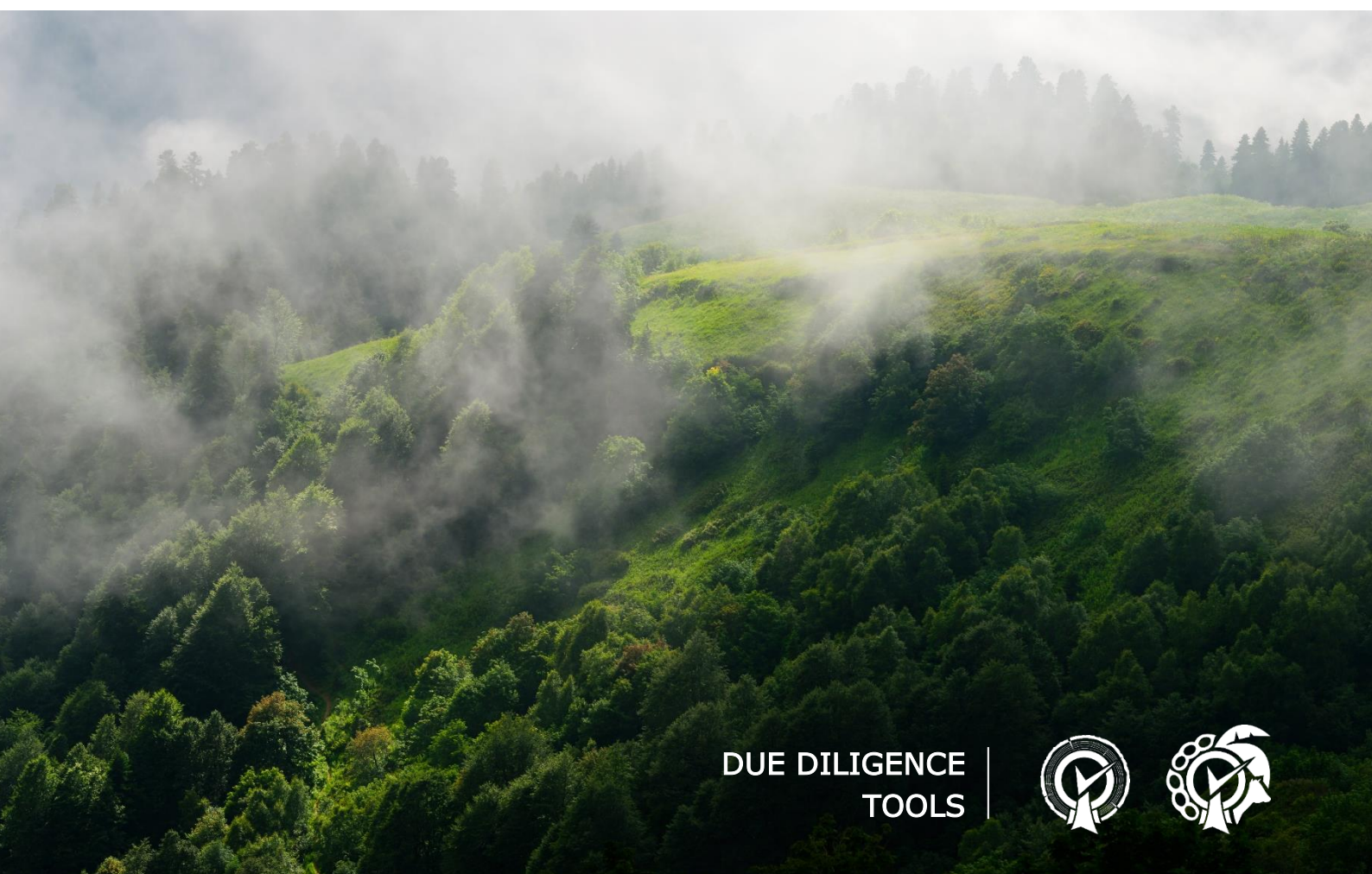


Version 1.0

Due Diligence Guidelines for Forest Managers



DUE DILIGENCE
TOOLS



This tool has been developed by NEPCon as a part of the project “Supporting Legal Timber” funded by the LIFE programme of the European Union and UK aid from the UK government, as well as the project “Responsible Sourcing of Soy, Palm Oil and Cattle” funded by DANIDA, Ministry of Foreign Affairs of Denmark.



NEPCon has adopted an “open source” policy to share what we develop to advance sustainability. This work is published under the Creative Commons Attribution Share-Alike 3.0 license. Permission is hereby granted, free of charge, to any person obtaining a copy of this document, to deal in the document without restriction, including without limitation the rights to use, copy, modify, merge, publish, and/or distribute copies of the document, subject to the following conditions: The above copyright notice and this permission notice shall be included in all copies or substantial portions of the document. We would appreciate receiving a copy of any modified version.

The European Commission support for the production of this publication does not constitute endorsement of the contents which reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

This material has been funded by the UK aid from the UK government; however the views expressed do not necessarily reflect the UK government’s official policies.

DANIDA, Ministry of Foreign Affairs of Denmark has supported the development of this material, however DANIDA is not responsible for any views or claims presented in this material.

Contents

Acronyms.....	4
On the use of these guidelines	4
Introduction	5
Timber Regulations	5
Sources of information.....	5
The role of the FME	5
Placing timber on a regulated market?	5
Due diligence	6
Providing relevant information to buyers.....	6
Definition of legal timber.....	6
Due Diligence Guidelines for FMEs	7
1: Quality assurance system	7
1.1: Commitment - Establish a timber policy.....	7
1.2: Define responsibilities and train staff	7
1.3: Establish written procedures.....	7
1.4: Establish performance monitoring	7
1.5: Develop dispute resolution policy	8
1.6: Define scope	8
2: Forest level information	8
2.1: Information about the Forest Management Unit	8
2.2: Establish a list of applicable legislation.....	8
2.3: Legally required documents.....	9
3: Risk assessment	9
3.1: Review and record existing risk information.....	10
3.2: Specify risk at forest level	10
3.3: Record the risk assessment conclusions.....	11
4: Risk mitigation	11
4.1: Identify and implement risk mitigation actions.....	12
4.2: Evaluate the effectiveness of risk mitigating actions	12
Annex 1: Forest Level Verification Guidelines	14
Verification objectives.....	14
Scope	14
Preparation	14
Evaluation requirements	15
Auditor competence	15

Conformance evaluation	16
Reporting	16

Acronyms

DDS:	Due Diligence System
EUTR:	EU Timber Regulation
FLEGT:	Forest Law, Enforcement, Governance and Trade programme
FME:	Forest Management Enterprise
FMU:	Forest Management Unit
GFR:	Global Forest Registry

On the use of these guidelines

These guidelines provide – for forest managers, forest contractors or other entities engaged with Forest Management Enterprises (FMEs) – an overview of the process involved in implementing a Due Diligence System (DDS). The objective of the guidelines is to provide a stepwise approach to implementing a risk-based due diligence system to reduce the risk of violation of legal requirements relevant to FMEs.

Note: The following symbols are used throughout this document:



Refers to specific tools that are useful at certain stages of the due diligence process.



Provides guidance to the user and specific, relevant information.

Disclaimer: The NEPCon Due Diligence System (DDS) aims to support Forest Management Enterprises in managing the risk of producing and selling forest products that have been illegally harvested, transported or traded. The responsibility for the use of the DDS remains with the person or legal entity using the system. NEPCon waives any liability for the use of the system and shall not assume any responsibility for any loss or damage caused by the use of the DDS.

Introduction

Timber Regulations

The EU, Australia and USA have all implemented legislation to prevent the trade of illegally harvested timber.

All three regulations prohibit placing, on the market, timber that has been harvested, transported or traded in violation of applicable laws. In addition, they contain similar requirements to implement a risk-based system of due diligence (or due care) to minimise the risk that illegally harvested timber is placed on the markets of the EU, USA or Australia.

For forest managers or organisations involved in harvesting of timber outside regulated markets, the obligations on these markets means that buyers of timber will request additional assurance that risks of illegal timber harvesting have been controlled. As such, these guidelines can be used by FMEs to design and implement a system to ensure that necessary legal requirements are met, risk of legal violations are managed, and necessary information and documents are available to buyers.

For forest managers operating inside regulated markets, the guidelines may be used to meet legal requirements to implement due diligence systems or conduct due care.

Sources of information

The EU Timber Regulation (EUTR):

http://ec.europa.eu/environment/forests/timber_regulation.htm

The Australian Illegal Logging Prohibition Act (AILPA):

<http://www.agriculture.gov.au/forestry/policies/illegal-logging>

The US Lacey Act:

https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA_Lacey_Act

The role of the FME

The key to securing legally harvested timber is to ensure that the forest management, harvesting operations, and trade and transport are conducted according to applicable legal requirements in the country or region of harvest. The forest operation, being the first point in any timber supply chain, is therefore very important in assuring that legal compliance is documented and can be communicated downstream to processors and buyers of timber.

Placing timber on a regulated market?

Some forest managers will be placing timber directly onto regulated markets. You place the timber on the market (being an operator or processor) if you are the business or individual who owns standing trees when they are harvested and you make the timber or timber products available for commercial activities.

If you are not directly placing material onto regulated markets, it will be the organisation importing the timber or timber product into the regulated market that will be formally placing the material on the market, and thus will be responsible for ensuring that risks of illegal harvest, transport or trade have been managed. Such operators need to apply due diligence to ensure minimisation of the risks that the timber is illegal. A due diligence system (DDS) is a systematic way of gathering information, assessing the risk and – if necessary – applying measures to minimise that risk.

Due diligence

Due diligence or due care refers to a systematic approach to evaluating and managing risks associated with producing or sourcing timber that has been illegally harvested, transported or traded.

In many cases, due diligence is being used for downstream entities, but there are also potential benefits to applying a risk-based approach to controlling risks of illegal harvesting at the level of the forest.

Providing relevant information to buyers

For an FME, an important part of due diligence is the ability to transfer information about the wood materials to buyers. Such information may include where it was felled, species and quantity, and details as to how forest harvesting and management ensure compliance with applicable legislation.

Definition of legal timber

In the context of these guidelines, the term ‘legally harvested’ means timber harvested, transported and traded **in compliance with applicable laws in the location where the timber was harvested**.

A comprehensive definition of legal requirements relevant to forest management and timber harvesting includes:

1. Legal rights to harvest

- 1.1 Land tenure and management rights
- 1.2 Concession licenses
- 1.3 Management and harvesting planning
- 1.4 Harvesting permits

2. Taxes and fees

- 2.1 Payment of taxes, royalties and harvesting fees
- 2.2 Value-added taxes and other sales taxes

3. Timber harvesting activities

- 3.1 Timber harvesting regulations
- 3.2 Protected sites and species
- 3.3 Environmental requirements
- 3.4 Health and safety
- 3.5 Legal employment

4. Third parties’ rights

- 4.1 Customary rights

- 4.2 Free, Prior and Informed Consent (FPIC)
- 4.3 Indigenous and traditional peoples' rights
- 5. Trade and transport**
 - 5.1 Classification of species, quantities and qualities
 - 5.2 Trade and transport
 - 5.2 Offshore trading and transfer pricing
 - 5.4 Customs regulations
 - 5.5 CITES

Due Diligence Guidelines for FMEs

1: Quality assurance system

Due diligence involves consistent implementation of systems and procedures. The following guidelines will therefore follow a standardised approach to due diligence implementation at forest level.

1.1: Commitment - Establish a timber policy

Establish a policy that forms the basis for your commitment to implement due diligence. The policy should be signed by senior management.



Use the **Policy Template DD-03** and adapt it to your organisation.

1.2: Define responsibilities and train staff

To ensure proper implementation of your due diligence system, assign – to relevant people or positions – responsibility for specific activities. The overall responsibility for the DDS is also assigned to one position.

Responsibilities should be assigned to people or positions having the necessary competencies for the task. Designated people must have sufficient authority and (access to) adequate organisational resources to effectively implement your due diligence system.



Staff responsibilities can be identified and documented in the **FME Due Diligence Manual Template (DD-12)**.

1.3: Establish written procedures

Develop written procedures covering all applicable requirements and have the procedures signed by senior management.



Use the **FME Due Diligence Manual Template (DD-12)** as a basis and adapt it to your organisation.

1.4: Establish performance monitoring

Establish a system for monitoring compliance with applicable legal requirements. The system should include internal monitoring to ensure consistent performance and the ability to follow up on potential shortcomings. An internal monitoring system should be of a complexity that matches the size and scope of the FME.

1.5: Develop dispute resolution policy

As part of quality control systems, the organisation should develop and implement a dispute resolution policy.



Use the **FME Due Diligence Manual Template (DD-12)** as a basis and adapt it to your organisation.

1.6: Define scope

Defining the scope is a central activity of the due diligence process. It is necessary to gain a clear overview of the areas, products and species that are covered by your due diligence system.

2: Forest level information

As an FME, a key activity in your due diligence system is to secure access to information about your forest management operations. Information must be available to the level that allows conclusion of 'low risk' – or to a level where risk mitigation actions/ control measures can be established.

2.1: Information about the Forest Management Unit

Record all relevant information about the area under management. The overview of and information about the area under management should be on file and be made available to auditors upon request.

The following information should be recorded:

- Legally required FM documents and plans
- Product types sold
- Species and volumes harvested and sold
- FME maps and description of FMUs
- List of contractors
- Buyers
- Certification/ verification information

2.2: Establish a list of applicable legislation

To ensure that – as the FME – you are managing forests according to relevant regulations, it is necessary to know the applicable legal requirements for forest management as well as forest product trade and transport.

To ensure that you have this information, you should evaluate the applicable legal framework and assure that all laws and regulations are known to the management, as well as relevant staff and contractors operating in the FME.



NEPCon publishes Timber Legality Risk Assessments that contain lists of applicable legislation on the Online Risk Platform (www.nepcon.org).



The **FME Due Diligence Manual Template (DD-12)** contains an annex that can be used to list relevant laws and regulations.

2.3: Legally required documents

Depending on the jurisdiction and type of FMU under management, different legal requirements will apply related to which documents an FME shall hold in order to be operating legally.

Table 1: Examples of documents related to the five main legality categories.

Legality category	Type of records
1. Documentation for rights to harvest timber within legally gazetted boundaries	Documentation of ownership/ land use rights, contract or concession agreements, concession license, concession maps, harvest permits, etc.
2. Payments for harvest rights and timber including duties related to timber harvesting	Contracts, logging permit, bank notes, VAT documentation, official receipts, etc.
3. Timber harvesting, including environmental and forest-related legislation such as forest management and biodiversity conservation, where directly related to timber harvesting	Official audit reports, environmental clearance certificates, approved harvest plans, logging permits, coupe closure reports, publicly available information demonstrating rigorous legislative supervision and timber tracking and control procedures, official documents issued by competent authorities in a country of harvest, etc.
4. Third parties' legal rights concerning use and tenure that are affected by timber harvesting	Environmental impact assessments, environmental management plans, environmental audit reports, social responsibility agreements, specific reports on tenure and rights claims and conflicts.
5. Trade and customs, in so far as the forest sector is concerned	Generally available documents in paper or electronic format, e.g. transport permits, log removal passes, contracts, bank notes, trade notes, import licenses, export licenses, official receipts for export duties, export ban lists, export quota awards, etc.



The **FME Due Diligence Manual Template (DD-12)** contains an annex that can be used to list relevant legally required documents.

3: Risk assessment

The objective of the risk assessment is to identify where risk exists that applicable legislation is being violated in relation to:

1. Risk of legal violation in connection with the **forest management** and harvesting operations;
2. Risk of legal violation during **trade and transport** of the material;

3. **Risk of mixing:** If you are also handling timber from other FMEs not under your direct control, there may also be risks related to mixing material from your own FME with other material during transport or trade (if applicable)¹.

3.1: Review and record existing risk information

At a national level there exist different sources of information about risks related to the forest sector. This existing information should be evaluated and taken in to account in the risk assessment of your specific operations.



The **FME Due Diligence Manual Template (DD-12)** contains an annex that can be used to record the risk identification findings for each legal sub-category.



Information about risks at the national level are contained in **Timber Legality Risk Assessments**, which can be accessed on the **Online Risk Platform (www.nepcon.org)** and should be used as a reference for national level risks and lists of applicable legislation.

The national-level risk assessment should be used as a basis for the forest-level risk assessment. If a legal category or sub-category has been identified to have a 'Specified Risk' at national level, the particular issue shall be carefully evaluated at forest level.

In situations where you as the FME changes the risk designation identified in the national level risk assessment, a justification should be provided and justified.

Even where 'Low Risk' has been identified in the national level risk assessment, the FME should conduct a forest-level risk assessment to take into account any specific issues that may prevail in actual on-site forest management.

3.2: Specify risk at forest level

If there are legal categories that have been concluded to have 'Specified Risk' in the national-level risk assessment, then there is a need to conduct a forest-level evaluation of these issues to judge if they are in fact areas of risk in your operation, and what can be done to manage or mitigate those risks.



The **FME Due Diligence Manual Template (DD-12)** contains an annex that can be used to record the risk specification findings.



The conclusion of the risk assessment shall be 'Low' or 'Specified'.



It should be noted that even if the national level risk assessment contains specified risk of violations of applicable laws, it does not necessarily have to be present in the FME.

¹ This would be relevant only where the FME handles wood from other areas or sources as part of their operations. In this case risk assessment and supply chain management needs to be included in the due diligence system.

Basically, the risk assessment process at forest level entails evaluating risk for each of the legal categories listed in the definition of legal timber, as follows:

1. Legal rights to harvest

- 1.1 Land tenure and management rights
- 1.2 Concession licenses
- 1.3 Management and harvesting planning
- 1.4 Harvesting permits

2. Taxes and fees

- 2.1 Payment of taxes, royalties and harvesting fees
- 2.2 Value-added taxes and other sales taxes

3. Timber harvesting activities

- 3.1 Timber harvesting regulations
- 3.2 Protected sites and species
- 3.3 Environmental requirements
- 3.4 Health and safety
- 3.5 Legal employment

4. Third parties' rights

- 4.1 Customary rights
- 4.2 Free, Prior and Informed Consent (FPIC)
- 4.3 Indigenous and traditional peoples' rights

5. Trade and transport

- 5.1 Classification of species, quantities and qualities
- 5.2 Trade and transport
- 5.2 Offshore trading and transfer pricing
- 5.4 Customs regulations
- 5.5 CITES

For each of these categories and sub-categories the risk of legal violation within the FME's operations should be evaluated. As mentioned above, focus should be given to those areas where a national-level risk assessment has concluded 'Specified Risk'. However, it is recommended that the full range of legal categories is evaluated, to assess if there could be potential risk of legal violations in the management of forest as well as in transport and trade of forest products.

3.3: Record the risk assessment conclusions

Record all conclusions made based on your risk assessment. The conclusions should be made based on the objective evaluation of the forest management, transport and trade activities conducted by the FME. Any areas where actual or potential legal violations are identified should be concluded to have a 'Specified Risk'.



The **FME Due Diligence Manual Template (DD-12)** contains an annex that can be used to record risk assessment findings.

4: Risk mitigation

For any products or supply chains that are classified as 'Specified Risk', you need to conduct risk mitigation measures. This also means that any verification of issues at forest level in your FME should focus on areas with specified risk.

4.1: Identify and implement risk mitigation actions

Once it has been concluded that certain operations in the FME are at risk of, or in fact are, violating applicable legal requirements, actions need to be taken to manage these risks.

In principle, the risk mitigation at forest level consists of implementing systems to ensure that legal requirements are met by the FME, as well as implementing a system to monitor continued legal compliance in the forest operations.

4.2: Evaluate the effectiveness of risk mitigating actions

Once risk mitigating actions have been implemented, evaluate their effectiveness on a regular basis.

Table 2: Examples of risks, mitigating actions and verification actions

'Specified Risk'	Mitigating actions	Verification actions
Risk of violations of customary rights at the forest level	Manage legal non-compliance by ensuring management practices include respect for customary rights	On-site audit, stakeholder consultations, interviews, document review.
Risks of violations of harvest regulations related to environmental regulations	FME revise harvest practices to meet requirements as described in the law.	Forest level verification audits focusing on environmental compliance.



Annex 1 contains brief guidelines on how forest level verification may be used as a tool to verify legal compliance and monitor the efficiency of risk mitigation actions.



Figure 1: Risk assessment, mitigation and verification process

Annex 1: Forest Level Verification Guidelines

Verification audits may be used by the FME internally to verify how effective mitigation actions have been in controlling legal non-compliances. Verification in the forest may also play a role in the monitoring of overall legal compliance in the FME's operations.

Verification may therefore play an important role in the whole due diligence process.



The ***Verification Report Template (DD-14)*** supports you in conducting forest level verification and recording findings in a systematic way.

Verification objectives

Verification may have two objectives:

1. Verify the absence or presence of potential legal non-compliances in the FME based on the specific risks identified during the risk assessment.
2. Verify if risk mitigation measures have been implemented effectively and that the risk has been mitigated.

A verification system may include both objectives in one process.

Scope

The scope of the verification audit must correspond to the specified risks in the FME. This means that the audit may be limited to areas with specified risks and not to others. This is important in terms of establishing the audit requirements as well as the necessary auditor competencies.

The audit scope definition includes determination of:

- The FMUs where activities must be modified;
- Identification of the areas where risk has been specified and the related activities that will therefore be evaluated;
- Site visits required in the audit evaluation; these depend on the location and number of FMUs included in the scope of the evaluation and the audit team composition.

Preparation

In any case, preparation for the audit needs to be well-planned and communicated with all implicated parties.

Depending on the risks and on the role of your FME staff, the following should be prepared prior to on-site audits:

- Availability of documented procedures
- Records and systems that document the actions taken to mitigate risks
- Identification of responsible staff

- Identification of the relevant FMUs/ forest locations and activities to be evaluated
- Applicable legal documents related to relevant forest management operations (forest management plan, maps, licenses, etc.)
- Records showing compliance with relevant laws and regulations.

Evaluation requirements

The verification of forest sources of timber addresses any specified risks identified as present in the FME.



The legality framework for verifying FMEs is found in Annex 1 of the NEPCon LegalSource Standard².



Trade and transport requirements: The requirements for trade and transport are found in Annex 2 of the LegalSource Standard.



If you are handling other sources of timber than from you own FME, you can use the NC-STD-02 Generic COC Standard to implement a chain of custody system.

During the evaluation, confirm that the FME conforms to all relevant legality issues that have been defined as 'Specified Risk' during the risk assessment. A legality category that has been confirmed to be 'Low Risk' does not need to be evaluated.

If the verification identifies violations of applicable legalisation on the FME that has not been mitigated, you should develop a plan to handle these issues immediately.



Timber from areas where violations of applicable laws are identified should not be placed on the market for sale.

Auditor competence

The reliability of the audit process depends on the competencies of those conducting the audit.

Finally, it is important for any auditor to have a thorough knowledge of the system and the standard against which the audit is being conducted. Knowledge of legal requirements and the legal context is also very important.

Auditor competence covers the following aspects:

- Audit principles, procedures and techniques:* the auditor must be able to apply those appropriate to different audits and ensure that audits are conducted in a consistent and systematic manner.
- Management system and reference documents:* the auditor must comprehend the scope of the audit and the applicable audit requirements.

² The NEPCon LegalSource Standard sets out the LegalSource requirements for producing and sourcing legally harvested timber. It is used for evaluating and certifying due diligence in legal timber sourcing. Download the standard here: www.nepcon.org/legalsource-standard

- c) *Organisational context*: the auditor must understand the organisation's (or auditee's) operational context. Knowledge and skills in this area should cover:
 - organisational size, structure, authority, functions and relationships,
 - general business processes and related terminology, and
 - cultural and social customs of the auditee.
- d) *Applicable laws, regulations and other requirements relevant to the discipline*: the auditor must be able to work within, and be aware of, the requirements that apply to the organisation being audited. Knowledge and skills in this area should cover:
 - local, regional and national codes, laws and regulations,
 - contracts and agreements,
 - international treaties and conventions, and
 - other requirements to which the organisation subscribes.

Conformance evaluation

As mentioned above, the specific applicable requirements depend on the risks that have been specified, as well as the type of entity under evaluation. Annex 1 of the LegalSource Standard contains verifiers that must be evaluated for each specific type of legality requirement.

It is important that conformance applicable legislation is evaluated and documented. Any non-conformances against the requirements should be defined and specific corrective action requests should be raised and given a defined timeline for conformance.

Reporting

The results of verification should be documented in a systematic and transparent way.

About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the EU LIFE programme and UK aid from the UK government.



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 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.

NEPCon | www.nepcon.org | info@nepcon.org