

Palm Oil Risk Assessment Malaysia - Peninsular

Version 1.2 | November 2017



COUNTRY RISK
ASSESSMENTS



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Contents

A. Introduction	1
B. Overview of sourcing risks for palm oil from Malaysia – Peninsular	2
C. Overview of the palm oil sector in Peninsular Malaysia	5
D. CSR Risk Assessment	8
BUSINESS ISSUES	8
<i>1.2. Plantation registration and management rights</i>	<i>12</i>
<i>1.3. Payment of royalties and required fees</i>	<i>17</i>
<i>1.4. Value added taxes and other sales taxes</i>	<i>20</i>
<i>1.5. Income and profit taxes</i>	<i>22</i>
<i>1.6. Disclosure of information</i>	<i>24</i>
SOCIAL ISSUES	26
<i>2.1. Civil rights - legal employment</i>	<i>26</i>
<i>2.2. Health and Safety</i>	<i>31</i>
<i>2.3. ILO Fundamental Conventions are upheld</i>	<i>33</i>
THE ENVIRONMENT	44
<i>3.1. Environment</i>	<i>44</i>
<i>3.2. Protected sites and species</i>	<i>49</i>
<i>3.3. High Conservation Values (HCV)</i>	<i>54</i>
CONVERSION	71
<i>4.1. New plantations have not replaced natural forest or natural ecosystems since November 2005</i>	<i>71</i>
<i>4.2. Fire avoidance is being practiced</i>	<i>75</i>
GENETICALLY MODIFIED ORGANISMS (GMOs)	77
<i>5.1. There is no commercial use of genetically modified palm</i>	<i>77</i>
Annex I: Palm oil plantation types	79
Annex II: Expert Consultation	Error! Bookmark not defined.
Annex III: Global Forest Watch Map of Tree Cover Loss (2005 -2014) and Intact Forest Landscapes (IFLs) Loss 2000-2013 in Peninsular Malaysia	81
Annex IV: Global Forest Watch Map of Total Tree Cover Loss 2005-2014 in Peninsular Malaysia	

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A. Introduction

The world demand for palm oil is rapidly growing and is driving deforestation and other negative Corporate Social Responsibility (CSR) related impacts e.g., biodiversity loss, greenhouse gas emissions, corrupt and illegal behaviour, and violation of civil rights including workers' rights, traditional and indigenous peoples' rights.

Each of the CSR categories are considered minimum legal, environmental and social responsible criteria that should met for palm oil plantation establishment and management. The criteria are in line with key CSR International Guidelines Content Areas as identified, analysed and published by the Danish Business Authority: A comparison of 4 international guidelines for CSR OECD Guidelines for Multinational Enterprises, ISO 26000 Guidance on Social Responsibility, UN Global Compact and UN Guiding Principles on Business and Human Rights, January 2015. This risk assessment used the methodology detailed in the Corporate Social Responsibility (CSR) Palm Oil Risk Assessment Framework Guidelines (November 2015).



Figure 1. Countries for which NEPCo have developed a risk assessment for palm oil

B. Overview of sourcing risks for palm oil from Malaysia – Peninsular.

Palm oil Risk Score: 15 / 100 in 2017

This report contains an evaluation of the CSR risks in Peninsular Malaysia for five categories and 21 sub-categories of law. We found:

- Specified risk in 17 sub-categories.
- Low risk for 3 sub-categories.
- Not-applicable for 1 sub-category.

Palm oil source types and risks

There are three palm oil source types found in Peninsular Malaysia. Knowing the “source type” that palm oil originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risks. We have analysed the risks for all source types and found the risks do not differ between the source types.

Government land development schemes	Palm oil produced on large estates where smallholders are awarded small plots (between 4 and 5.7 hectares). The costs of establishment are carried by the state agency and repaid by smallholders through education and their monthly income.
Large-scale private plantation	Palm oil produced on large scale private plantations. Many companies have fully integrated operations covering the entire production process. Licensing is required for planting, processing, and other business activities.
Small-scale private plantation	Palm oil produced on scattered smallholdings where farmers manage and work their own plantation with minimal government assistance. They sell their FFB directly to local mills and traders.

The CSR risks identified in this report concern business issues, social issues, environmental issues and conversion.

Regarding **business issues**, there is a risk that:

- land title from customary land owners is excised illegally or through an undue process (sub-category 1.1). The issue lies within the provisions of the National Land Code which provide the State authority with power to seize private land for the benefit of private companies and/or individuals. Legislation and statutory law have been the main route for private development at the expense of residing indigenous populations which are often forced to relocate. This continues despite the High Court has recognized the customary rights of the Orang Asli.
- Licenses are issued illegally due to corruption, which is has been demonstrated by the ability of the State government to exercise preferential treatment for private companies (1.2). Preferential treatment could be in the form of access to high conservation value areas or zoning changes compromising Permanent Reserved Forests areas.

- Royalties, fees and income taxes are evaded due to corruption (1.3 and 1.5). There are several complaints from the palm oil industry about the heavy taxation and this is considered a prime motivation for tax evasion which is commonly linked to businesses with family, government and foreign ownerships in Malaysia.

Regarding **social issues**, there is a risk that:

- producers are engaging illegal labour practices mainly linked to the employment and working conditions of migrant workers (2.1). Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage. Other common treatment of foreign workers includes passport retention, contract violations, restricted movement, wage fraud, poor housing conditions and lack of H&S training.
- Malaysian's legal employment laws do not cover what the ILO considers universal fundamental principles and rights at work as Malaysia currently has only ratified 5/8 ILO fundamental conventions (2.3). This is reinforced by the fact there also exist several cases of alleged illegal labour, human trafficking, child labour and abuses of foreign workers in oil palm plantations in Peninsular Malaysia. Abuses also include lack of safety training, inadequate housing, unfair withholding of pay and a lack of medical insurance in case of injury.
- Malaysia's Occupational Health and Safety (OSH) requirements are breached by palm oil producers (2.2). There is evidence that shows several instances of alleged breaches of OSH requirements which is exposing workers to injuries falling fruit bunches, tool usage, heavy lifting and health hazards connected oil palm pest bites, over exposure of the sun and herbicides etc.
- indigenous and traditional peoples' rights are not upheld (2.4). Malaysia's legal framework seems incapable of adequately protecting indigenous rights as well as State- and Federal governments, who have used this legal framework systematically to prioritize 'public purpose development' over customary land rights. Malaysia has not ratified ILO convention 169 on indigenous and tribal peoples. There are numerous court cases and allegations that commercial plantations had encroached on, or were introduced into, land claimed as indigenous customary land rights/title, without the community's knowledge or without complying the principles of free, prior and informed. Furthermore, there is no legal definition or understanding or concept of 'traditional territories'.

Regarding **environmental issues**, there is a risk that:

- oil palm plantations are causing a host of environmental problems such as deforestation, biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change and forest fires, and pesticide use (3.1). There is also a risk that the Environmental Impact Assessment requirements are not being complied with due to the vetting and monitoring compliance of the EIA process is lacking due to lack of personnel and/or sufficient expertise by the relevant authorities. Additionally, an environmental audit to monitor the implementation of the EIA controls measures is not required and there are also loopholes whereby an EIA is required based on the size of the project where plantation companies can easily break the project into smaller lots to avoid the EIA requirement. There is also a risk of low level of compliance of required

practices aimed at minimising runoff and soil erosion between caused by conversion of natural forests into oil palm plantations.

- natural ecosystems along the boundaries of protected areas and high conservation value areas are being cleared to establish palm oil plantations (3.2 and 3.3: 3.3.1 – 3.3.4). There is also a risk of lack of adequate identification and thus appropriate conservation measures applied for protected, rare, threatened and endangered species within and adjacent oil palm plantations. There also is low level of compliance of required practices aimed at minimising runoff and soil erosion between caused by conversion of natural forests into oil palm plantations.

Regarding **conversion**, there is a risk of natural forest or ecosystem conversion are cleared for the establishment of palm oil plantations. It is not illegal to convert forest to oil palm in Malaysia and millions of hectares of forests have been cleared or designated as conversion forest for oil palm plantations.

This matrix summarises the findings of the CSR risk assessment set out in this report.

Legal Category	Sub-category	Risk conclusion	
Business Issues	1.1. Land tenure	Elevated risk	
	1.2. Plantation registration & management rights	Elevated risk	
	1.3. Payment of royalties & required fees	Elevated risk	
	1.4. Value Added taxes & other sales taxes	Low risk	
	1.5. Income and profit taxes	Elevated risk	
	1.6. Disclosure of Information	Not applicable	
Social issues	2.1. Legal employment	Elevated risk	
	2.2. Health and safety	Elevated risk	
	2.3. ILO Fundamental Conventions are upheld.	Elevated risk	
	2.4. IP and TP rights are upheld.	Elevated risk	
Environmental issues	3.1. Environment	Elevated risk	
	3.2. Protected sites and species	Elevated risk	
	3.3. HCV	3.3.1. Species diversity.	Elevated risk
		3.3.2. Landscape-level ecosystems & mosaics.	Elevated risk
		3.3.3. Ecosystems and habitats	Elevated risk
		3.3.4. Critical ecosystem services.	Elevated risk
		3.3.5. Community needs	Elevated risk
3.3.6. Cultural values.	Elevated risk		
Conversion	4.1. New plantations since November 2005 have not replaced natural forest or ecosystems.	Elevated risk	
	4.2. Fire avoidance is being practiced	Low risk	
GMOs	5.1. No GMO's	Low risk	

C. Overview of the palm oil sector in Peninsular Malaysia

Malaysia is one of the world's largest producers of palm oil, surpassed only by Indonesia. In 2015, Malaysia possessed the second largest area of plantations worldwide, covering 5.64 million hectares (ha) of land; 2.66 million hectares (47%) of this is found in Peninsular Malaysia, while 1.54 million hectares (27%), and 1.44 million hectares (26%) is found in Sabah and Sarawak, respectively (MPOB, 2016, p. 1). In 2015, production of Crude Palm Oil (CPO) was 19.96 million tonnes. Total export of palm oil products in the same year was 25.37 million tonnes, which generated 60,169 billion Malaysian Ringgit (RM) – approx. 14.32 billion USD - in export revenue (MPOB, 2016, p. 6).

Oil palm was first planted commercially in Malaysia in 1917. Cultivation accelerated during the 1960s under the government's agricultural diversification programme, as well as land settlement schemes for landless farmers and smallholders (MPOC, 2012). Most of the British controlled palm oil companies were nationalized in the 1970s and 1980s, and in the 1990s the strategy shifted towards transnational expansion. This transnational expansion is reflected in the current export scheme, where Malaysian Palm Oil Board (MPOB) (2016) reports that the markets in India, the European Union, China, Pakistan, USA, Philippines and Vietnam together imported 11.16 million tonnes (64.0%) of palm oil from Malaysia (MPOB, 2016, p. 1).

From 2014 to 2015, production of Malaysian palm oil increased slightly by 1.5% to 19.96 million tonnes, while the area planted with oil palm increased by 4.6%, to 5.64 million ha. In the same period, Crude Palm Oil (CPO) production increased marginally, and exports increased 1.2%, from 25.07 to 25.37 million tonnes. Most of this increase was in Sarawak with an increase of 7.6% in CPO production and a 13.9% increase in planted area. Peninsular Malaysia experienced a growth of 3.6% in CPO production, but Sabah faced a decline of 5.5%. (MPOB, 2016, p. 1).

There are three broad oil palm farm types in Malaysia: private, smallholder and joint venture/state agency.

Private plantations occupy 3.1 million ha (61.6%) of the oil palm planted area in Malaysia. Private plantations can be broken down further to the following subcategories:

- Government-linked public listed firms (GLCs, e.g. Sime Darby, FGV, TH Plantations)
- Large publicly-owned firms, e.g. Hap Seng, IOI, KLK
- Medium-sized firms with 3-8 mills, and a production area less than 100,000 ha
- Small companies with 1-2 mills and a production area less than 10,000 ha

Smallholders are legally defined by the Malaysian government as aggregate land of less than 40.46 ha. The Roundtable on Sustainable Palm Oil (RSPO) definition states that smallholders usually mix commodity and subsistence crops, while the family comprise the bulk of the workforce and revenue the principal source of income (RSPO, n.d.). Smallholders fall into one of two categories:

- Independent smallholders that operate without external assistance (and who sell crops directly to mills or traders).
- Supported smallholders – land owners supported by a company or a government State Agency (e.g. FELDA, FELCRA, RISDA etc.). The land owner provides land in exchange for management assistance and guarantee that the relevant partner will buy the produce.

Palm oil production is regulated at both the state and federal levels. Importantly, land tenure and rights is a State matter, while at the national level, licensing takes place under purview of

the Malaysian Palm Oil Board (MPOB) and the Department of Environment (DOE). Taxes, levies and cesses are paid to the MPOB and the federal Ministry of Finance.

Major forest types in Malaysia are lowland dipterocarp forest (LDF), hill dipterocarp forest (HDF), upper hill dipterocarp forest, oak-laurel forest, montane ericaceous forest, peat swamp forest and mangrove forest. There are also smaller areas of freshwater swamp forest, heath forest, forest on limestone and forest on quartz ridges. While most of the country was covered with LDF in the past, today the majority has been cleared for other land uses, including oil palm. The few remaining pockets are under intense development pressure and are shrinking rapidly (WWF, 2016).

Forest conversion statistics show that between 1990 and 2010, approximately 28% of all plantations in Peninsular Malaysia, or 318,000 ha, have been established following forest conversion (Gunarso et al, 2014). The percentage of oil palm plantation area on peat soils stayed relatively constant throughout those 20 years: 8.1% in 1990 and 7.9% in 2010 (Gunarso et al, 2014). The direct conversion of forest to oil palm was more common in Sabah and Sarawak, but the conversion of other types of land use, such as rubber was more important in Peninsular Malaysia (Gunarso et al, 2014).

Major environmental threats from oil palm plantations are deforestation, biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change and forest fires, and pesticide use (Chin, 2011). There are also human-wildlife conflicts fuelled by forest conversion for oil palm (Persey, Imanuddin, & Sadikin, 2011).

The biggest underlying drivers of the risks in the palm oil sector are corruption and weak enforcement of the law. Comprehensive legislation exists to regulate business, labour, human rights, indigenous rights, and the environment, however, the effectiveness of enforcement is hampered by insufficient numbers of enforcement officers, lack of cohesiveness of government monitoring agencies, and corruption. Indigenous rights is an area of high concern as the palm oil sector continue to encroach on indigenous land in a political environment that marginalizes indigenous communities from the benefits of development.

The Roundtable on Sustainable Palm Oil is a voluntary certification scheme that offers a comprehensive set of safeguards in the palm oil sector, but critics have said that the certification bodies and RSPO itself need to undergo credible reform for the safeguards to become truly effective. Until then, critics have said that buyers must exercise due diligence to determine the source of their palm oil – or risk the many products on supermarket shelves being tainted with human trafficking, human rights abuses and species extinction (Environmental Investigation Agency UK Ltd and Grassroots, 2015).

Information Sources:

- Chin, M. (2011). Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework. Bogor, Indonesia: CIFOR.
- Environmental Investigation Agency UK Ltd and Grassroots, 2015. Who Watches the Watchmen? Auditors and the breakdown of oversight in the RSPO. Environmental Investigation Agency. <https://eia-international.org/wp-content/uploads/EIA-Who-Watches-the-Watchmen-FINAL.pdf>
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 - WWF. (2016). The Malaysian Rainforest. Retrieved from: http://www.wwf.org.my/about_wwf/what_we_do/forests_main/the_malaysian_rainforest/

Spatial Scale

Malaysia - Sub-national AuAs: Peninsula Malaysia

D. CSR Risk Assessment

BUSINESS ISSUES

1.1. Land Tenure

Legislation covering land tenure rights that includes the use of legal methods to obtain tenure rights. 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 rights. The intent of this indicator is to ensure that any land tenure rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- Malaysia Federal Constitution - [link](#)
- Art. 13, art. 76(4), 88(a)
- Aboriginal Peoples Act 1954 - [link](#)
- National Land Code (Act No. 56 of 1965) - [link](#)
- Land Acquisition Act 1960 - [link](#)
- Land (Group Settlement Areas) Act 1960 - [link](#)
- Land Development Act 1956 - [link](#)

1.1.2. Legal authority

- Federal Government: Referent to the National Land Code 1965, the Federal government can intervene in land matters to promote uniformity of law and policy and thus plays an important coordinating role across law, administration and policy - <http://aseanvaluer.org>
 - Department of Environment Malaysia (DOE): Responsible for the implementation and regulation of environmental legislation
 - Key activities: environmental assessment, monitoring, review and enforcement of environmental regulations and orders as prescribed under the Environmental Quality Act - http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf
 - The Ministry of Plantation Industries and Commodities (MPIC) - <http://www.kppk.gov.my/mpic/index.php/en/>
 - The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies in regards to finance and implementation – e.g. MPOB
 - Malaysian Palm Oil Board (MPOB) - <http://www.mpob.gov.my/en/about-us/about>
 - Government agency charged with overseeing, regulating and developing the Malaysian Palm Oil sector.
- State Government: All land belongs to the State; land that has not been alienated, declared as reserved land or mining land is considered State land - http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=MYS. Because land is a State matter, each State has its own responsible entity. Potential important state actors are:

- Menteri Besar/Chief Minister
- State Executive Council
- State Committee on Natural Resources
- State Forestry Department
- State Development Corporation

1.1.3. Legally required documents or records

- Proof of ownership is provided by two documents: **Issue Document of Title** and **Register Document of Title**. If the buyer of land is a foreign person or company, the transfer needs to be sanctioned by the State Authority

1.1.4. Sources of information

Non-Government sources

- Ahmad, M. N. (2002, April 12). Sagong Tasi & Ors v. Kerajaan Negeri Selangor & Ors 2002 (High Court). Retrieved from: http://www.malaysianbar.org.my/selected_judgements/sagong_tasi_ors_v._kerajaan_nege_ri_selangor_ors_2002_high_court.html
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- Nicholas, C. (2010). *Orang Asli: Rights, Problems, Solution*. SUHAKAM.
- Nicholas, C., Engi, J., & Ping, T. Y. (2010). *The Orang Asli and UNDRIP: From Rhetoric to Recognition*. Subang Jaya, Malaysia: COAC.
- Transparency International. (2016, August 2). *Corruption Index*. Retrieved from [transparency.org](https://www.transparency.org/country/#MYS) - <https://www.transparency.org/country/#MYS>
- Weiss, M. L. (2006). *Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia*. Stanford: Stanford University Press.

1.1.5. Risk determination

Overview of Legal Requirements

In Peninsular Malaysia, there are three ways to gain land ownership: transfer/purchase, inheritance and alienation. Land ownership is based on the National Land Code 1965 and the "Torrens System", meaning that everything is registered and ownership is thus determined by the name on the title. Transfer/purchase also includes leases, charges, easements and liens (Buang, 2002). Inheritance is when land is inherited from one's parents or ancestors. Alienation refers to state land being disposed by way of "alienation", meaning acquired from customary landowners by government. Land ownership is legally guaranteed and protected by both the Federal Constitution (FC) (Article 13), and the National Land Code 1965 (NCL), which

states that a land title is indefeasible (cannot be annulled or overturned) (Buang, 2002).

There exist two types of ownership: freehold (land held in perpetuity) and leasehold (leased land not exceeding a 99-year term). Land ownership comes with certain duties in the form an annual rent to the State as well as express conditions for agricultural land referent to section 115 of the NCL (Mah & Balasundaram, n.d.). If these conditions are breached, the right to land can be forfeited. However, the adoption of the Land Acquisition Act 1960 made it possible for any State Authority to legally acquire land (compulsory land acquisition) for one of the following purposes:

- For any public purpose¹;
- For an economic development deemed to be beneficial to the public of Malaysia; or
- For purpose of mining, residential, agricultural, commercial, industrial or recreational purposes (Mah & Balasundaram, n.d.)

Should the State Authority choose to acquire one's land, it is obligated to pay an adequate compensation fee based on the current market value. Hence, despite the guarantee of private property as provided in the FC, private land can be legally acquired by the State authority based on opaque grounds.

In Peninsular Malaysia, the main statute in relation to customary rights is the '*Aboriginal Peoples Act 1954*', which circumscribes the rights of the Orang Asli. While the Act allows for the designation of aboriginal areas, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and can therefore only have the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 478). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land.

Description of risk

There is a risk of excising land title from customary land owners illegally or through an undue process.

- The issue lies within the provisions of the National Land Code which provide the State authority with power to seize private land for the benefit of private companies and/or individuals. Legislation and statutory law have been the main route for private development at the expense of residing indigenous populations which are often forced to relocate. This continues despite the High Court has recognized the customary rights of the Orang Asli.
- In Malaysia, the access to secure land tenure seems to be contingent upon by socio-economic status or ethnicity and some level of discrimination, especially against the indigenous Orang Asli population, is thus present (Subramaniam, 2015).
- Little evidence or cases of alleged corruption in the transfer of land has been found in Peninsular Malaysia regarding transfer/purchase of land as well as inheritance. However, land alienation from customary land owners have received notable media attention and been taken to the high court as well. The root of this conflict seems to be the apparent discrimination AGAINST the Orang Asli, a discrimination present despite a seemingly encompassing Malaysian legal framework and international commitments like the UNDRIP².

¹ The court-case "S.Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204" determined that 'public purpose' has no clear definition and should be based on common sense (Mah & Balasundaram, n.d.)

² United Nations Declaration on the Rights of Indigenous Peoples

- The issue lies within the provisions of the National Land Code which provide the State authority with incontestable power to seize private land for the benefit of private companies and/or individuals. As there exist significant economic incentive for the State authority to sell large areas of land to private developers, the indigenous group of Orang Asli is often forced to relocate (Nicholas, 2010). Consequently, legislation and statutory law have been the main route to opening land for private development at the expense of residing indigenous populations (Nicholas, Engi, & Ping, 2010).
- While the High Court has recognized the customary rights of the Orang Asli as exemplified by the Sagong Tasi case, a vast majority of the Orang Asli remains too few and too politically disorganized to make a political influence (Weiss (2006, p. 91) quoted in Aiken & Leigh (2011, p. 477)).

Risk conclusion

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

1.1.6. Risk designation and specification

Elevated risk

1.1.7. Control measures and verifiers

Verifiers:

Review updated information and news on land tenure issues via:

- NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth foe.org, Center for Orang Asli Concerns (COAC) (<http://www.coac.org.my/>), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komnas (komnas.org), Cultural Survival (culturalsurvival.org))
- Media reports (Mongabay.com, greenomics.org, red-monitor.org, eyesontheforest.org, malaysiakini.com)
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations.

For land tenure issues check palm oil producers' 'Landbank' scores - <http://www.sustainablepalmoil.org/companies/>

This data can support SPOTT users in conducting further research to verify whether company commitments are being implemented on the ground.

Under Map of Concessions found here: <http://www.sustainablepalmoil.org/about/> use the map search bar to find specific company concessions or locations. Click the concession sites marked by pins to zoom in for more information, then go to the company pages of featured concessions to view their assessments and for legality particularly pay attention to the layer called 'government allocated areas' to ensure the palm oil producer is operating in a legal area. For more on how to use the SPOTT map see the ZSL FAQs page.

Control Measures:

- Evidence of palm oil farms obtaining proof of ownership documents: Issue Document of Title and Register Document of Title
- Evidence of MPOB License (see Section 1.2 for more details)

- Palm Oil Plantations >500 hectares or plans to clear >50 hectares: evidence an approved Environmental Impact Assessment (EIA) from the Department of Environment Malaysia (DOE) (See Section 3.1 for more details).

1.2. Plantation registration and management rights

Legislation covering land management rights including customary rights and any legal requirements for management planning. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land management rights have been issued according to the legislation. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.2.1. Applicable laws and regulations

- National Land Code (Act No. 56 of 1965) - [link](#)
- Land Acquisition Act 1960 - [link](#)
- Land (Group Settlement Areas) Act 1960 - [link](#)
- Land Development Act 1956 - [link](#)
- Malaysian Palm Oil Board (Licensing) Regulations 2005 - [link](#)
- Environmental Quality Act 1974 - [link](#)
- Companies Act 1965 (Act 125) - [link](#)
- Registration of Businesses Act 1956 (Act 197) - [link](#)
- Trust Companies Act 1949 (Act 100) - [link](#)
- Kootu Funds (Prohibition) Act 1971 (Act 28) - [link](#)
- Limited Liability Partnerships Act 2012 (Act 743) - [link](#)
- Subsidiary legislation:
 - Companies Regulations 1966 - [link](#)
- Registration of Businesses Rules 1957 - [link](#)

1.2.2. Legal authority

- Federal Government: Referent to the National Land Code 1965, the Federal government can intervene in land matters to promote uniformity of law and policy and thus plays an important coordinating role across law, administration and policy
 - Department of Environment Malaysia (DOE): Responsible for the implementation and regulation of environmental legislation
 - Key activities: environmental assessment, monitoring, review and enforcement of environmental regulations and orders as prescribed under the Environmental Quality Act - http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf
 - The Ministry of Plantation Industries and Commodities (MPIC) - <http://www.kppk.gov.my/mpic/index.php/en/>
 - The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies in regards to finance and

implementation – e.g. MPOB

- Malaysian Palm Oil Board (MPOB) - <http://www.mpob.gov.my/en/about-us/about>
 - Government agency charged with overseeing, regulating and developing the Malaysian Palm Oil sector.
 - Licensing and taxation authority in the palm oil sector
- State Government: All land belongs to the State; land that has not been alienated, declared as reserved land or mining land is considered State land (http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=MYS). Because land is a State matter, each State has its own responsible entity. Potentially important state actors are:
 - Menteri Besar/Chief Minister
 - State Executive Council
 - State Committee on Natural Resources
 - State Forestry Department
 - State Development Corporation
 - And as well as other operators and/or middlemen
- The Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia or SSM) - <http://www.ssm.com.my/en/about-ssm>
 - Statutory body charged with regulation of companies and businesses in Malaysia. Serves as an agency to incorporate and regulate businesses as well as provide information to the public. Ensures compliance with business- and corporate legislation.
 - SSM is responsible for the administration and enforcement of the following legislation
 - Companies Act 1965 (Act 125);
 - Registration of Businesses Act 1956 (Act 197);
 - Trust Companies Act 1949 (Act 100);
 - Kootu Funds (Prohibition) Act 1971 (Act 28);
 - Limited Liability Partnerships Act 2012 (Act 743);
 - any subsidiary legislation made under the Acts specified above such as:
 - Companies Regulations 1966; and Registration of Businesses Rules 1957

1.2.3. Legally required documents or records

- A business license is required and is provided by the relevant State authority
- A Business Registration Form (Form A), submitted to the SSM

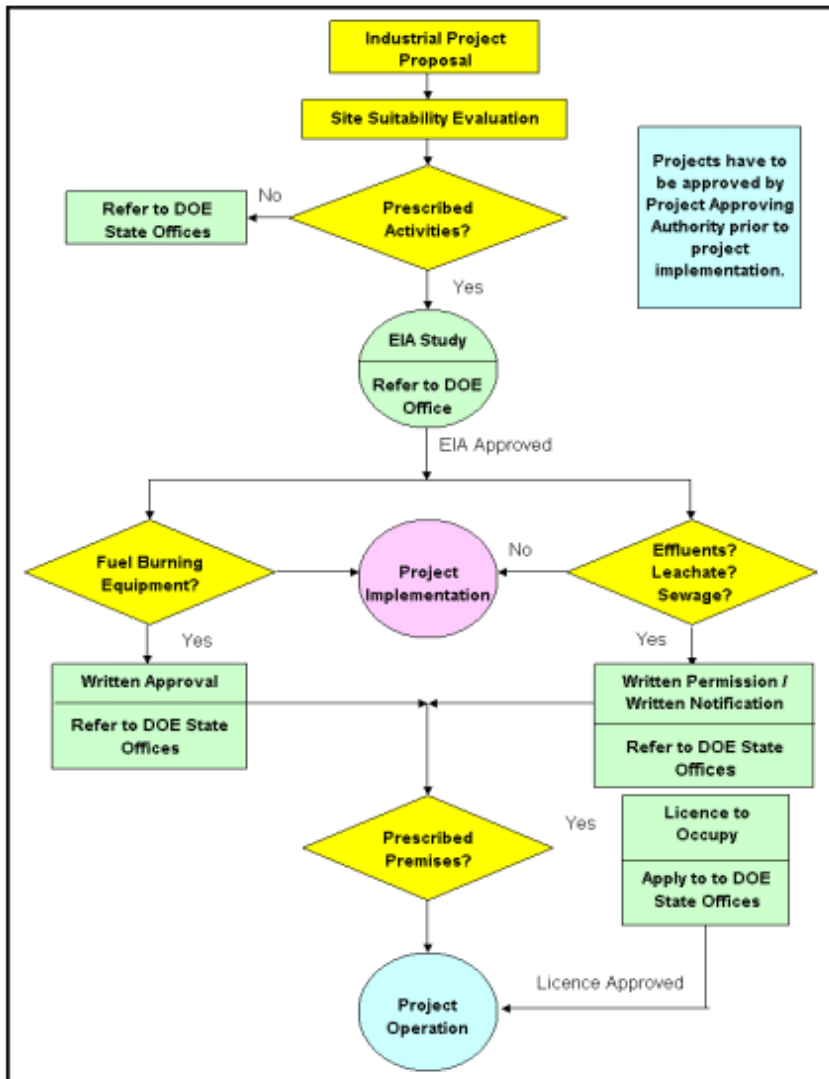
Establishment and management of a palm oil plantation in Peninsular Malaysia requires the following licenses:

- MPOB License (MPOB L1):
 - All persons wanting to be involved in the palm oil business needs to be licensed the MPOB according to the MPOB Regulations of 2005. This also includes the production,

sale, purchase, movement, storage, commence construction of oil palm mill, milling, commence construction of bulking facilities, survey, test, export and import of oil palm products - <http://161.142.157.2/pnp/bi/pelesenan.html>

- Palm Oil Mills: Referent to the Environmental Quality Act 1974, all treatment and disposal facilities (e.g. crude palm oil mill) must obtain prior written permission from the Director-

Figure 1
APPLICATION PROCEDURE FOR ENVIRONMENTAL REQUIREMENTS IN MALAYSIA



STEP 1

- Site Suitability Evaluation (for non-Prescribed Activities).
- EIA Approval (for Prescribed Activities).

STEP 2

Activities subject to air and water pollution control:

- Written Permission (Air).
- Written Notification (Sewage, Industrial Effluent, Leachate).
- Written Approval (Prescribed Premises: Crude Palm Oil Mills, Raw Natural Rubber Mills, Scheduled Wastes Facilities)

STEP 3

Licence to occupy:

- Crude Palm Oil Mills.
- Raw Natural Rubber Factories.
- Scheduled Waste Treatment and Disposal Activities
- Prescribed Conveyance

General of Environmental Quality (RSPO, 2014)

- A separate license from the DOE is required to occupy and operate crude palm oil mills (RSPO, 2014)

If the proposed agricultural plantation is of more than 500 ha or with plans to clear >50 hectares of land derived from secondary- or primary forests (or from modification of present land use) it requires project proponents to submit an Environmental Impact Assessment (EIA) and obtain approval from DOE -

http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf

1.2.4. Sources of information

Government sources

- Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Kuala Lumpur: Government of Malaysia.

Non-Government Sources

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- Department of Environment (2010). Environmental Requirements: a guide for investors. Department of Environment
- Lawson, S. (2015). Stolen Goods: The EU's Complicity in illegal tropical deforestation. FERN.
- Lawson, S., Blundell, A., Cabarle, B., Basik, N., Jenkins, M., & Canby, K. (2014). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. *Forest Trends*.
- Teoh, C. H. (2002). The Palm Oil Industry in Malaysia: From Seed to Frying Pan. WWF.
- Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.
- Wyn, L. T. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. *Forest Trends*. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195

1.2.5. Risk determination

Overview of Legal Requirements

Licensing is of utmost importance, because it determines who gets to operate and consequently who gets to profit from land use. In Peninsular Malaysia, once land has been acquired and legal tenure secured, licenses from various authorities must be obtained. All businesses must obtain a business license from the relevant State authority. In addition, all companies and corporations must register with the Companies Commission of Malaysia (SSM) using a Business Registration Form (Form A). The palm oil sector requires an additional set of licenses from the Department of Environment (DOE) and Malaysia Palm Oil Board (MPOB) as well as special rules on taxation (for taxation, see section 1.3). All parties engaged in the palm oil sector must further obtain a MPOB L1 license subject to the MPOB Licensing Regulations 2005. The MPOB L1 license covers specific areas audited by the MPOB such as: production, sale, purchase, movement, storage, construction, milling, survey, test, export and imports. Thus, if an organization has been approved for production, storage and movement but wants to start selling and exporting Crude Palm Oil (CPO) or palm oil products, then a reassessment of the MPOB L1 is required. If the plantation exceeds 500 hectares, an Environmental Impact Assessment must be handed in to the DOE, who must approve the project. Consequently, the palm oil plantation will be subject to DOE regulations and monitoring referent to the Environmental Quality Act 1974 (Teoh, 2002).

Description of risk

There is a risk that relevant licenses are issued illegally due to corruption, which is has been demonstrated by the ability of the State government to exercise preferential treatment for private companies. Preferential treatment could be in the form of access to high conservation value areas or zoning changes compromising Permanent Reserved Forests areas.

In general, the oil palm sector in Peninsular Malaysia has the legal framework in place to become a highly organized, regulated, taxed and monitored sector. However, as stated by

Transparency International Malaysia, there is always an element of risk when private companies get involved in agriculture, because the only objective is the generation of revenue. In their 2011 Forest Governance Integrity Report of Peninsular Malaysia, Transparency International pointed to several weaknesses in the legislation and possible areas influenced by corruption. In relation to corruption and licensing in the forestry sector, the main concern was the legislation's inability to address issues of preferential treatment exercised by state governments towards private companies. However, Transparency International Malaysia also admits that the failure in forest governance cannot be entirely attributed to corruption and bribery (Transparency International Malaysia, 2011). In addition, for the palm oil sector, which is closely connected to issues of forestry, there is also a great level of federal monitoring from the DOE and MPOB.

The main risk related to farm registration and management rights is corruption in the issuance of relevant licenses, which is caused by the ability of the State government to exercise preferential treatment to private companies. Preferential treatment could be in the form of access to high conservation value areas or zoning changes compromising Permanent Reserved Forests areas. In addition, the discretionary power of the State government can circumvent normal procedures like competitive bidding consequently causing unqualified companies to develop the land (Transparency International Malaysia, 2011). However, the above risks seem to be mitigated by the existence of an apparently robust legal system. Any incompetence from the State appointed land developer is uncovered in the federal licensing processes carried out by the DOE and MPOB.

Even though no cases have been successfully prosecuted, research shows several cases of alleged corruption in the issuance of licenses in Peninsular Malaysia. More specifically, Forest Trends (2014) found 13 cases of violations of environmental- and planning laws. Most of these cases were related to issues of political patronage, cronyism and nepotism at an often very high level. Hence, the conclusion "... seems to suggest that breaches of regulations during plantation development are common across the country" (Lawson, et al., 2014). This notion is backed by the evidence presented by Wyn (2014), who presents several cases of allegedly unlawful forest clearance for plantation development in Malaysia, which she ascribes to high-level corruption in the granting of land concessions by state governments.

Risk conclusion

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

1.2.6. Risk designation and specification

Elevated risk

1.2.7. Control measures and verifiers

Verifiers:

- NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth [foe.org](http://www.foe.org), Forest-Trends - <http://www.forest-trends.org/>, REDD-Monitor - <http://www.redd-monitor.org/>)
- Media reports (Mongabay.com, greenomics.org, red-monitor.org, eyesontheforest.org, sarawakreport.org, malaysiakini.com)
- Assess corporate risk – trace origins back to company and compare company ownership based on their policies, practices, initiatives, and goals (utilizing ZSL's Sustainable Palm Oil Transparency Toolkit (SPOTT) - <http://www.sustainablepalmoil.org/companies/>)

Control Measures:

- Evidence of a business license and a completed a Business Registration Form (Form A) to the SSM.
- Evidence of MPOB License
- Palm Plantations that are larger than 500 hectares have an approved Environmental Impact Assessment (EIA) from the Department of Environment Malaysia (DOE)
- Tax authorities shall confirm valid tax registration.
- Stakeholder consultation shall confirm that registration of farm has been granted following legally prescribed processes
- Stakeholder consultation shall confirm that legal status of the operation or rights for conducting the established activities are not subject to court orders or other legally established decisions to cease operations.

1.3. Payment of royalties and required fees

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

1.3.1. Applicable laws and regulations

- Malaysian Palm Oil Board (Licensing) Regulations 2005:
<http://www.mpob.gov.my/en/licensing-a-enforcement/law-a-legislation/511-achievements>
- Malaysia Income Tax Act 1967:
<http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm>
- Windfall Profit Levy Act 1998 (Act 592):
http://www.customs.gov.my/en/pg/Pages/pg_levy.aspx
- Promotion of Investments Act 1986:
<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20327%20%20-%20Promotion%20of%20Investments%20Act%201986.pdf>
- Real Property Gains Tax Act 1976:
<http://fght.utm.my/tlchoon/files/2015/09/REAL-PROPERTY-GAINS-TAX-1976-ACT-169.pdf>

1.3.2. Legal authority

- The Ministry of Finance - <http://www.treasury.gov.my/index.php/en/ministrys-profile/treasurys-profile.html>
- The ministry in charge of formulating and implementing monetary policies and further in charge of distribution and the management of financial resources of Malaysia
- Royal Malaysian Customs Department - http://www.customs.gov.my/en/ci/Pages/ci_vmv.aspx Responsible for the nations indirect tax-policies, hereunder the GST
- The Ministry of Plantation Industries and Commodities (MPIC) - <http://www.kppk.gov.my/mpic/index.php/en/> The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies (e.g. MPOB) in regards to finance and implementation
- Malaysian Palm Oil Board (MPOB) - <http://www.mpob.gov.my/en/about-us/about> Government agency charged with overseeing, regulating and developing the Malaysian

Palm Oil sector. Licensing and taxation authority in the palm oil sector

1.3.3. Legally required documents or records

- Proof of ownership is provided by two documents: Issue Document of Title and Register Document of Title
 - If the buyer of land is a foreign person or company, the transfer needs to be sanctioned by the State Authority
- A business license is required and is provided by the relevant State authority
- Complete a Business Registration Form (Form A) to the SSM
- In addition, establishment and management of a palm oil plantation in Peninsular Malaysia requires the following licenses:
 - If the proposed agricultural plantation is of more than 500 ha or plans to clear >50 hectares of land derived from secondary- or primary forests (or from modification of present land use) it requires project proponents to submit an Environmental Impact Assessment (EIA) and obtain approval from DOE - http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf
- MPOB License (MPOB L1):
 - All persons wanting to be involved in the palm oil business needs to be licensed by the MPOB per the MPOB Regulations of 2005. This includes the production, sale, purchase, movement, storage, commence construction of oil palm mill, milling, commence construction of bulking facilities, survey, test, export and import of oil palm products - <http://161.142.157.2/pnp/bi/pelesenan.html>

1.3.4. Sources of information

Government sources

- Zakaria, T. S. (2010). Tax System in Malaysia: The ASEAN Tax System Seminar 2010. Bangkok, Thailand: Government of Malaysia.

Non-Government sources

- Annuar, H. A., Salihi, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. *Procedia - Social and Behavioral Sciences*, 164, 150-160.
- Chin, M. (2011). *Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework*. Bogor, Indonesia: CIFOR.
- Ching, O. T. (2016, March 16). CPO export tax hike to benefit refiners. *New Straits Times Online*.
- Lawson, S. (2015). *Stolen Goods: The EU's Complicity in illegal tropical deforestation*. FERN.
- Lawson, S., Blundell, A., Cabarle, B., Basik, N., Jenkins, M., & Canby, K. (2014). *Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*. *Forest Trends*.

1.3.5. Risk determination

Overview of Legal Requirements

Due to the importance of agriculture in Malaysia, several measures and laws have been implemented to support and advance the growth of the sector, while legislation also has been designed to make agriculture a source of direct income for the Federal and State governments.

Taxation of the palm oil industry is characterized by government taxes, cesses and levies. In Peninsular Malaysia, palm oil is heavily taxed with no collection of subsidies (Chin, 2011, p. 9). Taxes are paid to the MPOB and the Ministry of Finance.

The standard corporate tax rate for all industries is 25%. Specific to the palm oil sector is the payment of cesses per tonne of produced Crude Palm Oil (CPO). The focus on CPO means that this cess applies to oil palm farms that process FFB in CPO. As most large-scale plantations are centred on the production of CPO, the vast majority of large plantations have an integrated mill, thus converting Fresh Fruit Bunches to CPO instantly. The smallholder supply chain is different, as few smallholders can afford their own mill and typically sell their FFB to middlemen or directly to a mill. This supply-chain, however, should be short and transportation fast, as FFB deteriorate quickly. A cess is paid to the MPOB, which channels the funds into research and development of the industry. A smaller cess is paid to the 'palm oil price stabilization fund' and a final cess is paid by estates over 40.46 ha to subsidize the price of cooking oil and thus counter the high prices of CPO. Government development schemes such as FELDA, FELCRA and RISDA are exempt from this cess (Chin, 2011). In addition, palm oil producers in Peninsular Malaysia pay a windfall tax when CPO prices are over 2,500MYR per tonne. Smallholders with estates under 40 ha are exempt from the windfall tax (Chin, 2011, pp. 9-10).

The CPO export duty is also of significant importance for the Malaysian palm oil industry, and is 5% as of April 2016, but this number fluctuates monthly (Ching, 2016). There is no export duty on refined palm oil or biodiesel. Goods and Services Tax is a levy currently at 6% (see section 1.4 for GST). While the above-mentioned taxes, levies and cesses are paid to the Federal government, land taxes are an important source of revenue for the State governments, constituting 0.5 of the rental value of the land (Chin, 2011). An overview of the above is provided by the table³ (note that the table is from 2010).

Table 3. Taxation on the Malaysian oil palm industry

Charge	Rate
Corporate tax	25% of corporate profit
Cess for MPOB	MYR11 per tonne of CPO
Cess for Price Stabilisation Fund	MYR2 per tonne of CPO
Cess for cooking oil subsidy	5% above CPO price of MYR1700 per tonne
Windfall profit tax	15% above CPO price of MYR2500 per tonne (Peninsular) 7.5% above CPO price of MYR3000 per tonne (Sabah and Sarawak)
Foreign workers levy	MYR540 per worker
Sabah sales tax	7.5% for CPO price at MYR1000 per tonne and above
Sarawak sales tax	2.5% for CPO price at MYR1000–1500 per tonne 5.0% for CPO price above MYR1500 per tonne
Sarawak land tax	MYR5 per ha
Property assessment tax (by District Councils)	0.5% of rental value of land
Export duty on CPO	10%–30% per tonne of CPO
Goods and Service Tax (GST)	4% of sales value on fresh fruit bunch, CPO, processed palm oil (proposed implementation by 2011)

Source: Malaysian Estate Owners Association, quoted in Hanim (2010b)

³ The table is retrieved from (Chin, 2011, p. 10)

Description of risk

There is a risk of tax evasion due to corruption. There are several complaints from the palm oil industry about the heavy taxation and this is considered a prime motivation for tax evasion which is commonly linked to businesses with family, government and foreign ownerships in Malaysia.

Malaysia scores a 50/100 on Transparency International's corruption index and corruption is thus an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. It thus seems reasonable to subject that similar risks are present in the oil palm sector. Supporting this claim is the findings by Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion.

Risk conclusion

This indicator has been evaluated as elevated risk taking a precautionary approach based on the level of overall corruption in Malaysia and evidence of tax evasion commonly linked to businesses with family, government and foreign ownerships.

1.3.6. Risk designation and specification

Elevated risk

1.3.7. Control measures and verifiers

Evidence of:

- Proof of ownership is provided by two documents: Issue Document of Title and Register Document of Title
- Evidence of a business license and a completed a Business Registration Form (Form A) to the SSM
- Evidence of MPOB License
- Receipts shall exist for payments of related royalties, taxes and other required fees.
- Volumes and qualities given in sales and transport documents shall match the paid fees.
- Classification of volumes and qualities shall match the royalties and fees paid.

1.4. Value added taxes and other sales taxes.

Legislation covering different types of sales taxes which apply to the material being sold. Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.4.1. Applicable laws and regulations

- Malaysian Palm Oil Board (Licensing) Regulations 2005 - <http://www.mpob.gov.my/en/licensing-a-enforcement/law-a-legislation/511-achievements>
- The Goods and Services Act 2014 - <http://www.customs.gov.my/en/pg/Documents/BI%20ACT%20762.pdf>

1.4.2. Legal authority

- The Ministry of Finance - <http://www.treasury.gov.my/index.php/en/ministries-profile/treasurys-profile.html> The ministry in charge of formulating and implementing

monetary policies and further in charge of distribution and the management of financial resources of Malaysia.

- Royal Malaysian Customs Department - http://www.customs.gov.my/en/ci/Pages/ci_vmv.aspx Responsible for the nations indirect tax-policies, hereunder the GST.
- The Ministry of Plantation Industries and Commodities (MPIC) - <http://www.kppk.gov.my/mpic/index.php/en/> The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies (e.g. MPOB) in regards to finance and implementation.
- Malaysian Palm Oil Board (MPOB) - <http://www.mpob.gov.my/en/about-us/about> Government agency charged with overseeing, regulating and developing the Malaysian Palm Oil sector. Licensing and taxation authority in the palm oil sector

1.4.3. Legally required documents or records

- Proof of ownership is provided by two documents: Issue Document of Title and Register Document of Title
 - If the buyer of land is a foreign person or company, the transfer needs to be sanctioned by the State Authority
- A business license is required and is provided by the relevant State authority
- Complete a Business Registration Form (Form A) to the SSM
- In addition, establishment and management of a palm oil plantation in Peninsular Malaysia requires the following licenses:
 - If the proposed agricultural plantation is of more than 500 ha or plans to clear >50 hectares of land derived from secondary- or primary forests (or from modification of present land use) it requires project proponents to submit an Environmental Impact Assessment (EIA) and obtain approval from DOE - http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf
- MPOB License (MPOB L1):
 - All persons wanting to be involved in the palm oil business needs to be licensed by the MPOB per the MPOB Regulations of 2005.
 - This includes the production, sale, purchase, movement, storage, commence construction of oil palm mill, milling, commence construction of bulking facilities, survey, test, export and import of oil palm products - <http://161.142.157.2/pnp/bi/pelesenan.html>

1.4.4. Sources of information

Non-Government sources

- Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. *Procedia - Social and Behavioral Sciences*, 164, 150-160.
- Ting, E. H. (2015). At a Glance – The Malaysian Goods and Services Tax Act 2014. Abdullah Chan & Co.
- Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.

1.4.5. Risk determination

Overview of Legal Requirements

The Goods and Services Tax (GST) was implemented on a nation-wide basis April 1st 2015 and replaced the former types of sales- and service tax. The GST is a multi-staged "... consumption based tax on goods and services" (Ting, 2015, p. 2) and as such it differs from direct taxes (RPGT, income tax etc.). The GST will apply to goods or services supplied in Malaysia, as well as on any importation of goods into Malaysia (Ting, 2015) and is rated at either 6% or 0% unless explicitly exempt by the law. In relation to palm oil, only cooking oil is rated at 0%, meaning that FFB, which is sold from the farms to the mills for oil extraction and the final product, CPO, ready for the refiners as well as other oil palm products are rated at 6%. The GST is imposed on most the transactions in the production process and consequently refunded to all parties in the process except for the final consumer.

Description of risk

The main risk in relation to taxation in Peninsular Malaysia is related to corruption. Malaysia scores a 50/100 on Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. In particular, family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014); these types of ownerships are also found in the palm oil plantation sector in Malaysia.

Despite the level of corruption in Malaysia and indicators pointing to tax evasion especially by family, government and foreign ownerships GST is not imposed on palm oil plantations selling FFB.

Risk conclusion

This indicator has been evaluated as low risk as GST is not imposed on palm oil plantations selling FFB.

1.4.6. Risk designation and specification

Low risk

1.4.7. Control measures and verifiers

N/A

1.5. Income and profit taxes

Legislation covering different types of sales taxes which apply to the material being sold. Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.5.1. Applicable laws and regulations

- Malaysian Palm Oil Board (Licensing) Regulations 2005 - [link](#)
- Malaysia Income Tax Act 1967 - [link](#)
- The Goods and Services Act 2014 - [link](#)

1.5.2. Legal authority

- The Ministry of Finance - <http://www.treasury.gov.my/index.php/en/ministrys-profile/treasurys-profile.html> The ministry in charge of formulating and implementing

monetary policies and further in charge of distribution and the management of financial resources of Malaysia

- Royal Malaysian Customs Department - http://www.customs.gov.my/en/ci/Pages/ci_vmv.aspx Responsible for the nations indirect tax-policies, hereunder the GST
- The Ministry of Plantation Industries and Commodities (MPIC) - <http://www.kppk.gov.my/mpic/index.php/en/> The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies (e.g. MPOB) in regards to finance and implementation
- Malaysian Palm Oil Board (MPOB) - <http://www.mpob.gov.my/en/about-us/about> Government agency charged with overseeing, regulating and developing the Malaysian Palm Oil sector. Licensing and taxation authority in the palm oil sector

1.5.3. Legally required documents or records

- Proof of ownership is provided by two documents: Issue Document of Title and Register Document of Title
 - If the buyer of land is a foreign person or company, the transfer needs to be sanctioned by the State Authority
- A business license is required and is provided by the relevant State authority
 - Complete a Business Registration Form (Form A) to the SSM
- In addition, establishment and management of a palm oil plantation in Peninsular Malaysia requires the following licenses:
 - If the proposed agricultural plantation is of more than 500 ha or plans to clear >50 hectares of land derived from secondary- or primary forests (or from modification of present land use) it requires project proponents to submit an Environmental Impact Assessment (EIA) and obtain approval from DOE - http://www.rspo.org/files/resource_centre/OP_Chain_Part%20A_new.pdf
- MPOB License (MPOB L1):
 - All persons wanting to be involved in the palm oil business needs to be licensed by the MPOB per the MPOB Regulations of 2005. This includes the production, sale, purchase, movement, storage, commence construction of oil palm mill, milling, commence construction of bulking facilities, survey, test, export and import of oil palm products - <http://161.142.157.2/pnp/bi/pelesenan.html>

1.5.4. Sources of information

Government sources

- Zakaria, T. S. (2010). Tax System in Malaysia: The ASEAN Tax System Seminar 2010. Bangkok, Thailand: Government of Malaysia.

Non-Government sources

- Annuar, H. A., Salihi, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. *Procedia - Social and Behavioral Sciences*, 164, 150-160.
- Chin, M. (2011). *Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework*. Bogor, Indonesia: CIFOR.
- PwC. (2016). 2015/2016 Malaysian Tax and Business Booklet. Kuala Lumpur, Malaysia:

PricewaterhouseCoopers Taxation Services Sdn Bhd.

- Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.

1.5.5. Risk determination

Overview of Legal Requirements

In Malaysia, the standard taxation of corporate income is at 25% percent. This level of taxation applies to all sectors, except for the following: banking, insurance, air transport and shipping. Taxable income is all earnings derived from Malaysia and covers gains from dividend, royalty and land trading. Companies with annual earnings below 2,500,000MYR is classified as 'Small-to-Medium Enterprise' (SME) and qualifies for a 5% tax decrease for the first 50,000MYR (PwC, 2016).

Description of risk

The main risk in relation to taxation is related to corruption. Malaysia scores a 50/100 on Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. In particular, family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014); these types of ownerships are also found in the palm oil plantation sector in Malaysia.

It thus seems reasonable to subject that similar risks are present in the oil palm sector. Supporting this claim is the findings by Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion.

Risk conclusion

This indicator has been evaluated as elevated risk taking a precautionary approach based on the level of overall corruption in Malaysia and evidence of tax evasion commonly linked to businesses with family, government and foreign ownerships.

1.5.6. Risk designation and specification

Elevated risk

1.5.7. Control measures and verifiers

Country Specific

Evidence of:

- Proof of ownership is provided by two documents: Issue Document of Title and Register Document of Title
- Evidence of a business license and a completed a Business Registration Form (Form A) to the SSM
- Evidence of MPOB License
- Consultation with financial authority to verify that all required income and profit taxes have been paid.

1.6. Disclosure of information

Legislation covering requirements for regular business reporting to ensure information disclosure and transparency. Risk relates to lack of business transparency and/or incorrect disclosure of legally required

business information.

1.6.1. Applicable laws and regulations

- Companies Act 1965 (Act 125) - [link](#)

1.6.2. Legal authority

- Malaysian Accounting Standard Board (MASB) - <http://masb.org.my/pages.php?id=14>
In charge of formulating accounting standards

1.6.3. Legally required documents or records

N/A

1.6.4. Sources of information

Non-Government sources

- Othman, R., & Ameer, R. (2010). Environmental Disclosures of Palm Oil Plantation Companies in Malaysia: A Tool for Stakeholder Engagement. Corporate Social Responsibility and Environmental Management, 52-62.

1.6.5. Risk determination

Overview of Legal Requirements

Subject to the Companies Act 1965, reporting in the palm oil industry is confined only to financial data with no reference to disclosure to environmental information. The Financial Reporting Standard 1 (FRS) does make a special reference to environmental disclosures, but it only encourages companies to present additional information and environmental reporting is thus voluntary (Othman & Ameer, 2010).

Description of risk

In their research on environmental disclosures in the Malaysian oil palm industry, Othman & Ameer (2010) found that companies only disclosed limited information in their annual reports (p. 61). With the increasing media- and public attention towards both social- and environmental consequences of oil palm plantation development, it must be assumed that stakeholders and investors must be increasingly dissatisfied with the lack of disclosure of information. However, following the current legal requirements, the requirements of disclosure seem to be adhered to.

Risk conclusion

This indicator has been evaluated as low risk as identified laws are upheld

1.6.6. Risk designation and specification

Low risk

1.6.7. Control measures and verifiers

N/A

SOCIAL ISSUES

2.1. Civil rights - legal employment

Legal requirements for employment of personnel involved in plantation 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. Risk relates to situations/areas where systematic or large scale noncompliance with labor and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

2.1.1. Applicable laws and regulations

- Malaysia Federal Constitution - [link](#)
 - Part II, Art. 6 + 8
- Employment Act 1955 - [link](#)
- Minimum Wages Order 2016 - [link](#)
- Industrial Relations Act 1967 (Act 177) - [link](#)
- Employment (Restriction) Act 1968 - [link](#)
- Employment (Information) Act 1953 - [link](#)
- Wages Council Act 1947 - [link](#)
- Workers Minimum Housing Standards and Amenities Act 1990 (Act 446) - [link](#)
- Employees Provident Fund Act 1991 - [link](#)
- Employee Social Security Act 1969 - [link](#)
- Workmen's Compensation Act 1952 - [link](#)
- Children and Young Persons (Employment) Act 1966 - [link](#)
- Occupational Safety and Health 1994 - [link](#)
- Trade Unions Act 1959 (Act 262) - [link](#)
- Immigration Act 1957 - [link](#)
- Immigration Regulations 1959/63 - [link](#)
- Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Amendment 2010) - [link](#)

2.1.2. Legal authority

- The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards
 - Department of Labour, Peninsular Malaysia
 - Occupational Health and Safety Department – Responsible for reviewing, enforcing and promoting industrial health and safety
 - The Industrial Court of Malaysia: Main functions are to "... hear and down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties" (Industrial Court of Malaysia, n.d.) and to monitor the collective agreement reached between the employer/trade union of employers and trade union of employees - <http://www.mp.gov.my/en/about-us/client-s-charter>

- Social Security Organization (SOSCO): Government Agency administering and enforcing the Employee Social Security Act 1969 and Employee Social Security General Rules 1971
- Ministry of Finance
 - Employees' Provident Fund (EPF): Management of mandatory savings- and retirement planning for all Malaysian workers in the private sector. To Malaysians, membership of EPF is obligatory and voluntary for non-Malaysian workers.
- Ministry of Home Affairs: Main function is "To ensure orderly management of the issue of travel documents, entry/exit of citizens and foreign nationals as well as the issue of appropriate passes to foreign nationals who reside in this country in accordance with immigration acts and regulations" - <http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian>
 - The Immigration Department: Charged with issuance of passports and travel documents to Malaysians, visas, passes and permits to foreign nationals and management the movement of people at authorized entry and exist points - <http://www.imi.gov.my/index.php/en/corporate-profiles/introduction.html>
- Plantation Industries and Commodities Ministry: The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies in regards to finance and implementation – e.g. MPOB (<http://www.kppk.gov.my/mpic/index.php/en/>)

2.1.3. Legally required documents or records

- Employment Contract
 - Subject to the Employment Act 1955 and the Industrial Relations Act 1967, any employer or self-employed person must provide his/her employees with a written contract of employment (unless the duration of the work is less than one month, in which an oral contract will suffice)
 - The contract must include the following information:
 - Names of both employer and employee
 - Job title
 - Date of commencement of work
 - Place of work as well as work address
 - Required notice period as well as retirement age
 - By law, following minimum terms and conditions must be adhered to:
 - No more than 48 hours per week
 - No more than 8 hours per day (maximum 10 hours if spread over a day)
 - A minimum 30 minute of rest for every five hours worked
 - One day off per week
- Migrant workers also need to have a valid passport and a valid visa, and pass a medical exam prior to employment

2.1.4. Sources of information

Government sources

- Industrial Court of Malaysia. (n.d.). Functions. Retrieved August 10, 2016, from

www.mp.gov.my - <http://www.mp.gov.my/en/about-us/client-s-charter>

- MPIC. (2014, December 14). PALM OIL -Reduce red tape for hiring foreign workers, employers group tells Putrajaya. Retrieved from www.kppk.gov.my - <http://www.kppk.gov.my/mpic/index.php/en/media-mpic-vbi/media-release/2-uncategorised/129-palm-oil-reduce-red-tape-for-hiring-foreign-workers-employers-group-tells-putrajaya>
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- Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. Retrieved from www.wsj.com - <http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>
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2.1.5. Risk determination

Overview of Legal Requirements

The Employment Act 1955 (EA) covers employees that have a monthly salary less than 2,000MYR, engage in manual labour, supervise manual labour, operate propelled machinery, or work as a domestic servant, as well as employees in certain positions in sea-going vessels (ICLG, 2016). The coverage of manual labour means that the EA effectively covers most oil palm farm workers and is significant to the palm oil industry. Employees covered by the EA have the following minimum terms and conditions of employment:

- Maximum hours of work per day and per week;
- Overtime payment for work more than normal hours of work;
- Protection from deduction of wages;
- Paid annual leave/vacation leave;
- Paid sick leave
- Minimum 10 paid public holidays, five of which are determined by law

- Termination notice period
- Payment of termination benefits, except in cases where the termination of employment is due to misconduct or poor performance
- A minimum wage of 1000MYR per month or 4.81 per hour in Peninsular Malaysia (ICLG, 2016)

The EA requires all employees in the private sector to be members of the Employee's Provident Fund (EPF) and the Social Security Organization (SOCSO). EPF handles savings- and retirement- planning, while SOCSO provides medical insurance. SOCSO membership is contingent upon a salary not exceeding 3,000MYR unless the employee is a registered contributor (PERKESO, n.d.). An important note is that foreign nationals working in Malaysia are excluded from EPF and SOCSO (ICLG, 2016). Instead, foreign workers are covered by the Workmen's Compensation Act. The EA also states that all contracts with a duration of one month or more must be in written form and contain provision for termination. Should a written contract not exist, the employment relationship and contractual terms still stand (ICLG, 2016).

Summing up, people working on palm oil farms in Malaysia are covered by the EA and thus enjoy a set of minimum terms and conditions of employment, as well as implied rights to protection from unjust dismissal (ICLG, 2016). Unionizing is governed by the Trade Unions Act 1959 (TUA) and the Industrial Relations Act 1967 (IRA). Membership is restricted to certain sectors and the law prohibits migrant workers from forming a trade union, but allows for migrant workers to join an existing union. Subject to section 28(1) of the Trade Union Act, a migrant worker cannot hold an executive position in a trade union.

Malaysian law states that all job vacancies must be offered to Malaysian nationals before opening for migrant applications. In the case of vacancies, which is the norm in the palm oil industry, an application to the Immigration Department (ID) is made by the employer and if successful, the ID will grant the employer with a license to import migrant workers. Migrant workers must then be able to show a valid visa and passport as well as pass a medical exam (Othman & Rahim, 2014). Upon expiry of the visa (usually valid for three months), the migrant worker is terminated. Migrant labour is thus temporary and workers are tied to one Malaysian employer. Referent to the Workmen's Compensation Act of 1952, all employers must insure all their foreign employees. In addition, it is the duty of the employer to produce a written OSH policy for the workplace, hire a safety and health officer (only in some cases) as well as provide the necessary training to the employees (ILO, 2013). Migrant labourers in Malaysia thus enjoy legal protection that is similar to that of Malaysians.

Description of risk

There is a risk that producers are engaging illegal labour practices mainly linked to the employment and working conditions of migrant workers. Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage. Other common treatment of foreign workers includes passport retention, contract violations, restricted movement, wage fraud, poor housing conditions and lack of H&S training.

The main risk of legal employment is related to the import and working conditions of migrant workers. Industrial growth in Malaysia has often led to an acute labour shortage in certain sectors, necessitating an influx of migrant workers. According to the 2015 Trafficking in Persons (TIP) report prepared by the US Department of State, Malaysia is a major destination for illegal trafficking and forced labour. This has been especially evident in the palm oil industry in Malaysia and Indonesia, which employs a total of some 3,5 million workers (Villadiego, 2015). In Malaysia, most of these workers are migrant workers from the Philippines, Nepal, Bangladesh and Indonesia.

It is estimated that Malaysia currently has two million documented, and even more

undocumented, foreign workers (US Department of State, 2016, p. 254). Furthermore, it is concluded that Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage (US Department of State, 2016). Common policies in the treatment of foreign workers further include passport retention (both authorized and unauthorized), contract violations, restricted movement, wage fraud and imposition of debt by both recruitment agents and employers (US Department of State, 2016, p. 255). In 2002, the Human Rights Resource Centre concluded that: "There have been complaints of mistreatment, exploitation by unscrupulous recruitment agencies, physical abuse and poor living and work conditions of foreign workers" (Lih, 2012) and further that these problems are exacerbated by the lack of law enforcement.

Several reports of abuse of foreign workers in Malaysian oil palm plantations have surfaced in the media in the last couple of years. Of greatest relevance to Peninsular Malaysia is probably an article by the Wall Street Journal in 2015 that reported horrible treatment and systematic abuse of foreign workers in some plantations (Al-Mahmood, 2015). Workers reported that they did not receive their salaries, lived secluded from society in inadequate housing, lacked training in operating machinery and spraying herbicides, and had to cover their own medical costs. Because they were in Malaysia illegally, they dared not complain to the employer (Al-Mahmood, 2015). This is one of many cases of alleged abuse of foreign workers in the Malaysian palm oil industry, which have prompted the US Department of Labor to designate palm oil as a product produced by both forced- and child labour (US Department of Labor, 2014). Hence, despite enjoying legal protection close to that of Malaysian nationals, reports of abuses of foreign labour are much more prominent in the media.

Risk conclusion

Following several reports of abuse of both domestic- and foreign workers in Peninsular Malaysia, most notably by the Wall Street Journal, this risk has been evaluated as an elevated risk.

2.1.6. Risk designation and specification

Elevated risk

2.1.7. Control measures and verifiers

Evidence of:

- List of employees (e.g., request the employer's payroll list) and ask for a sample of Employment Contract(s) of those employees on the list.
 - The contract must include the following information:
 - Names of both employer and employee
 - Job title
 - Date of commencement of work
 - Place of work as well as work address
 - Required notice period as well as retirement age
- Request the employer's payment voucher and evidence that that required payments such as social security contributions are being paid.
- Request from the employee or the employer pay stubs to verify it is in line within the relevant contract agreement
- Interviewing employees and ask what activity performed, that amount paid by the

employer for the activity, which method of payment have (daily / daily wage, monthly, performance / production), how long working hours, few days a week they work.

- To ensure that employees are registered with EPF and SOCSO, one can cross check the record of salary payment slips with receipts from EPF and SOCSO and the corresponding payment forms (Form A for EPF and Form 8A for SOCSO)

2.2. Health and Safety

National and sub national laws and regulations incorporation of the ILO Fundamental Conventions. This is to ensure minimum employment requirements cover an observance of minimum working age, legislation against forced and compulsory labour, and discrimination and freedom of association etc. Risk relates to if there are gaps in the national and/or sub national laws and regulations with the ILO Fundamental Conventions. The objective is to identify the gaps and/or where there may be serious violations of the legal rights of workers take place against the eight core ILO Fundamental Conventions.

2.2.1. Applicable laws and regulations

- Occupational Safety and Health Act 1994 (Act 514) - [link](#)
- Factories and Machinery Act 1967 (Act 139) - [link](#)
- Petroleum (Safety Measures) Act 1984 (Act 302) - [link](#)

2.2.2. Legal authority

- The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards
 - The Department of Occupational Safety and Health (DOSH) is the department under MOHR responsible for the safety, health and welfare of the working people.

2.2.3. Legally required documents or records

- Employers and self-employed persons are required to produce a written Occupational Health & Safety policy, and employers advise employees about the content of the policy, and make revisions based on suggestions made by his employees
- Large-scale oil palm plantations and mills are required to hire a health and safe officer

2.2.4. Sources of information

Non-Government sources

- Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. Retrieved from [www.wsj.com](http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321) - <http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>
- Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers Federation (MEF). (pp. 1-2). Kuala Lumpur: Malaysian Employers Federation.
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- ILO. (2013). Malaysia - 2013. Retrieved from [www.ilo.org](http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_YEA) - http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_YEA

[R:MYS,2013](#)

- Kumar, M., Ismail, N.A. and Govindarajo, N.S., 2014. Way to measure the concept precarious working conditions in oil palm plantations. *Asian Social Science*, 10(21), pp.1-10.
- US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State.
- Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? *The Guardian*.

2.2.5. Risk determination

Overview of Legal Requirements

The main components guiding Occupational Health and Safety (OSH) in Malaysia is the Occupational Safety and Health Act 1994, the Factories and Machinery Act 1967, the Petroleum Act (safety measures) 1984. However, there are others laws mentioning OSH, but the three above are the most important. Of special relevance to the palm oil industry is concerns such as legally required protection and training, safety requirements of machinery and safety requirements in relation to chemical usage.

Section 15(1) of the Occupational Safety and Health Act 1994 states that it is the duty of every employer and self-employed person to ensure the safety and welfare of all his employees while at work. The act further states in section 24(1c) that it is the duty of the employer to provide the necessary protective equipment for the workers. The employer has the duty to ensure the usage of the protective equipment. The employer must provide first-aid kit, sanitary installations, drinking water as well as rest- and eating areas (ILO, 2013). Furthermore, it is the duty of the employer to produce a written OSH policy for the workplace, hire a safety and health officer (only in some cases) as well as provide the necessary training to the employees (ILO, 2013).

An important feature of the Occupational Safety and Health Act 1994 is that it is based on the concept of self-regulation, meaning that health and safety concerns must be handled by whoever creates the risks. Self-regulation comes in one of three forms; voluntary self-regulation, mandated full self-regulation or mandated partial self-regulation (Bahrin, 2016). Voluntary self-regulation is pure self-regulation, where the company or industry makes the rules and enforces these rules without government intervention. Mandated full self-regulation means that both rules and enforcement are handled by the company or industry, but subject to government monitoring and enforcement, if necessary. Finally, mandated partial self-regulation means that the company or industry can choose to either make the rules or enforce the rules, but not both. This effectively means public enforcement of private rules or vice versa (Bahrin, 2016).

Description of risk

There is a risk that Malaysia's Occupational Health and Safety (OSH) requirements are breached by palm oil producers. There is evidence that shows several instances of alleged breaches of OSH requirements which is exposing workers to injuries falling fruit bunches, tool usage, heavy lifting and health hazards connected oil palm pest bites, over exposure of the sun and herbicides etc.

The above walk-through of the central OSH legal requirements relevant to the palm oil industry shows a Malaysian regulatory framework protective of its workers. This protection is indeed necessary, as workers in oil palm plantations face several OSH hazards daily. Some major risks are:

- Falling fruit bunches (weighing 15-25 kilograms)

- Injuries from cutting tools
- Eye damage from falling fronds
- Bites from insects and snakes as well as oil palm pest (fire caterpillars)
- High level of sun exposure causing heating, dehydration and increased risk of skin cancer
- Poisoning from toxic herbicides (such as paraquat)
- Abrasion from the thorns of the palm oil fruit
- Injuries from heavy lifting and carrying as well as repetitive movements (ILO, 2004)

While the legal requirements for OSH effectively covers the risks above, research shows several instances of alleged breaches of the OSH requirements (Al-Mahmood, 2015; Human Rights Watch, 2011; Villadiego, 2015; US Department of State, 2016). Of special interest to Peninsular Malaysia is the Wall Street Journal report by Al-Mahmood (2015), who reported grave breaches of OSH standards in FELDA plantations. One study conducted by Kumar, Ismail & Govindarajo (2014) suggested that OSH breaches were more common in smallholder- than large-scale plantations. However, this suggestion stands in contradiction to the widespread OSH breaches reported in FELDA-plantations by Al-Mahmood (2015).

Risk conclusion

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

2.2.6. Risk designation and specification

Elevated risk

2.2.7. Control measures and verifiers

Seek evidence on:

- Company's occupational safety and health (OSH) management system reporting via published annual sustainability reports in combination with:
- Verify that the company has an occupational safety and health (OSH) program, and that the program used in practice.
- Verify that the employees of the company have been trained about work safety
- Obtain records of reports of workplace deaths. Deaths in the workplace must be recorded.

For Large-scale private plantations [>40 - $>100,000$ ha]

- Evidence of a H&S officer position and training, procedures and equipment are in place

Generic

- All safety and health regulations shall be followed and all required safety equipment shall be used.
- Occupational health and safety requirements shall be observed by all personnel involved in farm management activities.
- Interviews with staff shall confirm that legally required protection equipment is required/provided by the organization.
- All requirements on prevention of air and water pollution shall be followed and are verified through reports monitoring pollution (when applicable).

2.3. ILO Fundamental Conventions are upheld

Legally required personnel protection equipment for persons involved in plantation activities 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 on the plantation. Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of plantation workers at significant risk throughout plantation establishment and management operations.

Context

Malaysia has ratified the following ILO Fundamental Conventions:

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)

Malaysia ratified the Abolition of Forced Labour Convention, 1957 (No. 105), but it was denounced on 10 January 1990, and is not in force.

For ratified ILO conventions by Malaysia -

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102960

For non-ratified ILO conventions by Malaysia -

http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:375936265133562:::P11210_INSTRUMENT_SORT:1

For information on ILO Conventions and Recommendations -

<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

2.3.1. Applicable laws and regulations

Relevant Legislation (see section 2.1.1 for hyperlinks to applicable legislation):

- Federal Constitution of Malaysia
 - Part II outlines right to personal liberty, freedom of speech, assembly and association
 - Art. 6 provides protection from forced labour
 - Art. 8 states that all are equal before the law and that there shall be no discrimination based on religion, race, descent or place of birth
- Employment Act 1955
 - Provides minimum protection to employees regarding their terms and conditions of service consisting of working hours, wages, holidays and retrenchment benefits (see section 2.1.4) (ILO, 2014)
- Workers Minimum Housing Standards and Amenities Act 1990 (Act 446)
 - Prescribes minimum standards of housing while requiring employers to provide medical- and social amenities for workers (ILO, 2014)
- Workmen Compensation Act 1952 (Act 273)
 - Provides payment of compensation for injuries sustained in accidents during employment (ILO, 2014)

- Children and Young Persons (Employment) Act 1966
 - Provides regulation to protect children and young persons engaged in employment in terms of working hours, type of work, abuse, etc. (ILO, 2014)
- Occupational Safety and Health 1994
 - Provides regulations to secure the safety, health and welfare at work against risks to safety or health arising out of the activities of persons at work (ILO, 2014)
- Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

2.3.2. Legal authority

See 2.1.1

2.3.3. Legally required documents or records

See 2.1.2

2.3.4. Sources of information

- Ratifications by Malaysia Ratified ILO conventions by Malaysia - http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102960
- Non-ratified ILO conventions by Malaysia - http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:375936265133562:::P11210_INSTRUMENT_SORT:1
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- Verite. 2013. Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains. - http://www.verite.org/sites/default/files/images/Palm_White_Paper_May_2013_Final_Draft_0.pdf
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2.3.5. Risk determination

Overview of Legal Requirements

Malaysia has only ratified six of the eight fundamental ILO conventions and further denounced convention number 105, meaning that five of eight conventions currently are in force. However, from the legislation above it is evident that Malaysia has an encompassing legal framework for labourers effectively covering the eight fundamental conventions of employment.

Description of risk

There is a risk that Malaysian's legal employment laws do not cover what the ILO considers universal fundamental principles and rights at work as Malaysia currently has only ratified 5/8 ILO fundamental conventions. This is reinforced by the fact there also exist several cases of alleged illegal labour, human trafficking, child labour and abuses of foreign workers in oil palm plantations in Peninsular Malaysia. Abuses also include lack of safety training, inadequate housing, unfair withholding of pay and a lack of medical insurance in case of injury.

In relation to the ILO fundamental conventions and Malaysian legal framework, the risks seem to be twofold. First, it is a clear risk that Malaysia currently has only ratified 5/8 ILO fundamental conventions. Second, despite the existence of an encompassing legal framework, there exist several cases of alleged illegal labour, human trafficking, child labour and abuses of foreign workers in oil palm plantations in Peninsular Malaysia. Abuses include lack of safety training, inadequate housing, unfair withholding of pay and a lack of medical insurance in case of injury (Section 2.1.4 for further information).

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 signifies an increased Malaysian awareness on the issue of human trafficking and illegal immigration, which is a serious issue in the palm oil sector. While the increased attention towards human trafficking and smuggling is a positive and indeed necessary development, little attention is awarded to the rights of migrant workers. Malaysia has not ratified ILO Conventions 97 (Migration for Employment Convention) and 143 (Migrant Workers (Supplementary Provisions)) or the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Considering that most oil palm plantation workers are foreign, this lack of ratification of international conventions is worrisome.

Despite the seemingly encompassing legal framework, evidence and reports from both newspaper articles and official government departments suggests that the Malaysian legal framework covering areas of employment is not consistently enforced in the palm oil sector (Al-Mahmood, 2015; Human Rights Watch, 2011; US Department of Labor, 2014; US Department of State, 2016). Reports of use of illegal immigrants and abuse of foreign workers in plantations suggests that neither ILO conventions nor the Malaysian legal framework are being sufficiently enforced (see section 2.1.5). In addition, it seems that the freedoms of association and collective bargaining are not upheld as Amnesty International (2016) reports that an erosion of civil liberties is currently happening in Malaysia, compromising liberties as the freedom of speech and freedom of association and assembly. Case studies from oil palm plantations in Peninsular Malaysia shows incidences of illegal workers, forced labour (US Department of State, 2016) and physical and mental abuse (Lih, 2012).

Risk conclusion

Country/region under assessment has not ratified all the ILO Fundamental Conventions and ILO Fundamental Conventions related laws are not upheld consistently by all entities and/or are systematically ignored, and/or are not enforced by relevant authorities.

2.3.6. Risk designation and specification

Elevated risk

2.3.7. Control measures and verifiers

Verifiers:

- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Check palm oil producers scores:
<http://www.sustainablepalmoil.org/companies/> and review the relevant company(s) annual or sustainability report to determine if and how they are reporting on labour right issues.

Control Measures:

- Evidence of that the palm oil farm(s) have a clear policy and compliance system is in place that prohibits child labour and its worst forms and sets the minimum age for employment consistent with applicable law.
- Documentation of pay and conditions and evidence is provided that it is being implemented credibly (additional cross checks with employees and/or objective observers/stakeholders could be conducted). See also control measures under 2.1.5 for more guidance on evidence of legal employment.

Generic

- At least the legally established minimum salaries shall be paid for personnel involved in farm management activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in farm management activities.
- Minimum age shall be observed for all personnel involved in farm management activities.
- Minimum age shall be observed for all personnel involved in hazardous work.
- Stakeholders shall confirm that forced or compulsory labour is not involved in farm management activities.
- There evidence and/or employees confirm the employer allows them the right to organize

and collective bargain.

2.4. The rights of indigenous and traditional peoples are upheld

Legislation requirements addressing: i) customary rights relevant to plantation activities including requirements covering sharing of benefits and indigenous rights ii) "free prior and informed consent" in connection with transfer of plantation management rights and customary rights to the organisation in charge of the plantation operation iii) Legislation that regulates the rights of indigenous/traditional people as far as it's related to plantation activities. Possible aspects to consider are land tenure, right to use certain plantation related resources or practice traditional activities, which may involve plantation lands.) When there is no or inadequate legislation addressing the rights of traditional and indigenous peoples, their rights are still upheld by the relevant plantation operation(s). Risk relates to the violation of indigenous and traditional peoples' rights including land tenure rights, resource access and use rights, a due process has been follow in cases of transference of rights, a recognised dispute conflict resolution process exists etc.

2.4.1. Applicable laws and regulations

- Malaysia Federal Constitution - [link](#)
- Art. 76(4), 88(a)
- Aboriginal Peoples Act 1954 - [link](#)
- National Land Code (Act No. 56 of 1965) - [link](#)
- Land Acquisition Act 1960 - [link](#)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - [link](#)

2.4.2. Legal authority

- Federal Government
 - Ministry of Rural Development
 - Department of Orang Asli Development (JAKOA)
Government agency overseeing the affairs of the Orang Asli "... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service" (Federal Constitution, Article 8(5)).
 - Ministry of Home Affairs
 - The National Registration Department (NRD)
Responsible for the registration of important events of all Malaysians, including birth, adoption, marriage, divorce and death. NRD also distributes Identification Cards and determines citizenship status.

2.4.3. Legally required documents or records

- See also legal documents required under 1.1.2
- Malaysian Identity Card (MyKad)
 - Mandatory identity card for all Malaysians over the age of 12. The card must be carried at all times and functions as a driver's license, ATM card as well as public key. In relation to traditional rights, the MyKad shows ethnicity and thus determines whether a person can be considered to be a Malaysian aborigine.

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2.4.5. Risk determination

Overview of Legal Requirements

Peninsular Malaysia is inhabited by the Orang Asli, who is "... the most impoverished and marginalized community in Malaysia" (Subramaniam, 2015, p. 73). The Orang Asli enjoys two statuses: Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples (Nicholas, 2010). The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite of this constitutional and statutory protection, the Orang Asli faces difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia (PM), the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and thus occupies the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land. The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004). In addition to the issues of land access, the Aboriginal Peoples Act 1954 transfers many administrative duties and rights of the Orang Asli to the Federal- and State governments, including the right to determine whether a person is Orang Asli, appointment of Orang Asli heads (Batin) and restriction of any material whether written or photographic deemed harmful by the relevant government (Subramaniam, 2015, p. 80). Consequently, the term Orang Asli places both makes their identity, leadership and ethnicity as a state responsibility (Subramaniam, 2015).

There exists a legal ambiguity in relation to the Orang Asli, as the legal framework on the one side provides recognition and protection on the special status of indigenous communities, while also affording incontestable power over land matters to the State authority as well as a paternalistic transfer of rights away from the Orang Asli. Consequently, while there exists little doubt of the encroachment of land development projects on customary Orang Asli land, both

the Federal- and State governments oftentimes operate within the law to make these concessions. However, the Orang Asli's customary right to land is increasingly recognized by the High Courts in Malaysia, which have ruled in favour of the Orang Asli in a number of disputes (Nicholas, 2010, pp. 7-9). No court rulings have so far led to a change in legislation.

An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the Orang Asli is in contradiction with Malaysia's international moral obligations.

The legal ambiguity mentioned above has caused multiple conflicts, consequently generating several high-profile cases of violation of customary rights, which have ended in the Malaysian High Courts.

- Koperasi Kijang Mas v Kerajaan Negeri Perak

Important case from the Ipoh High Court, where it was decided that the Orang Asli had exclusive rights to the forest produce in approved Orang Asli areas. An important point here was that these rights were in force despite the land only being approved for reserve and not yet gazetted (Nicholas, 2010, pp. 7-8)

- Adong bin Kuwau & Ors v State Government of Johor

Case from 1997 in the Johor High Court, where compensation was awarded 52 Jakuns for loss of ancestral lands. Despite not holding an official title to the land, the Johor High Court recognized the customary rights of the Jakuns to use the land. Hence, the case implied that aboriginal peoples have right to hunt and gather on lands other than those reserved for indigenes (Nicholas, 2010, p. 8)

- Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors

In 2002, the Shah Alam High Court ruled that the Temuans had propriety rights over their customary lands and thus should be compensated according to the rules of the Land Acquisition Act 1960. The Temuans had been evicted from their land to make way for a highway to the Kuala Lumpur International Airport in 1995 (Nicholas, 2010, pp. 9-10). This case set an important precedent and received a lot of media attention because the defendants were both private companies, Selangor State and the Federal Government.

In general, the disputes between the Orang Asli and the State- and Federal governments have been solved in the courts and the decisions of the courts seems to be respected by both parties. As accounted for above, it seems that the courts have been favourable to the Orang Asli. However, a court case is both protracted and expensive and consequently oftentimes out of reach for the Orang Asli, who are both few and politically disorganized (Weiss, 2006).

Description of risk

There is a risk that indigenous and traditional peoples' rights are not upheld. Malaysia's legal framework seems incapable of adequately protecting indigenous rights as well as State and Federal governments, who have used this legal framework systematically to prioritize 'public purpose development' over customary land rights.

Malaysia has not ratified ILO convention 169 on indigenous and tribal peoples. There are numerous court cases and allegations that commercial plantations had encroached on, or were introduced into, land claimed as indigenous customary land rights/title, without the community's knowledge or without complying the principles of free, prior and informed. Furthermore, there is no legal definition or understanding or concept of 'traditional territories'.

While a positive development is traceable in the Malaysian court system, this road to justice oftentimes requires vast amounts time and resources not in the possession of a marginalized

community like the Orang Asli of Peninsular Malaysia.

Risk conclusion

The risk is determined as Elevated as Malaysia's legal framework is inadequately protecting indigenous rights as well as State- and Federal governments use the legal framework systematically to prioritize 'public purpose development' over customary land rights.

2.4.6. Risk designation and specification

Elevated risk

2.4.7. Control measures and verifiers

Verifiers:

- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. For land tenure issues check palm oil producers' 'Landbank' and 'Environmental' scores – the latter which covers FPIC and IP rights - <http://www.sustainablepalmoil.org/companies/>
- Conduct a search on latest news and NGO reports on disputes and developments on indigenous and traditional peoples' land claims and assurance of rights via websites and NGOs including:
 - NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, , Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth [foe.org](http://www.foe.org), Centre for Orang Asli Concerns (COAC) (<http://www.coac.org.my/>), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komang (komas.org), Cultural Survival ([culturalsurvival.org](http://www.culturalsurvival.org)))Media reports (Mongabay.com, greenomics.org, red-monitor.org, , eyesontheforest.org, sarawakreport.org, malaysiakini.com)
 - Global Platform of Indigenous and Community lands - <http://www.landmarkmap.org/>

Control Measures:

- Evidence of legal land tenure ownership as per requirements cited under 1.1:
 - Evidence of palm oil farms obtaining proof of ownership documents: Issue Document of Title and Register Document of Title
 - Evidence of MPOB License
 - Palm Oil Plantations >500 hectares or plans to clear >50 ha of land - evidence an approved Environmental Impact Assessment (EIA) from the Department of Environment Malaysia (DOE)

And

- Records from the farm that demonstrate active consultation and/or evidence of a participatory social impact assessment and/or conducting a Free Prior Informed Consent before developing farm activities.
- Evidence of maps of an appropriate scale showing the extent of recognised legal, customary or user rights developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities) are available.

-
- Copies of negotiated agreements detailing the process of free, prior and informed consent are available.
 - Evidence of an absence of significant disputes on land use, tenure and access is provided and corroborated by local stakeholders and/or evidence of consent of indigenous and/or traditional communities has obtained.
 - Evidence there is a mutually agreed and documented system for dealing with complaints and grievances and is accessible and agreed upon by all affected parties and that where conflicts have arisen the conflict resolution mechanism is being used and outcomes are considered mutually agreed including by affected parties.

THE ENVIRONMENT

3.1. Environment

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 water use, air and green-house gas emissions, chemical, fertilizer and pesticide use. Risk relates to systematic and/or large scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens natural resources or other environmental values.

3.1.1. Applicable laws and regulations

- Environmental Quality Act 1974 (Prescribed Premises) (Crude Palm-Oil) Regulations 1977 - [link](#)
- Environmental Quality (Clean Air) Regulation 1978 - [link](#)
- Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 - [link](#)
- Environment Quality (Scheduled Wastes) Regulations 2005 - [link](#)
- Environment Quality (Declared Activities) (Open Burning) Order 2003 - [link](#)
- Environmental Quality (Control of Emission from Diesel Engines) Regulation 1996 - [link](#)
- Environmental Quality (Control of Emission from Petrol Engines) Regulation 1996 - [link](#)
- Factories and Machinery (Noise Exposure) Regulations 1989 - [link](#)
- Land Conservation Act 1960, revised 1989 - [link](#)
- National Forestry Act 1984 - [link](#)
- National Land Code 1965 - [link](#)
- National Parks Act 1984 - [link](#)
- Pesticide Act 1974 (Pesticide Registration) Rules 2008 - [link](#)
- Pesticide (Labelling) Regulations 1984 - [link](#)
- Pesticide (Sale and Storage Licencing) Rules 2007 - [link](#)
- MPOB Code of Good Agricultural Practice for Oil Palm - [link](#)
- Malaysian Standard Good Agricultural Practice - [link](#)
- National Land Code 1965 - [link](#)
- Street, Drainage & Building Act 1974 (Act 133) - [link](#)
- Irrigation Areas Act 1953 (Revised 1989) - [link](#)
- Garis Panduan Pembangunan Melibatkan Sungai dan Rizab Sungai, Department of Irrigation and Drainage Malaysia - [link](#)
- Destruction of Disease-Bearing Insects Act (1975) - [link](#)
- OSH Act 1994 (Act 514) Regulations and Orders - [link](#)
- Use & Standards Exposure of Chemicals Hazardous to Health (USECHH) Regulations 2000 - [link](#)
- Wildlife Conservation Act 2010 - [link](#)
- Road Transport Act 1987(Act 334) - [link](#)

- Water Act 1920 (Act 418) - [link](#)

3.1.2. Legal authority

- Department of Environment (DOE): is responsible to prevent, eliminate, control pollution and improve the environment, consistent with the purposes of the Environmental Quality Act 1974.
- Department of Occupational Safety and Health (DOSH): is responsible for the administration and enforcement of legislations related to occupational safety and health of the country.
- Department of Director General of Lands and Mines (JKPTG): is responsible for Amendment or improvement of any provision of land law and legislation regarding with land administration; Management of the record of Federal Government's Property in Land; Acquisition of the alienated land for Federal Project purposes; Tenancy and enforcement of Federal Government's Property in Land; and Management of Small Estate Distribution.
- Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984.
- Department of Agriculture (DOA): is responsible for the provision of consultation services, technical support and professional advice in various agricultural field to ensure sufficient food production that are safe for consumption and control environmental pollution.
- Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: is responsible for the enforcement of the Wildlife Conservation Act 2010 and National Parks Act 1984.
- Department of Irrigation and Drainage (DID): is responsible to provide engineering expertise services and water resources management including river management, coastal and manage flood and drought to improve water security and environment sustainability.
- Malaysian Palm Oil Board (MPOB): an agency under the Ministry of Plantation Industries and Commodities with the stated goal to enhance the Malaysian oil palm industry. MPOB is responsible for research and development, administrative and marketing functions in the palm oil sector.

3.1.3. Legally required documents or records

- Environmental Impact Assessment reports are required for the following prescribed activities under Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987:
 - Agriculture
 - (a) Agricultural programmes necessitating the resettlement of 100 families or more.
 - (b) Development of agricultural estates covering an area of 500 hectares or more involving changes in types of agricultural use.
 - (c) Drainage of wetland, wild-life habitat or of virgin forest covering an area of 100 hectares or more.
 - Drainage and Irrigation
 - (a) Construction of dams and man-made lakes and artificial enlargement of lakes with surface areas of 200 hectares or more.
 - (b) Drainage of wetland, wild-life habitat or of virgin forest covering an area of 100 hectares or more.

- (c) Irrigation schemes covering an area of 5,000 hectares or more.
- Forestry
- (a) Conversion of hill forest land to other land use covering an area of 50 hectares or more.
- (b) Conversion of forest land to other land use within the catchments area of reservoirs used for municipal water supply, irrigation or hydropower generation or in areas adjacent to state and national parks and national marine parks.
- (d) Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more.
- Housing
- Housing development covering an area of 50 hectares or more.
- Waste Treatment and Disposal
- (a) Construction of recovery plant (off-site)
- (b) Construction of wastewater treatment plant (off-site)
- (c) Construction of secure landfill facility
- (d) Construction of storage facility (off-site)
- Site suitability evaluation (for non-prescribed activities)
- Written approval by DOE for installation of incinerator, fuel burning equipment and chimney – under Environmental Quality (Clean Air) Regulation, 1978, EQA, 1974
- Any person intending to construct on any land or any building; or carrying out work that would cause the land or building to become prescribed premises (crude palm oil mills, raw natural rubber processing mills, and treatment and disposal facilities of scheduled wastes), as stipulated under Section 19 of the Environmental Quality Act, 1974 must obtain prior written permission from the Director-General of Environmental Quality. (Applies to whole of Malaysia.)
- A separate license from DOE is required to occupy and operate crude palm oil mills (Applies to whole of Malaysia).

3.1.4. Sources of Information

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3.1.5. Risk determination

Overview of Legal Requirements

Under the National Land Code 1965 and Land Acquisition Act 1960, oil palm plantations are restricted to gazetted agricultural land (Ministry of Plantation Industries and Commodities, Malaysia, 2011). Local Government Act 1976 (Act 171), Town and Country Planning Act 1976 (Act 172), and Street, Drainage & Building Act 1974 (Act 133) govern the establishment of nursery, site preparation, establishment of field, and maintenance of field (Malaysia Productivity Corporation, 2014). These Acts covers the planning of land use in local authority area and deals with matters regarding drainage, and maintenance of municipal roads and public buildings (Malaysia Productivity Corporation, 2014).

The Environment Quality Act (EQA) 1974 forms the backbone of Malaysia's system of environmental legislation to regulate industrial pollution. Palm oil production was one of the major industrial activities that necessitated the EQA 1974 (Ministry of the Environment, Japan). Under that law, the DOE has comprehensive jurisdiction over environmental administration related to industrial activities and is charged with formulating environmental rules and regulations; enforcing legislation and carrying out monitoring in relation to water pollution, air pollution, and hazardous substances; conducting environmental impact assessments (EIAs) for proposed development projects; and carrying out Site Suitability Evaluations of proposed factories (Ministry of the Environment, Japan). More specific environmental controls for the palm oil sector consist of a raft of regulations and orders, formulated separately under the

provisions of the EQA, plus several guidelines (Ministry of the Environment, Japan). As listed in Section 3.1.1, these EQA regulations cover production of crude palm oil, emissions from mills, environmental impact assessment, scheduled wastes, open burning, and emissions from diesel and petrol engines. A documented EIA procedure and requirements in Malaysia is published by DOE: <http://www.doe.gov.my/eia/wp-content/uploads/2013/06/EIA-Procedure-and-Requirements-in-Malaysia.pdf>. In addition to the EQA, there are federal regulations on specific aspects of the environment, such as the protection of national parks and wildlife, and the use of pesticides.

Description of risk

There is a risk oil palm plantations are causing a host of environmental problems such as deforestation, biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change and forest fires, and pesticide use.

There is also a risk that the Environmental Impact Assessment requirements are not being compiled with due to the vetting and monitoring compliance of the EIA process is lacking due to lack of personnel and/or sufficient expertise by the relevant authorities.

Additionally, an environmental audit to monitor the implementation of the EIA controls measures is not required and there are also loopholes whereby an EIA is required based on the size of the project where plantation companies can easily break the project into smaller lots to avoid the EIA requirement.

There is also a risk of low level of compliance of required practices aimed at minimising runoff and soil erosion between caused by conversion of natural forests into oil palm plantations.

The expansion of oil palm plantations in the tropics has been associated with a host of environmental problems such as deforestation, biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change and forest fires, and pesticide use (Chin, 2011). The DOE has had limited resources to undertake its functions (Memon, 2012 and Yaacob & Yusof, 2013). The DOE also has limited powers to deal with the land planning system (Maidin, 2005). This is because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005). Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action has been extremely low (Maidin, 2005). In 2014, Malaysia Federal Court judge Datuk Azhar Mohamed told a UN forum that enforcement agencies in Malaysia “do not have sufficient trained officers and tools, and many cases are not brought before the courts” (AHMAD, 2014).

There are serious problems with the EIA system under the law as it requires control measures in the EIA, but environmental audit to monitor the implementation of controls measures is not required (Yaacob & Yusof, 2013). Most sites are visited by DOE only once or twice a year, and there are high chances that plantation management units delay or do not comply with the control measures in the EIA (Yaacob & Yusof, 2013). There is also commonly a conflict of interest between the companies and the consultants they hire to do the EIA, and there are also loopholes whereby an EIA is required based on the size of the project but plantation companies can easily break the project into smaller lots to avoid the EIA requirement (Sharom, 2008). Most officials from environment related departments including the Town and Country Planning Department and the DOE often lack sufficient expertise to vet the Development Proposals and the EIA reports submitted by the applicants seeking for grant of planning permission (Maidin, 2005). Monitoring compliance of the EIA process is lacking due to lack of personnel and increasing numbers of newly approved development projects (Maidin, 2005).

Risk conclusion

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

3.1.6. Risk designation and specification

Elevated risk

3.1.7. Control measures and verifiers

Evidence of:

- For palm oil plantations > 500 ha or palm oil plantations clearing more than >50 hectares of land seek a completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of the species or habitat are met.
- Agricultural land title or lease to prove site location is on agricultural land (see Section 1.1 and 1.2 for more details).
- Written Permission to Construct a Palm Oil Mill from the Director-General of Environmental Quality
- License to occupy and operate a crude palm oil mill from the Department of Environment Malaysia (DOE)

3.2. 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 plantation establishment and/or management within protected sites. Note that protected areas may include protected cultural sites, including sites with historical monuments.

3.2.1. Applicable laws and regulations

- Convention on Biological Diversity (CBD) [link](#)
- The International Trade in Endangered Species Act 2008 [link](#)
- National Forestry Act 1984 [link](#)
- National Parks Act 1984 [link](#)
- Wildlife Conservation Act 2010 [link](#)
- Aboriginal Peoples Act 1954 [link](#)
- Land Conservation Act 1960, revised 1989 [link](#)
- National Land Code 1965 [link](#)
- Customs Act 1967 (amended in 1988) [link](#)
- Environmental Quality Act 1974 (amended 1985) [link](#)
- Local Government Act No. 171 of 1976 [link](#)
- Town and Country Planning Act No. 172 of 1976 [link](#)
- Fisheries Act 1985 (Act 317) [link](#)
- Taman Negara Enactment (Pahang) No.2, 1939 [En.2 of 1938] (hyperlink not available)
- Taman Negara Enactment (Terengganu) No.6, 1939 [En.6 of 1358] (hyperlink not available)

- Taman Negara Enactment (Kelantan) No.14, 1938 [En.14 of 1938] (hyperlink not available)
- Johor National Parks Corporation Enactment 1989 (hyperlink not available)
- Perak State Parks Corporation Enactment 2001 (hyperlink not available)

3.2.2. Legal authority

- Department of Environment (DOE): enforces the Environmental Quality Act 1974.
- Department of Director General of Lands and Mines (JKPTG): enforces land law and legislation regarding with land administration.
- Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984.
- Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: enforces the Wildlife Conservation Act 2010.
- Department of Orang Asli Development (JAKOA): enforces aboriginal reserves under the Aboriginal Peoples Act 1954.
- Department of Wildlife and National Parks (DWNP) Pahang: enforces Taman Negara Enactment (Pahang) No.2, 1939 [En.2 of 1938]
- Department of Wildlife and National Parks (DWNP) Terengganu: enforces Taman Negara Enactment (Terengganu) No.6, 1939 [En.6 of 1358]
- Department of Wildlife and National Parks (DWNP) Kelantan: Taman Negara Enactment (Kelantan) No.14, 1938 [En.14 of 1938]
- Johor National Parks Corporation (JNPC): enforces Johor National Parks Corporation Enactment
- Perak State Park Corporation (PSPC): enforces Perak State Parks Corporation Enactment 2001

See also 2.4.1 relevant laws

3.2.3. Legally required documents or records

- Agricultural land title or lease from the mill

3.2.4. Sources of Information

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3.2.5. Risk determination

Overview of Legal Requirements

As a signatory of the CBD, Malaysia has an obligation to contribute to global targets for protected areas. According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base (UNDP, 2013). Timber harvesting and hunting is prohibited in these areas. Official figures state that Peninsular Malaysia has approximately 13% of its land under protection, consisting of protection forests within PRFs, wildlife areas/sanctuaries and State Parks. PAs under different networks are governed by different laws with varying degrees of protection status, and gazetting and de-gazetting procedures (UNDP, 2013). In general, Protected Areas (PAs) in Malaysia can be grouped according to the laws used for their establishment (Suksuwan & Abidin, 2012):

- National parks and state parks under the park laws
- Sanctuaries or reserves under the wildlife laws
- Protection forests under the forestry laws
- Marine parks and fisheries prohibited areas under the National Fisheries Act 1985
- Areas reserved for a public purpose under the land laws

The Protection of Wildlife Act 1972 was repealed and replaced by the Wildlife Conservation Act 2010 which came into force in 2011 (Ministry of Natural Resources and Environment, Malaysia, 2014). The new Act contains significantly stricter provisions on species protection by adding species to the protective status and alleviating the protection of several species (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for "presumptions

under the law” (Ministry of Natural Resources and Environment, Malaysia, 2014). Simply by being in possession of snares, the presumption under the law is that there was the intention to hunt, trap and/or kill wildlife which is punishable by a fine of up to RM100,000 and a prison term of up to three (3) years or both. There is also the presumption now that if any wildlife or any part or derivative or any wildlife or snare is found on any premises, the ‘occupier’ of the premises is presumed to be in possession of the above (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for more punitive measures (Ministry of Natural Resources and Environment, Malaysia, 2014). For example, any person who has been convicted of an offence under the Act or any of its subsidiary legislation may be barred from holding any license, permit or special permit for hunting, commercial use of wildlife, or research for a period not exceeding five (5) years (Ministry of Natural Resources and Environment, Malaysia, 2014). Another significant change made under the new Act relates to the power to compound offences under the previous Act (Ministry of Natural Resources and Environment, Malaysia, 2014). As a result, certain offences such as failure to obtain prerequisite special permits in relation to Totally Protected species, the female or the immature of a Totally Protected species will result in prosecution of the offence rather than an offer to compound the offence through a fine (Ministry of Natural Resources and Environment, Malaysia, 2014).

Under the Aboriginal Peoples Act 1954, all matters pertaining to land, including the gazetting and de-gazetting of aboriginal reserves come under the purview of the State, who may by notification in the gazette, declare any area exclusively inhabited by aborigines to be (a) an aboriginal reserve, (b) an aboriginal area, or (c) an aboriginal inhabited area. An aboriginal reserve is to be gazetted, under which no land may be declared for other uses such as sanctuary for wild animals, or reserved forests, neither shall lands be alienated, granted or leased except to Orang Asli who are resident there, and no temporary occupation of the land is permitted. An aboriginal inhabited area has almost similar protection, except the Director General of the Department of Orang Asli Affairs (JHEOA) has the power upon consultation to issue licence for collection of forest produce to people other than the Orang Asli residents. An aboriginal inhabited area may be declared by the state government, but the state has authority to revoke it and there appears to be no provision of any obligation imposed on the state to replace any land taken or de-gazetted as such (Human Rights Commission of Malaysia (SUHAKAM), 2013).

Description of risk

There is a risk that natural ecosystems along the boundaries of protected areas and high conservation value areas are being cleared to establish palm oil plantations.

There is also a risk of lack of adequate identification and thus appropriate conservation measures applied for protected, rare, threatened and endangered species within and adjacent oil palm plantations.

There also is low level of compliance of required practices aimed at minimising runoff and soil erosion between caused by conversion of natural forests into oil palm plantations.

In Malaysia, most protected areas and forest reserves are surrounded by oil palm plantations and smallholdings (e.g. Taman Negara, Krau Wildlife Reserve, and Endau Rompin National Park) (Azhar, Sapari, Zulkifly, Suhailan, & Sajap, 2013). There are occurrence and risk of oil palm plantations encroaching into the boundaries of protected areas, for example the Krau Wildlife Reserve in the state of Pahang (Ahmad, Jaafar, & Abdullah, 2011).

Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species in oil palm plantations. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on

keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Wyn, 2013). These two measures are intended to avoid impacts on the physical and ecological environment (Wyn, 2013). However, the effectiveness of the monitoring is often limited by manpower shortages and other constraints faced by DOE (Wyn, 2013).

As for the Orang Asli communities, apart from loss of land, they have complained that the opening of plantations has resulted in destruction of graveyards (Human Rights Commission of Malaysia (SUHAKAM), 2013). The situation is compounded by the fact that many foresters and administrators are typically unfamiliar with or not informed of the nature of Orang Asli traditional markers (e.g. graves, orchards, old village sites, sacred sites), resulting in high risk of destruction of Orang Asli's protected sites by plantation activities (Human Rights Commission of Malaysia (SUHAKAM), 2013). Most officers from the State Land and Mines Office, and District Officers are ignorant of the Aboriginal Peoples Act which should protect Orang Asli's reserves, and court decisions and precedents on Orang Asli land matters (Human Rights Commission of Malaysia (SUHAKAM), 2013).

Risk conclusion

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

3.2.6. Risk designation and specification

Elevated risk

3.2.7. Control measures and verifiers

Verifiers:

- NGO investigations and reports (Indigenous Peoples Network of Malaysia (JOAS) <http://orangasal.blogspot.my/>, Malaysian Nature Society (MNS) <https://www.mns.my/>, WWF Malaysia <http://www.wwf.org.my/>, Forest Peoples Programme <http://www.forestpeoples.org>, Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth foe.org)
- Media reports (Clean Malaysia <http://cleanmalaysia.com/>, Malaysian Environmental NGOs <http://www.mengo.org/>, Mongabay.com, redd-monitor.org)
- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. Particularly review environmental management and fragile, marginal and peat soils in addition to reviewing the company's latest sustainability and/or annual report if the scorecard is out of date.
- <http://www.iucnredlist.org/>

Control Measures

- For palm oil plantations > 500 ha or plan to clear >50 hectares of land seek a completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of the species or habitat are met.
- Agricultural land title or lease to prove site location is on agricultural land.

- Evidence that comprehensive biodiversity surveys and/or a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 1- 6 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS): <https://www.hcvnetwork.org/als/public-summaries>].
- Evidence of management plans for rare, threatened or endangered species (RTE) include actions for their protection, survival, and prevention of poaching, are develop for the management area and surrounding landscape have been developed and are implemented.
- The RTE management plan takes into consideration traditional hunting by communities outside the management area and includes specific activities to contribute to the protection and survival of RTE species affected by hunting.
- Supplier records of stakeholder consultation with environmental NGOs knowledgeable on protected areas (see NGOs listed in verifier)
- Obtain information on location of the farm (e.g. from management plan) and compare with locations of protected areas in Malaysia
- Information on protected areas in Malaysia:
- Protected Area Master List owned by the Ministry of Natural Resources and Environment (contact: <http://www.nre.gov.my/en-my/ContactUs/Pages/default.aspx>), which is not publicly available. Older version of the list compiled by WWF-Malaysia can be found here: http://awsassets.wwf.org.my/downloads/list_of_pa.pdf

3.3. High Conservation Values (HCV)

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 plantation establishment and/or management within protected sites. Note that protected areas may include protected cultural sites, including sites with historical monuments.

Overall Context

According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base. Agricultural development is prohibited in these areas. Official figures state that Peninsular Malaysia has approximately 13% of its land under protection, consisting of protection forests within Permanently Reserved Forests (PRFs), wildlife areas/sanctuaries and State Parks. PAs under different networks are governed by different laws with varying degrees of protection status, and gazetting and de-gazetting procedures (UNDP, 2013). In general, PAs in Malaysia can be grouped according to the laws used for their establishment (Sukswan & Abidin, 2012):

- National parks and state parks under the park laws
- Sanctuaries or reserves under the wildlife laws
- Protection forests under the forestry laws
- Marine parks and fisheries prohibited areas under the National Fisheries Act 1985
- Areas reserved for a public purpose under the land laws

The expansion of oil palm plantations in the tropics has been associated with a host of environmental problems such as deforestation (conversion of natural forest to oil palm plantation), biodiversity loss, water pollution, soil erosion, carbon emissions resulting from land use change, and pesticide use, The DOE has had limited resources to undertake its functions

(Memon, 2012). Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action has been extremely low (Maidin, 2005). The DOE, as the principal agency entrusted to implement and enforce the environmental protection legislation has limited powers to deal with the land planning system (Maidin, 2005). This is because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005).

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3.3.1. Species Diversity – HCV 1

Concentrations of biological diversity including endemic species, and rare, threatened or endangered species that are significant at global, regional or national levels. HCV 1 sub-categories also consider:

- a) Areas that contain species that are listed as rare, threatened or endangered by IUCN and or Official National and/or regional lists;*
- b) Centres of endemism where concentrations of endemic species occur;*
- c) Areas that contain species that are listed as depleted or poorly reserved at national or regional scale;*
- d) Areas with mapped significant seasonal concentrations of species (e.g. migratory staging areas);*
- e) Areas of high species/communities diversity*
- f) Areas that are identified in the literature as refugia.*

3.3.1.1. HCV Occurrence

HCV1 occurs throughout the natural forests and other ecosystems of Peninsular Malaysia. The region contains 99 vulnerable, threatened and endangered species, according to the IUCN redlist (2016). It is home to endangered mammals such as Asian elephant (*Elephas maximus*), Malayan sun bear (*Helarctos malayanus*), Malayan tapir (*Tapirus indicus*), and various bats: Leschenault's Rousette fruit bat (*Rousettus leschenaultia*), Marshall's Horseshoe Bat (*Rhinolophus marshalli*), and Shamel's Horseshoe Bat (*Rhinolophus shameli*) (Copenhagen Zoo, 2010). Peninsular Malaysian forests contain important habitats of the Malayan Tiger (*Panthera tigris ssp. Jacksoni*), an endangered species in Peninsular Malaysia (Department of Wildlife and National Parks Peninsular Malaysia, 2008).

The region is also home to threatened and endangered species of plants. Most those studied are Dipterocarpaceae, of which ninety-two taxa (56.1%) occurring in Peninsular Malaysia have an IUCN threatened category nationwide: 42 are Vulnerable, 35 are Endangered, and 15 are Critically Endangered (Chua, Suhaida, Hamidah & Saw, 2010). *Aquilaria* and *Gyrinops* (Agarwood/Gaharu), *Gonystylus* (Ramin), *Podocarpus neriifolius* (Podocarp) and *Taxus* (Yews) are the major species/genera of CITES-listed tree species found in Malaysia (Groves & Rutherford, 2015).

Outside of natural ecosystems, some endangered wild animals do occur in oil palm plantations in Peninsular Malaysia, and most cases of Human-Wildlife Conflicts involve tigers and elephants (Persey, Imanuddin, & Sadikin, 2011). Tigers (*Panthera tigris*) and leopards (*Panthera pardus*) in Peninsular Malaysia frequently move into oil-palm estates from surrounding forest areas to prey on wild ungulates such as pigs and deer or on domestic cattle (Azlan & Sharma, 2006)

3.3.1.2. Sources of information

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3.3.1.3. Risk determination

Annex 2 shows a GFW map of significant total tree cover loss from 2005-2014 overlaid with proxy HCV 1 and 3 mapped areas (Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots).

In general, conversion of forest to agriculture is an intense form of forest disturbance, often involving complete and permanent removal of trees (Sodhia, et al., 2010). Threats to HCV 1 are mainly caused by conversion of natural forests into oil palm plantations (see also Section 4) which results in habitat removal and fragmentation – see Annex 1 and 2 for evidence of significant tree cover loss from 2005 -2014 and Intact Forest Landscape loss (2000 -2013) in key HCV 1 proxy areas including protected areas, important bird and tiger habitat areas. This threat of habitat loss can be demonstrated also by this example: in 2013 the Forest Research Institute Malaysia (FRIM), a state agency, announced that the last stands of Keruing Paya (*Dipterocarpus coriaceus*) in Peninsular Malaysia were wiped out when Bikam forest reserve in Perak was cleared and converted into oil palm plantations (Butler, 2013).

In Peninsular Malaysia, the Department of Wildlife and National Parks (DWNP) is responsible for elephant conservation and management, as well as for the mitigation of Human-Elephant Conflict (Saaban, et al., 2011). However, DWNP is limited by shortage of personnel, challenges in budget allocation, logistics, etc. (Saaban, et al., 2011). Most plantations combine trenches and electric fencing to protect their crops from incoming elephants (Salman & Nasharuddin, 2003). Overall, there is a low number of illegal killings of elephants by frustrated farmers, although the impact is significant and continuous monitoring is necessary (Saaban, et al., 2011).

Human-Tiger conflicts in oil palm plantations are often reported in Peninsular Malaysia, whereby workers are killed by the tiger or vice versa (Brown & Jacobson, 2005). Malaysia has adopted a National Tiger Conservation Action Plan annually monitored by the Malaysian Conservation Alliance for Tigers (MYCAT) Secretariats' Office and Ministry of Natural Resources and Environment, but the overall level of implementation has been unsatisfactory (Kawanishi, 2016). Continued loss of Malaysia's remaining tigers and natural forests is happening due to insufficient resources, government committeemen, and public interest (Kawanishi, 2016).

Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species in oil palm plantations. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Wyn, 2013). These two measures are intended to avoid impacts on the physical and ecological environment (Wyn, 2013). However, the effectiveness

of the monitoring is often limited by manpower shortages and other constraints faced by DOE (Wyn, 2013).

Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014). Additionally, according to the IUCN Red List Peninsular Malaysia has 99 vulnerable, threatened and endangered species (IUCN 2016). This indicates the overall level of implementation and monitoring biodiversity protection in Malaysia needs to improve.

In conclusion, given the threats to HCV 1 are mainly caused by conversion of natural forests into oil palm plantations (see also Section 4) which results in habitat removal and fragmentation this indicator is considered Elevated risk.

3.3.1.4. Risk designation and specification

Elevated risk

3.3.1.5. Control measures and verifiers

- For plantations >500 ha **or plan to clear >50 hectares of land** or palm oil plantations clearing more than >50 hectares of land, seek a completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of the species or habitat are met.
- Agricultural land title or lease to prove site location is on agricultural land.
- Evidence that comprehensive biodiversity surveys and/or a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 1- 6 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].
- Evidence of management plans for rare, threatened or endangered species (RTE) include actions for their protection, survival, and prevention of poaching, are develop for the management area and surrounding landscape have been developed and are implemented.
- The RTE management plan takes into consideration traditional hunting by communities outside the management area and includes specific activities to contribute to the protection and survival of RTE species affected by hunting.
- Supplier records of stakeholder consultation with environmental NGOs knowledgeable on protected areas (see NGOs listed in verifier)
- Obtain information on location of the farm (e.g. from management plan) and compare with locations of protected areas in Malaysia
 - Information on protected areas in Malaysia: Protected Area Master List owned by the Ministry of Natural Resources and Environment (contact: <http://www.nre.gov.my/en-my/ContactUs/Pages/default.aspx>), which is not publicly available. Older version of the list compiled by WWF-Malaysia can be found here:

3.3.2. Landscape-level ecosystems and mosaics – HCV 2

Large landscape-level ecosystems and ecosystem mosaics that are significant at global, regional or national levels, and that contain viable populations of the great majority of the naturally occurring species in natural patterns of distribution and abundance. Sub-categories:

- a) *Intact Forest Landscapes (IFL map⁴ uses the most recent coverage)*
- b) *Landscape-scale natural forests that have experienced lesser levels of past human disturbance (e.g., minimal timber harvesting) or other management (e.g. fire suppression), or areas within such forests.*
- c) *Forests recognised as being regionally significant at the bioregion or larger scale by conservation organisations (in formally recognised reports or peer reviewed journals) due to the unusual landscape-scale biodiversity values provided by size and condition of the forest relative to regional forest land cover and land use trends.*
- d) *Forests that provide regionally significant habitat connectivity between larger forest areas or between refugia and mosaics.*
- e) *Significant Roadless areas.*
- f) *Significant Forests that haven't been affected by forest management activities.*

3.3.2.1. HCV Occurrence

The Central Forest Spine (CFS) of Peninsular Malaysia is an important natural landscape of Malaysia, supplying 90% of the population's water supply and harbouring the remaining population of Malayan tigers in its forests (UNDP 2014). The CFS runs down the length of Peninsular Malaysia, straddling eight states, comprising of four main forest complexes: Banjaran Titiwangsa – Banjaran Bintang – Banjaran Nakawan; Taman Negara – Banjaran Timur; South-East Pahang, Chini and Bera Wetlands; and Endau-Rompin National Park – Kluang WR (UNDP 2014). Within those forest complexes, the United Nations Development Programme (UNDP) identified three forest landscapes as priority landscapes in improving the connectivity of the CFS: The Taman Negara forest landscape in Pahang, the Belum-Temengor forest landscape in Perak, and the Endau-Rompin forest landscape in Johor (UNDP 2014). The CFS covers an area of approximately 5.3 million ha; over 40% of the total terrestrial area and over 91% of forest areas in Peninsular Malaysia; roughly 80% are in PRF, and 20% are Alienated Land and State Land forests (UNDP 2014). There are four Intact Forest Landscapes in Peninsular Malaysia according to 2013 data (Global Forest Watch, 2016). These IFLs are the forest complexes of Taman Negara – Banjaran Timur range, Krau Wildlife Reserve, Royal Belum State Park, and Temenggor Forest Reserve.

Ecologically speaking, plantations are areas that have been cleared of original vegetation, possibly drained and cut and maintained with an alternative plant cover (Copenhagen Zoo, 2010). These lands are considered ecologically altered – cleared and no longer in their original state or maintained in a state of arrested or deflected succession (Copenhagen Zoo, 2010). However, oil palm plantations may be converted from areas that are considered HCV 2 (i.e. natural forest may be converted to oil palm plantation) (see Annex 1 and also Section 4), and present plantation boundaries may pose threats to adjacent HCV 2.

3.3.2.2. Sources of information

- Annex 1 – Global Forest Watch - www.globalforestwatch.org/maps
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3.3.2.3. Risk determination

Annex 1 shows a Global Forest Watch (GFW) map of Peninsular Malaysia Tree Cover Loss from 2005 to 2014 and IFL loss from 2000-2013 on Peninsular Malaysia.

In Malaysia, most protected areas and forest reserves are surrounded by oil palm plantations and smallholdings (e.g. Taman Negara, Krau Wildlife Reserve, and Endau Rompin National Park) (Azhar, Sapari, Zulkifly, Suhailan, & Sajap, 2013). There are occurrence and risk of oil palm plantations encroaching into the boundaries of protected areas, for example the Krau Wildlife Reserve in the state of Pahang (Ahmad, Jaafar, & Abdullah, 2011).

Given the evidence of IFL loss and encroachment of palm oil plantations into protected areas this indicator is identified as Elevated risk.

3.3.2.4. Risk designation and specification

Elevated risk

3.3.2.5. Control measures and verifiers

Verifiers:

- geographic risk –
 - Cross reference palm oil supply area with above maps to identify any overlap with HCV areas
 - Examine deforestation, peat, fires, social indicators and other trends by region/province/district - <http://commodities.globalforestwatch.org/>
- Corporate risk - Review the [Zoological Society of London \(ZSL\)](#)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to

environmental and social best practice which is based on publicly available information on disclosure of their operations.

- Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores - <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.
- mill + supply base – when CPO or derivative palm oil can be traced back to the mill of known location, then risk associated with the particular mill can be examined (utilizing the upcoming GFW mill neighbourhood environmental risk assessment tool). - <http://commodities.globalforestwatch.org/>

Control Measures:

- Completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of HCV 2 are met.
- Agricultural land title or lease to prove site location is on agricultural land.
- Evidence a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 1- 6 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].
- Evidence that management plans have been developed for the management area and surrounding landscape have been developed and are implemented to ensure the maintenance of HCV 2 values.

3.3.3. Ecosystems and habitats – HCV 3

Rare, threatened, or endangered ecosystems, habitats or refugia. Sub categories:

- a) Existing forests in forest landscapes where these ecotypes are rare;*
- b) Areas of important genes or genetically distinct populations;*
- c) Ecosystems that are depleted or poorly reserved at the regional or national scale;*
- d) Old growth forests, outside of forest biomes where the concept is redundant;*
- e) Remnant natural forest vegetation in heavily cleared landscapes.*

3.3.3.1. HCV Occurrence

Ecosystems that are poorly represented within Protected Areas in Peninsular Malaysia (less than 5 per cent of the ecosystem is protected) include mangroves, beach vegetation, peat swamp forest, limestone and ultra-basic habitats, and heath (kerangas) forest (Zuraidah & Suksuwan, 2014). Lowland dipterocarp forests, wetlands and limestone hills are also especially vulnerable ecosystems in Malaysia (Ministry of Natural Resources and Environment, 2016). Oil palm plantations may contain patches of natural forest, and may be adjacent to natural forest that may contain HCV 3.

3.3.3.2. Sources of information

- Annex 2 – Global Forest Watch Maps - <http://www.globalforestwatch.org/>
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http://www.wildlife.gov.my/images/stories/penerbitan/lain_lain/Redlist%20Final.pdf

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3.3.3.3. Risk determination

Annex 2 shows a GFW map of significant total tree cover loss from 2005-2014 overlaid with proxy HCV 1 and 3 mapped areas (Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots).

Threats to HCV 3 are mainly from the conversion of natural forests into oil palm plantations (see also Section 4). Lowland dipterocarp forest has been and are being converted into, oil palm or rubber plantations (Rainforest Journal, 2011). A large amount of peatland in Malaysia has already been drained for large scale oil palm plantations and continues to be cleared for oil palm plantations (Wetlands International – Malaysia, 2010). A key area of management is in the buffer zones around plantations so that it does not negatively affect the value of the peat swamp forest remnant (Wetlands International – Malaysia, 2010). Unfortunately, one of the main contributing factors of riparian buffer zone destruction in Malaysia is the encroachment of river reserves by oil palm plantations, releasing pollutants such as fertilizers and pesticides (Zainudin, Ansari, & Baharudin, 2013).

Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia" (Ministry of Natural Resources and Environment, Malaysia, 2014).

In conclusion, given the threats to HCV 3 are mainly caused by conversion of natural forests into oil palm plantations (see also Section 4) which results in habitat removal and fragmentation this indicator is considered Elevated risk.

3.3.3.4. Risk designation and specification

Elevated risk

3.3.3.5. Control measures and verifiers

Country Specific

- Corporate risk - Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations.

Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.

Control Measures:

- Completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of HCV 3 are met.
- Agricultural land title or lease to prove site location is on agricultural land.
- Evidence that comprehensive biodiversity surveys and/or a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 1- 3 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].
- Evidence of management plans for rare, threatened or endangered ecosystems include actions for their protection, survival, and prevention of poaching, are develop for the management area and surrounding landscape have been developed and are implemented.

3.3.4. Critical ecosystem services – HCV 4

Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes. Sub-categories:

- a) protection from flooding;*
- b) protection from erosion;*
- c) barriers from destructive fire;*
- d) clean water catchments*

3.3.4.1. HCV Occurrence

Dam, water catchment, and soil protection or conservation in natural forests would be classified and gazetted as Protection Forest under PRF under the National Forestry Act, in which agriculture is prohibited. However, many areas that would qualify as HCV 4 have not been gazetted as such. Fires have occurred sporadically in the natural forests, and more frequently in the secondary and peat swamp forests, the gelam forests on raised sand beaches on the east coast, and in forest plantations (International Forest Fire News, 2001). Most of the secondary and degraded forests that were burned were not forest reserves but state forests that were earmarked for conversion. Often the spread of fire halts when it reaches the undisturbed forests (ISA, 2000). Fires in natural forests on Alienated Land stem from land clearing by farmers and private land owner (International Forest Fire News, 2001).

Ecologically speaking, plantations are areas that have been cleared of original vegetation, possibly drained and cut and maintained with an alternative plant cover (Copenhagen Zoo, 2010). These lands are considered ecologically altered – cleared and no longer in their original state or maintained in a state of arrested or deflected succession (Copenhagen Zoo, 2010). Therefore, oil palm plantations themselves do not contain HCV 4, and loss of HCV 4 due to conversion will be dealt with under CSR Category 4.

3.3.4.2. Sources of information

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- Mekhilef, S., Siga, R., & Saidur, R. (2011). A review on palm oil biodiesel as a source of renewable fuel. Renewable and Sustainable Energy Reviews, 1937–1949.
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3.3.4.3. Risk determination

In Malaysia, the Biochemical Oxygen Demand (BOD) level must be below 100 parts per million before palm oil processing effluent can be legally discharged into streams (WWF, 2016). Many palm oil mills in Malaysia still discharged either partially treated or raw palm oil mill effluent (POME) into nearby rivers (Madaki & Seng, 2013). Unfortunately, a lack of enforcement is a major challenge to ensure the water environments (Khalit, 2009 and Clean Malaysia, 2016). Rivers management in Malaysia is fragmented and placed under different government's department and agencies, each responsible for a distinct component with little or no interaction or coordination amongst them (Khalit, 2009). Typically, the mill hires a consultant company to analyze samples from the final discharge and the results must be submitted monthly to the Department of Environment, which usually only does an on-site inspection upon complaints by residents.

Relatively low fertilizer and pesticide amounts are needed in oil palm plantations (Sumathi,

Chai, & Mohamed, 2008 and Mekhilef, Siga, & Saidur, 2011). However, there is low level of compliance of practices aimed at minimising runoff and soil erosion between land clearing and full ground coverage with vegetation (Teoh, 2000).

In conclusion, given the low level of compliance to practices aimed at minimising runoff and soil erosion and threats to HCV 4 caused by conversion of natural forests into oil palm plantations (see also Section 4) this indicator is considered Elevated risk.

3.3.4.4. Risk designation and specification

Elevated risk

3.3.4.5. Control measures and verifiers

Country Specific

Verifiers:

- Corporate risk - Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations.
- Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.

Control Measures:

- Completed and approved Environmental Impact Assessment for areas that require them (see section 3.1.3) (check list of approved EIAs on the DOE website: <http://www.doe.gov.my/eia/eia-reports/>) and verify that environmental controls are followed in the field through evidence of an audit. Ensure that any legal requirements relating to the protection of HCV 4 are met.
- Agricultural land title or lease to prove site location is on agricultural land.
- Evidence that a High Conservation Value (HCV) and Environment Impact Assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors) to identify HCV 4 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].

3.3.5. Community needs – HCV 5

Sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples (e. g.: for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or indigenous peoples. Sub-categories:

- a) Unique/main sources of water for drinking and other daily uses;*
- b) Unique/main sources of water for the irrigation of food crops;*
- c) Food, medicines or fuel etc. for local consumption.*

3.3.5.1. HCV Occurrence

Peninsular Malaysia is inhabited by the Orang Asli, who are the indigenous peoples of Peninsular Malaysia. Because the customary land (and waters) of an Orang Asli community is very localized and site-specific, it is not surprising that this specific ecological niche invariably becomes the basis of the community's subsistence, spirituality, culture, history and identity (Human Rights Commission of Malaysia (SUHAKAM), 2013). There is often overlap of Orang

Asli communities and palm oil plantations, because most Orang Asli villages are on state land (Nicholas, 2012), and states continue issuing plantation licences on state land claimed under indigenous customary land rights/title (Yong, SACCESS, & JKOASM, 2014).

3.3.5.2. Sources of information

- Transparency International Malaysia. (2013). Forestry in Malaysia. Retrieved from Transparency International Malaysia Forest Governance Integrity Project - <http://fgi.transparency.org.my/forestry-sector/>
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3.3.5.3. Risk determination

Oil palm plantations in Peninsular Malaysia affect the health and livelihoods of Orang Asli communities as most Orang Asli villages are on state land (Nicholas, 2012), and states continue issuing plantation licences on state land claimed under indigenous customary land rights/title, without the consent of affected communities, prior process, or adequate compensation (Yong, SACCESS, & JKOASM, 2014). There are land conflicts that stem from the non-recognition of the native customary rights of indigenous peoples (Human Rights Commission of Malaysia (SUHAKAM), 2013). The health and livelihood of Orang Asli villagers living adjacent to established plantations are directly affected by plantation management in terms of their reliance on rivers for water consumption and disturbance to the crops they plant for subsistence and income (Human Rights Commission of Malaysia (SUHAKAM), 2013).

The National Inquiry into the Land Rights of Indigenous People in 2013 recorded 51 statements of allegations that commercial plantations had encroached on, or were introduced into, land claimed as indigenous customary land rights/title, without the community's knowledge or without complying the principles of free, prior and informed consent (Human Rights Commission of Malaysia (SUHAKAM), 2013). Apart from loss of land, many community witnesses complained that the opening of plantations has resulted in destruction of graveyards and crops, and pollution of rivers and loss of livelihoods and traditional ways of life (Human Rights Commission of Malaysia (SUHAKAM), 2013). Compensation is usually not paid because the Orang Asli's right to the land is not recognized (Human Rights Commission of Malaysia (SUHAKAM), 2013). EIAs and SIAs are not done comprehensively, and rarely are cumulative impacts considered (Human Rights Commission of Malaysia (SUHAKAM), 2013). Often surrounded by plantations, Orang Asli villagers find it difficult to gather food and continue their traditional ways of life. In addition, water has become increasingly scarce as the rivers, which they depend heavily on are now severely polluted by poor forestry practices and not suitable for consumption (Human Rights Commission of Malaysia (SUHAKAM), 2013). There are also complaints that crops that Orang Asli planted were being cut down by plantation companies (Human Rights Commission of Malaysia (SUHAKAM), 2013). Many loggers/foresters/administrators declared that they were unfamiliar with or not informed of the nature of Orang Asli traditional markers of their crops (Human Rights Commission of Malaysia (SUHAKAM), 2013).

In plantation management in Peninsular Malaysia, consultation is limited only to a small group of government-appointed local community leaders, local authorities, state agencies and ruling state and federal representatives (Yong, SACCESS, & JKOASM, 2014). FPIC violations are common, particularly when the state allocates forestry concessions and provisional leases to oil palm companies (Yong, SACCESS, & JKOASM, 2014). There is rarely any transparency or the need to obtain the communities' FPIC, resulting in NCR lands and territories being extinguished without their knowledge and consent (Yong, SACCESS, & JKOASM, 2014).

Given the evidence presented above on the potential threats to HCV 5 by palm oil plantations this indicator is considered Elevated risk.

3.3.5.4. Risk designation and specification

Elevated risk

3.3.5.5. Control measures and verifiers

Verifiers:

- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. For land tenure issues check palm oil producers' 'Landbank' and 'Environmental' scores – the latter which covers FPIC and IP rights: <http://www.sustainablepalmoil.org/companies/>
- Conduct a search on latest news and NGO reports on disputes and developments on indigenous and traditional peoples' land claims and assurance of rights via websites and NGOs including:
 - NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, , Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth [foe.org](http://www.foe.org), Center for Orang Asli Concerns (COAC) (<http://www.coac.org.my/>), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komang (komang.org), Cultural Survival ([culturalsurvival.org](http://www.culturalsurvival.org)))Media reports (Mongabay.com, greenomics.org, red-monitor.org, , eyesontheforest.org, sarawakreport.org, malaysiakini.com)
 - Global Platform of Indigenous and Community lands: <http://www.landmarkmap.org/>

Control Measures:

It is important to remember that the appropriate way to maintain or enhance each value will depend on the value itself. There are a variety of possible options to maintain or enhance various HCVs, which include:

- Evidence that a High Conservation Value (HCV) assessment to identify HCV 5 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].
- Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights in accordance with internationally recognized FPIC standards, are not constrained by local legal frameworks (see Category 2.2 also for more details).
 - Documents or records of consultations with local communities for any land or rights dispute resolutions.

3.3.5. Cultural values – HCV 6

Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples. Sub-categories:

- a) Aesthetic values;
- b) Historic values;
- c) Scientific values;
- d) Social (including economic) values;
- e) Spiritual values.

3.3.6.1. HCV Occurrence

Peninsular Malaysia is inhabited by the Orang Asli, who are the indigenous peoples of Peninsular Malaysia. Because the customary land (and waters) of an Orang Asli community is very localized and site-specific, it is not surprising that this specific ecological niche invariably becomes the basis of the community's subsistence, spirituality, culture, history and identity (Human Rights Commission of Malaysia (SUHAKAM), 2013). There is often overlap of Orang Asli communities and palm oil plantations, because most Orang Asli villages are on state land (Nicholas, 2012), and states continue issuing plantation licences on state land claimed under indigenous customary land rights/title. Important cultural and spiritual sites of Orang Asli could be occupied by oil palm plantations. Foraging areas, or what are often referred in Malay as "kawasan rayau", are precise areas within an Orang Asli traditional territory, which are non-residential or non-cultivated (Human Rights Commission of Malaysia (SUHAKAM), 2013). The size of a foraging area will depend on the degree in which a particular Orang Asli community relies on the forests for food and other needs, and the overall size of their traditional territory (Human Rights Commission of Malaysia (SUHAKAM), 2013). The size of land awarded or leased to companies and GLCs can sometimes include more than one village involving vast areas of the Orang Asli's kawasan rayau or foraging areas (Human Rights Commission of Malaysia (SUHAKAM), 2013).

3.3.6.2. Sources of information

- Human Rights Commission of Malaysia (SUHAKAM). (2013). REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from <http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf>
- Transparency International Malaysia. (2011). FOREST GOVERNANCE INTEGRITY REPORT. TRANSPARENCY INTERNATIONAL MALAYSIA. Retrieved from <http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf>

3.3.6.3. Risk determination

Unfortunately, there is no clear-cut legal definition or understanding or concept of 'kawasan rayau' (foraging areas) or 'traditional territories' (Human Rights Commission of Malaysia (SUHAKAM), 2013). Neither is there an appreciation as to why Orang Asli need large areas of customary lands (Human Rights Commission of Malaysia (SUHAKAM), 2013), even though the Malaysian government's declared policy states that it recognises and protects the cultural identity and customary lands of the Orang Asli (Transparency International Malaysia, 2011). Many foresters/administrators have declared that they were unfamiliar with or not informed of the nature of Orang Asli traditional markers (e.g. graves, orchards, old village sites, sacred sites) (Human Rights Commission of Malaysia (SUHAKAM), 2013). Such a situation had

resulted in the properties and sacred sites of the Orang Asli being destroyed by oil palm plantation activities (Human Rights Commission of Malaysia (SUHAKAM), 2013).

Given the evidence presented above on the potential threats to HCV 6 by palm oil plantations this indicator is considered Elevated risk.

3.3.6.4. Risk designation and specification

Elevated risk

3.3.6.5. Control measures and verifiers

Verifiers:

- Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available information on disclosure of their operations. For land tenure issues check palm oil producers' 'Landbank' and 'Environmental' scores – the latter which covers FPIC and IP rights:
<http://www.sustainablepalmoil.org/companies/>
- Conduct a search on latest news and NGO reports on disputes and developments on indigenous and traditional peoples' land claims and assurance of rights via websites and NGOs including:
 - NGO investigations and reports (Forest Peoples Programme <http://www.forestpeoples.org>, , Rainforest Action Network www.ran.org, <http://www.schusterinstituteinvestigations.org>, greenpeace.org, Friends of the Earth foe.org, Center for Orang Asli Concerns (COAC) (<http://www.coac.org.my/>), The Human Rights Commission of Malaysia (SUHAKAM) (<http://www.suhakam.org.my/>), Pusat Komang (komang.org), Cultural Survival (culturalsurvival.org))Media reports (Mongabay.com, greenomics.org, red-monitor.org, , eyesontheforest.org, sarawakreport.org, malaysiakini.com)
 - Global Platform of Indigenous and Community lands: <http://www.landmarkmap.org/>

Control Measures:

It is important to remember that the appropriate way to maintain or enhance each value will depend on the value itself. There are a variety of possible options to maintain or enhance various HCVs, which include:

- Conservation set-asides (e.g. appropriately designed protected areas, buffer zones, habitat corridors)
- Restoration (e.g. remediation of previous damage to ecosystems, reintroduction of hunted species, creation of wildlife corridors between forest blocks)
- Community development and livelihoods projects (e.g. employment and healthcare)
- Local government and NGO support (e.g. extending or renewing leases, preventing inappropriate development, supporting company conservation initiatives).
- Evidence that a High Conservation Value (HCV) assessment to identify HCV 6 have been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)].
- Where HCV set-asides with existing rights of local communities have been identified, there is evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights in accordance with internationally recognized FPIC standards, are not constrained by local legal frameworks (see Category 2.2 also for more details).

- Documents or records of consultations with local communities for any land or rights dispute resolutions.

CONVERSION

4.1. New plantations have not replaced natural forest or natural ecosystems since November 2005

November 2005 has been set as the baseline of natural forest and/or ecosystem conversion. Risk relates to plantation establishment on converted natural forest and/or ecosystem areas post November 2005.

Note: The baseline of natural forests and ecosystem conversion has been set at November 2005 to be in aligned with other international benchmarks set through the Roundtable on Sustainable Palm Oil's deforestation 2005 baseline and to complement initiatives such as Amazon Soy Moratorium establishment in 2006.

Context

The change in forest cover in Peninsular Malaysia shows that extensive deforestation occurred from 1970 to 1982, however, from 1982 onward, the rate of deforestation has slowed down (Miyamoto, Parid, Aini, & Michinaka, 2014). This can be attributed to the fact that logging in Peninsular Malaysia slowed down significantly in the 1980s with the ban on logs exports in 1985 and the adoption of a National Forestry Policy in 1986 to reduce the annual cutting rate of timber through selective harvesting systems (Yong, Saccess, & Jkoasm, 2014). This decline was argued by the government to demonstrate the country's progressive commitment towards sustainability concerns, and by critics to have been caused by overharvesting in previous decades (Yong, Saccess, & Jkoasm, 2014). While this reduction plan was somewhat effective in reducing the rate of logging (at least in the case of legal logging), land conversion for oil palm and other plantations increased (Yong, Saccess, & Jkoasm, 2014).

The major land uses in Peninsular Malaysia have since been oil palm (19% of land area in 2010) and rubber (6% in 2010), while other land uses (paddy, coconut, and orchard) accounted for no more than 3% each (Gunarso et al, 2014). Forest conversion statistics show that between 1990 and 2010, approximately 28% of all plantations in Peninsular Malaysia or 318,000 ha have been planted after conversion (Gunarso et al, 2014). The percentage of oil palm plantations on peat soils stayed relatively constant throughout that 20 years, expanding proportionally with the sector, constituting about 8.1% of all oil palm plantations in 1990 and 7.9% in 2010 (Gunarso et al, 2014). In Malaysia, the direct conversion as opposed to progressive degradation of forest to oil palm was more common than in Indonesia, particularly in Sabah and Sarawak, but the conversion of other types of land use, such as rubber was more important in Peninsular Malaysia (Gunarso et al, 2014).

4.1.1. Applicable laws and regulations

- National Physical Plan (NPP)
- Convention on Biological Diversity (CBD) - [link](#)
- The National Parks Ordinance 1962 - [link](#)
- Wildlife Conservation Enactment 1997 - [link](#)
- Environment Protection Enactment 2002 - [link](#)
- Environment Protection (Prescribed Activities)(Environmental Impact Assessment) Order 2005 - [link](#)
- Forest Enactment 1968 - [link](#)
- Land Conservation Act 1960, revised 1989 - [link](#)
- Environmental Quality Act 1974 (amended 1985) - [link](#)

- Local Government Act No. 171 of 1976 - [link](#)
- Wildlife Conservation Act 2010 - [link](#)

4.1.2. Legal authority

-

4.1.3. Legally required documents or records

- EIA report

4.1.4. Sources of information

- Ahmad, C. B., Jaafar, J., & Abdullah, J. (2011). Buffer zone characteristics for protected areas: a preliminary study of Krau Wildlife Reserve. WIT Transactions on Ecology and The Environment. Retrieved from <http://www.witpress.com/Secure/elibrary/papers/RAV11/RAV11003FU1.pdf>
- Gunarso, P., Hartoyo, M. E., Agus, F., & Killeen, T. J. (2014). OIL PALM AND LAND USE CHANGE IN INDONESIA, MALAYSIA AND PAPUA NEW GUINE. Roundtable on Sustainable Palm Oil (RSPO). Retrieved from http://www.tropenbos.org/file.php/1343/4_oil_palm_and_land_use_change_gunarso_et_al.pdf
- Lim, T. W. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195
- Miyamoto, M., Parid, M. M., Aini, Z. N., & Michinaka, T. (2014). Proximate and underlying causes of forest cover change in Peninsular Malaysia. Forest Policy and Economics. Retrieved from http://ac.els-cdn.com/S1389934114000768/1-s2.0-S1389934114000768-main.pdf?tid=01863d62-70da-11e6-8107-00000aacb360&acdnat=1472799411_b7045641ac61a25dd4e1f5a42ce44ec2
- Yong, C., SACCESS, & JKOASM. (2014). Deforestation Drivers and Human Rights in Malaysia. Forest Peoples Programme. Retrieved from <http://www.forestpeoples.org/topics/climate-forests/publication/2014/deforestation-drivers-and-human-rights-malaysia>

4.1.5. Risk determination

Overview of Legal Requirements

There is no law or binding public policy that completely prohibits conversion of forest to oil palm plantation. There are rules that regulate conversion, and these relate to land classifications, where the rules differ depending on the land classification.

Conversion is legally allowed and must get prior approval from State Forestry Department particularly in areas alienated from state land. Conversion of forest reserved as plantation or other land use is legal provided it is approved by the State Executive Committee (EXCO) and published in the Gazette. Oil palm and rubber are classified as forest in Peninsular Malaysia and forest can be converted to these forest types while still being classified as Permanent Forest Reserve.

All forest clearance for plantations involving the extraction of timber requires a license to be issued under the National Forestry Act 1984 (NFA, revised 1993 (Act 313)). For plantations established inside forest reserves, these licenses may contain provisions for environmental protection (stream buffers, steep zone exclusions, etc.).

The Town and Country Planning Act provides for the proper control and regulation of town and country planning in local authority areas in the states of Malaysia. The agency responsible for

enforcing this law is the Department of Town and Country Planning which has approved a National Physical Plan (covering Peninsular Malaysia) and Development Plans (structure plans (state, district, local area plans) and detailed plans). These plans have several provisions of relevance to forest clearance for commercial plantations. The plans specify where plantations can be situated. The plans also identify environmentally sensitive areas (ESAs) (Lim, 2013).

The state forestry department keeps forest conversion records including maps/aerial photographs/satellite images.

The National Physical Plan (NPP) establishes categories/rankings of Environmentally Sensitive Areas (ESAs) that correspond to different allowances and restrictions on land use (Roundtable on Sustainable Palm Oil (RSPO), 2015). No conversion to oil palm is allowed in ESA Rank 1 and Rank 2.

ESA Rank 1 (no development, agriculture or logging shall be permitted except for the purpose ecotourism, research and education) consists of:

- Existing and proposed Protected Areas (PA).
- Important small habitats outside the PA system: turtle landing sites, salt licks, important plant areas, limestone outcrops and natural wetlands of high conservation value.
- Catchments of existing and proposed dams.
- Areas above 1,000m.

ESA Rank 2 (No development or agriculture. Sustainable logging and eco-tourism may be permitted subject to local constraints) consists of:

- All other forests and wetlands outside Protected Areas.
- 500m buffer zone around Rank 1 areas.
- Areas between 300m-1,000m contour.

ESA Rank 3 (Controlled development whereby the type and intensity of the development shall be strictly controlled depending on the nature of the constraints) consists of:

- Marine park islands.
- 500m buffer zone around Rank 2 areas.
- Catchments of water intake and groundwater recharge zones.
- Areas between 150m-300m contour, all areas with erosion risk above 150ton/ha/year, all areas experiencing critical or significant coastal erosion.

The Environmental Quality Act (EQA) requires that an environmental impact assessment (EIA) be carried out prior to engaging in several prescribed activities (s 34A). Item No. 6 of the 1987 Order prescribes the following "Forestry" activities as requiring EIAs:

- Conversion of hill forest land to other land use covering an area of 50 hectares or more.
- Logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydropower generation or in areas adjacent to state and national parks and national marine parks.
- Logging covering an area of 500 hectares or more.
- Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more.
- Clearing of mangrove swamps on islands adjacent to national marine parks.

Description of risk

There is a risk of natural forest or ecosystem conversion are cleared for the establishment of

palm oil plantations. It is not illegal to convert forest to oil palm in Malaysia and millions of hectares of forests have been cleared or designated as conversion forest for oil palm plantations.

Given that it is not illegal to convert forest to oil palm, there is a clear risk that conversion will occur for this purpose. 8.6% (19 000ha) of new oil palm plantations established in Peninsular Malaysia during the period 2006-2010 were planted on land directly converted from forest (Gunarso et al, 2014). 45.2% (99 000 hectare) were established on bare soil, which may have been converted from forest. A total of 2.38 million hectares of forest are designated as conversion forest – to be cleared for non-forest uses (Lim, 2013).

Malaysia is among countries with the highest IFL degradation between 2000 and 2013 in both absolute terms (area) and relative terms (percentage) (Intact Forest Landscapes, 2014) - also see Annex 1. The four IFLs in Peninsular Malaysia appear to overlap with protected areas, namely Taman Negara, Krau Wildlife Reserve, Royal Belum State Park, and Temenggor Forest Reserve. However, most protected areas and forest reserves are surrounded by oil palm plantations and smallholdings (e.g. Taman Negara, Krau Wildlife Reserve, and Endau Rompin National Park). There is occurrence and risk of oil palm plantations encroaching into the boundaries of protected areas, for example the Krau Wildlife Reserve in the state of Pahang (Ahmad, Jaafar, & Abdullah, 2011).

A Sustainable Palm Oil Transparency Toolkit (SPOTT: <http://www.sustainablepalmoil.org/map/>) analysis shows that there are likely tree cover losses inside the boundaries of protected areas in Peninsular Malaysia that could be associated with encroachment by oil palm plantations, based on satellite imagery and cloud computing algorithm. These encroachments are violations of the legislations governing protected areas (see Section 3.2).

The National Physical Plan applies to Peninsular Malaysia, and the various development plans under its jurisdiction give extensive provision for forest protection through the spatial zonation of the country's protected areas. Conversion of protected forests into plantations is forbidden by this policy. However, in practice there appear to be extensive and regular breaches of these provisions (Wyn, 2013). Six prominent cases have been identified in which state forestry departments issued permits for large-scale forest clearance in violation of the "Environmentally Sensitive Area" status of the area as designated by the development plans (Wyn, 2013). The Department of Town and Country Planning is rarely consulted before the decision is made to proceed with conversion to plantations inside forest reserves (Wyn, 2013). Of the six cases identified where there have been alleged breaches of the planning laws, all are in Peninsular Malaysia (Wyn, 2013).

Risk conclusion

Elevated risk: The agricultural commodity is driving direct impact of converting natural forest or ecosystems post November 2005. Data yield evidence that conversion is occurring on a widespread and/or systematic basis.

4.1.6. Risk designation and specification

Elevated risk

4.1.7. Control measures and verifiers

Verifiers:

- (1) geographic risk – examine time series tree cover (deforestation trends) by region/province/district (<http://commodities.globalforestwatch.org/>)
- (2) corporate risk – Corporate risk - Review the Zoological Society of London (ZSL)'s Sustainable Palm Oil Transparency Toolkit (SPOTT) tool to assess the palm oil producer's commitments to environmental and social best practice which is based on publicly available

information on disclosure of their operations.

- Check palm oil producers' 'environmental management' and 'fragile, marginal and peat soils' scores: <http://www.sustainablepalmoil.org/companies/> and/or the company's latest annual report.

Control Measures:

- Obtain the shape file of the farm property's boundaries and compare/overlay with mapping data from the following initiative that are using satellite time series images to detect the land change cover: www.globalforestwatch.org
- Evidence that a comprehensive HCV assessment, including stakeholder consultation, was conducted prior to any conversion or new planting before November 2005. Evidence should include historical remote sensing imagery which demonstrates that there has been no conversion of primary forest or any area required to maintain or enhance one or more HCV.
- Evidence is provided of undeveloped areas of peat land (of any depth) are not developed or drained post November 2005. Evidence should include historical data which demonstrates that there has been no conversion of peatlands post November 2005. Evidence should include maps identifying marginal and fragile soils, including excessive gradients and peat soils and how the farm management plans has identified and protected peatlands.
- Evidence of management plans that demonstrates fires and road-building on peat soils are prohibited.
- Where peat land has been cleared since November 2005, and without a prior and adequate HCV and HCS assessment, exclusion of the palm oil farm(s) palm oil supply should be considered from the upstream buyer's supply chain.

4.2. Fire avoidance is being practiced

Assess the risk of fire use in plantation establishment and/or management activities. Risk relates to assessing the role of fire use driving natural ecosystem conversion.

Context

The Environmental Quality Act 1974 has effectively banned open burning on vast plantation areas and a 2000 amendment placed a complete ban on burning on any peat soil area (Abdullah, 2002). However, exemptions are allowed including for the burning of the following: "any diseased and noxious plants; agricultural equipment; residues from land cleared for cultivating food crops; and residues from smallholdings cleared for planting or replanting crops in an area not exceeding 2 ha per day" (Abdullah, 2002).

4.2.1. Applicable laws and regulations

- Guidelines for implementation of ASEAN policy on zero-burning, 2003 - [link](#)
- Environment Quality (Declared Activities) (Open Burning) Order 2003 - [link](#)

4.2.2. Legal authority

- Department of Environment

4.2.3. Legally required documents or records

- EIA report

4.2.4. Sources of information

- Abdullah, A. (2002). A Review and Analysis of Legal and Regulatory Aspects of Forest Fires

in South East Asia. Jakarta: Project FireFight South East Asia. Retrieved from <https://portals.iucn.org/library/sites/library/files/documents/2002-074.pdf>

- Reuters, The Star/Asia News Network. 2016. Malaysia planning to amend law to seize land if there are big fires. The Straits Times, 28 April 2016. <http://www.straitstimes.com/asia/se-asia/kl-planning-to-amend-law-to-seize-land-if-there-are-big-fires>
- Roundtable on Sustainable Palm Oil (RSPO). (2015, March 6). Malaysia National Interpretation of RSPO Principles and Criteria for Sustainable Palm Oil Production. Retrieved from <http://www.rspo.org/key-documents/certification/rspo-national-interpretations>
- Senathirajah, S. Personal communication. (2016, September 1).

4.2.5. Risk determination

Description of risk

Use of fire in land preparation for palm oil establishment has greatly reduced in Malaysia, however use of fire is still observed in the clearing of biomass waste and domestic waste (pers. comms. Senathirajah, 2016). According to a news article quoting Malaysia's Natural Resources and Environment Minister, Malaysia is proposing to amend its Environmental Protection Act to allow the government to seize control of land where big fires are discovered, as part of its long-term efforts to curb haze from slash-and-burn forest clearing techniques usually linked to palm oil plantations (Reuters, The Star/Asia News Network, 2016). This would indicate that while most information about forest fires related to clearing for palm oil plantations is about Indonesia, the issue remains important in Malaysia as well.

No information has been found on the level of competence of plantation staff with respect to fire management, however it has been said that management staff typically attend very basic fire management training (pers. comms. Senathirajah, 2016).

Risk conclusion

Low risk. Expert consultation reveals that fire use in land preparation for oil palm has been greatly reduced in Peninsular Malaysia, thus it presents low risk.

4.2.6. Risk designation and specification

Low risk

4.2.7. Control measures and verifiers

N/A

GENETICALLY MODIFIED ORGANISMS (GMOs)

5.1. There is no commercial use of genetically modified palm.

Plantations have not been planted with genetically modified commodities and/or GMO fertiliser is not being used. Risk relates to the use of GMO plants and/or fertiliser as a potential factor influencing upstream buyers purchasing decisions based on consumer preferences.

5.1.1. Applicable laws and regulations

- BIOSAFETY ACT 2007 - [link](#)
- The Biosafety (Approval and Notification) Regulations 2010

5.1.2. Legal authority

- Department of Biosafety, Ministry of Natural Resources and Environment Malaysia.

5.1.3. Legally required documents or records

N/A

5.1.4. Sources of information

- Department of Biosafety, Ministry of Natural Resources and Environment Malaysia. NO DATE. User's Guide to the Biosafety Act and Regulations. - <http://ibc.um.edu.my/images/ibc/Download/Biosafety%20User%20Guide.pdf>
- Masani MYA, Noll GA, Parveez GKA, Sambanthamurthi R & Prüfer D. 2014. Efficient Transformation of Oil Palm Protoplasts by PEG-Mediated Transfection and DNA Microinjection. - <http://dx.doi.org/10.1371/journal.pone.0096831>
- Parveez GKA, Rasid OA, Hashim AT, Ishak Z, Rosli SK & Sambanthamurthi R. 2015. Tissue Culture and Genetic Engineering of Oil Palm. In: Lai O-M, Tan CP & Akohe Palm Oil: Production, Processing, Characterization, and Uses.

5.1.5. Risk determination

Overview of Legal Requirements

The Biosafety Act of Malaysia follows the broad scheme laid down by the Cartagena Protocol on Biosafety (CPB). Just like the Protocol, Malaysia recognizes the twin aspects of modern biotechnology: the great potential offered by modern biotechnology, and, the need to protect human health and the environment from the possible adverse effects of the products of biotechnology (Ministry of Natural Resources and Environment (NRE) Malaysia, 2008).

The Biosafety Act of Malaysia establishes a process to vet all applications for direct release of living modified organisms (LMOs) into the environment to ensure that the LMO is safe (Ministry of Natural Resources and Environment (NRE) Malaysia, 2008). If it is safe, then it is approved. To arrive at this decision, a science-based risk assessment report submitted by the applicant is reviewed by the Genetic Modification Advisory Committee (GMAC), consisting almost entirely of scientists (Ministry of Natural Resources and Environment (NRE) Malaysia, 2008). The process is as suggested by the CPB and there is no a priori (preconceived) assumption against biotechnology or the approval of the LMO (Ministry of Natural Resources and Environment (NRE) Malaysia, 2008).

Description of risk

The Malaysian Biosafety Act 2007 came into force on 1 December 2009, and the Biosafety (Approval and Notification) Regulations 2010 were passed and came into force on 1 November

2010 to implement it. Together they represent a new national scheme for the regulation of living modified organisms (LMOs (synonymous with GMO)) and products of LMO (Department of Biosafety, n.d.). There is no legislation that applies specifically to oil palm, or palm oil products.

The Malaysian Palm Oil Board (MPOB) initiated genetic engineering of oil palm in the late 1980s and breakthroughs made in the 1990's provided impetus for further ventures (Parveez et. Al, 2015). Many transgenic oil palm plantlets have been produced and are currently growing in MPOB screenhouses, in accordance with the Malaysian Biosafety Act – they are not allowed to be planted in open fields as their safety has not been fully assessed (Parveez et. Al, 2015).

The main objectives of this program are to produce transgenic oil palm with a higher content of oleic acid, modified oil quality (e.g. a higher content of stearic acid), and the ability to produce value-added oils such as palmitoleic and ricinoleic acid, as well as novel products such as biodegradable plastics (Masani et al 2014). Transgenic oil palms are being produced for niche markets such as the oleochemical industry, lubrication, and nutraceuticals, and not for use as commodity oil Parveez et. Al, 2015.

The current palm oil being produced in Malaysia is free from GMO source, and it is expected that this status will continue until at least 2030, due to the regeneration time required for yield testing and multiplying plants for commercialization (Parveez et. Al, 2015).

No information has been found regarding unauthorized use of GM palm oil in the country.

Risk conclusion

LOW RISK: There is no commercial use of GM species in the area under assessment.

5.1.6. Risk designation and specification

Low risk

5.1.7. Control measures and verifiers

N/A

Annex I: Palm oil plantation types

The table **Palm oil plantations Types in Malaysia – Peninsular** identifies the different types of plantations in **Malaysia – Peninsular** which supply palm oil to the market.

'Palm oil plantation type' is a term used to describe the different types of palm oil plantations in a country, to allow a more detailed specification of risk. The Palm oil plantation Type is used to clarify:

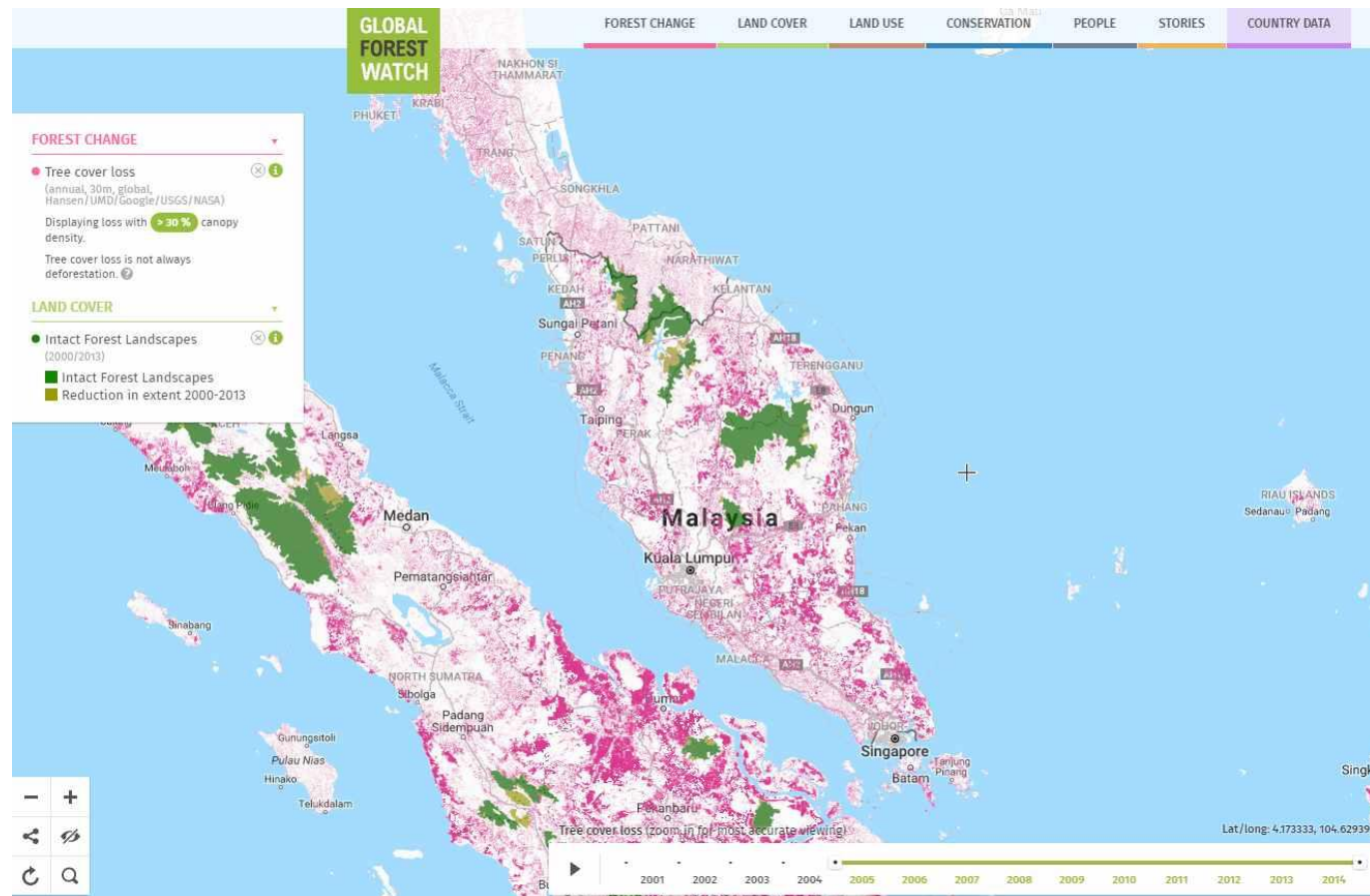
- which plantation types palm oil can be sourced from legally;
- what the legal requirements are for each plantation type, and
- if there are risks related to certain plantation types and not others.

Brief introduction to plantation types for Malaysia – Peninsular.

PALM OIL PLANTATION TYPES IN PENINSULAR MALAYSIA

Source type	Land Ownership	Management regime	Plantation type	Description of source type
Government land development schemes	State land leased to smallholders. Ownership is transferred to smallholders after a 10-15-year period.	Independent Smallholder.	Mono-cropping on land between 4.0 and 5.7 ha. Farming is carried out for subsistence and commercial purposes.	Palm oil produced on large estates where smallholders are awarded small plots (between 4 and 5.7 hectares). The costs of establishment are carried by the state agency and repaid by smallholders through education and their monthly income.
Large-scale private plantation	Alienated land under a Freehold Land title, or Country Land title (CL) under a 99-year lease.	Commercially managed by private companies, including Government-linked companies (GLC) and Non-government-linked companies (Non GLC).	Mono-cropping on land between >40 - >100,000 ha.	Palm oil produced on large scale private plantations. Many companies have fully integrated operations covering the entire production process. Licensing is required for planting, processing, and other business activities.
Small-scale private plantation	Alienated Land. Privately owned under Freehold Land title, Country Land title (CL) under a 99-year lease, or Native Title (NT) alienated for perpetuity Native Titles consist of Malay reservation or Orang Asli customary land.	Independent smallholders.	Mono-cropping on land <40 ha for subsistence and commercial purposes.	Palm oil produced on scattered smallholdings where farmers manage and work their own plantation with minimal government assistance. They sell their FFB directly to local mills and traders.

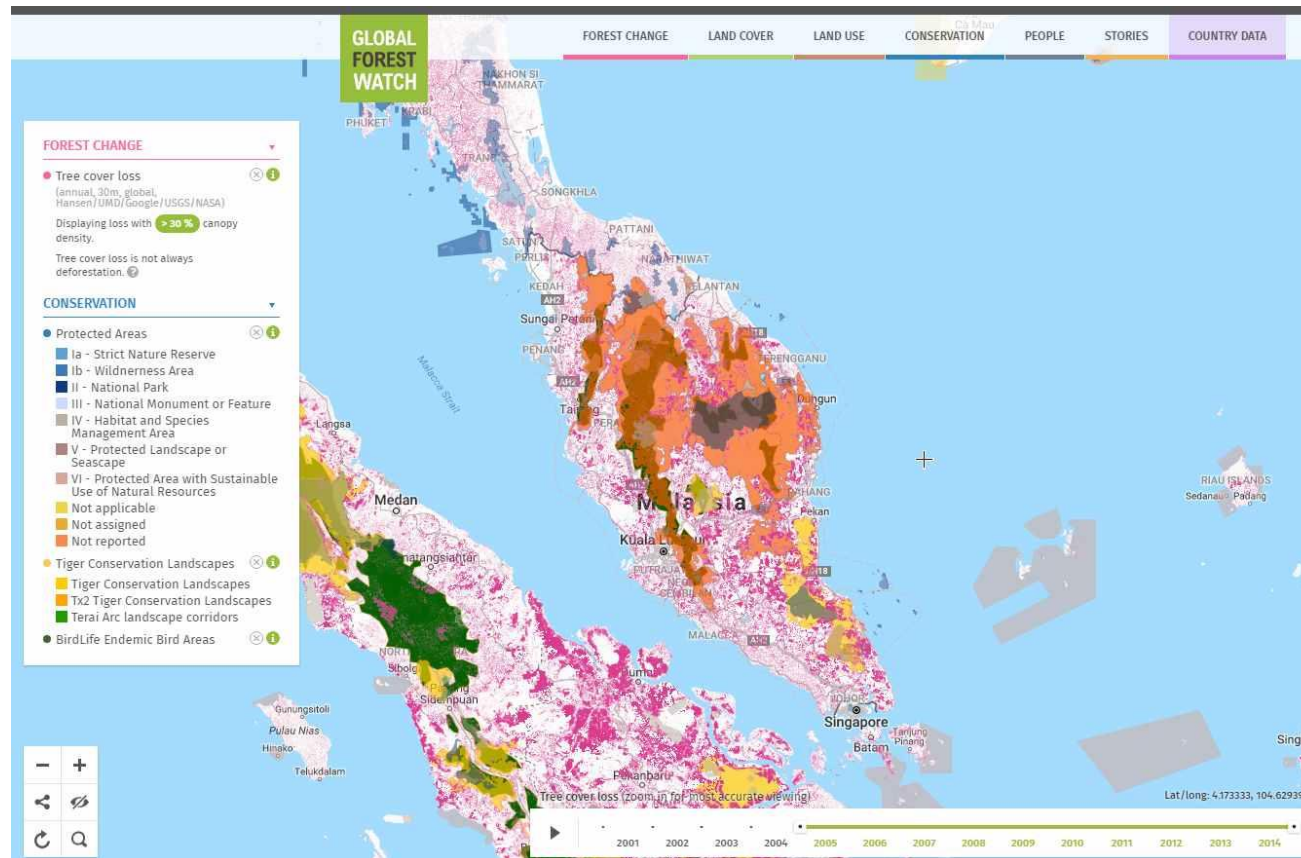
Annex II: Global Forest Watch Map of Tree Cover Loss (2005 -2014) and Intact Forest Landscapes (IFLs) Loss 2000-2013 in Peninsular Malaysia



As last seen on 3rd November 2016: http://www.globalforestwatch.org/map/7/4.17/104.63/ALL/grayscale/loss/607?tab=analysis-tab&begin=2005-01-01&end=2015-01-01&threshold=30&dont_analyze=true

Annex III: Global Forest Watch Map of Total Tree Cover Loss 2005-2014 in Peninsular Malaysia

With overlaid with proxy HCV 1 and 3 areas (Protected Areas, BirdLife Endemic Bird Areas and Tiger Conservation Landscapes)



As last seen on 3rd November 2016:

http://www.globalforestwatch.org/map/7/4.17/104.63/ALL/grayscale/loss/619,618,612?tab=analysis-tab&begin=2005-01-01&end=2015-01-01&threshold=30&dont_analyze=true

About

Responsible Sourcing of Soy, Cattle and Palm Oil

Responsible Sourcing of Soy, Cattle and Palm Oil is a project aimed at creating awareness and capacity among Danish companies to minimise risks of social and environmental problems connected to sourcing palm oil, soy and cattle from developing countries. The project is run by NEPCon and SEGES and funded by DANIDA, Ministry of Foreign Affairs of Denmark.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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