there is a logging ban in force for the natural forest. The Law on Royalties provides for the payment of royalties on the exploitation of Viet Nam natural and mineral resources. The Law describes the natural resource output used for royalty calculation, royalty-liable prices, and royalty rates. Royalty payers must register, declare, calculate, and pay royalties under the Law on Tax Administration.

##### *Description of Risk*

Not applicable for all source types.

##### *Risk Conclusion*

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

#### 1.5.6. Risk designation and specification

Not applicable for all source types.

#### 1.5.7. Control measures and verifiers

None.

### 1.6. Value added taxes and other sales taxes

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

#### 1.6.1. Applicable laws and regulations

- Law 13/2008/QH12 the National Assembly on Value-added tax dated on 03 June 2008 [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&\\_page=1&mode=detail&document\\_id=70797](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=70797)
- Circular 219/2013/TT-BTC dated 31 December 2013 providing guidance on implementation of the Law on Value-added tax. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-219-2013-TT-BTC-huong-dan-Luat-thue-gia-tri-gia-tang-va-Nghi-dinh-209-2013-ND-CP-220761.aspx>
- Circular 26/2015/TT-BTC dated on 27 February 2015, providing Guidelines for Value-Added Tax and Tax Administration in The Government's Decree No. 12/2015/NĐ-CP Dated February 12, 2015, on Guidelines for The Law on Amendments To Laws, Decrees on Taxations, and Amendments To Circular No. 39/2014/TT-BTC Dated March 31, 2014 of The Ministry Of Finance On Invoices For Goods Sale and Service Provision. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-26-2015-TT-BTC-huong-dan-12-2015-ND-CP-thue-gia-tri-gia-tang-sua-doi-39-2014-TT-BTC-267174.aspx>
- Official Dispatch 12571/BTC-TCT, dated 08 September 2014, on Value-added tax for timber product. <https://thuvienphapluat.vn/cong-van/Thue-Phi-Le-Phi/Cong-van-12571-BTC-TCT-2014-chinh-sach-thue-gia-tri-gia-tang-san-pham-go-rung-trong-Bo-Tai-chinh-249186.aspx>
- Decree No. 125/2017/ND-CP dated November 16, 2017 of the Government on amending a certain Articles of the Government's Decree No. 122/2016/ND-CP dated September 01, 2016 on export duty schedule, preferential import duty schedule and lists of commodities and their flat tax rates, compound tax rates and outside tariff quota rates <https://luatVietNam.vn/thue/nghi-dinh-125-2017-nd-cp-chinh-phu-118523-d1>
- Decree 119/2018/NĐ-CP dated 12 September 2018 on electronic invoices for sale of goods and provision of services. <https://thuvienphapluat.vn/van-ban/thue-phi-le-phi/nghi-dinh-119-2018-nd-cp-quy-dinh-ve-hoa-don-dien-tu-khi-ban-hang-hoa-cung-cap-dich-vu-394152.aspx>
- Circular 68/2019/TT-BTC dated 30 September 2019 guiding the implementation of Decree 119/2018/NĐ-CP on e-invoices. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-68-2019-TT-BTC-huong-dan-thuc-hien-Nghi-dinh-119-2018-ND-CP-ve-hoa-don-dien-tu-405141.aspx>

#### 1.6.2. Legal authority

- Department of Taxation at the different levels - Ministry of Finance (MOF)

#### 1.6.3. Legally required documents or records

- Receipts of paid value-added taxes

#### 1.6.4. Sources of information

##### *Government sources*

- Hai Quan Online (2021). Tổng cục Thuế "điểm mặt" một số hành vi gian lận hoàn thuế giá trị gia tăng (The General Department of Taxation "spotted" a number of value-added tax refund frauds). <https://haiquanonline.com.vn/tong-cuc-thue-diem-mat-mot-so-hanh-vi-gian-lan-hoan-thue-gia-tri-gia-tang-142090-142090.html>. [Accessed 12 May 2021]
- The Ministry of Finance (2020) Bóc đường dây buôn bán hóa đơn: Bộ Tài chính, Tổng cục Thuế khen thưởng 4 tập thể, 12 cá nhân (Discovered a line of illegal trading of VAT invoices: Ministry of Finance, the General Department of Taxation rewarded 4 teams and 12 individuals).

[https://mof.gov.vn/webcenter/portal/btcvn/pages\\_r/l/tin-bo-tai-chinh?dDocName=MOFUCM181961&dID=10164](https://mof.gov.vn/webcenter/portal/btcvn/pages_r/l/tin-bo-tai-chinh?dDocName=MOFUCM181961&dID=10164) [Accessed 31 October 2021]

- Viet Nam Investment Review (2021). Risks at the fore in global wood trade. <https://www.vir.com.vn/risks-at-the-fore-in-global-wood-trade-83900.html>. [Accessed 12 May 2021]

#### *Non-Government sources*

- CPI, 2021. Transparency International. <https://www.transparency.org/en/countries/Viet Nam> [Accessed 31 March 2021]
- Forest Legality Alliance (2014). Risk Tool - Viet Nam. Available at: <https://forestlegality.org/risk-tool/country/Viet Nam#tab-management> [Accessed 24 November 2020]
- Tuoi Tre Online (2021). *Bún, phở, cà phê, gỗ dăm vào danh sách rủi ro về hoàn thuế GTGT (Vermicelli, pho, coffee, wood chips on the list of risks of VAT refund)*. <https://tuoitre.vn/bun-pho-ca-phe-go-dam-vao-danh-sach-rui-ro-ve-hoan-thue-gtgt-20210511115944869.htm> [Accessed 12 May 2021]

### **1.6.5. Risk determination**

#### *Overview of Legal Requirements*

Round wood, unprocessed logs directly planted and sold by organizations or individuals, are not subject to VAT. (Law 13/2008/QH12, Article 5)

For round wood, unprocessed logs that enterprises and cooperatives, which pay VAT by the credit method, sell to enterprises or cooperatives at the commercial stage, the seller is not required to declare and pay VAT. On the VAT invoice, the seller will write the sales price without VAT and cross out the tax rate and VAT line.

Processed wood products such as planks, wood panels, wood chips are subject to the VAT rate of 10% (Law 13/2008/QH12, Article 8)

For export of timber products: Export of timber products are subject to Export tax. The detailed export tax rates for timber products, according to HS Code, are provided in Decree No. 125/2017/ND-CP.

The regulations (Circular 68/2019/TT-BTC) contain a definition of “high tax risk enterprises”. High-risk enterprises are defined as those which have equity of less than VND 15 billion and have certain features, for example:

- Sales of goods or provision of services to related parties (a definition thereof is included); or
- Non-compliance with certain tax declaration requirements; or
- Change of business location more than 2 times within 12 months without any notification or any tax declaration at the new location; or
- Enterprises have been penalized for breaches of the invoice regulations in the last year. Etc...

“High tax risk enterprises” are required to use e-invoices with verification codes, instead of normal paper VAT invoices, continuously for 12 months. The “high tax risk enterprise” status will then be re-assessed after 12 months for possible approval for using e-invoices without verification code. If an enterprise is in the list of “High tax risk enterprises”, it can be found on the website of the General Department of Taxation <http://tracuuhoadon.gdt.gov.vn/dnrrvp.html>

Viet Nam is going to make e-invoice compulsory for all entities. It is currently in the transition period, and the due date to completely change to e-invoice is 1<sup>st</sup> July 2022. From 1<sup>st</sup> July 2022, e-invoice should be possible be checked online for their validity on the website of the General Department of Taxation <http://tracuuhoadon.gdt.gov.vn/main.html>

*Description of Risk – forest level*

VAT is not applied for organizations or individuals operating at the forest level. Therefore, the risk is not applicable for all source types.

*Risk Conclusion*

Based on the available information, the risk for this indicator has been assessed as: Not applicable for all source types

**1.6.6. Risk designation and specification**

Not Applicable for all source types

**1.6.7. Control measures and verifiers**

None

## 1.7. Income and profit taxes

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

**1.7.1. Applicable laws and regulations**

- Law 32/2013/QH13 of the National Assembly on amending and supplementing some articles of the Law on Enterprise Income Tax. <http://vbqpppl.mpi.gov.vn/en-us/Pages/default.aspx?itemId=e8f95ed6-0c35-4522-9d94-4c3e25b104c8&list=documentDetail>
- Law 71/2014/QH13 dated 26 November 2014 of the National Assembly on Amending and Supplementing a Number of Articles of the Laws on Taxes <http://vbpl.vn/TW/Pages/vbpgen-toanvan.aspx?ItemID=11034>
- Circular 111/2013/TT-BTC dated 15 August 2013, on the Implementation of The Law on Personal Income Tax, The Law on The Amendments to The Law on Personal Income Tax, and The Government's Decree No. 65/2013/ND-CP Elaborating A Number of Articles of The Law on Personal Income Tax and The Law on The Amendments to The Law on Personal Income Tax. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-111-2013-TT-BTC-Huong-dan-Luat-thue-thu-nhap-ca-nhan-va-Nghi-dinh-65-2013-ND-CP-205356.aspx>
- Decree 218/2013/ND-CP dated 20 December 2013 on specification and guiding on business income tax. <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Nghi-dinh-218-2013-ND-CP-huong-dan-thi-hanh-Luat-thue-thu-nhap-doanh-nghiep-217811.aspx>
- Circular 78/2014/TTBTC dated 18 June 2014, guidance on implementation of enterprise income tax, <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Thong-tu-78-2014-TT-BTC-huong-dan-218-2013-ND-CP-thi-hanh-Luat-Thue-thu-nhap-doanh-nghiep-236976.aspx>
- Decree 31/2021/NĐ-CP dated 26 March 2021, to elaborate some articles of the Law on Investment. <https://thuvienphapluat.vn/van-ban/Dau-tu/Nghi-dinh-31-2021-ND-CP-huong-dan-Luat-Dau-tu-462291.aspx>
  - Appendix III: List of areas with difficult or extremely difficult socio-economic conditions.
- Decree 119/2018/NĐ-CP dated 12 September 2018 on electronic invoices for sale of goods and provision of services. <https://thuvienphapluat.vn/van-ban/thue-phi-le-phi/nghi-dinh-119-2018-nd-cp-quy-dinh-ve-hoa-don-dien-tu-khi-ban-hang-hoa-cung-cap-dich-vu-394152.aspx>

- Circular 68/2019/TT-BTC dated 30 September 2019 guiding the implementation of Decree 119/2018/NĐ-CP on e-invoices. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-68-2019-TT-BTC-huong-dan-thuc-hien-Nghi-dinh-119-2018-ND-CP-ve-hoa-don-dien-tu-405141.aspx>

#### 1.7.2. Legal authority

- Tax Departments at different level - Ministry of Finance (MOF), Provincial Department of Tax

#### 1.7.3. Legally required documents or records

- Annual income tax declaration form
- Receipts for payment of enterprise income tax

#### 1.7.4. Sources of information

##### *Government sources*

- Hai Quan Online (2021). Tổng cục Thuế "điểm mặt" một số hành vi gian lận hoàn thuế giá trị gia tăng (The General Department of Taxation "spotted" a number of value-added tax refund frauds). <https://haiquanonline.com.vn/tong-cuc-thue-diem-mat-mot-so-hanh-vi-gian-lan-hoan-thue-gia-tri-gia-tang-142090-142090.html>. [Accessed 12 May 2021]
- Tin tức Tài chính (2020). Bóc đường dây buôn bán hóa đơn: Bộ Tài chính, Tổng cục Thuế khen thưởng 4 tập thể, 12 cá nhân (Discovered a line of illegal trading of VAT invoices: Ministry of Finance, the General Department of Taxation rewarded 4 teams and 12 individuals). [https://www.mof.gov.vn/webcenter/portal/tttc/r/o/ttsk/ttsk\\_chitiet?dDocName=MOFUCM181961&dID=190160&\\_afLoop=2091324754170063#%40%3FdID%3D190160%26\\_afLoop%3D2091324754170063%26dDocName%3DMOFUCM181961%26\\_adf.ctrl-state%3Dawaavspwm\\_4](https://www.mof.gov.vn/webcenter/portal/tttc/r/o/ttsk/ttsk_chitiet?dDocName=MOFUCM181961&dID=190160&_afLoop=2091324754170063#%40%3FdID%3D190160%26_afLoop%3D2091324754170063%26dDocName%3DMOFUCM181961%26_adf.ctrl-state%3Dawaavspwm_4). [Accessed 12 May 2021]
- Viet Nam Investment Review (2021). *Risks at the fore in global wood trade*. Available at: <https://www.vir.com.vn/risks-at-the-fore-in-global-wood-trade-83900.html>. [Accessed 12 May 2021]
- The Ministry of Finance (2020). Hơn 642.400 lượt doanh nghiệp vi phạm trên 35.900 tỷ đồng tiền thuế (More than 642,400 businesses violated over VND 35,900 billion in tax). [https://mof.gov.vn/webcenter/portal/btcvn/pages\\_r/l/tin-bo-tai-chinh?dDocName=MOFUCM181961&dID=10164](https://mof.gov.vn/webcenter/portal/btcvn/pages_r/l/tin-bo-tai-chinh?dDocName=MOFUCM181961&dID=10164). [Accessed 31 October 2021]

##### *Non-Government sources*

- CPI, 2021. Transparency International. Available at: [https://www.transparency.org/en/countries/Viet\\_Nam](https://www.transparency.org/en/countries/Viet_Nam) [Accessed 31 March 2021]
- Forest Legality Alliance (2014). *Risk Tool - Viet Nam*. [online]. Available at: [https://forestlegality.org/risk-tool/country/Viet\\_Nam#tab-management](https://forestlegality.org/risk-tool/country/Viet_Nam#tab-management) [Accessed 24 November 2020]

#### 1.7.5. Risk determination

##### *Overview of Legal Requirements*

According to the Law on Personal Income Tax and the detailed instruction Circular 111/2013/TT-BTC, income of households and individuals directly engaged in agricultural production, forestry, salt making, aquaculture, and fisheries activities, of which products have not yet been processed, are exempted from personal income tax. The eligible household/individual must have the legal right to

use land, rent land, use water surface, rent water surface for production, and directly participate in agricultural, forestry, salt making, and aquaculture production process.

According to Law on Corporate Income Tax, any organization conducting production activities [and/or] business in goods and services that earn taxable income must pay corporate income tax. Taxable income comprises income earned from activities of production and/or business in goods and services AND other incomes, including income from the transfer of capital or transfer of the capital-contributing rights; income from the transfer of the real estate, transfer of investment projects, transfer of the right to participate in investment projects or transfer of the right to explore, exploit and process minerals; income from asset use rights or asset ownership rights, etc..... (Law 71/2014/QH13).

In Viet Nam, incomes from planting, tending, and protecting forests in forestry enterprises or cooperatives operating in areas with difficult or extremely difficult socio-economic conditions are entitled to enterprises' income tax preferences. The income tax rate of 10% shall be applied in this case (the normal corporate income tax rate is 20%). The eligible areas are in the most updated list in Decree 31/2021/NĐ-CP dated 26 March 2021.

Enterprises must pay corporate income tax provisionally every quarter based on estimates. The payment deadline is no later than the 30th day of the following quarter. Essentially, a final tax declaration and return must be filed and submitted annually. This must be done within 90 days after the end of the calendar year or fiscal year. The total sum of provisional quarterly payments will then be reconciled with the finalization amount.

The regulations (Circular 68/2019/TT-BTC) contain a definition of "high tax risk enterprises." In particular, high-risk enterprises are defined as those which have equity of less than VND 15 billion and have certain features, for example:

- Sales of goods or provision of services to related parties (a definition thereof is included); or
- Non-compliance with certain tax declaration requirements; or
- Change of business location more than 2 times within 12 months without any notification or any tax declaration at the new location; or
- Enterprises that have been penalized for breaches of the invoice regulations in the last year, etc....
- "High tax risk enterprises" are required to use e-invoices with verification codes continuously for 12 months. The "high tax risk enterprise" status will then be re-assessed after 12 months for possible approval for using e-invoices without verification code.

#### *Description of Risk*

Forest owners being households/individuals are exempted from personal income tax, so this indicator is not applicable for households/individuals.

Since Viet Nam has a high level of corruption and a low score on governance, risks relating to forest owners being organized include:

- The tax management system in Viet Nam relies on self-reporting, and evaluations of compliance are generally done based on self-declarations only. Audits are relatively infrequent, weakening the system (FLA, 2015)
- There are several opportunities for corruption to occur within the tax department. There is a common understanding amongst Viet Nam people that there are high levels of corruption amongst tax officials (feedback provided by experts consulted during the preparation of this report). Where corruption occurs concerning income tax, a common scenario is an underpayment of official taxes with a percentage of the difference paid to the official to overlook the underpayment.

- There is no centralized database facilitating control by the relevant authority.

In addition, many businesses are evading tax by minimizing taxable income compared to actual income through reducing revenue or increasing costs, or both when making tax declarations. According to Government source 4, many companies declare insufficient revenue and incorrect expenses, thereby underestimating value-added tax, corporate income tax, and profit tax to be paid to the Government. The logging, transport, and wood processing sectors are still high-risk and need further oversight and guidance from the authorities (Government source 1,2,3).

#### *Risk Conclusion*

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

Individuals/household-owned plantation: Not Applicable

State-owned and private company owned plantation: Specified risk

- There is a risk of evading tax by minimizing taxable income compared to actual income through reducing revenue or increasing costs, or both when making tax declarations.

#### **1.7.7. Control measures and verifiers**

Risk that taxes is evaded by minimizing taxable income compared to actual income through reducing revenue or increasing costs or both when making tax declarations

#### **Document review**

- Check that the organization does not have any export tax debt, late payments to due dates at Viet Nam Custom website:

<https://www.customs.gov.vn/Lists/CongKhaiThongTin/ViewDetails.aspx?ID=38>

The link is only in Vietnamese. This link lets you access the list of businesses that have export tax debt or late payments by provinces. Therefore, it is necessary to know the border gate through which the company exported the goods, to consult the list of that correspondent province.

- Obtain the necessary proof of payment of taxes: This could be an annual income tax declaration form or receipts for payment of corporate income taxes.
- Check if the organization is on the list of “High tax risk enterprises” on the General Department of Taxation website: <http://tracuuhoadon.gdt.gov.vn/dnrrvp.html>. These enterprises have to continuously use special e-invoices with verification codes for 12 months to be monitored by the Tax authority. If the enterprise is on the list, consultation with the local tax authority is recommended.

**Consultation:** Consult with local Tax Departments to confirm that an operation is up to date in tax payment. The contact details of the local Tax department can be found on their correspondent website.

## 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

- Law on Forestry 2017 <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
- Decree 156/2018/NĐ-CP, dated 16 November 2018, on guiding the implementation of some articles of the Law on Forestry, <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-dinh-156-2018-ND-CP-huong-dan-Luat-Lam-nghiep-379366.aspx>
- Circular 27/2018/TT-BNNPTNT, dated 16 December 2018 <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>

#### 1.8.2. Legal authority

- Department of Forest Protection (FPD) - Ministry of Agriculture and Rural Development (MARD)
- Natural forest: Forest is managed by State Forestry Companies (SFC), harvesting design needs to be approved by of Department of Agriculture and Rural Development (DARD) at the provincial level.
- Plantation: Plantation is managed by SFC. When SFC is not the investor, the harvesting design needs to be approved by DARD. Whereas, when plantations are managed by SFC and where SFC is the investor, harvesting design is approved by themselves.

#### 1.8.3. Legally required documents or records

**Natural forest:** Not applicable. There is a logging ban in force for the natural forest.

Plantations:

- Harvesting of wood from planted forests owned and/or wholly invested in by the State: Approved Harvesting plan and Packing list of forest products after harvest.
- Harvesting of planted forests owned and invested by a private organization/individual: Packing list of forest products after harvest.

#### 1.8.4. Sources of Information

*Non-Government sources*

- Forest Legality Alliance (2020). Risk Tool - Viet Nam. [online]. Last updated: 2014. Available at: [https://forestlegality.org/risk-tool/country/Viet Nam#tab-management](https://forestlegality.org/risk-tool/country/Viet%20Nam#tab-management) [Accessed 24 November 2020]
- World Bank (2020) Available at: [https://dataviz.worldbank.org/views/WGI2020\\_25Sept2020\\_ExternalPublish/TableView?:embed\\_code\\_version=3&:embed=y&:loadOrderID=0&:display\\_spinner=no&:showAppBanner=false&:display\\_count=n&:showVizHome=n&:origin=viz\\_share\\_link](https://dataviz.worldbank.org/views/WGI2020_25Sept2020_ExternalPublish/TableView?:embed_code_version=3&:embed=y&:loadOrderID=0&:display_spinner=no&:showAppBanner=false&:display_count=n&:showVizHome=n&:origin=viz_share_link) [Accessed 24 November 2020]

- Tran, T. V. (2013). Sustainability impact assessment (SIA) of alternative forest- wood supply chains (FWSCs): A case study from Viet Nam. [online]. Freiburg: Albert-Ludwig-University of Freiburg. Available at: <https://d-nb.info/1118409272/34> [Accessed 31 October 2021]

### 1.8.5. Risk determination

#### *Overview of Legal Requirements*

Note that currently, there is a logging ban in force for the natural forest.

#### *For plantations:*

- *Harvesting of timber from planted forests owned and/or wholly invested in by the State:* the forest owner shall submit the harvesting document (harvesting plan), which include the wood production calculation, expected skidding and transport roads, adoption of measures for forest protection and forest fire prevention, formulation of the post-harvesting forest development plan. Specifically, according to Decree 156/2018/NĐ-CP, Article 20, main harvesting of planted protection forest must comply with harvesting methods: Harvesting and thinning of main crops must ensure the remaining density of at least 600 trees/ha and evenly distribute in the plot; Selected harvesting of main crops with an intensity not exceeding 20% of the reserve; For clear-cutting in bands, the width of the band should not exceed 30 m; For clear-cutting in plots, the area of each plot must not exceed 3 hectares; the total area of annual harvest must not exceed 20% of the total forest area that has met the protection standards. The compliance with these requirements is monitored by local Forest Protection staff when they have information on the harvesting submitted by the forest owner. However, there is no specific legal requirement on the records for these checks.

- *Harvesting of planted forests owned and invested by private organization/individual:* there is no specific requirement by laws

In all harvest cases, a packing list of forest products must be prepared by the timber owner.

#### *Description of Risk*

As there is currently a complete logging ban for natural forests, the risks for this indicator are not applicable for natural forests.

For plantations, the harvesting techniques and technology are mainly decided by the forest owners. Only for the case of planted protection forest, there are some specific requirements for harvesting methods as described above. The local Forest Protection Department monitors compliance with these requirements when they have information on the harvesting submitted by the forest owner.

#### *Risk Conclusion*

After thorough research of different sources, we conclude the risk for this indicator is Low for plantations. Illegal harvesting has been mainly associated with natural forests, and no information in the public domain suggested a significant problem with compliance with legal requirements related to harvesting techniques and technology.

### 1.8.6. Risk designation and specification

Low risk for all source types

### 1.8.7. Control measures and verifiers

None

## 1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their

habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

#### 1.9.1. Applicable laws and regulations

- Decree 06/2019/ND-CP dated January 22, 2019 on management of endangered, precious and rare species of forest fauna and flora and implementation of Convention on International Trade in Endangered species of Wild Fauna and Flora, <http://vbpl.vn/TW/Pages/vbpg-toanvan.aspx?ItemID=133859&Keyword=06/2019/N%C4%90-CP>
- Decree 156/2018/NĐ-CP and 83/2020/NĐ-CP on some instructions to implement Law of Forestry. <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-dinh-156-2018-ND-CP-huong-dan-Luat-Lam-nghiep-379366.aspx> and <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-83-2020-ND-CP-sua-doi-Nghi-dinh-156-2018-ND-CP-huong-dan-Luat-Lam-nghiep-447407.aspx>

#### 1.9.2. Legal authority

- Provincial forestry administrations

#### 1.9.3. Legally required documents or records

For planting and harvesting endangered, rare and precious species of forest flora (as currently listed in Decree 06/2019/ND-CP) for commercial purposes:

- For planting: Forest owner must have a Planting (raising) plan according to Form no. 07; and a Planting (raising) logbook according to Form no. 17 provided in the Decree
- For harvesting: Harvest plan according to Form No.01 provided in the Decree.

#### 1.9.4. Sources of Information

##### *Government sources*

- Decision 1558/QĐ-BNN-TCLN dated 13 April 2021, on Announcement of forest area status nationwide in 2020. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quyết-dinh-1558-QĐ-BNN-TCLN-2021-cong-bo-hien-trang-rung-toan-quoc-nam-2020-470677.aspx> [Accessed 12 May 2021]
- Nhan Dan Dien Tu (2021). *Ngang nhiên phá rừng đặc dụng tại Vườn quốc gia Xuân Sơn (Destroying special-use forests in Xuan Son National Park)*. Available at: <https://nhandan.com.vn/thoi-su-phap-luat/ngang-nhien-pha-rung-dac-dung-tai-vuon-quoc-gia-xuan-son-636499/> [Accessed 12 May 2021]
- Lao Dong (2019). *Phá rừng nghiêm trọng tại Vườn Quốc gia Phong Nha – Kẻ Bàng (Severe deforestation in Phong Nha – Ke Bang National Park)*. Available at: <https://laodong.vn/phap-luat/pha-rung-nghiem-trong-tai-vuon-quoc-gia-phong-nha--ke-bang-662150.ldo> [Accessed 12 May 2021]

##### *Non-Government sources*

- N.N. Phuong and S.A. Dembner (n.d.). Improving the lifestyles of people in protected areas of Viet Nam. [online]. FAO. Available at: <http://www.fao.org/docrep/v2900e/v2900e05.htm> [Accessed 23 April 2015]
- Forest Trends (2011). Baseline Study 3: Viet Nam: Overview of Forest Governance and Trade. [online]. Available at:

<http://www.euflegt.efi.int/documents/10180/23308/Baseline+Study+3,%20Viet+Nam/73bea271-0a2e-4ecb-ac4e-f4727f5d8ad9> [Accessed 14 December 2016]

- Global Forest Watch (2021). Intact Forest landscapes 2000-2016. Land Cover. Map. Select Map -Land cover – Intact Forest Landscapes. Available at: <https://www.globalforestwatch.org/>
- An LT, Markowski J, Bartos M (2018), The comparative analyses of selected aspects of conservation and management of Viet Nam’s national parks. *Nature Conservation* 25: 1–30. Available at: [Accessed 15 June 2021]
- Forest Legality Alliance (2015). Risk Tool - Viet Nam. [online]. Available at: <http://www.forestlegality.org/risk-tool/country/Viet+Nam#tab-management> [Accessed 5 February 2015].
- Viet Nam News (2017) Illegal logging, smuggling found in protected Central Highlands Forest. Available at <http://VietNamnews.vn/environment/373183/illegal-logging-smuggling-found-in-protected-central-highlands-forest.html#Rk1rWzUdViupugPS.97> [Accessed 15 June 2021].
- Tuoi Tre News (2020). Illegal logging rampant in Viet Nam’s Central Highland. Available at <https://tuoitrenews.vn/news/society/20200413/illegal-logging-rampant-in-Viet+Nams-central-highlands/54008.html> [Accessed 15 June 2021].
- Country Profile & Viet Nam’s Fifth Convention on Biodiversity National Report. <https://www.cbd.int/countries/profile/default.shtml?country=vn#measures>
- VIFOREST (2019). Xuất khẩu gỗ và sản phẩm gỗ đạt 10,5 tỷ USD năm 2019 (Export of wood and wood products reached USD 10.5 billion in 2019). <https://goviet.org.vn/bai-viet/xuat-khau-go-va-san-pham-go-dat-10-5-ty-usd-nam-2019-9073>. [Accessed 15 June 2021].
- Mongabay (2017). Viet Nam luxury wooden furniture makers feel the pain of regulations and deforestation. <https://news.mongabay.com/2017/01/Viet+Nam-luxury-wooden-furniture-makers-feel-pain-of-regulations-and-deforestation/>. [Accessed 15 June 2021].

### 1.9.5. Risk determination

#### *Overview of Legal Requirements*

The Law on Forestry and other legal documents specifying conservation of nature (including biodiversity) apply only to special-use forests (national parks, nature reserves, species conservation areas, historic parks, cultural sites). On the other hand, protection forests are used predominantly for protecting water resources, land, to prevent erosion and desertification in key areas, to restrict natural calamities, and to regulate climate. So special-use forests are the main protected areas and support protected species, established in areas with significant ecological and/or cultural importance.

The management of protected areas is coordinated by the Forest Protection Department (FPD) within the MARD. Forest management boards of protected areas (FMBs) belonging to the state currently manage more than 4.7 million ha, primarily special-used and protected forests for protection and conservation purposes. As of 2020, out of 4.7 million ha, about 88% are natural forests, and the remaining 12% are plantation forests (Government source 1). FMBs receive central government budget allocations and, in many cases, contract local people to implement protection and conservation activities (EFI 2011, FPD 2013).

Viet Nam has regulations to ensure conservation in special-used forests. Around the special-used forests, there is a buffer zone to further ensure that the special-used forests are not infringed upon. Furthermore, there is currently a logging ban in Viet Nam for natural forests, in both protection forests and special-use forests.

The production forests are not subject to requirements for protection activities. In the Law on Forestry, there is mention of protecting species and sites in production forests; however, no circular

or decree elaborate how this should be carried out. Harvesting companies must identify endangered animal and plant (including timber) species within the forest management unit (FMU) as per the Decree 06/2019/ND-CP list and comply with relevant provisions for their protection or exploitation as appropriate.

For forest owner who would like to plant, and harvest protected species for commercial purpose, Article 12 and 15 of Decree 06/2019/ND-CP stipulates the conditions for this, as below:

- For planting: Forest owner or planting facility must have suitable conditions for characteristics of the species and shall register with the Provincial FPD to have a Facility Code. The facility also must have a Planting (raising) plan according to Form no. 07; and keep a Planting (raising) logbook according to Form no. 17 provided in the Decree.

- For harvesting: Forest owner shall have a harvest plan according to Form No.01 provided in the Decree. Before harvesting, the forest owners must notify the provincial-level state management agency in forestry, the Provincial FPD, for monitoring.

According to Decree 06/2019/ND-CP, some common protected timber species are as below:

- **Group IA** (Flora species threatened with extinction and banned from exploitation or use for commercial purpose, and species in CITES Appendix I naturally inhabiting Viet Nam): *Xanthocyparis Viet Namensis* (Bách vàng), *Taiwania cryptomerioides* (Bách đài loan), *Cupressus tonkinensis* (Hoàng đàn hữu liên), *Cunninghamia konishii* (Sa mộc dầu), *Glyptostrobus pensilis* (Thông nước), *Keteleeria davidiana* (Du sam đá vôi), *Abies delavayi subsp. fansipanensis* (Vân sam fan si pang).
- **Group IIA** (flora species that, although currently not threatened with extinction, but may become so without strict control of exploitation and use for commercial purpose and species specified in CITES Appendix II naturally inhabiting Viet Nam): *Calocedrus rupestris* (Bách xanh núi đá), *Calocedrus macrolepis* (Bách xanh), *Fokienia hodginsii* (Pơ mu), *Taxus chinensis* (Thông đỏ lá ngắn), *Taxus wallichiana* (Thông đỏ lá dài), *Cephalotaxus mannii* (Đình tùng), *Podocarpus pilgeri* (Thông tre lá ngắn), *Pinus cernua* (Thông xuân nha), *Pinus dalatensis* (Thông Đà Lạt), *Pinus krempfii* (Thông lá dẹt), *Pinus kwangtungensis* (Thông Pà cò), *Pinus kwangshanensis* (Thông hai lá quả nhỏ), *Pseudotsuga brevifolia* (Thiết sam giả lá ngắn), *Diospyros mun* (Mun), *Azelia xylocarpa* (Gỗ đỏ), *Sindora siamensis* (Gụ mật), *Sindora tonkinensis* (Gụ lau), *Dalbergia oliveri* (Cẩm lai Bà Rịa), *Pterocarpus macrocarpus* (Giáng hương quả to), *Erythrophloeum fordii* (Lim xanh), *Dalbergia cochinchinensis* (Trắc), *Dalbergia rimosa* (Trắc dây), *Dalbergia tonkinensis* (Sưa), *Cinnamomum balansae* (Gù hương), *Cinnamomum glaucescens* (Re xanh phấn), *Cinnamomum parthenoxylon* (Vù hương), *Excentrodendron tonkinense* (Nghĩn).

#### Description of Risk

Viet Nam law stipulates the separation of forest conservation (special-used forest) from production forests and protection forests. There are high levels of Government oversight of the special-use forests, and the Government has invested significant resources in this. There are specific legal sanctions that apply to illegal harvesting in special-used forests. However, there are several cases of illegal harvesting in the special-use forests, with these offenders usually arrested by the forest rangers (Government Source 1, 2).

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

Viet Nam's 5th National CBD report identifies that illegal logging and road construction are linked to habitat degradation and fragmentation. It also cites that population growth may lead to uncontrolled deforestation linked to the need of many people to clear land for farming and livestock. The most difficult task related to the conservation and management of Viet Nam's national parks and nature reserves now results from the pressure placed by the human population growth and

resource use within and around protected areas, the lack of funding, limited human and institutional capacity and land use conflict. Illegal hunting, trapping, poaching, and fishing, the illegal wildlife trade, illegal logging, and firewood collecting appeared to be the most serious threats to the conservation and management of natural resources. (Non-government source 4)

Furthermore, the Global Forest Watch Intact Forest Landscape loss map layer from 2000 to 2013 indicates IFL loss in all existing IFL areas in Viet Nam and loss of one whole IFL area during this period. Although the loss of intact forest landscape seems to have been reduced in 2013-2016, and there has been no available data on the IFL areas in Viet Nam since 2016, the risk of loss on these landscapes is relatively high. The pressure of human population growth and resource use pressure within and around protected areas.

As legal timber sources are from plantations, consultation with stakeholders and experiences from FSC audits of Preferred by Nature staff confirm plantations are not established in protected areas. However, since illegal logging in the protected area is still a rampant issue in Viet Nam, there is a risk that timber in the protected area is illegally harvested and enters the commercial supply chain.

In the case of risk related to protected species within plantations, little information is found on the harvesting of protected species within plantations in Viet Nam. Species most used in forest plantations are *Acacia (Acacia spp.)* and *Eucalyptus (Eucalyptus spp.)*. The risk for this sub-category is considered low.

However, with the continued demand for rare and high-value species for hand-carved wood furniture for the domestic market and export to China (non-government source 9), there is a risk that the protected species are planted and harvested illegally, not following the legally required procedure. This is covered in the sub-category 1.20 CITES below.

#### *Risk Conclusion*

Specified risk for all source types: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.9.6. Risk designation and specification**

Specified risk for all source types: Risk that timber in the protected area is illegally harvested and enters the commercial supply chain.

#### **1.9.7. Control measures and verifiers**

*Risk that timber in the protected area is illegally harvested and enters the commercial supply chain*

Conduct non-linear supply chain mapping to ensure timber is not originating from protected areas (please read more about supply chain mapping in the Risk Assessment 1.22. Supply chain transparency and traceability).

#### **Review document and verify:**

Require supporting documents from the forest level. The document required depend on the supply chain.

#### **Use online databases:**

Confirm the authenticity of following documents and permits used to verify the supply chain:

- Business Registration Certificates of enterprises along the supply chain to confirm their legal operation (<https://dichvuthongtin.dkkd.gov.vn/inf/default.aspx>).
- VAT invoices (for e-invoice) to confirm their validity (<http://www.tracuuhoadon.gdt.gov.vn/main.html>)

#### **Conduct targeted timber testing:**

Timber test samples of purchased material to identify the species or origin of timber and verify that timber purchased corresponds to the harvesting permit or authorisation required. See [Preferred by Natures Thematic article No 1](#) on Timber Testing Techniques.

**Onsite verification:**

Conduct verification audits of upstream suppliers, which may include forest level audits - check critical control points in the supply chain, CoC system or due diligence system.

## 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

- Law on Environment Protection (2018), dated 10 December 2018 <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Van-ban-hop-nhat-19-VBHN-VPOH-2018-Luat-Bao-ve-moi-truong-410275.aspx>
- Law on Environment Protection (2020) dated 17 November 2020, *effective from 01 January 2022*. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-so-72-2020-QH14-Bao-ve-moi-truong-2020-431147.aspx>
- Law on Plant Protection and Quarantine (2013), dated 25 November 2013, <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-bao-ve-kiem-dich-thuc-vat-2013-215840.aspx>
- Law on Biodiversity (20/2008/QH12 in 2008) and revised in 2018. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Van-ban-hop-nhat-32-VBHN-VPOH-2018-hop-nhat-Luat-Da-dang-sinh-hoc-407228.aspx>
- Circular 28/2018/TT-BNNPTNT, dated 16 November 2018 <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Thong-tu-28-2018-TT-BNNPTNT-quy-dinh-ve-quan-ly-rung-ben-vung-402853.aspx>
- Decree 18/2015/ND-CP, dated 14 February 2015, promulgates environmental protection planning (EPP), strategic environmental assessment (SEA), environmental impact assessment (EIA) and/or environmental protection plans of the Law on Environment protection, <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Decree-No-18-2015-ND-CP-environmental-protection-planning-strategic-environmental-assessment-268489.aspx?tab=1>
- Decree 19/2015/ND-CP on detailing the implementation of a number of articles of the law on environmental protection: <http://thuvienphapluat.vn/archive/Decree-No-19-2015-ND-CP-detailing-the-Law-on-Environmental-Protection-vb268680.aspx>
- Decree 40/2019/NĐ-CP dated 13 May 2019, on amendments to Decrees on guidelines for the Law on Environment Protection. <https://luatvietnam.vn/tai-nguyen/nghi-dinh-40-2019-nd-cp-chinh-phu-172760-d1.html>

- Circular 10/2020/TT-BNNPTNT dated 9 September 2020, on List of permissible and banned agrochemicals in Viet Nam. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Thong-tu-10-2020-TT-BNNPTNT-danh-muc-thuoc-bao-ve-thuc-vat-duoc-phep-su-dung-tai-Viet-Nam-452219.aspx>
- Circular 25/2019/TT-BNNPTNT dated 27 December 2019, on Regulations on Forest Fire prevention and fighting. <https://luatvietnam.vn/nong-nghiep/thong-tu-25-2019-tt-bnnptnt-ve-phong-chay-va-chua-chay-rung-179939-d1.html>

#### 1.10.2. Legal authority

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

#### 1.10.3. Legally required documents or records

- Forest owners shall have a fire prevention and fighting plan. The plan of organizations must be sent to the local Forest Protection Department and Fire Police for their comments before implementation.

And for forest owners being organizations:

- Sustainable Forest Management Plan
- Decision on approving Sustainable Forest Management Plan issued by Provincial People's Committee (except for the private organizations that self-invest on the plantation).
- Report on the results of the implementation of the SFM plan submitted to the District Department of Agriculture and Rural Development before 10<sup>th</sup> December annually.

#### 1.10.4. Sources of information

*Non-Government sources*

- Nguyen Dang Anh Thi, *Viet Nam's lack of transparency on environmental issues is glaring*, 21 July 2020, <https://e.vnexpress.net/news/perspectives/Viet-Nam-s-lack-of-transparency-on-environmental-issues-is- glaring-4132917.html> [Accessed 10 April 2021]
- Hoang-Anh Ho, *Business Compliance with Environmental Regulations: Evidence from Viet Nam*, March 2015, [http://veam.org/wp-content/uploads/2016/08/2015\\_16\\_Hoang-Anh\\_Ho\\_Business\\_Compliance\\_with\\_Environmental\\_Regulations.pdf](http://veam.org/wp-content/uploads/2016/08/2015_16_Hoang-Anh_Ho_Business_Compliance_with_Environmental_Regulations.pdf) [Accessed 10 April 2021]
- Open Development Initiative (2020). Forests and Forestry. <https://VietNam.opendevelopmentmekong.net/topics/forest-and-forestry/#ref-3281354-40> [Accessed 10 May 2021].
- Minh Tuyen Pham et. al. (2020). *Legal framework for environmental impact assessment in Viet Nam: the challenges between the regulations and practice*. Web of Conferences 164, 11008. Available at: [https://www.e3s-conferences.org/articles/e3sconf/abs/2020/24/e3sconf\\_tpacee2020\\_11008/e3sconf\\_tpacee2020\\_11008.html](https://www.e3s-conferences.org/articles/e3sconf/abs/2020/24/e3sconf_tpacee2020_11008/e3sconf_tpacee2020_11008.html) [Accessed 10 May 2021]

#### 1.10.5. Risk determination

*Overview of Legal Requirements*

The main piece of legislation, the Law on Environmental Protection (2018), establishes the provisions for environmental protection in Viet Nam in general. Articles 52-64 specifically stipulate



the requirements for protecting land, water, and air environments. For example, organizations, households, and individuals are responsible for minimizing and treating waste before discharging it into any water body. The land must be closely monitored for any possible soil pollution to promptly detect and implement measures to prevent and respond to environmental incidents following law. The use of any pesticides shall follow the list of permissible and banned agrochemicals in Viet Nam.

The Law on Forest also stipulates requirements on forest protection. The efforts include protecting forest ecosystems, endangered precious and rare forest flora and fauna species listed for control and protection; Forest fire prevention and fighting; and Control of forest pests and diseases. For example, for plantations, after clear-cutting, the harvested area must be replanted in the next planting season; measures must be implemented to minimize soil erosion for steep slopes of over 25°, such as creating contour lines, using low impact harvesting techniques in SFM plan and implementation. On the other hand, the law prohibits illegally bringing wastes, toxic chemicals, explosives, combustible into forests, tending, grazing cattle, livestock in strictly protected zones of special-use forests or newly planted forests. It also prohibits illegally exploiting natural resources, minerals resources, and using the forest environment; illegally building works, excavating, digging, construction, embanking, barricading natural water flows, and other illegal activities that disrupt the natural landscape structures of forest ecosystems. More details are specified in Chapter IV of the Law on Forestry.

The Law on Forestry also requires organizations to prepare a sustainable forest management plan (SFM plan) for their managed area. The specific requirements are stipulated in Circular 28/2018/TT-BNNPTNT. For plantations, the SFM plan shall include a detailed plan for forest protection and biodiversity conservation, forest development, the harvest of forest products using low impact harvesting techniques.

Regarding fire prevention and fighting in forests, according to Decree 156/2018/NĐ-CP, forest owners shall have a fire prevention and fighting plan, and the plan of organizations must be sent to the local Forest Protection Department and Fire Police for their comments before implementation. The Forest owner is responsible for implementing the plan, and the relevant authorities shall give instructions and oversee the development and implementation of fire prevention and fighting plans.

The Law on Biodiversity, on the other hand, provides for the conservation of natural ecosystems, protection of wildlife and precious genetic resources in their natural habitats, and equitable sharing of benefits from genetic resources. This Law provides provisions for the establishment of conservation zones. Specifically, it stipulates that a conservation zone must have two functional sections: a strictly protected section and an ecological restoration section. In addition, the Law specifically provides for the establishment of biodiversity conservation facilities as an ex-situ conservation measure.

#### *Description of Risk*

In recent years, an improvement in policies has helped to improve the regulation of forest management. Policies are now more comprehensive, state management by law has progressed, and social awareness of the forest sector has increased. However, implementation is also limited because law enforcement in the sector is perceived as weak; laws and regulations are not strictly followed, and sanctions are not strong enough to act as a deterrent. (Non-Government Source 4,5).

Viet Nam has established and implemented a range of legal requirements related to the identification and/or protection of environmental values. However, with a significant body of reports and news on limited implementation and weak monitoring, which has led to environmental degradation, including land degradation and water pollution, there is a high risk related to systematic and/or large-scale non-compliance with legally required environmental protection measures that threaten the forest resources or other environmental values.

For forest owners being organizations, the SFM plan is the tool to make sure their forest activities comply with environmental protection regulations. As mentioned in category 1.3 above, since this is a new legal requirement, there is a specified risk that the organizations do not have an SFM plan and approved by appropriate authority (if applicable). Even if the plan is in place, it may not be

implemented by the forest owner. The same risk applies to the requirement on the Fire fighting and prevention plan.

For individual/household forest owners, the requirement on the SFM plan is not applicable. However, there are still requirements for the individual/household to prepare and implement a Fire prevention and fighting plan, as well as comply with other environmental protection requirements (use of permissible pesticides, minimizing and treating waste before discharging it into any water bodies, no wastes/toxic chemicals/explosives/inflammable in the forests, minimizing soil erosion for steep slopes of over 25° such as creating contour lines, etc....). Although there has been no clear evidence, nor the significant body of reports on the incompliance, the risk is considered specified because law enforcement in the sector is perceived as weak; laws and regulations are not strictly followed, and sanctions are not strong enough to act as a deterrent.

#### *Risk Conclusion*

Specified risk for all source types.

#### **1.10.6. Risk designation and specification**

Specified risk for all source types:

- State-owned and private company owned plantation:
  - The risk that forest owners do not have and implement a Fire prevention and fighting plan
  - The risk that forest owners do not have SFM plan and approved by the appropriate authority as legally required; and in the case that the plan is in place, it is not implemented by the forest owners
- Individual/household: risk that forest owners do not have Fire prevention and fighting plan and do not comply with other environmental protection requirements.

#### **1.10.7. Control measures and verifiers**

Mitigating risk that forest owners do not have SFM plan and approved by the appropriate authority as legally required; and in the case that the plan is in place, it is not implemented by the forest owners

#### **Document review and verify**

- Check if the State-owned and private company-owned plantation has SFM plan as legally required and approved by the appropriate authority.
- Regarding the risk that the forest owner does not implement the plans:
  - Request for their record of the report on the results of implementing their SFM plan submitted to the District Department of Agriculture and Rural Development before 10<sup>th</sup> December annually.

#### **Consult:**

- Consult with the local Forest Protection Department, District Department of Agriculture and Rural Development on the compliance of the forest owner with the reporting responsibility

#### **Onsite verification:**

- Consider conducting supplier audit at the forest level to verify legal compliance in implementing the SFM plan of forest owner (if possible).

*The mitigating risk that forest owners do not have and implement Fire prevention and fighting plan*

#### **Onsite verification:**

- Check if the State-owned and private company-owned plantation/individual/household has a fire prevention and fighting plan.
  - Check legal compliance with other environmental protection requirements

### 1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, the 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

- Labour Law 2019, Chapter IX. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Bo-Luat-lao-dong-2019-333670.aspx>
  - Chapter IX: Occupational safety and health
- Law on Forestry 2017, Article 27. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
- Law on occupational safety and hygiene, Article 13-23. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Luat-an-toan-ve-sinh-lao-dong-2015-281961.aspx>
  - Article 13- 23 outlines the requirements to ensure OH&S: Training, Personal protective equipment ect.
- Law on Fire prevention and fighting 2001, Article 19. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-phong-chay-choa-chay-2001-47923.aspx>
  - Article 19.- Fire prevention for forests
- Circular No. 06/2020/TT-BLDTBXH dated 20 August 2020 on Promulgation Of List Of Occupations Bound By Strict Requirements For Occupational Safety And Health. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Thong-tu-06-2020-TT-BLDTBXH-Danh-muc-cong-viec-co-yeu-cau-nghiem-ngat-ve-an-toan-ve-sinh-lao-dong-450777.aspx>
- Circular No. 04/2014/TT-BLDTBXH dated 12 February on 2014 Guiding Implementation Of Regulations On Personal Protective Equipment. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Thong-tu-04-2014-TT-BLDTBXH-huong-dan-thuc-hien-che-do-trang-bi-phuong-tien-bao-ve-ca-nhan-220950.aspx?tab=0>
- Decree No. 113/2017/ND-CP dated 09 October 2017 on Specifying and providing guidelines for implementation of certain articles of the law on chemicals, Article 18, 32. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-113-2017-ND-CP-huong-dan-Luat-hoa-chat-346246.aspx>
  - Article 18: The list of banned chemicals is provided
  - Article 32. Individuals provided with training courses in chemical safety
- Circular No. 28/2018/TT-BNNPTNT dated 16 November 2018 on Sustainable Forest Management, Article 14. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Circular-28-2018-TT-BNNPTNT-sustainable-forest-management-431327.aspx>

- Article 14: SFM criteria, principles and indicators which Outlines the Health and Safety requirements at indicator 3.2

#### **1.11.2. Legal authority**

- Ministry of Labour, Invalids and Social Affairs (MOLISA), Department of Labours, Invalids and Social Affairs
- Ministry of Health (MOH)
- Ministry of Agriculture and Rural Development (MARD)
- The People's Committees at provincial, district and communal levels.

#### **1.11.3. Legally required documents or records**

The enterprise must have the following:

- Plan for occupational safety and hygiene prepared by the employer
- Training records, PPE
- Fire prevention and fighting plan

#### **1.11.4. Sources of information**

##### *Government sources*

- National Center for Occupational and Health (2020). *Tình hình tai nạn lao động năm 2020*. Available at <http://huanluyenantoan.gov.vn/tinh-hinh-tai-nan-lao-dong-nam-2020.html> [Accessed 31 October 2021]

##### *Non-Government sources*

- Viet Nam net (2019). Occupational safety remains a problem in Viet Nam. Available at: [https://VietNamnet.vn/en/society/occupational-safety-remains-a-problem-in-Viet Nam-567371.html](https://VietNamnet.vn/en/society/occupational-safety-remains-a-problem-in-Viet-Nam-567371.html) [Accessed 31 October 2021]

#### **1.11.5. Risk determination**

##### *Overview of Legal Requirements*

Viet Nam has formulated the legal system on occupational health and safety that applies to employers and employees.

##### *Workers with labour contract*

According to Labour Law, 2019 "employer" means an enterprise, agency, organization, cooperative, household or individual who employs other people under agreements. An employer that is an individual shall have full legal capacity (article 3).

According to Law on occupational safety and hygiene, the employers must have: Health and safety regulation developed (Article 15), training (Article 14) provided to the workers and PPEs provided (Article 23) and ensure them to be used in the field.

The employers have to pay mandatory social insurance for the employees, which cover the insurance for occupational accidents and occupational diseases

The workers take responsibility for occupational safety and hygiene of their works as prescribed (article 6). They must be trained in occupational safety and hygiene and granted safety cards (article 14 of Law on occupational safety and hygiene and circular No. 06/2020/TT-BLĐTBXH).

The PPEs shall be equipped to the workers (Timber cutting by machines or by hand, - Transporting of lumber, log driving) included: Manual worker's clothing; protective headgear against traumatic

brain injury; transparent goggles against dust or mechanical injuries; shoulder pads; raincoat; high-necked shoes for forest trekking; anti-leech socks; canvas gloves; soap, Warm clothing and protective headgear for when working in cold areas.

Law On Forestry (2017), the organizations' forest owners must indicate the Health and Safety requirements in their Sustainable Forest management plans. Forest owners that are households, individuals, communities, or associated households and individuals are encouraged to develop and implement sustainable forest management plans (Article 27).

Article 19 of Law on Fire prevention and fighting 2001 is required when elaborating the forest development planning and projects; it is necessary to work out plans on fire prevention and fighting for each kind of forest.

Article 18, 32 of Decree No. 113/2017/ND-CP regulates the list of banned chemicals and individuals provided with training courses in chemical safety.

The forest owners are the organisation are required to implement health and safety in the sustainable forest management plan, regulated at Article 14 of Circular No.28/2018/TT-BNNPTNT

Each forest owner must keep a record of Health and safety regulation, training provided to the workers and provided PPEs. At different levels, the People's Committees carry out inspections and deal with violations against legislation on occupational safety and hygiene at local governments.

#### *Description of Risk*

According to the National Centre for Occupational and Health (2020) report, of the labours that have the labour contract, there were 7,473 occupational accidents cases nationwide involving 7,649 people in 2020. By sectors, mining and mineral exploitation accounted for 16.51%; the construction sector accounted for 15.6%, the field of mechanics, metallurgy accounted for 6.42%, the service sector accounted for 5.51% and the textile, garment and footwear sector accounted for 5.5% of the total number of cases. However, with the labours that do not have labour contracts, the accident cases have been recorded in construction, production of construction materials, agriculture, mechanics, and business services. (Government source 1). The forestry sector is categorized under the agricultural sector in the report.

Also, according to the report mentioned above, the reasons for occupational accidents are listed: the employers did not provide the labour the safety training or inadequate training for the employees (43%), equipment does not ensure occupational safety (11.93%) the organization of labour and working conditions (8.27%), employers who did not develop safe working procedures and measures accounted (4.59%), employers without personal protective equipment or unqualified personal protective equipment (2.75%) of the total number of cases (Government source 1).

By type of production: Joint-stock company (37.61%), limited liability company (30.28%), state-owned enterprises, administrative and non-business units (22.93%), private enterprise, individual business household accounts for 5.51% of accidents and 5.22% of deaths (Government source 1).

Though Viet Nam has made progress through the years, occupational safety remains a problem in Viet Nam (Non-Government source 2).

#### *Risk Conclusion*

This indicator has been evaluated as a 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 for all source types.

The risks are:

With labour contract

- The safe working procedures and measures are not in place
- The employers did not provide the safety training, chemical use training or adequate training for the employees, safety cards
- The workers are without personal protective equipment or unqualified personal protective equipment
- The insurance for occupational accidents and occupational diseases

Without labour contract:

- Lack of personal protective equipment
- Lack of health and safety training, safety cards

#### 1.11.7. Control measures and verifiers

##### Review documents and verify

*For workers with labour contract:*

- Check whether the plan for occupational safety and hygiene, fire prevention and fighting plan prepared by the employer (SFMP for State-owned and private company owned plantation) are available.
- OH&S training record, safety cards to verify completed H&S training, Personal Protective Equipment provided list – ensure procedures (mentioned in the plan for occupational safety and hygiene, fire prevention and fighting plan) are implemented and being adhered to.
- The insurance for occupational accidents and occupational diseases

*For workers without labour contract (in case of freelance work/work less than one month):*

- Safety cards (to verify completed H&S training), PPE used (during onsite verification)

##### Consult

- Consult the relevant Department of Labour, Invalids and Social Affairs for the results of annual inspections for the company.

##### Onsite verification

- On-site verification of operational activities to ensure the PPE and training requirements are being complied with in practice.

## 1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of workers' legal rights take place, such as forced, underage or illegal labour.

### 1.12.1. Applicable laws and regulations

- Labour Law 2019, Articles 3, 8, 14, 105, 107, 143, 147. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Bo-Luat-lao-dong-2019-333670.aspx>
    - Article 8: Regulate the forbidden actions: labour discrimination, maltreatment of employees, forced labour, sexual harassment in the workplace etc
    - Article 143: Outline the minimum working age
  - Law on Social Insurance 2014, Articles 2. <https://thuvienphapluat.vn/van-ban/Bao-hiem/Luat-Bao-hiem-xa-hoi-2014-259700.aspx>
    - Article 2: Outline the subjects shall be covered by compulsory social insurance
  - Law on Employment dated 16 November 2013, article 43, 44. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Luat-viec-lam-nam-2013-215628.aspx>
  - Law on Health Insurance Law 2014. <https://thuvienphapluat.vn/van-ban/Bao-hiem/Luat-Bao-hiem-y-te-sua-doi-2014-238506.aspx>
  - Law on Health Insurance Law 2012, Article 12. <https://thuvienphapluat.vn/van-ban/Bao-hiem/Luat-bao-hiem-y-te-2008-25-2008-QH12-82196.aspx>
  - Article 12: Outline the subjects shall be covered by health insurance
  - Decree No. 88/2020/ND-CP dated 28 July 2020 on elaborating some articles of the law on occupational safety and health on compulsory insurance for occupational accidents and occupational diseases, Article 2. <https://thuvienphapluat.vn/van-ban/Bao-hiem/Nghi-dinh-88-2020-ND-CP-huong-dan-Luat-An-toan-ve-sinh-lao-dong-ve-bao-hiem-tai-nan-lao-dong-448472.aspx>
    - Article 2: Outline the subjects shall be covered.
  - Law on Trade Union 2012, Article 3. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Luat-Cong-doan-2012-142186.aspx>
    - Article 3: Outline the subjects shall be covered by Trade Union Law
  - Circular No. 26/2017/TT-BLDTBXH dated 20 September 2017 on guidelines for statutory insurance for occupational accidents and diseases, Article 2. <https://thuvienphapluat.vn/van-ban/Bao-hiem/Thong-tu-26-2017-TT-BLDTBXH-che-do-bao-hiem-tai-nan-lao-dong-benh-nghe-nghiep-bat-buoc-327962.aspx>
  - Circular No. 09/2020/TT-BLDTBXH dated 12 November 2020 on elaborating some articles of the labour code on minor worker, APPENDIX III. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Thong-tu-09-2020-TT-BLDTBXH-huong-dan-Bo-luat-Lao-dong-ve-lao-dong-chua-thanh-nien-466418.aspx?tab=3>
- Decree No. 191/2013/ND-CP dated 21 November 2013 on Detailing on Trade-Union Finance, article 4, 5. <https://thuvienphapluat.vn/van-ban/lao-dong-tien-luong/nghi-dinh-191-2013-nd-cp-huong-dan-tai-chinh-cong-doan-214175.aspx?v=d>

#### 1.12.2. Legal authority

- Ministry of Labour - Invalids and Social Affairs/Provincial Department of Labour - Invalids and Social Affairs
- Department of Labour, War invalids and social affairs

#### 1.12.3. Legally required documents or records

- Labour contract or verbal agreement if a job is less than one month. If a verbal agreement is applied, the following are not applicable.

- The payroll of employing agency demonstrating the payment amount for monthly social insurance, health insurance, unemployment insurance, Insurance for occupational accidents and diseases and trade union fee.

#### 1.12.4. Sources of information

##### *Government sources*

- General Statistics (2020). *Press release on employment situation in quarter iii and 9 months of 2020*. Available at: <https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2020/10/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iii-va-9-thang-nam-2020/#:~:text=T%E1%BB%B7%20%E1%BB%87%20lao%20%C4%91%E1%BB%99ng%20c%C3%B3,v%E1%BB%9Bi%20c%C3%B9ng%20k%E1%BB%B3%20n%C4%83m%20tr%C6%B0%E1%BB%9Bc>. [Accessed 31 October 2021]

##### *Non-Government sources*

- Forest Legality Alliance (2020). *Risk Tool - Viet Nam*. [online]. Available at: [https://forestlegality.org/risk-tool/country/Viet Nam#tab-management](https://forestlegality.org/risk-tool/country/Viet%20Nam#tab-management) [Accessed 24 November 2020]
- Internal Labour Organization (2016). *Report on informal employment in Viet Nam*. Available at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_638330.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_638330.pdf) [Accessed 31 October 2021]
- Internal Labour Organization, General Statistics Office and Ministry Of Labour, Invalids And Social Affairs (2018). *Viet Nam National Child Labour Survey 2018, Key findings*. Available at [https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_764357.pdf](https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_764357.pdf) [Accessed 31 October 2021]

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

The Labour Law 2019 stipulates the requirements for the employers and the employees that cover: labour contracts, training requirements, minimum working age and the minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association.

##### Forms of employment contract (Article 14)

1. An employment contract shall be concluded in writing and made into two copies, one of which will be kept by the employee and employer, except for the case specified in Clause 2 of this Article.

An employment contract in electronic data conformable with electronic transaction laws shall have the same value as that of a physical contract.

2. Both parties may conclude an oral contract with a term of less than one month, except for the cases specified in Clause 2 Article 18 (for a seasonal or specific job that has a duration of under 12 months, a group of employees may authorize a member of the group to enter into a written labour contract; in this case, such labour contract is effective in the same manner as if it is entered into with each of the employees) , Point a Clause 1 Article 145 (apply for employment of employees under 15 years old) and Clause 1 Article 162 of this Labour Code (apply employment contracts with domestic workers).

##### **Minimum working age**

The legal working age is 15 (article 3). However, the labours aged 15 to under 18 are not allowed to work that is harmful to the development of their physical health, mental health or personality (article 143, 147). These types of works are regulated in Appendix III of Circular No. 09/2020/TT-BLDTBXH. There are 05 types of works related to the forestry sector: 1) Directly and manually



digging up tree roots with a diameter of more than 40cm. 2) Using manual two-person wood saws, 3) Cutting trees with a diameter of 35cm or more, cutting branches and cutting high branches manually, 4) Transporting large pieces of wood and moving pieces of wood with a diameter of 35 cm or more manually or using wooden levers or wooden ramps, 5) Collecting sunken wood, and dragging wood from navigational locks and slipways to land.

### **Working hours and Overtime**

Overtime working shall be agreed by the employee and followed the below requirements:

Normal working hours shall not exceed 08 hours per day or 48 hours per week (article 105). The number of overtime working hours does not exceed 50% of the normal working hours in 01 days; in case of weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 days, and 40 hours in 01 months; c) The total overtime working hours do not exceed 200 hours in 01 years, except for the cases specified in Clause 3 of Article 105. These types of works are allowed overtime not exceeding 300 hours in 01 years in the following fields, works, jobs, and cases: Manufacture, processing of textile, garment, footwear, electric, electronic products, processing of agricultural, forestry, aquaculture products, salt production; etc. (article 107).

### **Labour discrimination**

“Labour discrimination” means discrimination on the grounds of race, skin colour, nationality, ethnicity, gender, age, pregnancy, marital status, religion, opinion, disability, family responsibility, HIV infection, the establishment of or participation in a trade union or internal employee organization in a manner that affects the equality of opportunity of employment (article 3). Labour discrimination is one of the forbidden actions, according to Article 8. Law on Social Insurance 2014 requires that employers have adequate compulsory social insurance for their staff.

Forced labour is prohibited by the Labour Law and regulated in article 8.

Law on Social Insurance 2014 requires that employers must pay social insurance for their staff.

Law on Health Insurance Law 2012 requires that employers have adequate health insurance for their staff.

Law on Employment 2013 requires that employers have adequate unemployment for their staff.

Decree No. 88/2020/ND-CP and Circular No. 26/2017/TT-BLDTBXH require employers to have compulsory insurance for occupational accidents and occupational diseases for the employees.

Law on Trade Union 2012 states that labours are Viet Nam persons working in agencies, organizations, enterprises shall have the right to establish, participate in and operate Trade Union. The trade-union fee shall be 2% of salary fund which are used as the basis for social insurance payment for employees, paid by the employers.

### *Description of Risk*

- Not all workers have contracts as required by law. The number of workers in informal employment was found to be quite significant (more than 18 million persons), accounting for 57.2% of non-agricultural workers nationwide. If workers engaged in agricultural households were included, the rate of informal workers would stand at 78.6% (Non-Government Source 3). 76.7% of informal workers engaged in such employment without any form of the written labour contract, in which 62.1% had a verbal agreement and the remainder (14.6%) no form of agreement. In quarter 3, 2020, the informal worker's rate is 57% (Government Source 1).

- Most informal economy workers<sup>19</sup> have not gained any benefits from social insurance (97.9%). Just 0.2% of informal economy workers had compulsory social insurance paid by their employers. The remainder (about 1.9%) participated in voluntary social insurance. In contrast, the rate of formal economy workers without compulsory social insurance was only 19.5%, 78.4% lower than that of informal economy workers (Non-Government Source 3). Social insurance, health insurance, unemployment insurance, insurance for occupational accidents and occupational diseases and trade union fee is compulsory. Whenever one of them is not met, the others are not either.
- Child Labour: Latest survey undertaken in 2018 found more than 1.7 million children participating in economic activities across Viet Nam, among whom more than 1 million are engaged in child labour. In line with global trends, 84% of children in child labour in Viet Nam are concentrated in rural areas and just over half of them work in the agricultural, forestry and fishery sector (Non-Government Source 4).
- The plantation owned by the individuals/households often uses family labour or pays the workers daily or volume, and the scale and level of legal employment violation is insignificant. However, they usually sell standing trees without harvesting activities. The harvesting activities are managed by the logging companies who are often paying the workers by daily basic/Volume, usually with a verbal agreement (apply only for jobs shorter than a month). Based on the Preferred by Nature local expert, it is common for logging companies to hire the harvesting team without the labour contract regardless of the duration of the jobs to avoid paying the social, health insurance for the workers. Therefore, there is a risk of lack of the labour contract.
- Forced labour and Discrimination: Viet Nam has no comprehensive studies on forced labour; many sources are showing forced labour related to drug rehabilitation centres, Viet Nam migrant workers overseas. In the forestry sector, the workers are mostly villagers or domestic workers equally treated and protected by the laws. In addition, as mentioned in point 4 above, the workers and logging companies are unlikely to sign the written labour contract. Consequently, the workers have the rights to voluntarily choose the job. There is a low risk of forced labour and discrimination.
- Overtime work: Due to the lack of labour contract, payment by volume (harvesting/debarking), or a fixed daily rate, overtime work is hard to identify, and the risk is considered as specified.
- Freedom of association: The labourers have the right to establish, participate in and operate the Trade Union if they comply with the procedures for establishment, participation and operation of the Trade Union provided in the charter of Viet Nam Trade Union.
- Given the number of informal workers in the agricultural sector, including the forestry section, the risk is high. It is linked to the risk of lack of legal employment. This indicator has been evaluated as a specified risk.

#### *Risk Conclusion*

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

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<sup>19</sup> Internal Labour Organization (2016). Report on informal employment in Viet Nam. Page 3, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_638330.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_638330.pdf)

### 1.12.6. Risk designation and specification

Specified risk for all source types:

The risks are:

- Lack of labour contract for the workers
- Lack of social insurances for workers who work over 1 months, health/unemployment insurance, insurance for occupational accidents and diseases for workers who works over 3 months, trade union fee.
- Child labour was found in the agricultural, forestry, and fishery sector
- Overtime work

### 1.12.7. Control measures and verifiers

**Onsite verification:**

- Onsite verification to verify the written labour contract is available for jobs that have a duration of over one month.
- Observe if the child labour is used in the forest sites

**Consultation**

- Consultant with Department of Labour, War invalids and social affairs if illegal employment, child labour is found during inspections.

**Review documents and verify**

Check the employee list and define if child labour is used

- Check the timesheet to see if the overtime work is following the lawful requirements
  - Normal working hours shall not exceed 08 hours/day or 48 hours/week
  - Overtime working hours do not exceed 50% of the normal working hours in 1 day.
  - in case of weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 1 day and 40 hours in 1 month.
  - The total overtime working hours do not exceed 200 hours in 1 year
  - overtime shall not exceed 300 hours in 1 year
- Check that a labour contract or a verbal agreement is in place. If a verbal agreement applies (only for work less than 1 month), the following is not applicable: Payroll of employing agency demonstrating the payment amount for monthly social insurance, health insurance, unemployment insurance, Insurance for occupational accidents and diseases, trade union fee.

## 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.

Not applicable. There is no formal recognition of customary rights in Viet Nam legislation.

#### **1.13.2. Legal authority**

Not applicable

#### **1.13.3. Legally required documents or records**

Not applicable

#### **1.13.4. Sources of information**

##### *Non-Government sources*

- Thu Thuy Pham et al., 2015. Adapting Free, Prior, and Informed Consent (FPIC) to Local Contexts in REDD+: Lessons from Three Experiments in Viet Nam. Available at: <https://www.researchgate.net/>

#### **1.13.5. Risk determination**

##### *Overview of Legal Requirements*

Viet Nam does not constitute formal recognition of customary rights in Viet Nam law.

The following overview of requirements provide the legal system that ensures all ethnic groups have the same rights to the forest land and forest resources and their right are respected and protected.

The Constitution of The Socialist Republic of Viet Nam (2013) regulates all ethnicities are equal and unite with, respect, and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited. This resulted in ethnic minorities and Kinh people (which is the majority) in Viet Nam being treated equally under the laws.

Land Law 2013 indicates that Land belongs to the entire people, with the State acting as the owner's representative and uniformly managing land. The State shall grant land use rights to land users following this Law (Article 4). The subjects are granted the land use rights, forest use rights mentioned in sub-category 1.1 have the rights to utilize the forest and enjoy benefits arising from that place. There is no specific requirement for customary rights to the harvesting of the forest.

In practice, Viet Nam government encourages the benefits sharing from the forest through the new forest management mechanisms such as Payment of Forest Environment Services (PFES), REDD+, and FLEGT. These offer the potential for greater recognition of customary tenure, as they require that benefits accrue to local people (non-Government source 1).

##### *Description of risk*

Not applicable

##### *Risk Conclusion*

Not applicable

#### **1.13.6. Risk designation and specification**

Not applicable

#### **1.13.7. Control measures and verifiers**

Not applicable

### **1.14. Free prior and informed consent**

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

Not applicable.

In 2009 Viet Nam became the first country to trial the implementation of FPIC under the UN-REDD program. Three pilot projects were initiated in Lam Dong, Thai Nguyen, and Nghe An.

However, FPIC has not been implemented into the legal framework.

## 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, the right to use certain forest-related resources, or traditional activities involving forest lands.

### 1.15.1. Applicable laws and regulations

Not applicable.

In 2019, The total population of Viet Nam was 96,208,984 people. The Kinh population was 82.1 million persons, accounting for 85.3% of the total population. The rest of the population are 53 ethnic minorities.<sup>20</sup>

Viet Nam ratified the International Covenant on Civil and Political Rights in 1982 and thereby recognized the rights of its ethnic minorities. In 2007, Viet Nam ratified the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Constitution of The Socialist Republic of Viet Nam (2013) regulates all ethnicities are equal and unite with, respect, and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited (Article 5). This resulted in ethnic minorities, and Kinh people (which is the majority) in Viet Nam being treated equally under the law.

### 1.15.2. Legal authority

Not applicable

### 1.15.3. Legally required documents or records

Not applicable

### 1.15.4. Sources of information

Not applicable

### 1.15.5. Risk determination

Not applicable

### 1.15.6. Risk designation and specification

<sup>20</sup> <https://www.gso.gov.vn/su-kien/2019/12/thong-cao-bao-chi-ket-qua-tong-dieu-tra-dan-so-va-nha-o-nam-2019/>

Not applicable

#### 1.15.7. Control measures and verifiers

Not applicable

## 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

- Law on Forestry 2017. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
- Circular 27/2018/TT-BNNPTNT dated 16 November 2018, Article 5, 36-42 . <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>
  - Article 5. Packing list of forest products
  - Chapter V: Inspection of tracing of forest products
- Circular No. 39/2014/TT-BTC dated 31 March on guidelines for the government's Decree No. 51/2010/ND-CP dated on 14 may, 2010 and Decree No. 04/2014/ND-CP dated 17 January 2014 on sale invoices. <https://thuvienphapluat.vn/van-ban/Thuong-mai/Thong-tu-39-2014-TT-BTC-huong-dan-51-2010-ND-CP-04-2014-ND-CP-hoa-don-ban-hang-hoa-dich-vu-229190.aspx>
- Circular 119/2014/TT-BTC dated 25 August 2014 on Amendments to some Articles of Circular No. 156/2013/TT-BTC Dated November 06, 2013, Circular No. 111/2013/TT-BTC Dated August 15, 2013, Circular No. 219/2013/TT-BTC Dated December 31, 2013, Circular No. 08/2013/Tt-Btc Dated January 10, 2013, Circular No. 85/2011/Tt-Btc Dated June 17, 2011, Circular No. 39/2014/TT-BTC Dated March 31, 2014, And Circular No. 78/2014/TT-BTC Dated June 18, 2014 Of The Ministry Of Finance In Order to Simplify Tax Formalities. [https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-119-2014-TT-BTC-sua-doi-cac-thong-tu-de-cai-cach-don-gian-thu-tuc-hanh-chinh-ve-thue-246608.aspx?anchor=khoan\\_2\\_5](https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Thong-tu-119-2014-TT-BTC-sua-doi-cac-thong-tu-de-cai-cach-don-gian-thu-tuc-hanh-chinh-ve-thue-246608.aspx?anchor=khoan_2_5)

#### 1.16.2. Legal authority

- Department of Agriculture and Rural Development (MARD)
- Forest Protection Department

#### 1.16.3. Legally required documents or records

- Packing list of forest products (No.01/ Circular 27/2018/TT-BNNPTNT)
- Sale invoice

#### 1.16.4. Sources of information

##### *Non-government sources*

- Timber trade portal, 2021. <https://www.timbertradeportal.com/countries/Viet Nam/> [Accessed on 29 August 2021]
- Forest Legality Alliance (2014). Risk Tool - Viet Nam. [online]. Available at: <https://forestlegality.org/risk-tool/country/Viet Nam#tab-management> [Accessed 24 November 2020]

#### 1.16.5. Risk determination

##### *Overview of Legal Requirements*

Circular No. 39/2014/TT-BTC requires the sales invoice to be made by the sellers who are organizations, households, and individuals that sell goods and/or provide services in Viet Nam or abroad.

Circular 119/2014/TT-BTC requires that information in the sale invoice include: Names of goods and services, units, quantity, unit prices of goods and services; amount must be written in numbers and words.

Circular 27/2018/TT-BNNPTNT defines that the forest product owner shall make a packing list after harvesting; when trading, transporting and dispatching forest products. The packing list reflects the information related to forest products on the vehicle used for transport. Circular 27/2018/TT-BNNPTNT stipulates the information which must be contained in the Packing list of forest products by forest owners/log owners, including:

- For round wood and sawn timber: Number, marking label, Common name, Scientific name (only for exported timber and sawn timber), Quantity, Dimensions and Volume.
- For wood products: Wood product name, Marking label number (if available), Common name, Scientific name, Quantity and volume of the product, Unit.

Articles 36 – 42 of Circular 27/2018/TT-BNNPTNT outline the inspection procedure of tracing forest products. The Forest Protection Department will conduct two types of inspection: annual inspection or unannounced inspection. Unannounced inspection will be conducted when complaints, violations, denunciations, or reports are made.

The contents of the inspection will include:

- Harvesting activities: Compliance with regulations of law before harvesting; compliance with regulations of law during and after harvesting; documents concerning the harvesting of forest products; Regarding harvested wood that is skidded and transported to a storage area, it is required to inspect its quantity, volume, type and number of woods, packing list; harvesting documents.
- Transport of forest products: a) Dossiers and applications specified in Sections 2 and 3 Chapter III of this Circular; and b) Forest products available on the vehicle.
- Wood and non-wood forest products at processing and trading facility: a) Forest product dossiers specified in Clause 1 Article 31 of this Circular; b) Forest products available at the facility; c) Storage of forest product dossiers.
- The imported, exported, or transited forest products: a) Dossiers and applications specified in Article 17 and Section 3 Chapter III of this Circular; b) Forest products available at the border checkpoint.
- A forest animal specimen raising and processing facility: a) Dossier on raised forest animals specified in Clause 2 Article 31 of this Circular; b) Forest animals raised.

- A forest product storage facility: a) Forest product dossier specified in Article 32 of this Circular; b) Forest products available at the storage facility.

#### *Description of Risk*

According to the above law requirements, both the sale invoice and packing list could be the documents that define the information on species, quantities, qualities. However, the sale invoice does not clearly state the species but the names of goods instead. Due to this, in some cases, the sale invoices may not be sufficient to identify the species and it is not required to be attached with the vehicle during transport, but the packing list are. Therefore, the packing list is used to demonstrate compliance with this requirement.

The risk of this sub-category is related to three steps of 1) how to complete the packing list and 2) the ability to make a false classification on the packing list to avoid the taxes and 3) trade bans on product types or species.

1) Circular 27/2018/TT-BNNPTN, the packing list is no longer required to be verified by the Local Forest Protection Department (for plantation forest), which creates a simplified process for the forest owners as they can complete it themselves. Forest Protection Department inspects tracing of forest products by annual inspection or unannounced inspection as mentioned in the overview of legal requirements, including inspecting the quantity, volume, type and number of woods, packing list; harvesting documents. The combination of the simplified process to complete the packing list and the inspection by the Forest Protection Department creates encouragement for the forest/log owners to comply with the relevant law requirements.

2) Wood sourced from Viet Nam forests mostly originates from plantations. According to MARD (2019) the Viet Nam "mass" plantation forests (i.e., not including scattered trees) produced about 16 million m<sup>3</sup> of logs in 2019, which is mainly used for processing by the domestic industry. Species most commonly used in forest plantations are Acacia (*Acacia spp.*) and Eucalyptus (*Eucalyptus spp.*) (non-government source 1).

Two commercially traded timber species are listed on CITES Appendix II from Viet Nam: *Aquilaria spp.* and *Dalbergia cochinchinensis* (Thailand Rosewood). These Appendix-II listings are not a ban on trade. To conduct international commercial trade in these listed species, it is necessary to ensure all the proper CITES documentation from the exporting or re-exporting country is compiled and accurate. (Non-government source 2). There is no trade ban on the species from the plantation available.

3) Regarding to the incorrect classification (quantities/volume) of harvested material to reduce/avoid payment of legality prescribed taxes and fees, value-added taxes and income and profit taxes as the description in sub-category 1.5, 1.6 and 1.7, the household are not applicable for all these taxes and fees. At the same time, the private and state-owned plantations are not applicable for sub-categories 1.5 and 1.6 and specified risk income and profit taxes (sub-category 1.7). As mentioned in sub-category 1.7, many businesses avoid tax by claiming the lowest possible profit or not complying with tax declaration requirements. They may declare insufficient revenue and incorrect expenses, thereby underestimating value-added tax, corporate income tax, and profit tax to be paid to the Government. Therefore, the risk for the private and state-owned plantation is specified.

#### *Risk Conclusion*

At the supply chain level: Specified

The household/individual owned plantation: Specified risk

(Note: Specified risk if not buying directly from the household/individual (supply chain risk). Low risk if buying directly from a household/individual).

The State and private company owned plantation: Specified risk



#### 1.16.6. Risk designation and specification

The household/individual owned plantation (supply chain risk): Specified

The State and private company owned plantation: Specified.

- The risk of incorrect quantity on the packing list to avoid the corporate income tax and profit tax.

#### 1.16.7. Control measures and verifiers

##### Review documents and verify

- Check quantities/volume, species on the packing lists, sale invoices and forest product origin dossier and the consistency of information these documents.
- Check the inspection minutes (if any) by the local Forest Protection Department whether any violation of incorrect quantities found.

##### Consult

- Consult the local Forest Protection Department, to ascertain the existence of forest violations related to the transportation of forestry products.

### 1.17. Trade and transport

All required trading permits shall exist and legally required transport documents that 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 fake proof of legality with the harvested material.

#### 1.17.1. Applicable laws and regulations

- Law on Forestry 2017, article 69 <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Luat-lam-nghiep-367277.aspx>
  - Article 69. National timber legality assurance system
- Circular 27/2018/TT-BNNPTNT dated 16 November 2018. Articles 19-29, 36-42. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>
  - Articles 19-29 stipulate the documents during trade and transport

#### 1.17.2. Legal authority

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

#### 1.17.3. Legally required documents or records

**Dossier on timber and NTFP harvested from planted forests and not having undergone any processing**

- An original packing list made by the forest product owner.
- A copy of the forest product origin dossier of the seller.

#### **Dossier on imported timber and NTFP not having undergone any processing**

- An original packing list made by the forest product owner.
- A copy of the forest product origin dossier of the seller.
- Imported forest products transported from the border checkpoint of import to the warehouse of the importer, Article 17 of Circular 27/2018/TT-BNNPTNT);
  - A customs declaration made following applicable regulations,
  - An original packing list made by the forest product owner or foreign exporter,
  - A copy of the CITES import permit issued by the Viet Nam CITES management authority to forest products prescribed in CITES Appendices.,
  - Documents about forest product origin prescribed by the exporting country)

#### **Dossier on confiscated forest products not having undergone any processing**

From the seller:

- An original packing list made by the forest product owner.
- A copy of the forest product origin dossier of the seller (Article 18 of Circular 27/2018/TT-BNNPTNT).

From the auction council:

- If Forest products are directly purchased from the auction council and then transported to the warehouse of the purchaser (Article 18 of Circular 27/2018/TT-BNNPTNT).
  - An original auctioned property sale contract,
  - An invoice prescribed by the Ministry of Finance (if any),
  - An original packing list made by the seller

#### **Dossier on timber, NTFP harvested from nature or planted forests, imported or confiscated and processed**

- An original packing list made by the forest product owner.
- A copy of forest product origin dossier of the seller.

#### **Dossier on internally transported forest products (transport between the facilities/branches of the same company)**

- An original of the dispatch function as an internal transport note.
- An original packing list was made by the forest product owner. In case of internal transport of the forest products specified in Clauses 1, 2, and 3 Article 6 of Circular Circular 27/2018/TT-BNNPTNT out of a province, a packing list certified by a local forest protection authority is required.
- A copy of forest product origin dossier.

#### **Dossier for transit of forest products**

- Documents about forest products to be transited following applicable regulations.
- In the cases where transited forest products are handled or forwarded between vehicles within the territory of Viet Nam, a packing list of forest products on each vehicle is required.

#### **1.17.4. Sources of information**

*Government sources*

- VNFORST (2020). <http://tongcuclamnghiep.gov.vn/LamNghiep/Index/thu-truong-bo-nn-ptnt-le-minh-hoan-lam-viec-voi-tong-cuc-lam-nghiep-4323> [Accessed 31 October 2021]

#### *Non-Government sources*

- Forest Legality Alliance (2014). *Risk Tool - Viet Nam*. [online]. Available at: [https://forestlegality.org/risk-tool/country/Viet Nam#tab-management](https://forestlegality.org/risk-tool/country/Viet%20Nam#tab-management) [Accessed 24 November 2020]

### **1.17.5. Risk determination**

#### *Overview of Legal Requirements*

No transportation permit is required by laws to transport timber or timber products.

Law on Forestry 2017 states that the Government shall develop and operate the national timber legality assurance system: issue criteria, power, procedures for classification of enterprises using, transporting, consuming, processing and exporting timbers or timber products (Article 69).

Circular 27/2018/TT-BNNPTNT guides compliance with the laws on timber transport activities. Whenever the timber, timber products and NTFPs are transported, they shall have the specified dossier (as mentioned in 1.17.3) accompanied with.

The articles 36 – 42 of Circular 27/2018/TT-BNNPTNT outline the procedure of inspection of the tracing of forest products. Forest Protection Department will conduct the two types of inspection are: annual inspection or unannounced inspection. Unannounced inspection will be conducted when complaints, violations, denunciations, reports, etc. are made. The inspection process and scope is presented in section 1.16.5.

#### *Description of Risk*

The circular 27/2018/TT-BNNPTNT only requires dossiers (as mentioned in 1.17.3) to accompany the transported timber, timber products and NTFPs. Though the dossiers required are slightly different depending on the timber origins, what is generally required to be included during transport are: the packing list and a copy of the forest product origin dossier of the seller. The packing list is made by the owners of forest products and the forest product origin dossier is collected from the sellers without pre-verification/stamping by local forest protection department. The owners of forest products must be solely responsible for the legality of the forest products. This simplified process of obtaining these dossiers on one side lowers the risk of compliance with lawful requirements. On the other hand, the simplified process also risks making fraudulent documents (packing list, forest origin dossier).

In addition, the Local Forest Protection Department annually conducts inspections or unannounced inspections of the trade and transport of timber, timber products and NTFPs. Regarding the transport activities, the Local Forest Protection Department checks relevant dossiers and applications (see section 1.17.3) and forest products available on the transport vehicle. According to VNFORST, in 2020, there are 10,931 cases of forestry violation for the whole country, a decrease of 2% compared to 2019 (Government source 1). Compared to Forest Legality Alliance (2014), there were an estimated 30,000 to 50,000 reported forest violations per year (non-Government source 1), the number of forest violations in Viet Nam has decreased significantly from 2014 to 2020. These numbers are relevant for the whole forest sector, and not only to transport. However, the trend in decreased violations is also expected to be relevant to violations related to transport.

Like the sub-category 1.16, the incorrect packing list to avoid/reduce income and profit taxes likely happen to the forest owned by state and private organizations and the supply chain.

#### *Risk Conclusion*

The household/individual owned plantation: Low risk if bought directly from the household/individual. Specified risk if not buying directly from a household/individual

The State and private company owned a plantation and the supply chain: Specified

#### 1.17.6. Risk designation and specification

The household/individual-owned plantation: Low risk. Specified risk if not buying directly from a household/individual

The State and private company owned plantation and the supply chain: Specified risk

The risks are:

- The incorrect packing lists
- Lack of forest product origin dossier

#### 1.17.7. Control measures and verifiers

##### Review documents and verify

- Check quantities/volume, species on the packing lists, sale invoices and forest product origin dossier and the consistency of information these documents.
- Check the inspection minutes (if any) by the local Forest Protection Department whether any violation of incorrect quantities found.

##### Consult

- Consult the local Forest Protection Department, to ascertain the existence of forest violations related to the transportation of forestry products.

### 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

- Law No. 38/2019/QH14 dated 13 June 2019 on Law on Tax Administration, article 42. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Luat-quan-ly-thue-2019-387595.aspx>
- Decree No. 126/2020/ND-CP dated on 19 October 2020 on Decree Elaboration of the Law on Tax Administration, Article 41. <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Nghi-dinh-126-2020-ND-CP-huong-dan-Luat-Quan-ly-thue-455733.aspx>
- Decree 132/2020/NĐ-CP dated 5 November 2020 on prescribing tax administration for enterprises having related-party transactions. <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Nghi-dinh-132-2020-ND-CP-quy-dinh-quan-ly-thue-doi-voi-doanh-nghiep-co-giao-dich-lien-ket-452218.aspx>
- Circular No. 45/2021/TT-BTC dated on 18 June 2021 on Application of Advance Pricing Agreements to Enterprises Having Related-Party Transactions. <https://thuvienphapluat.vn/van->

ban/Doanh-nghiep/Circular-45-2021-TT-BTC-advance-pricing-agreements-enterprises-having-related-party-transactions-480476.aspx

#### 1.18.2. Legal authority

- General Department of Taxation,
- Departments of Taxation and Sub-departments of Taxation.

#### 1.18.3. Legally required documents or records

- An annual declaration of related party transactions (Appendix 1 of Decree 132/2020/NĐ-CP)
- A local file and master file (Appendix 2 and 3 of Decree 132/2020/NĐ-CP)
- Country-by-country reporting (Appendix 4 of Decree 132/2020/NĐ-CP)
- Cooperate Income Tax finalization returns

#### 1.18.4. Sources of information

##### *Non-Government sources*

- Viet Nam Briefing (2019). "An Overview of Transfer Pricing in Viet Nam". Available at: <https://www.Viet-Nam-briefing.com/news/overview-transfer-pricing-Viet-Nam.html/> [Accessed 31 October 2021]
- PWC (2019). "Viet Nam Pocket Tax Book 2019". Available at: <https://www.pwc.com/vn/en/publications/2019/pwc-Viet-Nam-pocket-tax-book-2019-en.pdf> [Accessed 31 October 2021]
- KPMG (2017). "Integrated International Tax – Transfer Pricing". Available at: <https://assets.kpmg/content/dam/kpmg/xx/pdf/2017/03/tnf-tp-Viet-Nam-mar7-2017.pdf>
- <https://tapchitaichinh.vn> (2019). "Hoạt động chuyển giá tại Việt Nam và những tác động đến nền kinh tế" Available at: <https://tapchitaichinh.vn/nghien-cuu-trao-doi/hoat-dong-chuyen-gia-tai-viet-nam-va-nhung-tac-dong-den-nen-kinh-te-302055.html>. [Accessed 31 October 2021]
- LIÊN MINH CÔNG BẰNG THUẾ VIỆT NAM (VATJ)(2020). "Trốn và Tránh Thuế ở Việt Nam - Trường hợp Thuế Thu Nhập Doanh Nghiệp". Available at [http://vepr.org.vn/upload/533/fck/files/\[VIE\] Tax%20Avoidance%20and%20Evasion.pdf](http://vepr.org.vn/upload/533/fck/files/[VIE] Tax%20Avoidance%20and%20Evasion.pdf) [Accessed 01 September 2021]
- <https://goviet.org.vn> (2020). "FDI trong ngành gỗ: Xây dựng hệ sinh thái FDI tốt". Available at <https://goviet.org.vn/bai-viet/fdi-trong-nganh-go-xay-dung-he-sinh-thai-fdi-tot-9111> [Accessed 01 September 2021]
- VnEconomy (2021). "Kiểm toán Nhà nước chỉ ra những "lỗ hổng" trong quản lý doanh nghiệp Nhà nước". Available at: <https://vneconomy.vn/kiem-toan-nha-nuoc-chi-ra-nhung-lo-hong-trong-quan-ly-doanh-nghiep-nha-nuoc.htm> [Accessed 15 September 2021]
- <http://vjst.vn> (2021). "Giải pháp kiểm soát chuyển giá đối với doanh nghiệp ở Việt Nam". Available at: [http://vjst.vn/vn/\\_layouts/15/ICT.Webparts.TCKHCN/mt\\_poup/Intrangweb.aspx?IdNews=4517](http://vjst.vn/vn/_layouts/15/ICT.Webparts.TCKHCN/mt_poup/Intrangweb.aspx?IdNews=4517) [Accessed 09 October 2021]

#### 1.18.5. Risk determination

##### *Overview of Legal Requirements*

Decree 132/2020/NĐ-CP dated November 5, 2020, on prescribing tax administration for enterprises having related-party transactions that regulate transfer pricing doctrines, methods, and processes

for the determination of transfer pricing factors; taxpayer's transfer pricing rights and obligations, declaration procedures; responsibilities of state regulatory authorities for the tax administration over taxpayers having related party transactions.

Article 5 defines the enterprises that are related parties: 1) A party is directly or indirectly involved in the management, control of, the contribution of capital to, or investment in, the other party; 2) Parties are directly or indirectly affected by the management, control of, the contribution of capital, or investment, from the other party and meet one of the following conditions from points a to me of the Article 5. Article 18 indicates that the taxpayers (enterprises) engaged in related party transactions shall be held responsible for declaring information about their interrelationships or intra-group relationships and related party transactions using Form No. 01 given in Appendix I, II and III to this Decree, and submitting their completed forms together with Finalization of corporate tax and retaining and providing the transfer pricing files comprising information, documents, data and records.

- Exemption: Taxpayers shall be responsible for making transfer pricing declaration according to Appendix I to this Decree, but shall be exempted from the transfer pricing documentation requirements in the following circumstances: Taxpayers are engaged in the transfer pricing, but their total sales arising within a specified taxable period are less than VND 50 billion, and their total values of the related-party transactions arising within a specified taxable period do not exceed VND 30 billion (Article 19 of Decree 132/2020/NĐ-CP)

Taxpayers already entering into the Advance Pricing Agreement (APA) have submitted the annual report following the legislation on Advance Pricing Agreements. For those related party transactions not covered by the APA, taxpayers shall be responsible for making transfer pricing declarations as referred to in Article 18 herein. Taxpayers perform business activities by exercising simple functions, neither generating any revenue nor incurring any cost from an operation or use of intangible assets, generating the sales of less than VND 200 billion, as well as applying the ratio of net operating profit before deducting loan interest and corporate income tax (exclusive of the difference between sales and costs of financial activities) to net sales, in detail: Distribution (5% or over), Manufacturing (10% or over), Processing (15% or over.). Law No. 38/2019/QH14, Article 42 provide the rules for declaring and calculating taxable prices in related-party transactions:

- a) Values of related-party transactions shall be determined and declared by analysing and comparing with independent transactions the nature of operation and nature of the transaction, to determine tax liability in the same manner as that of transactions between independent parties.
- b) Values of related-party transactions shall be adjusted according to independent transactions to declare tax so taxable income is not decreased.
- c) Taxpayers whose businesses are small in scale and pose low tax risk are exempt from compliance to provisions of Point a and Point b of this Clause and may apply simplified related-party transaction declaration procedures.

Circular No. 45/2021/TT-BTC and Decree No. 126/2020/ND-CP guide the enterprises' application Advance Pricing Agreement (APA). An APA will be applied on the principle that the tax authority and the taxpayer or a Viet Nam tax authority and a party tax authority and a taxpayer cooperate, discuss and negotiate the application of regulations of law on payment of corporate income tax on the related transactions covered by APA in conformity with arm's length principle and substance-over-form principle.

#### *Description of Risk*

Before the government released applicable laws to enterprises having controlled transactions (in April 2017), transfer pricing rules in Viet Nam were lax. Investors could enter the market without worrying about their transfer pricing policies. Now, companies considering an investment into Viet Nam and those companies already operating in the country need to comply with the stricter regulatory requirements, which are based on OECD guidelines and Base Erosion and Profit Shifting BEPS actions (non-Government source 1).

In July 2015, a Transfer Pricing Audit Department was established within the General Department of Taxation ("GDT"). Soon afterward, in November 2015, local Transfer Pricing Audit departments were also established in the Hanoi, Binh Duong, Dong Nai, and Ho Chi Minh City tax authorities. (Non-Government source 2).

During 2016, tax audits were conducted on 84,472 companies, with the additional tax amount of VND17.164 trillion. Specifically, 329 transfer pricing audit cases were conducted, with the recollected tax amount and penalties of VND607.52 billion, loss reduction of VND5,612.21 billion) (non-Government source 3).

According to the Foreign Investment Agency report, FDI inflows into Viet Nam continuously increased in the period 2010–2018. It is worth noting that about 28% of this capital flow came from countries and territories with very low or zero corporate income tax (CIT) rates such as Singapore, Hong Kong, UK Virgin Islands, Cayman Islands, etc. Therefore, multinational enterprises from the above countries and territories may transfer profits from Viet Nam to those places to reduce the tax rate that should be paid in Viet Nam. (Non-Government source 5).

According to the Foreign Investment Department, by the end of 2019, the total number of FDI enterprises operating in the timber industry was 966, an increase of 11.4% compared to the number of FDI enterprises in 2018. Total registered investment capital reached \$ 6.3 billion by the end of 2019, an increase of 13.2% compared to the total registered capital at the end of 2018 (non-Government source 6).

The annual report of Viet Nam enterprises in 2015 published by the Viet Nam Chamber of Commerce and Industry (VCCI) has a very remarkable result, among the three types of enterprises, the Foreign Direct Investment (FDI) sector has the highest rate of loss-making enterprises, with nearly 48 enterprises in 3 years (2012 - 2014). Investment sectors with the highest rate of transfer pricing enterprises include 90% of businesses in the financial and insurance sectors, 70% of textile and garment manufacturing enterprises, 51% of auto parts manufacturing enterprises, etc. (Non-Government source 4).

A study by Nguyen Huu Anh from National Economics University on analysing and assessing the current situation of transfer pricing, controlling transfer pricing, and assessing its impact Viet Nam enterprises in many aspects and pointed out several limitations and shortcomings, specifically: the database for the arm length price has not been available, lack of capacity of government staffs on transfer pricing audit, etc. (Non-Government source 8).

APA application is to improve the efficiency in tax administration, reduce the cost of compliance with tax laws, determine prices of taxpayers' related-party transactions in conformity with arm's-length and substance-over-form principles to determine the nature of related-party transactions and corporate income tax liability of taxpayers in the same manner as that of transactions between independent parties, and prevent double taxation and tax evasion and minimize disputes over the determination of prices of related transactions. The enterprises that join APA are considered as low risk for transfer pricing. Nevertheless, there is only 11 enterprises that joined in the negotiation of APA (Non-Government source 8).

As the above information, the number of transfer pricing activities was a significant and high rate across the country with FDI enterprises. The risk for the privately-owned planation is therefore considered as Specified.

In 2020, the State Audit Office audited the financial statements and activities related to the management and use of state capital in 2019 of 160 enterprises belonging to 17 groups and corporations and pointed out many management issues of the use of state capital and assets in corporations, leading to inefficiencies, losses, and negative capital. (Non-Government source 7). There is no information on the Offshore transfer pricing found linked with the state company. Given the above situation and based on the precautionary approach, the risk for the State-owned planation is therefore considered Specified.

According to article 5 of Decree 132/2020/NĐ-CP, households are not recognized as transfer pricing-related parties. The risk for household-owned plantations is Not Applicable. However, if the timber from the household-owned plantation goes into the supply chain through trading, processing, and exporting, the risk is Specified.

*Risk Conclusion*

The household/individual owned plantation

Not Applicable if purchasing directly from the household/individual.

Specified if not purchasing directly from the household/individual (supply chain risk).

The State and private company owned plantation and the supply chain: Specified risk

**1.18.6. Risk designation and specification**

The household/individual owned plantation:

Not Applicable if bought direct from the household/individual.

Specified if not buy direct from the household/individual.

The State and private company owned plantation and the supply chain: Specified risk.

The risks are:

- Risk of offshore trading and transfer pricing, especially related to trade with FDI companies/corporations from the tax heaven countries such as Singapore, Hong Kong, UK Virgin Islands, Cayman Islands.
- Risk of Stated owned companies/corporations mismanaging of the use of state capital and assets in corporations (based on a precautionary approach).

**1.18.7. Control measures and verifiers**

**Review documents and verify**

*The enterprises have entered into an Advanced Pricing Agreement (APA):*

- Check the signed Advanced Pricing Agreement (APA)

*The enterprise does not have an Advanced Pricing Agreement (APA):*

- Determine if the organisation has any affiliates/subsidiaries in tax havens and has invoiced these entities concerning wood products.
  - Ascertain if the organization is in the list of “High tax risk enterprises” on the General Department of Taxation website <http://tracuuhoadon.gdt.gov.vn/dnrrvp.html>. These enterprises have to continuously use special e-invoices with verification codes for 12 months to be monitored by the Tax authority. If the enterprise is on the list, make sure they provide valid e-voices by checking on the website: <http://tracuuhoadon.gdt.gov.vn/main.html>
  - Review the documents listed in Decree 132/2020/NĐ-CP:
    - Annual declaration of related party transactions (Appendix 1 of Decree 132/2020/NĐ-CP)
    - A local file and master file (Appendix 2 and 3 of Decree 132/2020/NĐ-CP)
    - Country-by-country reporting (Appendix 4 of Decree 132/2020/NĐ-CP)
- Verify if:
- Any related parties with the companies in the tax haven countries;
  - Any transaction was made to these related parties
- Check transactions to verify that there is no sign of TP (the selling price is significantly lower than the arm length price to the related parties)



- Review the inspection minutes by the Departments of Taxation and Sub-departments of Taxation, if any, to verify if;
  - any TP transaction was made and detected by Departments of Taxation
  - Departments of Taxation detected any other related information to TP activities

#### Consult

- Consult with the Departments of Taxation and Sub-departments of Taxation on the transfer pricing violation to verify if any TP transaction was made and found out by Departments of Taxation any other related information to TP activities found out by Departments of Taxation.

## 1.19. Custom regulations

Custom legislation covers export/import licenses and product classification (codes, quantities, qualities, and species).

### 1.19.1. Applicable laws and regulations

- Decree 102/2020/ND-CP dated 01 September 2020 on Viet Nam Timber Legality Assurance System, Article 7-10. <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-dinh-102-2020-ND-CP-quy-dinh-He-thong-bao-dam-go-hop-phap-Viet-Nam-451590.aspx>
- Circular 27/2018/TT-BNNPTNT dated 16 November 2018, Articles 26 <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>
- Decree No. 69/2018/ND-CP dated 15 May 2018 on guidelines for the law on foreign trade management <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-dinh-69-2018-ND-CP-huong-dan-Luat-Quan-ly-ngoai-thuong-382305.aspx>
- Circular No. 39/2018/TT-BTC Amendments to Circular No. 38/2015/TT-BTC dated 25 March 2015, Article 16. <https://thuvienphapluat.vn/van-ban/Xuat-nhap-khau/Thong-tu-39-2018-TT-BTC-sua-doi-Thong-tu-38-2015-TT-BTC-kiem-tra-giam-sat-hai-quan-342345.aspx>
- Decree No.06/2019/ND-CP dated 22 January 2019 <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-06-2019-ND-CP-quan-ly-thuc-vat-rung-dong-vat-rung-nguy-cap-quy-hiem-405883.aspx>
- Decree No: 122/2016/ND-CP dated 01 September 2016 on schedules of import tariffs and preferential import tariffs, list of goods and its flat tax, compound tariff, and out-of-quota import tariffs <https://thuvienphapluat.vn/van-ban/xuat-nhap-khau/nghi-dinh-122-2016-nd-cp-bieu-thue-xuat-nhap-khau-uu-dai-danh-muc-hang-hoa-muc-thue-ngoai-han-ngach-321066.aspx>
- Decree No. 57/2020/ND-CP dated 25 May 2020 on amendments and supplements to several articles of government's decree no. 122/2016/nd-cp dated on 01 September, 2016 on export and preferential import tariff schedules, lists of products, absolute, mixed and out-of-quota import duty rates, and to decree no. 125/2017/nd-cp dated November 16, 2017, amending and supplementing several articles of decree no. 122/2016/nd-cp <https://thuvienphapluat.vn/van-ban/Xuat-nhap-khau/Decree-57-2020-ND-CP-amendments-to-Decree-122-2016-ND-CP-preferential-import-tariff-schedules-444164.aspx?tab=1>
- Decision No. 1966/QĐ-TCHQ dated 07 October 2015 on customs procedure to imported and exported good. <https://thuvienphapluat.vn/van-ban/Xuat-nhap-khau/Quy-dinh-1966-QĐ-TCHQ-2015-thu-tuc-hai-quan-doi-voi-hang-hoa-xuat-nhap-khau-281906.aspx>
- Decision No. 4832/QĐ-BNN-TCLN dated 27 November 2020 on List of Wood Imported to Viet Nam and List of Positive Countries/regions imported into Viet Nam.

<https://thuvienphapluat.vn/van-ban/Xuat-nhap-khau/Quyiet-dinh-4832-QD-BNN-TCLN-2020-cong-bo-Danh-muc-cac-loai-go-da-nhap-khau-vao-Viet-Nam-458434.aspx>

#### 1.19.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Ministry of Finance (MOF)
- Customs Departments and Customs Sub-department

#### 1.19.3. Legally required documents or records

##### Dossier for exports

##### Dossier for export of roundwood, sawn timber and timber products

- An original packing list made by the forest product owner.
- A license specified in the treaties between the Socialist Republic of Viet Nam with the exporting country (if any).
- A copy of the CITES import permit issued by the Viet Nam CITES management authority to forest products prescribed in CITES Appendices and forest products on the list of endangered/rare plant forests and animals.

##### Dossier for export of NTFP

- An original packing list made by the forest product owner. A packing list certified by a local forest protection authority is required regarding the forest products specified in Clause 2 Article 6 of the Circular 27/2018/TT-BNNPTNT.
- A copy of the CITES import permit issued by the Viet Nam CITES management authority to forest products prescribed in CITES Appendices and forest products on the list of endangered/rare plant forests and animals.

##### Dossier For Imports:

- Customs Dossier
- Original copy of the packing list for imported timber (Form No. 01 or 02 in Appendix I of Decree 102/2020/ND-CP).
- One of the following documents:
  - In case the timber is listed in a CITES Appendix: Copy of the CITES permit for export or re-export issued by a CITES authority of the exporting or re-exporting country; Copy of the CITES permit for import issued by a CITES authority of Viet Nam;
  - In case timber is imported from a country that has entered a Timber Legality Agreement with EU and has an operative FLEGT licensing system: Copy of the FLEGT license to export issued by a competent authority of the exporting country.
  - In cases other than those specified in Point a or Point b of this Clause: Declaration of imported timber origin (Form No. 03 in Appendix I of Decree 102/2020/ND-CP ).

#### 1.19.4. Sources of information

##### *Non-government sources*

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- Forest Trends (2019). Despite National Ban, the Cambodian Exports of Timber into Viet Nam continues – Propelled by Provincial Authorities . Available at: <https://www.forest-trends.org/pressroom/advisory-despite-national-ban-the-cambodian-exports-of-timber-into-Viet-Nam-continues-propelled-by-provincial-authorities/> [Accessed 31 October 2021].
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- <https://www.timbertradeportal.com/countries/Viet-Nam/> [Accessed on 29<sup>th</sup> August 2021]
- To Xuan Phuc, Cao Thi Cam, Tran Lu Huy (2020). "Việt Nam Xuất Nhập Khẩu Gỗ và Sản Phẩm Gỗ - Thực trạng 2020 và xu hướng 2021". Available at [https://goviet.org.vn/upload/aceweb/content/1626947564\\_BC%20XNK%20G.SPG%20Nam%202020\\_FINAL.pdf](https://goviet.org.vn/upload/aceweb/content/1626947564_BC%20XNK%20G.SPG%20Nam%202020_FINAL.pdf) [Accessed 04 September 2021].

#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

- According to article 3 of Decree No. 69/2018/ND-CP, there is no specific license/permits required for import/export of timber and timber products into and out of Viet Nam, except for licenses for timber and timber products (CITES License) or import from the countries that have entered a Voluntary Partnership Agreement (VPA) with EU and has an operative FLEGT licensing system (FLEGT License). The enterprise interested in importing/exporting goods must hold a business registration certificate.
- There is a suspension of temporary import for re-export of round timber and sawn timber from natural forests of Laos and Cambodia from January 01, 2019, to December 31, 2023 (No. 44/2018/TT-BCT).
- The importers/exporters must submit the customs declaration online. The customs declaration requires a wide range of information that includes the product classification (HS codes, quantities, qualities and species). The system will automatically check whether the importer/exporters are eligible for importing/exporting. The Viet Nam customs system classifies the imported/exported products into 3 lines with different levels of risk management. Accordingly, 1) Green line (low risk): Exemption from detailed inspection of records and physical inspection of goods by the custom sub-department, 2) Yellow line (medium risk): Records are required to be checked, exemption from physical inspection of goods; 3) Red line (high risk): Records and physical inspection are needed (Decision No. 1966/QĐ-TCHQ). The products that are customs cleared are considered legally imported/exported. In addition, the inspection can be made at the border gate after the customs clearance depending on the risk level of the shipment.

##### The specific requirement for importing timber

- Article 4 of Decree No. 102/2020/ND-CP, the timber importer shall be legally responsible for: 1) the legal origins of the timber according to relevant laws of the country of harvest, 2) comply with the request for information according to the criteria for evaluation of exporting countries and species and 3) take responsibility for the accuracy of the documents provided and information declared. The import of timber shall be based on a risk assessment identifying

whether the countries/regions and the species are low/high risk (See more under sub-category 1.21). All the importers shall implement the due diligence system regulated under this decree.

- Decision No. 4832/QĐ-BNN-TCLN provides the list of 51 low-risk countries/regions considered low-risk for importing. The high-risk species criterion is listed in article 6 of Decree No. 102/2020/ND-CP.
- The importing dossiers are regulated in Article 7 of Decree No. 102/2020/ND-CP. The importers shall have the dossier as mentioned in 1.19.3.

The specific requirement for exporting timber

- Currently, the timber dossier for exporting is regulated under Article 26 of Circular 27/2018/TT-BNNPTNT. However, this will be replaced by article 10 of Decree No. 102/2020/ND-CP, which will be valid when the Prime Minister issues a decision on effective dates of regulations on management of timber for export prescribed in Section 2 Chapter II and FLEGT licensing prescribed in Section 1 Chapter IV of this Decree. The exporters shall have the dossier as mentioned in 1.19.3.
- The importing tax for timber and sawn timber is 0%. The exporting tax of timber and timber products is ranged from 0% to -25% (Decree 57/2020/ND-CP).

#### *Description of Risk*

##### **For importing:**

- The importing tax for timber and sawn timber is 0%, so tax evasion is low.
- Viet Nam has been operating the online platform customs declaration that is all relevant of classification of products, and relevant documents are recorded. The online system will check whether the importers are eligible for exporting and classify the shipment into low, medium and high risk with the appropriate inspection for each level of risk. This reduces the risk of violation of custom requirements.

However, numerous sources suggest that the illegal trade across the borders with Laos, Cambodia takes place as follows:

- In 2020, Viet Nam imported 2.54 million m<sup>3</sup> of sawn timber and 2.17 million m<sup>3</sup> of logs. The low-risk source accounts for 65.7% of imported wood materials; the remaining 34.3% is high-risk sources from 45 countries. (Non-government source 1). Though Laos and Cambodia used to be a significant source of tropical timber, timber imports from these two countries are officially decreasing and negligible in 2020, which is approximately 5,000- 6,000 m<sup>3</sup> of log and 50,000 - 60,000 m<sup>3</sup> of sawn wood from Laos and even less from Cambodia (Non-government source 2). However, up to 2017, various sources suggest that the illegal timber trade still occurs in some parts of Quang Binh, Ha Tinh and Nghe An provinces, which are on the Viet Nam-Lao PDR border and that most of that trade is in precious species that are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). (Non-government source 3, 4).
- Viet Nam is a leading timber transit market, with timber exports valued at more than USD11 billion in 2019. However, the source of the timber being imported into the country is not always clear, leading to concerns that the industry supports the illegal timber trade. In addition, the customs force is not well trained in forestry or timber identification; this is one of the major difficulties for this force. (Non-government source 5).

Based on the above information, the risk for importing is Specified

##### **For exporting**

- Viet Nam has been operating the online platform customs declaration where all relevant classification of products and relevant documents are recorded. The online system will check

whether the exporters are eligible for exporting and classify the shipment into low, medium, and high risk with the appropriate inspection for each level of risk. This reduces the risk of violation of custom requirements.

- Wood sourced from Viet Nam forests mostly originates from plantations. According to MARD (2019), the Viet Nam “mass” plantation forests (i.e., not including scattered trees) produced about 16 million m3 of logs in 2019, which is mainly used for processing by the domestic industry. Species most used in forest plantations are Acacia (*Acacia* spp.) and Eucalyptus (*Eucalyptus* spp.) (non-government source 6). There are a low risk of false species claims to avoid the CITES permit.
- USA, Japan, China, South Korea, and the EU are the five major markets for Viet Nam Forest products and account for 89,7% of the total exported forest products. (Non-government source 7). The shipments to these countries mostly go through the seaports, which are very strict on the customs procedures. In addition, US, EU and Japan require Due Diligence for importing forest products; this requires the enterprises that export the products to these countries to follow the custom regulation. There is a very low likeliness of violations of customs regulations taking place.

Based on the above analysis, the risk for exporting is considered as Low.

*Risk Conclusion*

Export: Low risk for all source types

Import: Specified

**1.19.6. Risk designation and specification**

Export: Low risk for all source types

Import: Specified

The risks are Risk of illegal import of timber from Laos and Cambodia (potentially clarify that it relates to high-value species).

If no legally imported the logs there is a risk of timber being illegally harvested in the country of origin.

**1.19.7. Control measures and verifiers**

**Review documents and verify**

- Check all the relevant importing documents and customs declarations and the consistency of these documents. Products shall be correctly classified (type, HS code, species, quantities, etc.).
- All cross-border trade of CITES-listed species shall be documented and accompanied by required certificates issued by competent authorities (CITES Management Authorities). Note that there is a risk that permits have been obtained fraudulently. See sub-category 1.20 below).

**1.20. CITES**

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

**1.20.1. Applicable laws and regulations**

- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)
- Decree 102/2020/ND-CP dated 01 September 2020 on Viet Nam Timber Legality Assurance System <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-dinh-102-2020-ND-CP-quy-dinh-He-thong-bao-dam-go-hop-phap-Viet-Nam-451590.aspx>
- Decree 06/2019/ND-CP dated 22 January 2019 on managing endangered, rare and precious species of forest fauna and flora and observation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Decree-06-2019-ND-CP-management-endangered-precious-and-rare-species-of-forest-fauna-and-flora-408938.aspx>
- Decree No.: 84/2021/ND-CP dated 22 September 2021 on Amendments to Government's Decree No. 06/2019/ND-CP Dated January 22, 2019, on Management of Endangered, Rare and Precious Species Of Forest Fauna And Flora and Observation of Convention on International Trade in Endangered Species of Wild Fauna And Flora <sup>21</sup>

#### 1.20.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- CITES Management Authority of Viet Nam
- Forest Protection Department at provincial level.

#### 1.20.3. Legally required documents or records

- CITES permit or CITES certificate issued by CITES Management Authority of Viet Nam for species which are listed in CITES Appendix I and II

#### 1.20.4. Sources of information

##### *Non-Government sources*

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<sup>21</sup> The Decree No.: 84/2021/ND-CP, effective from 30 November 2021.

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#### 1.20.5. Risk determination

##### *Overview of Legal Requirements*

Viet Nam ratified the CITES Convention in 1994.

Article 4 of Decree 06/2019/ND-CP provides lists of the endangered, precious, and rare species of forest fauna and flora, including:

a) Group I includes species of forest fauna and flora threatened with extinction and banned from exploitation or use for commercial purposes and species in CITES Appendix I naturally inhabiting Viet Nam.

There are 39 species under Group IA (Flora species): Xanthocyparis Viet Namensis (Bách vàng), Taiwania cryptomerioides (Bách đài loan), Cupressus tonkinensis (Hoàng đàn hữu liên), Cunninghamia konishii (Sa mộc dầu), Glyptostrobus pensilis (Thông nước), Keteleeria davidiana (Du sam đá vôi), Abies delavayi subsp. fansipanensis (Vân sam fan si pang). etc

b) Group II includes species of forest fauna and flora that, although currently not threatened with extinction, may become so without strict control of exploitation, and use for commercial purposes and species specified in CITES Appendix II naturally inhabiting Viet Nam.

There are 55 species under Group IIA (flora species): Calocedrus rupestris (Bách xanh núi đá), Calocedrus macrolepis (Bách xanh), Fokienia hodginsii (Pơ mu), Taxus chinensis (Thông đỏ lá ngắn), Taxus wallichiana (Thông đỏ lá dài), Cephalotaxus mannii (Đình tùng), Podocarpus pilgeri (Thông tre lá ngắn), Pinus cernua (Thông xuân nha), Pinus dalatensis (Thông Đà Lạt), Pinus krempfii (Thông lá dẹt), Pinus kwangtungensis (Thông Pà cò), Pinus kwangshanensis (Thông hai lá quả nhỏ), Pseudotsuga brevifolia (Thiết sam giả lá ngắn), Diospyros mun (Mun), Afzelia xylocarpa (Gỗ đỏ), Sindora siamensis (Gụ mật), Sindora tonkinensis (Gụ lau), Dalbergia oliveri (Cẩm lai Bà Rịa), Pterocarpus macrocarpus (Giáng hương quả to), Erythrophloeum fordii (Lim xanh), Dalbergia cochinchinensis (Trắc), Dalbergia rimosa (Trắc dây), Dalbergia tonkinensis (Sưa), Cinnamomum balansae (Gù hương), Cinnamomum glaucescens (Re xanh phần), Cinnamomum parthenoxylon (Vù hương), Excentrodendron tonkinense (Nghỉễn) and etc

The exploitation, raising, processing, promotion, exhibition, export, transportation, storage, and trade in Group I and Group II specimens shall comply with regulations for species specified in CITES Appendix I, II accordingly.

Decree 06/2019/ND-CP regulates the conditions for harvesting from natural specimens endangered species of wild fauna and flora specified in CITES Appendix I and II and the condition for raising of CITES-listed endangered wild fauna and flora for non-profit purpose and commercial purposes.

##### **Harvesting from the natural forest**

The harvesting of endangered species of wild fauna and flora specified in CITES Appendix I and II from nature are mostly for non-commercial purposes, except for Appendix II to serve the sustainable trade as per legal requirements (article 12 of Decree 06/2019/ND-CP) as follows:

Natural specimens of species specified in CITES Appendix I shall be exploited to:

- Serve scientific research themes and projects.
- Generate the source of original breed for breeding and artificial production purpose.
- Serve foreign affairs under decisions issued by the Prime Minister

Natural specimens of species specified in CITES Appendix II shall be exploited to:

- Serve scientific research themes and projects.
- Generate the source of original breed for breeding and artificial planting purpose.
- Serve foreign affairs under decisions issued by the Prime Minister
- Serve the purpose of sustainable trade as per law provisions

Steps to harvest from the nature (Article 12, point 3)

Entities exploiting the specimens above are required to:

- have an exploitation plan according to Form No.01 provided in Appendix.
- notify the exploitation to the provincial-level state management agency in forestry or fisheries before such exploitation.
- exploit such specimens so that no harmful effect is produced on the preservation and sustainable development of the species.

**Vietnamese law provisions and CITES provisions on the exploitation of specimens of endangered, precious and rare wild fauna and flora species. For planting and harvesting.**

Growing CITES-listed species can be done for commercial and non-commercial purposes and regulated in article 15 - 18 of Decree 06/2019/ND-CP. For commercial purposes, the conditions have to follow article 15 which are:

- The breed is legally sourced, the raising facility must be suitable for characteristics of the species, a planting (raising) plan and the planting (raising) logbook.
- Codes of seedling (raising) facilities: The code shall include name, address and contacting information of the planting facility, information about the planted species according to Form No.08 of Decree 06/2019/ND-CP.
- Registration of codes of facilities raising endangered wild fauna and flora specified in CITES Appendix I, II and III

**Issuing the CITES permit**

The CITES permit required for exporting, importing, re-exporting of CITES-listed endangered species of wild fauna and flora, and endangered, precious, and rare species of forest fauna and flora. The CITES permit must include sufficient information and carry a CITES stamp or bar code, signature, and seal of the CITES management authority of Viet Nam (Form No.09 provided in the Appendix).

The Enforcement Authority of CITES in Viet Nam is the CITES Management Authority. The Viet Nam CITES Management Authority is responsible for the overall implementation of CITES regulations. At the same time, the provincial-level forestry state management agencies shall conduct inspection and supervision of planting (raising), exploitation and origin of specimens of species provided in CITES Appendix I and II in the areas under management.

*Description of Risk*



### Domestically harvested

Two commercially traded timber species are listed as CITES Appendix II from Viet Nam: *Aquilaria spp.* and *Dalbergia cochinchinensis* (Thailand Rosewood). These Appendix-II listings are not a ban on trade. To conduct international commercial trade in these listed species, it is necessary to ensure all the proper CITES documentation from the exporting or re-exporting country is compiled and accurate. (Non-government source 1).

In September 2019, research by the Center for Nature Conservation And Development (CCD) and CITES Management Authority of Viet Nam shows that *Dalbergia oliveri* is recently being over-exploited due to the reduction of *Aquilaria spp.*, and *Dalbergia cochinchinensis* (Non-government source 8).

*Aquilaria spp.* in the wild: *Aquilaria spp.* was cut down indiscriminately to search for "Agarwood" due to its high economic value. Although the tree has a relatively wide distribution area, with the massive exploitation, in addition to deforestation, the source of *Aquilaria spp.* in Viet Nam has decreased markedly. At present, it is almost impossible to find large trees in the wild (non-government source 2).

*Aquilaria spp.* plantation: Viet Nam has several plantations of *Aquilaria crassna*, the products from which are legal to trade with proper CITES permits (non-government source 1). About 10,000 hectares of *Aquilaria spp.* have been planted (non-government source 2).

*Dalbergia cochinchinensis* in the wild: The Thailand rosewood population trend is decreasing in both Viet Nam and in the rest of the world. The number of mature individuals has significantly declined. Moreover, deforestation has seriously compromised the distribution of the species. In the past distribution locations such as Ben Cat of Binh Duong province, Trang Bom district of Dong Nai province, and Thu Duc district of Ho Chi Minh city, where six of 30 specimens of *Dalbergia cochinchinensis* were collected in the period 1880 – 1890 and are being kept at the French National Museum of Natural History, wild populations of *Dalbergia cochinchinensis* maybe now exterminated due to the urbanization. Results of field visits on Thailand rosewood in the provinces of Kon Tum, Gia Lai and Dak Lak from 9 – 14 September 2019 and Binh Thuan, Dong Nai and Binh Phuoc from 7 – 12 October 2019 indicated that *Dalbergia cochinchinensis* is still naturally distributed in all sites above. However, the occupancy area, populations, and the number of mature individuals has been drastically reduced due to over-exploitation and destructed habitats (non-government source 3).

*Dalbergia cochinchinensis* plantation: In recent years, under the instruction of the provincial FPDs of Kon Tum, Gia Lai, Dak Lak and Binh Phuoc provinces, citizens and local governmental officers planted *Dalbergia cochinchinensis* in the small, isolated lands (also called sparse land) on the streets, cultivated land of households and office on the international environmental day. Field visits indicated that few nurseries are having *Dalbergia cochinchinensis* in the region. Some seedling provision facilities such as the Tropical Forest Research Center in Pleiku city of Gia Lai province Yok Don national park and families in Trang Bom district of Dong Nai province produce *Dalbergia cochinchinensis* seedlings for local government programs of scattered afforestation, and planting trees in offices, streets, local households and surrounding areas (non-government source 3).

However, with the remaining demand for rare and high-value species for hand-carved wood furniture for the domestic market and export to China (non-government source 7), there is a risk that the protected species are planted and harvested illegally, not following the legally required procedure.

According to Non-government source 8, most of *Dalbergia cochinchinensis* and *Dalbergia oliveri* harvested from the natural forest are illegal.

Planting the *Aquilaria spp.* to make Agarwood became popular in Viet Nam. Viet Nam has a system of ranger agencies from central to local, where the private company or household has to register their *Aquilaria* plantation to make agarwood. Current challenges on *Aquilaria* (agarwood) plantation:

- Enforcement staffs lack the capacity to identify agarwood from artificial production or natural products.
- Lack of a standard process to create agarwood
- A lot of households have several trees in their home garden but lack of knowledge to fulfil the administration procedures
- The export of any artificial agarwood specimen requires to fulfil all CITES documents (non-government source 4).

Based on numerous sources of information, there is a risk that CITES permits have been obtained fraudulently.

Due to the above information, the risk for domestic harvest is Specified

#### **Import of CITES species**

Up to 2017, various sources suggest that the illegal timber trade still occurs in some parts of Quang Binh, Ha Tinh, and Nghe An provinces, which are on the Viet Nam–Lao PDR border, and that most of that trade is in precious species that are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Non-government source 5).

It is also reported that the illegal timber trade also relates to CITES species from Cambodia into Viet Nam by numerous reports by Environmental Investigation Agency (Non-government source 5).

Based on the above information, the risk for importing CITES species is Specified.

#### *Risk Conclusion*

Domestic harvested: Specified risk for all source types

Import CITES species: Specified

#### **1.20.6. Risk designation and specification**

Domestic harvested: Specified risk for all source types

The risks are:

##### **Harvested from nature**

- Illegal harvest from the natural forest of CITES species
- CITES permits have been obtained fraudulently

##### **For the plantation of CITES species, specifically**

- Lack of the fulfilment of CITES documents

**Import CITES species:** Specified

- Illegal import from Laos, Cambodia.

#### **1.20.7. Control measures and verifiers**

*Lack of fulfilment of the administration procedures for planting and harvesting CITES species*

##### **Review documents and verify**

- Check for a valid Facility Code issued by Provincial FPD.
- The plantation also must have the following documents:
  - A Planting (raising) plan according to Form no. 07;
  - A Planting (raising) logbook according to Form no. 17 provided in the Decree 06/2019/NĐ-CP.

All information in the plan and in the logbook must correctly correspond with other documents and the nature of the species, including species name, product descriptions, volumes, and qualities.

- Verify that the harvesting plan according to Form No.01 provided in the Decree 06/2019/NĐ-CP, is signed by forest owner.

Verify the existence of the CITES export permit and validate the information on the document. Check date of issue and validity. The effective period of the export or re-export permit is 6 months and 12 months for the import permit

- Verify that the harvesting plan according to Form No.01 provided in the Decree 06/2019/NĐ-CP, is signed by forest owner.

Verify the existence of the CITES export permit and validate the information on the document. Check date of issue and validity. The effective period of the export or re-export permit is 6 months and 12 months for the import permit

#### **Consult**

- Consult with the Provincial/District FPD to:
  - cross-check if any violations of planting and harvesting has occurred.
  - Verify if the forest owners/harvesters have notified the harvesting to the provincial-level state management agency in forestry before harvesting.

#### **Import CITES species**

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

#### **Import CITES species**

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

#### *Risk of Illegal CITES species harvest from the natural forest*

#### **Review documents and verify**

- The harvesting plan according to Form No.01 provided in the Decree 06/2019/NĐ-CP, is signed by forest owner.
- Verify the existence of the CITES export permit and validate the information on the document. Check the date of issue and validity: the valid period of the export or re-export permit is six (6) months; and twelve (12) months for the import permit.

#### **Consult**

- Consult with the Provincial/District FPD to:
  - cross-check if any violations of planting and harvesting has occurred.
  - Verify if the forest owners/harvesters have notified the harvesting to the provincial-level state management agency in forestry before harvesting.

### **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

- Decree 102/2020/ND-CP dated 01 September 2020 on Viet Nam Timber Legality Assurance System. <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-dinh-102-2020-ND-CP-quy-dinh-He-thong-bao-dam-go-hop-phap-Viet-Nam-451590.aspx>
- Decision no. 4832/QĐ-BNN-TCLN on the list of timber species that have been imported to Viet Nam and list of positive geographical areas exporting timber to Viet Nam. <https://www.mard.gov.vn/VanBan/Pages/4832-qd-bnn-tcln.aspx>

### 1.21.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Customs Department and customs Sub-department

### 1.21.3. Legally required documents or records

Declaration of imported timber origin (Form No. 03 in Appendix I of Decree 102/2020/ND-CP ).

### 1.21.4. Sources of information

#### *Non-Government sources*

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- County Profile: Viet Nam (2008). Available at: <https://forestgovernance.chathamhouse.org/countries/Viet-Nam>
- Forest Trends (2019). Despite National Ban, the Cambodian Exports of Timber into Viet Nam continues – Propelled by Provincial Authorities Available at: <https://www.forest->

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- 16) Viet Nam Investment Review (2020). "EU welcomes Decree on Timber Legality Assurance System of Viet Nam." Available at <https://vir.com.vn/eu-welcomes-decree-on-timber-legality-assurance-system-of-Viet-Nam-79360.html> [Accessed 23 June 2021]

### 1.21.5. Risk determination

#### *Overview of Legal Requirements*

The Viet Nam government and the European Union (EU) announced the start of formal negotiations for a Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) on 18 August 2010. This Agreement aims to ensure the legality of timber products entering the EU market. At the same time, it could help maintain and expand the export of timber and timber products from Viet Nam enterprises, subject to the changing EU market requirement as of March 2013.

The EU and Viet Nam signed the VPA in October 2018. The VPA entered into force in June 2019, after both the EU and Viet Nam had ratified it following their respective procedures. The VPA is yet fully implemented after the VPA has entered into force. During the early stage of the implementation phase, Viet Nam is revising and developing new legislation requirements to realize the commitments of the VPA. Following that, legislation will have to be implemented by developing new elements and building capacity to operate the system. In 2020, Viet Nam issued Decree 102/2020/ND-CP on Viet Nam Timber Legality Assurance System, which is to ensure that timber products are verified as legal according to specified requirements for all stages of the supply chain, from the forest or the point of import to the point of final sale or export. The Decree went into force on 31st October 2020. There have been requirements for Viet Nam operators to exercise due diligence to assess the legality of timber and timber products they import from that effective date. When importing timber, Viet Nam importers shall complete a self-declaration that documents their due diligence exercise, including collecting information, risk assessment, and mitigation of any risk related to the legal origin. Customs Department will verify compliance with due diligence requirements in cooperation with other relevant agencies.

Decision No. 4832/QĐ-BNN-TCLN provides the list of 51 countries/regions considered low risk for importing. The high-risk species criterion is listed in article 6 of Decree No. 102/2020/ND-CP.

Article 10 on Timber dossier for export and the FLEGT License has not been put in force yet. Therefore, the Timber dossier for export shall still be regulated by Article 26 of Circular 27/2018/TT-BNNPTNT. The Timber dossier for export and issuing the FLEGT License will be valid when the Prime Minister issues a decision on effective dates of regulations on management of timber for export prescribed in Section 2 Chapter II and FLEGT licensing prescribed in Section 1 Chapter IV of this Decree.

#### *Description of Risk*

It is reported that the supply of tropical timber from Africa, Laos, Cambodia, and PNG falls into the category of risky geographic regions. In terms of imported species, the proportion of risk species imported into Viet Nam out of the total of different imported species depends on the supplying sources. However, risk species generally still account for a relatively large proportion of imported species. In 2020, The U.S. Trade Representative initiated an investigation of Viet Nam's acts, policies, and practices related to importing and using illegally harvested or traded timber. Reports indicate that a significant amount of the timber exported from Cambodia to Viet Nam was harvested on protected lands, such as wildlife sanctuaries, or outside of and therefore in violation of legal timber concessions. Cambodia nevertheless remains a significant source of Viet Nam's timber imports. Similarly, timber sourced from other countries, such as Cameroon and the Democratic Republic of the Congo (DRC), may have been harvested against those countries' laws. (Non-government sources 1-12).

There is a warning from the experts about the illegal supply of logs and sawn timber from Russia and Ukraine imported into Viet Nam through China. Though the number of timber products from Russia and Ukraine account for a very small proportion, these sources are considered risky due to the illegal logging in these countries. (Non-government source 13).

Following the survey findings, VCCI and Forest Trends has developed the advising legal framework for bidding related to the public procurement policy on timber products, developed the guidelines and training material to support the central and provincial government buyers with the new bidding procedures, including, for example, how to evaluate bids. This handbook was released in April 2021, and due to its early release, there has been no evaluation of its impact (non-government source 15)

The legislation requirements on due diligence have only recently been issued and came into force in 2020. The EU has commented on the need to revise further and develop the current requirements to be in line with the VPA, "and Viet Nam then puts these controls into practice, including the specification of adequate, proportionate and dissuasive administrative or criminal sanctions to address violations". (Non-government source 16).

Therefore, the risk of non-compliance is considered Specified at the time of this risk assessment.

#### **1.21.6. Risk designation and specification**

Specified risk for all source types

#### **1.21.7. Control measures and verifiers**

*Risk that due diligence requirements are not complied with*

- Evidence of legality from supplier country:
  - CITES permit (is applicable)
  - FLEGT license (if applicable)
  - Check that a Self-declaration on timber imports is in place in cases where no CITES permit or/and FLEGT License are covering the product (Form no. 03 according to Decree 102/2020/ND-CP).

## 1.22. Supply chain transparency and traceability

This category does not cover an area of legislation but seeks to ask key questions in relation to whether the Forest Sector is structured in a way that frequently inhibits transparency and traceability of wood products through supply chains. Key questions we have asked include if:

- Supply chain mapping is particularly difficult in the country due to transparency and frequently occurring traceability information gaps.
- Cross border (national, sub-national) trade and transport adds risk that material has been traded illegally. There are well-known examples of material illegally harvested in one country and imported to the country under assessment, where the legal origin of the material is not verified or evaluated.
- Forest Sector supply-chain entities exist, and are a common feature of the forest sector, which frequently inhibit transparency and traceability of wood products through supply chains. Examples include some auctions, spot markets, etc...
- There is an elevated occurrence of false declarations of origin and/or species
- There is an elevated occurrence of falsification of documentation within the Forest Sector.
- Trade and administrative practices are inhibiting the availability of information on the traceability of forest products

### 1.22.1. Applicable laws and regulations

- Circular No. 27/2018/TT-BNNPTNT dated 16 November 2018 on management and tracing of forest products. <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Thong-tu-27-2018-TT-BNNPTNT-quy-dinh-quan-ly-truy-xuat-nguon-goc-lam-san-402849.aspx>
- Decree 102/2020/ND-CP dated 01 September 2020 on Viet Nam Timber Legality Assurance System, dated on 01 September 2020, and effective from 31 October 2020. <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-dinh-102-2020-ND-CP-quy-dinh-He-thong-bao-dam-go-hop-phap-Viet-Nam-451590.asp>

### 1.22.2. Legal authority

- Ministry of Agriculture and Rural Development (MARD)
- Customs Department and Customs Sub-department

### 1.22.3. Legally required documents or records

- Forest Product Entry
- Exit Book

### 1.22.4. Sources of information

Non-Government Source

- Việt Nam News (2020). "Wood exports to hit US\$12.5 billion in 2020". Available at <https://VietNamnews.vn/economy/833925/wood-exports-to-hit-uss125-billion-in-2020.html> [Accessed 28 October 2021]
- Goviet.org.vn (2017). "Phát triển ngành gỗ Việt theo hướng bền vững: Loại bỏ nguồn gỗ nhập khẩu rủi ro cao ra khỏi chuỗi cung ứng". Available at <https://goviet.org.vn/upload/aceweb/content/Phat%20trien%20ben%20vung%20nganh%20go%20Loai%20bo%20nguồn%20go%20NK%20rui%20ro%20ra%20khỏi%20chuỗi%20cung.pdf> [Accessed 28 October 2021]

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#### 1.22.5. Risk determination

##### *Overview of Legal Requirements*

According to Article 30 of Circular No. 27/2018/TT-BNNPTNT: The organization shall prepare the forest product entry and exit book using the Form No. 11 of the circular that includes the information of:

- Opening stock and Ending stock
- Received: Forest product name (Common name, scientific name), number, marking label, unit, volume or weight, endangered/rare species; CITES Forms, ordinary species, enclosed document
- Dispatched: Number of packing list of forest products dispatched, volume, weight, enclosed documents, estimated amount of lost raw materials (if available)

##### *Description of Risk*

The timber industry is important in Viet Nam. Viet Nam's wood processing industry produces and exports high-end wood products, particularly furniture. Viet Nam is an important timber processing hub and one of the world's largest exporting countries. The forestry sector in Viet Nam contributed US\$12.5 billion to the economy in 2020 (Nongovernment source 1). Viet Nam's export markets are US, Japan, China, South Korea, EU.

##### *Timber sources:*

Since Viet Nam banned logging in its natural forests, Viet Nam's rapidly expanding wood processing industry has become dependent on imported timber and domestic production from the plantation.

Domestic production: The domestic supply of industrial wood is expanding to keep up with spectacular growth in demand in Viet Nam's domestic and export markets:

Domestic production in 2016 reached approximately 24 million m<sup>3</sup>, composed of:

- Plantation timber: About 17 - 18 million m<sup>3</sup> of plantation timber is harvested per year, mostly acacia plantation.
- Rubberwood: About 3.2 million m<sup>3</sup> of rubberwood is harvested annually
- Scattered trees: Millions of smallholders produce 3 million m<sup>3</sup> of wood from trees.

The supply and demand volumes reveal how most of Viet Nam's smallholder and plantation forests supply mainly species, such as acacia and rubberwood, that feed the low value-added wood chip export industry. (Nongovernment source 3)

##### *Importing of round timber and sawn timber:*

In 2020, Viet Nam imported 2.54 million m<sup>3</sup> of sawn timber and 2.17 million m<sup>3</sup> of logs. The low-risk source accounts for 65.7% of imported wood materials; the remaining 34.3% is high-risk sources from 45 countries. Most of the imported wood goes into furniture products.

##### *Supply chain mapping and traceability*

Supply chain mapping is particularly difficult in Viet Nam, due to the often-high number of sub-suppliers, the complexity of supply chains, and challenges concerning supply-chain transparency and frequently occurring traceability information gaps within supply chains.

As described in indicator 1.21, the EU-Viet Nam VPA implementing legislation is being developed. The decree setting the requirements for Viet Nam Timber Legality Assurance System (VNTLAS) has



been developed (Decree No. 102/2020/ND-CP). This decree also provides for regulations on the law on management, tracing of origins of forestry products and relevant legislative documents shall apply to VNTLAS for harvest, transport, trade, and processing of timber.

However, the VPA has not yet been implemented, and currently, it is not possible to state a high level of transparency and traceability in supply chains from Viet Nam.

Also, based on the Preferred by Nature local expert, the Forest Product Entry and Exit Book are not usually completed comprehensively by the organization to provide supply chain transparency.

#### **1.22.6. Risk designation and specification**

Specified risk

The risks are:

- High complexity of timber supply chain from Viet Nam
- The Forest Product Entry and Exit Book are not completed comprehensively
- Low traceability system in the supply chain

#### **Review documents and verify**

- Check the Forest Product Entry and Exit Book of the supply chain entities, to ensure it is completed comprehensively
- Conduct non-linear supply chain mapping in order to verify the origin of the wood-based product.
- Review the Declaration of imported timber origin (Form No. 03 in Appendix I of Decree 102/2020/ND-CP) in order to verify the origin of the wood-based product

**Use online databases** to confirm the authenticity of documents and permits throughout the supply chain:

- Business Registration Certificates (<https://dichvuthongtin.dkkd.gov.vn/inf/default.aspx>);
- VAT invoices (<http://www.tracuuhoadon.gdt.gov.vn/main.html>),
- Quarantine (phytosanitary) certificates

#### **Timber testing**

- Test samples of purchased material to identify the species and/or origin of timber and verify that timber purchased corresponds to the harvesting permit or authorisation required. See [Preferred by Natures Thematic article No 1](#) on Timber Testing Techniques.

#### **Onsite verification**

- Conduct on-site audits of upstream suppliers. Check critical control points in the supply chain, CoC system or due diligence system.

## Annex I. Timber source types

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

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

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

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

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

## TIMBER SOURCE TYPES IN VIET NAM

Forest type	Ownership	Legal Land Classification	Management regime (forest owner)	License / Permit Type	Description of source type
Plantations	State-owned (ownership is represented by the State);	<ul style="list-style-type: none"> <li>• Special-use forest land;</li> <li>• Protection forest land;</li> <li>• Production forest land;</li> <li>• Agricultural land (rubber plantations)</li> </ul>	<ul style="list-style-type: none"> <li>• State Forestry Companies;</li> <li>• Forest management boards;</li> <li>• The Army;</li> <li>• Communal People's Committee</li> </ul>	<ul style="list-style-type: none"> <li>• Land Use Right Certificate, forest/land allocation, Forest /land leasing,</li> <li>• Approved sustainable forest management plan</li> <li>• Approved harvesting plan</li> </ul>	State-Owned
Plantations	Private organization-owned (local or international);	<ul style="list-style-type: none"> <li>• Production forest land;</li> <li>• Agricultural land (rubber plantations)</li> </ul>	<ul style="list-style-type: none"> <li>• Private companies (Local or international)</li> </ul>	<ul style="list-style-type: none"> <li>• Land Use Right Certificate, forest/land allocation, Forest /land leasing,</li> <li>• Approved sustainable forest management plan</li> </ul>	Private company Owned
Plantations	Individual, household,	<ul style="list-style-type: none"> <li>• Production forest land;</li> <li>• Agricultural land (rubber plantations)</li> </ul>	Households or Individuals	<ul style="list-style-type: none"> <li>• Land Use Right Certificate, forest/land allocation, Forest /land leasing,</li> <li>• Forestry book,</li> <li>• Confirmation of the Commune People's Committee,</li> <li>• One of the types of papers on land use rights as stipulated in Article 100 Land Law 2013*</li> <li>• Forest protection contract</li> </ul>	Households/Individuals owned

## About

# LIFE Legal Wood

[LIFE Legal Wood](#) is an initiative that aims at 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 initiative is funded by the LIFE Programme of the European Union.



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