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Evaluation and revision of the Sabah TLAS standard and audit checklists

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Acronyms

ACLR:	Assistant Collector of Land Revenue
AEC:	Agreement of Environmental Condition
AL:	Alienated land
AWP:	Annual Work Plan
CoC:	Chain of Custody
CW:	Controlled Wood
DFO:	District Forestry Officer
DOF:	Director of Forestry
DoL:	Department of Labor
DOSH:	Department of Occupational Safety and Health
ECR:	Environmental Compliance Report
EIA:	Environmental Impact Assessment
EPD:	Environment Protection Department
ETTF:	European Timber Trade Federation
EUTR:	EU regulation 995/2010
FDS:	Forest Department Sabah
FLEGT:	EU Forest Law, Enforcement, Governance and Trade programme
FMP:	10-year Forest Management Plan
FSC:	Forest Stewardship Council
G2RP:	Global Resources Resilience Programme
GFS:	Global Forest Services
ITP:	Industrial Tree Plantations
LTL:	Long Term Licence Agreement
MD:	Mitigation Declaration
NEPCon:	Nature, Environment and People Consult
PDP:	10-year Plantation Development Plan
PF:	Permanent Forest Reserve
PMM:	Proposal for Mitigation Measures
RIL:	Reduced Impact Logging
RSP:	Registered Survey Paper
SAFODA:	Sabah Forestry Development Authority
SBS:	Social Baseline Study
SFMLA:	Sustainable Forest Management Licence Agreement
SL:	State Land
SOCISO:	Social Security Organization
STIA:	Sabah Timber Industry Association
TDP:	Timber Disposal Permit
TLAS:	Timber Legality Assurance System
TOL:	Temporary Occupation Licence

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2. Introduction

The current report outlines the evaluation and revision of the Sabah Timber Legality Assessment System (TLAS) requirements carried out as part of the project managed by WWF Malaysia: Advancing a legal and sustainable global timber trade through the EU FLEGT action plan. The work has been possible through the generous support from the EU.

The evaluation has been carried out in close coordination with WWF Malaysia, the Sabah Forest Department (FDS) and the Sabah Timber Industry Association (STIA).

The evaluation has been carried out by NEPCo¹ in collaboration with G2RP².

The terms of reference for the evaluation contain the following outputs:

1. Proposal for revised criteria and verification procedures related to verifying industry conformance with Principles 5 and 6 and its Compliance Audit Checklist
2. A revised Compliance Audit Checklist for Principle 1 - Principle 4 based on the updated Sabah TLAS

See Annex 2 for the full Terms of Reference.

The evaluation and stakeholder comments to the revised Sabah TLAS is planned to be followed up by another two separate steps including comprehensive field testing of the Sabah TLAS (focusing on principle 5 and principle 6) as well as training and awareness raising activities aimed at the wood processing industry.

3. The Sabah TLAS

The Sabah Timber Legality Assurance System has been developed in response to EU FLEGT programme requirements contained in the Voluntary Partnership Programme (VPA). It is clear from the evaluation that the current system is well thought through and that the legality scope covered by the current Sabah TLAS covers almost all relevant issues. It is found that the Sabah TLAS system only have a short way to go, not only to fulfill the FLEGT legality scope, but also the scope as defined under the EU Timber Regulation.

¹ <http://www.nepcon.net/>

² The Global Resources Resilience Programme, managed by Rachel Butler

Malaysia has taken steps to engage the European Union under the FLEGT to work towards developing a Timber Legal Assurance System (TLAS) in preparation of signing the Voluntary Partnership Agreement (VPA) under the EU FLEGT programme. The Timber Legal Assurance System (TLAS) spells out the rules and requirements that will be used to monitor whether applicable laws are met and timber can be traced through the supply chain.

Until a TLAS system has been approved the industry of Sabah is still challenged with providing the EU timber importers with information and assurance of legality to meet the requirements for the EU regulation 995/2010 (EU Timber Regulation - EUTR). Since it may take some time before the formal VPA process is concluded and Sabah is able to export FLEGT licensed timber, an interim measure is needed. This measure could be for Sabah to implement an independently verified timber legality verification system that is in line with FLEGT and EUTR requirements - though not formally approved by the EU.

As part of this process FDS is looking to continue to support good forest management and governance in Sabah through independent verification of compliance to Sabah laws and regulations as well as meeting requirements from markets such as the EU related to legality assurance. Sabah has developed the Sabah TLAS with support from Germany and the Netherlands. Also the TLAS requirements have been tested in connection with the RIL auditing³. The concept was to develop a process in line with the requirements for FLEGT VPA to ensure compliance with the applicable legal framework for forest management within the Forest Management Units and licenses areas using an independent system to monitor all forestry operations compliance with the nationally defined legality standards, including systems to control the flow of timber from the harvest site to export through chain of custody controls (CoC).

The Malaysia FLEGT process applies the following definition of legal timber:

'Timber harvested by licensed person from approved areas and timber and timber products exported in accordance with the laws, regulations and procedures pertaining to forestry, timber industry and trade of Malaysia'

The TLAS includes the following six principles as part of the framework to establish legality:

1. Right to harvest
2. Forest operations
3. Statutory charges
4. Other users' rights
5. Mill operation
6. Trade and customs

The latest version of the Sabah TLAS requirements are found at: <http://www.flegtvpvpa.my/sabah-tlas-new>

³ <http://forest.sabah.gov.my/en/epublication/2012-04-10-04-06-15/ar2011>

4. Methodology

The evaluation of the Sabah TLAS has been carried out against the FLEGT and EUTR definition of legality using an interpretation of these in order to enable a comprehensive framework for legality.

The process for evaluation and proposed revision is as follows:

1. Compare the Sabah TLAS standard with the EUTR and FLEGT legality definition using the legality assessment framework
2. Develop Observations related to the definition of legality (P1-P6 in the Sabah TLAS), and outline where issues may be present that warrants revision.
3. Evaluate current verifiers and verification systems of the Sabah TLAS and compare against FLEGT requirements.
4. Based on the comparison and evaluation, develop a proposal for normative indicators for field verification for Principle 1-6 and revisions to criteria.

5. Output of this evaluation

The main outputs of this evaluation are:

1. **The current report** outlining a description of the evaluation and
2. **The new checklist (Appendix A)** containing the field checklist to be used to evaluate conformance against the Sabh TLAS. The checklist is consistent of:
 - a. The main checklist containing Criteria and indicators for P1-P6.
 - b. Annex 1 containing a generic CoC checklist that can be used to evaluate conformance to segregation requirements.
 - c. Annex 2 containing new requirements identified during this evaluation, but included as an annex for stepwise implementation.

NOTE: It should be underlined that the new requirements that has been placed in Annex 2 of the checklist should be considered equally important as the main checklist. Also it is the opinion of NEPCon that only by addressing these requirements too, would the Sabah TLAS meet the legality scope applied under the EUTR.

6. Defining the scope of legality

In order to evaluate the Sabah TLAS requirements, it is necessary to clearly define what legal timber means. In this study we have sought to evaluate the current Sabah TLAS standard with the definition applied by the EU, through use of the forest legality assessment framework, which have been recognised by the European Commission and adopted by ETTF, FSC, NEPCon and a number of private companies.

6.1. FLEGT definition of legality

The European Forest Institute's FLEGT facility **definition of legality** is outlined as:

"The national legality definition outlines the legislative and regulatory requirements to be systematically fulfilled and verified to ensure legal compliance of timber products before a FLEGT license can be issued in a VPA partner country. This set of legal requirements should include laws responding to economic, environmental and social aspects of forest management and timber processing".

The EU FLEGT briefing Note 02⁴ further elaborates that the following categories of laws are likely to be included in a **VPA legality definition**:

1. Granting of and compliance with rights to harvest timber within legally-gazetted boundaries;
2. Compliance with requirements regarding forest management, including compliance with relevant environmental, labour and community welfare legislation;
3. Compliance with requirements concerning taxes, import and export duties, royalties and fees directly related to timber harvesting and timber trade;
4. Respect for tenure or use rights to land and resources that may be affected by timber harvest rights, where such rights exist;
5. Compliance with requirements for trade and export procedures.

In the FLEGT process legality is therefore defined as the set of laws that will be enforced and monitored in the context of the FLEGT agreement, while 'Legality' is based on the laws and procedures of the timber producing country in question, and must include laws addressing social, environmental and economic issues.

6.2. The EUTR definition of legality

The EU regulation 995/2010 (EUTR) defines legality of timber in Article 2 (f), (g) and (h)⁵:

(f) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;

(g) 'illegally harvested' means harvested in contravention of the applicable legislation in the country of harvest;

(h) 'applicable legislation' means the legislation in force in the country of harvest covering the following matters:

1. *rights to harvest timber within legally gazetted boundaries,*
2. *payments for harvest rights and timber including duties related to timber harvesting,*
3. *timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,*

⁴ http://www.euflegt.efi.int/files/attachments/euflegt/efi_briefing_note_02_eng_221010.pdf

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

4. *third parties' legal rights concerning use and tenure that are affected by timber harvesting, and*
5. *trade and customs, in so far as the forest sector is concerned.*

6.2.1. Further implications of the EUTR

As mentioned above, the key obligation of the EUTR is that companies that place forest products on the EU market (Operators) shall implement Due Diligence in order to mitigate the risk that the products have been illegally harvested or traded. An effective way to provide such risk management is to purchase material that has been certified against a credible and recognised international standard that includes evaluation of all relevant legislation categories as defined by the EUTR.

Herein lays the opportunity for Sabah, to develop the Sabah TLAS system for it to be considered technically complete, as well as recognised to include appropriate quality assurance systems.

6.3. The forest legality assessment framework

In order to make the legality definition more operational and better evaluate the risk that material has been illegally harvested, the below framework for legality is applied, which specifies legal sub-categories for each of the legality categories as defined by the EUTR.

The legality framework contains requirements for:

1. Legal management and harvest of forests Including trade and transport)
2. Legal management of processing industries (including transport and trade)
3. Chain of Custody system

6.3.1. Legality at forest level

The table below provides a framework for applicable legislation covered by the legality definition.

The table contains the following columns:

1. **Applicable legal category and sub-categories:** this column contains the generic categories that constitute the framework of applicable legislation relevant to forest management and trade and transport of forest products related to the forest level.
2. **Explanation:** an explanation of each legal sub-category and guidance to the intent of each legal sub-category to be used during risk assessment. The explanation provides some guidance to the potential risks that could be relevant for each legal sub-category.

The below framework of applicable legislation has been developed with reference to the EU Timber regulation definition of applicable legislation.

Legality categories and sub-categories	Explanation
1. Legal rights to harvest	
1.1 Land tenure and management rights	Legislation covering land tenure rights, including customary rights as well as management rights that include the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses.

	<p>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.</p> <p>The intent of this sub-category is to assure that any land tenure and management rights have been issued according to the legislation.</p>
<p>1.2 Concession licenses</p>	<p>Legislation regulating procedures for issuing forest concession licenses, including use of legal methods to obtain concession license.</p> <p>Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The process of issuing forest concession licenses or harvest rights shall follow proper procedures.</p> <p>The intent of this sub-category is to avoid situations where organisations are obtaining concession licenses via illegal means such as bribery, or where organisations or entities that are not eligible to hold such rights do so via illegal means.</p> <p>The threshold that should be considered when evaluating the risk in this sub-category is to identify situations where due process has not been followed and the concession rights therefore can be considered to be issued on an illegal basis. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks.</p>
<p>1.3 Management and harvesting planning</p>	<p>Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by Competent Authorities.</p> <p>The main threat is when the management plan quality results in severe overharvesting (this can be due to very faulty taxation data or simply incorrect or missing calculations). Cases where required management planning documents are not in place or not approved by competent authorities should be considered.</p>
<p>1.4 Harvesting permits</p>	<p>Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit.</p> <p>The intent of this sub-category is to avoid situations where harvesting permits are lacking or obtained via illegal means such as bribery, or where harvesting permits are issued for areas or species not eligible for harvesting.</p> <p>Bribery is a well-known issue in connection with the issuing of harvesting permits. Bribery is commonly used to obtain harvesting permits for areas and species that could not be harvested according to the legislation (e.g. protected areas, areas that do not fulfil requirements of minimum age or diameter, species that cannot be harvested etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks.</p> <p>In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested</p>

	material.
2. Taxes and fees	
2.1 Payment of royalties and harvesting fees	Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.
2.2 Value added taxes and other sales taxes	Legislation covering different types of sales taxes which apply to the material being sold, including selling material as growing forest (standing stock sales). Avoidance can be done by selling products without official sales document or selling products far official far below market price combined with unofficial payment.
3. Timber Harvesting	
3.1 Timber harvesting regulations	Covers legal requirements for harvesting techniques and technology, including selective cutting, shelter wood regenerations, reduced impact logging, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.
3.2 Protected sites and species	Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats. The intent of this category is to avoid the risk of harvesting within protected sites or areas as well as illegal harvest of protected species on a significant scale.
3.3 Environmental requirements	Covers legislation related to environmental impact assessment in connection with harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, and environmental requirements for forest machineries. Risks in this category should be identified where systematic and/or large scale non-compliance with legally required environmental protection measures are evident to an extend that threatens the forest resources or other environmental values.
3.4 Health and safety	Legally required personal protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relevant to operations in the forest (not office work, or other activities not related to actual

	<p>forest operations).</p> <p>The intent of this category is to identify cases where health and safety regulations are being consistently ignored to a degree that puts the health and safety of forest workers at significant risk throughout the forest operations.</p>
3.5 Legal employment	<p>Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements. Furthermore, the points cover compliance to the minimum working age and minimum age for personal involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association.</p> <p>The intent is to enable identification of systematic or large scale non-compliance with labour and/or employment rules and regulations. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.</p>
4. Third parties' rights	
4.1 Customary rights	<p>Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and tenure rights.</p>
4.2 Free, Prior and Informed Consent	<p>Legislation covering "free, prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.</p>
4.3 Indigenous peoples rights	<p>Legislation that regulates the rights of indigenous people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.</p>
5. Trade and transport	
5.1 Classification of species, quantities, qualities	<p>Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees.</p> <p>The threshold for when material or products should be considered illegal should be established based on the risk that material is traded under false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).</p>
5.2 Trade and transport	<p>All required trading and transport permits shall exist.</p> <p>These documents include legally required removal passes, waybills and other documents permitting the removal of timber from the harvesting site.</p> <p>In countries with high levels of corruption, these documents are often faked or obtained by using bribery.</p>

	In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.
5.3 Offshore trading and transfer pricing	Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest. It is considered an important generator of funds that can be used to bribe forest operations and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading can be included here as far as it is legally prohibited in the country. When products are sold out of the country for prices that are significantly lower than market value and then sold to next link in the supply chain for market prices, it is usually a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.
5.4 Custom regulations	Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).
5.5 CITES	CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention).

6.3.2. Legality of processing industry

In addition to the framework for forest legality, the following definition of legality for processing and other industry entities (comparable to “mill operation” on the Sabah TLAS) has been used:

1. Legal Registration

1.1 Legal registration shall be in place

2. Trade and transport

2.1 Classification of species, quantities and qualities

2.2 Trade and transport

2.2 Offshore trading and transfer pricing

2.4 Custom regulations

2.5 Export taxes and duties

2.6 CITES

6.3.3. Chain of Custody

Chain of custody requirements plays an important role in legality verification and other certification systems. Implementing CoC systems enable tracking and segregation of different types of material or material with different levels of legal compliance. In the case of Sabah a CoC system would allow companies to ensure that material/logs with illegal or unknown origin is not mixed with legal material. Also the ability to segregate and reconcile timber flows from the forest to export; through processing, is mentioned a part of the EU definition of a functioning TLAS⁶.

Appendix A contains a proposed generic CoC checklist that is suggested to be used in combination with the Compliance Checklist to ensure segregation of material where needed.

⁶ http://www.euflegt.efi.int/portal/home/vpas/the_elements/

7. Evaluation of the Sabah TLAS principles and criteria for legal timber

The below evaluation of the current TLAS is made in order to identify potential gaps in the presentation of legal requirements, as well as to be used as basis to develop effective normative indicators. The indicators should be used during field verification. Details of the evaluation are found in Annex 1.

The revised checklist is found in the excel sheet in **Appendix A**.

Note: based on the discussions carried out during the stakeholder consultation meeting in Kota Kinabalu on 22nd October 2013, it was agreed to transfer a number of new requirements (as suggested in this report) to a separate checklist. This has been done in order to maintain alignment of the Sabah TLAS legality checklist with the Peninsular Malaysia TLAS standard (MYTLAS). The new checklist and the additional requirements are all found in **Appendix A** (the excel sheet).

It should be underlined that it is NOT the intention of this evaluation to change the legality definition of the Sabah TLAS. The main focus is to highlight areas of the Sabah TLAS format that could need clarification and issues that should be highlighted with the objective of enabling effective independent verification.

7.1. General observations and proposals on the Sabah TLAS

The Sabah TLAS is found to be a comprehensive representation of State law. In the evaluation certain observations are raised related to aspects of the legal framework as compared to the EU definition of legality. Observations are made related to areas where the current Sabah TLAS is found to lack direct reference to applicable legislation that is considered part of the legal framework under a FLEGT TLAS.

The following findings are highlighted:

1. **Legal status of imported material:** Table 21 is concerned with the legal requirements for importing timber and logs from overseas. However the Sabah TLAS does not include any requirements or guidance on how to handle material that may originate from unknown sources or sources originating from areas with a non-negligible risk of illegal logging. Therefore timber with unknown or potential illegal origin could be imported to Sabah, mixed with domestic material and subsequently exported as Sabah TLAS compliant. Such a possibility has consequences for the ability of Sabah TLAS material to meet EUTR requirements. It is therefore proposed that a system is developed to:
 - a. Exclude timber imports with unspecified risk of illegal logging from re-export to the EU,
 - b. Develop requirements for assessing and mitigating the risk of illegal logging from imported material.

NOTE: the segregation system has not yet been included in the revised checklist as this point needs formal approval, and is not currently a legal obligation.

2. **Handling material without confirmed legal compliance:** The current Sabah TLAS does not take into consideration the possibility that timber from Sabah forests may not be in full legal compliance. In order to enable segregation of material from sources that are not in full legal compliance it is proposed to include the possibility of segregation, through a Chain of Custody system. A proposed generic CoC checklist is found in **Appendix A**
3. **Chain of custody:** The current Sabah TLAS does not include a system of checklist for ensuring and evaluating chain of custody of verified legal forest products from harvesting/import, through processing to export. The possibility that illegal material may be imported or that material may be found in Sabah industry that does not have confirmed legal compliance should be considered. It is therefore recommended to adopt a Chain of Custody (CoC) system that allows tracking and segregation of logs and material through the system. NEPCon has included a CoC standard in **Appendix A**, that can be used both by companies in implementing the requirements as well as by auditors to evaluate and verify the effectiveness of such systems.
4. **Process vs. performance:** The Sabah TLAS is limited in terms of specifying performance requirements for the forest managers on implementation of forest management practices; the requirements as listed are mainly procedural and rarely relate to performance on the ground. This is seen as a weakness in relation to verification auditing as performance on the ground is considered a key point and it is therefore proposed to include more performance based indicators as part of the requirements and Checklist.
5. **Compliance threshold:** The current SFMLA independent auditing project has implemented a system where the compliance is evaluated based on a percentage of compliance of critical and noncritical criteria. Compliance is being determined based on a minimum percentage of compliance (70%). In the context of compliance to the legality definition used by the EUTR it is not considered that using a percentage based evaluation will meet the EU definition of legality. Also it is considered difficult to define how/why a 70% compliance threshold should be used. The report on the fifth round of auditing of SFMLA holders also found that four SFMLA holders did not meet all critical criteria, but because they achieved a score of more than 70% they are still perceived as compliant. Using a percentage in this fashion carries a risk that major or systematic compliance issues are not met, while still being considered compliant. It should be added that other systems currently used in forest or timber industry assessment certification and verification (such as FSC and PEFC) has moved away from using this type of percentage thresholds and are instead applying the use of major and minor non-conformances to define compliance thresholds. It is therefore proposed to revise the definition of threshold and compliance conclusion basis (see section 6.2 below).
6. **Criteria vs. verification procedure and output:** the formulation of criteria does generally not follow the ISO definitions for standards and includes several different requirements, sometimes related to different legal procedures. The description of the verification procedures and outputs in each of the Tables also are found to contain relevant requirements that could be included as indicators. It is recommended that criteria and indicators are formulated in a way that clearly identifies the relevant requirements and related indicators.
7. **Use of Tables:** the format of the Sabah TLAS is organised in separate tables without clear numbering of requirements that can make it difficult to get an overview of what the actual requirements are and what the "natural" hierarchy of these are. It is therefore proposed to revise the requirements into a table with a more traditional standard format of requirements and indicators for performance evaluation.
8. **Overlapping descriptions:** The verifiers or indicators are often overlapping in their scope. It is suggested below that the structure of the standard is revised in order to assure that each

criteria and verifier is relates to specific issues and limits overlap. This also relates to the ability of auditors to verify compliance. Without clear normative requirements, it will be difficult to objectively verify legal compliance.

7.2. Specific observations related to the Sabah TLAS and suggestions for revisions

Based on the evaluation of current Sabah TLAS requirements and the legality framework definitions the following specific observations and proposals are made:

1. **Land rights:** The Criterion of Table 1 does not refer to approval of harvest area, but to the process steps to gain approval. It is proposed to clarify the requirements through clear indicators which have been added to the new Conformance Checklist.
2. **Mapping:** The Sabah TLAS table contains no requirement for mapping forest management areas, compartments or coupes specifically. It is assumed that this information is included in FMP/PDP, but it is not directly mentioned. It is proposed to add this as a requirement to Table 7.
3. **Timber harvesting requirements:** The requirements for harvest operations are referred to in Table 9 as referring to the Licence conditions. It is proposed that requirements for the performance of harvest operations are made clear and formulated as normative indicators that enable field verification in the Conformance Checklist.
4. **Environmental requirements:** the Sabah TLAS does not outlining any performance requirements related to environmental protection. Only reference is made in Table 9 to adherence to RIL guidelines (which includes some protection of riparian and buffer zones). Also Table 5 relates to the requirements to develop EIA reports, but does not contain any specific requirements for implementation or performance. This makes auditing of these requirements difficult. It is therefore proposed to add performance indicators related to the implementation mitigation measures (PMM) and adherence to the Environmental Compliance Report (ECR) in the Conformance Checklist.
5. **Health and Safety:** Table 14 of the Sabah TLAS is considered to cover relevant health and safety regulations. However the criterion is very focused on documentation rather than performance. It has therefore been suggested to include more performance based indicators as part of the new Conformance Checklist.
6. **Legal employment:** the Sabah TLAS does not include any reference to legal employment of workers in forests or in mill operations as it is assumed that by requiring organisations to ensure their employees they also must have legal status. It is proposed to add more specific requirements to the Conformance Checklist to enable field verification and include verification of work permit and minimum wage compliance.
7. **Native rights:** Forest Enactment provides for traditional uses. The rights and privileges of traditional uses are specified when a forest reserve is declared. These rights and privileges may not be granted, other than by succession, without the Minister's consent. They are subject to cancellation if they are not exercised for three years, and the *Yang Di Pertua Negeri* (Governor) may at any time "rescind, modify or add" to them (Section 14). The holder of a right or privilege may be required to obtain a free permit in order to remove products from a reserve. The rights of Natives have not been mentioned in the Sabah TLAS as regards PF (Table 16). It is proposed that this is added to the Conformance Checklist to ensure that this issue is evaluated also for PF.

8. **Free Prior, Informed Consent:** Land Ordinance Cap. 68. Section 17 (2) mentions the prior consent of natives in transferring land rights over alienated land. It is proposed that this legal requirement is highlighted and outlined in a separate requirement.
9. **Forest Management Plan, Annual Work Plan and Comprehensive Harvesting Plan:** the requirement to develop and implement a FMP is only mentioned as a prerequisite for the development of the AWP and CHP. It is proposed that the legal requirement to develop, receive approval and implement the FMP is highlighted and added to the Checklist as a separate requirement.
10. **Mill operation:** the EU definition of legality does not include health and safety issues in processing since the processing is not directly related to "harvesting activities". It is therefore considered that the Sabah TLAS goes beyond the EU legality definition on this point. However it was also found that the current requirements for mills was insufficiently described in relation to control of input and output as well as to legal status of workers and employees. These two issues have been proposed as additional elements of the new Conformance Checklist.
11. **Log transport:** The Transit Pass requirement in TLAS does not describe any requirements related to the actual classification of species, volumes and qualities. It is proposed to add indicators related to assurance of conformance between actual logs and Removal Pass and TDP as part of the Conformance Checklist to ensure that this issue is evaluated in the field.
12. **Transfer pricing:** the Sabah TLAS does not mention transfer pricing. Sabah has new legislation regulating transfer pricing rules, and it is proposed that requirements are included to ensure compliance to these regulations (IF RELEVANT).
13. **Timber from Sarawak:** the Sabah TLAS excludes import and re-export of logs from Sarawak to the EU. . It is appropriate to exclude timber from sources that may have a non-negligible risk of illegal logging - and if it has been decided to consider Sarawak as such, this should naturally be included. However, the fact that no other imports are mentioned in the Sabah TLAS means that there is a risk that material from other countries or regions with non-negligible risks are imported and mixed with legal timber from Sabah. It is proposed that any timber sourced from areas with a non-negligible risk of being illegally harvested, transported or traded, should be excluded from material streams to the EU. It is therefore proposed to revise Table 26 to include requirement to reflect that any timber originating from countries or regions where risk of illegal logging is non-negligible⁷ should be excluded or segregated from legal timber. Indicators for such a requirement could look like this:

- i. Organisation shall only trade the following types of material as compliant to Sabah TLAS:
 - a. material from Sabah confirmed to meet the Sabah TLAS requirements, or;
 - b. material from sources with a negligible risk of illegal logging.
- ii. Organisations that handle or trade the other types of material than mentioned in point (i) shall implement a documented control system for material segregation and identification (see CoC checklist)⁸

⁷ The use of the term "non-negligible risk" originates from the EU timber regulation.
http://ec.europa.eu/environment/forests/timber_regulation.htm

⁸ Annex 3.

- iii. Organisations exporting material as compliant with the Sabah to shall declare that the products do not contain or include any timber sourced from countries, regions or concessions with non-negligible risk of illegal logging.

8. Next steps toward a functioning TLAS

The below section is in principle outside the scope of the current evaluation, but has been included since the subjects of verification and defining compliance thresholds are key to the development of a effective TLAS.

The definition of legality and the development of a checklist to evaluate and verify the legal compliance level of forest operations and processing as well as a functioning chain of custody system only cover the first two steps in developing a functioning TLAS.

The FLEGT facility states that a robust TLAS consists of five key elements⁹:

1. A clear **definition of legal timber**;
2. Mechanism to control the **timber supply chains**;
3. **Verification** of compliance to the Legality Definition (point 1) and controlled timber supply chains (point 2);
4. **Licensing** of legally produced timber and timber products for exports;
5. **Independent audit** of the TLAS to ensure the system is fully implemented

These are described in detail on the home page of the FLEGT facility.

8.1. Verification

The next step in a VPA process to develop and implement a TLAS is to define and implement verification of the compliance of forest managers and processing industry to the legality and tracking (CoC) requirements.

The EU FLEGT facility clearly outlines the basic requirements for organisations undertaking verification under a TLAS in FLEGT Briefing Note 05:

http://www.euflegt.efi.int/files/attachments/euflegt/efi_briefing_note_05_eng_221010.pdf

Key issues that need to be considered are:

1. **Organisation:** documented procedures, capacity, resources, competence of auditors, and absence of Conflict of Interest.
2. **Verification of legality in the forest:** Scope definition, evidence based, transparent, audit frequency, records.
3. **Verification of systems to control the supply chain:** Scope definition, evidence based, transparent, audit frequency, records, Reconciliation of data.
4. **Non-compliances:** system for requiring corrective and preventive measures, records.

⁹ http://www.euflegt.efi.int/portal/home/vpas/the_elements/

The main challenges when initiating a process to develop such a system includes the development of comprehensive systems and procedures to govern the verification processes, as well as building the necessary capacity and knowledge among a sufficient number of organisations/auditors to make effective verification possible.

It is proposed to draw on existing experience from timber certification and verification systems in order to develop such procedures.

8.2. Defining compliance threshold

Though it is outside the direct scope of this evaluation it is considered relevant and important to raise the issue of defining compliance thresholds, since it is found that the system currently being implemented under the SFML auditing project are not effective (as mentioned in section 5.1).

Defining the threshold for “legally harvested wood” is a complex issue. The challenge rests in the fact that even in the best managed forest, non-compliances with applicable law happen at times. However, does that mean that the timber originating from that forest is illegal? When trying to answer that question one may consider the wording of laws and regulations, the implementation of these by the relevant authorities governing the regulations, as well as prevailing practice in forest certification and verification.

When evaluating legality strictly based on the relevant law text, illegal will mean any act that contravenes current applicable law. Using this definition would mean that virtually all forest operations on the planet could be defined as illegal since minor non-compliances most likely take place in most operations. Therefore applying a strict literal interpretation is not considered to be meaningful.

To manage this issue in a pragmatic way it is suggested not only to consider the text of the law, but also the scope and impact of the potential non-compliance in question. That means that the seriousness of the specific case should be evaluated to be either a major or a minor issue. Based on such a specification a decision could be made on whether or not timber from the operation should be considered to be compliant with the law to an acceptable level or not.

Determining what should be considered minor and major contains a certain level of subjective judgment on behalf of the person carrying out the evaluation. However there are certain general principles that are used to support a consistent interpretation and judgement. Existing certification systems have adopted an approach that combines scale and severity of the potential negative impact on the affected resource. This includes forest productivity, forest ecosystem, people directly and indirectly affected by forest operations and society in general. The justification on classifying something as a minor or major issue will depend on evaluating the potential impact of identified non-compliances on those parameters.

Legal non-compliances in the forest may be considered minor when they are:

- a) temporary lapses;
- b) unusual/non-systematic; or,
- c) limited in their temporal and spatial impact.

Conversely, it must be considered a major non-compliance if the action:

- a) continues over a long period of time;
- b) affects a wide area and/or causes significant damage;
- c) indicates a the absence or break down of enforcement of the legal system;

- d) have a significant negative impact on the society, the production of forest products and other services, the forest ecosystem and the people directly and indirectly affected by forest operations, or;
- e) is not corrected or adequately responded to when identified.

It is proposed that the TLAS verification system is revised to conform to existing procedures for evaluating conformance and that systematic and transparent ways of classifying different levels of compliance are implemented. Again it is recommended to draw from experiences from existing verification and certification systems.

9. Notes on the Compliance Checklist

The checklist that is developed based on the current evaluation of the Sabah TLAS and is constructed to allow effective field verification of timber and timber industry legal compliance, according to the definition of timber legality developed under the Malaysian FLEGT process. **The checklist for the Sabah TLAS and Chain of Custody are found in Appendix 1.**

The checklist has been developed in excel in order to allow filtering of requirements relevant to the following types of operations:

1. Industrial Tree Plantations (ITP)
2. Permanent Forest (PF)
3. Alienated Land (AL)
4. State Land (SL)
5. Mill operations
6. Trade Operation

The format will allow extraction of a checklist with only the applicable criteria and indicators for the operation(s) under evaluation.

9.1. Compliance evaluation

The checklist format is constructed with a field stating the relevant Criterion with relevant indicators listed below. Also the checklist contains a field with checkboxes for noting the relevant compliance level identified. It is proposed to include the following options for compliance indications:

7. Compliance
8. Partial Compliance
9. Non Compliance

Where partial or non-compliance are identified, the auditor shall develop a Non-Compliance Report (NCR) including a Corrective Action Request (CAR).

A non-conformance is a discrepancy or gap identified during the assessment between some aspect of the organisation's system and one or more of the requirements of the Sabah TLAS standard. Depending on the severity of the non-conformance the assessment team differentiates between major and minor non-conformances.

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- Major non-conformance results where there is a fundamental failure to achieve the objective of the relevant TLAS criterion. A number of minor non-conformances against one requirement may be considered to have a cumulative effect, and therefore be considered a major non-conformance.
 - Minor non-conformance is a temporary, unusual or non-systematic non-conformance, for which the effects are limited.

Major non-conformances must be corrected before the compliance is accepted. While minor non-conformances do not prohibit issuing the certificate, they must be addressed within the given timeframe to maintain the certificate.

Each non-conformance shall be addressed by the audit team by issuing a nonconformity report (NCR). NCRs are requirements that candidate organisation must agree to, and which must be addressed, within the given timeframe. Annex 1: Evaluation of Sabah TLAS

The below analysis has been carried out by comparing relevant requirements of the tables that constitutes the Sabah TLAS with corresponding requirements of the legality assessment framework.

In the evaluation proposals are made for revisions and development of new normative indicators to be used for verification. These indicators will be referred to as the "Compliance Checklist" or "Checklist" for simplicity.

Annex 1: Evaluation of the Sabah TLAS

Legal categories	Description	Reference to relevant Sabah TLAS tables and criteria		Findings and outlining of Observations
		<i>Table number of current Sabah TLAS (criteria)</i>	<i>Criteria requirements</i>	<i>Colour code: Green: no observation Orange: Observations are made that may be present that warrants consideration and have been considered in the revised checklist</i>
1. Legal rights to harvest				
1.1 Land tenure and management rights	Legislation covering land tenure rights, including customary rights as well as management rights that include the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses.	<p>Table 1: Approval of harvesting area</p> <p>Table 10: Control of timber production</p>	<p>i. Any registered company, company with trading license or qualified individual (Sabahan) who intends to harvest forest produce from permanent forest (PF) and State Land (SL) must obtain an approval from the Natural Resources Office (NRO) under the Chief Minister's Department or the Director of Forestry (DoF) for Alienated Land (AL).</p> <p>ii. Areas gazetted for specific purposes, including Native Customary Right (NCR) land are excluded from the area to be approved for harvesting in PF and SL.</p> <p>Land owner has a valid land title/or letter of confirmation of land applicant from Assistant Collector of Land Revenue (ACLR) on the land status and receipt of payment of land premium.</p> <p>ii. The land owner has a letter/agreement/contract/[Power of Attorney (PA)] with the contractor to remove logs and wood residues.</p> <p>Note: Form IIB is a licence to take forest produce on prepayment of royalty.</p>	<p>OBS: The Criterion of Table 1 does not actually refer to approval of harvest area, but to the process steps to gain approval. It is proposed to clarify the requirements through clear indicates which have been added to the new Conformance Checklist.</p> <p>OBS: Table 10 contains some requirements for holding land tenure rights/ownership (for AL), but also includes some requirements regarding issuance of form IIB which relates to timber removal. This combination is considered ineffective and it is suggested that these are split, and that the part requirement for land title is moved to Principle 1 of the Sabah TLAS (see revised version)</p>
1.2 Concession licenses	Legislation regulating procedures for issuing forest concession licenses, including use of legal methods to obtain concession license.	Table 4: Issuance of harvesting license and/or coupe permit	<p>Any company or person/Organisation who intends to harvest forest produce from a forest area needs to have a valid harvesting licence. The issuance of a harvesting licence is subject to:</p> <ul style="list-style-type: none"> • Approval of forest harvesting area (refer criteria 1.1, 1.2, 1.3). • Letter of approval for issuance of licence from NRO (PF & SL - short term licence). • Approved EIA study / PMM where applicable (criteria 1.5). • Demarcation of harvesting area (criteria 7). • Approved Inventory Report (criteria 8). • Payment of licence fees and other charges imposed (criteria 3.1). • Letter of approval for issuance of harvesting licence in AL from DoF (criteria 1.1). 	There is considered a complete overlap in these requirements and their formulation.

1.3 Management and harvesting planning	Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by Competent Authorities.	Table 2: Approval of harvesting area	The Organisation is required to obtain approval for Annual Work Plan (AWP) based on the 10-year Forest Management Plan (FMP) and/or 10-year Plantation Development Plan (PDP).	<p>The criterion on management and harvesting planning is covered by different criteria in the Sabah TLAS.</p> <p>OBS: However, the requirement for a FMP is not directly described, but only indirectly mentioned through the process of approving the AWP and CHP. It is suggested to add more clear requirements for the development of the FMP, AWP and CHP in the Sabah TLAS and the indicators of the Compliance Checklist.</p> <p>OBS: it is also proposed to add requirements for mapping the license areas directly as a criteria (this has been included under Table 7 about area demarcation).</p>
		Table 3: Approval of harvesting area	The District Forestry Officer (DFO) is required to obtain approval for Annual Work Plan (AWP) based on the 10-year Forest Management Plan (FMP). N.A. As this is on government level not forest level	
		Table 6: Harvesting Plan	The Organisation (SFMLA/LTLA) must have an approved Annual Work Plan (AWP) consisting of harvesting components. ii. The Organisation must have an approved Comprehensive Harvest Plan (CHP) consisting of harvesting components (except area zoned for ITP development) iii. CHP must comply with Reduced Impact Logging (RIL) Operation Guide Book such as roads, skid trails and log landings density and location, harvestable tree marking and stream buffer zones identification. iv. The Organisation must employ registered CHP contractor.	
		Table 5: EIA requirement	i. The Organisation/Land Owner has an approved EIA Report from the Director of Environment Protection Department (EPD) for forest related activities involving removal of timber in an area of 500 ha and above. ii. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 100 ha and 500 ha. iii. The Organisation / Land Owner has an approved EIA from the Director of EPD for forest related activities involving removal of timber in an area of 100 ha or more bordering any protected areas. iv. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 50 ha and 100 ha bordering any protected areas.	
		Table 8: Forest Inventory	i. The Organisation conducts systematic plot sampling forest inventory in accordance with the Director's Circular: FDS 26/2009 as follows: a) Area below 600 ha - Timber cruise b) Area above 600 ha - L-shape	
		Table 7: Area demarcation for outer boundary of harvesting licence area	i. SL: Organisation to appoint a licensed surveyor to demarcate the area upon receiving Registered Survey Paper (RSP) from LSD. ii. AL: The land owner and/or authorized contractor has to maintain boundary stones for field verification. iii. PF: Organisation to appoint a licensed surveyor upon receiving Letter of Offer and survey permit from the DoF to demarcate the area based on Second Class accuracy standard. iv. PF / SL: The Organisation (via appointed licensed surveyor) surveys, marks with picket (PF)/boundary stones (SL) and under-brushes licence boundary on the ground.	

<p>1.4 Harvesting permits</p>	<p>Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit.</p>	<p>Table 4: Issuance of harvesting license and/or coupe permit</p>	<p>Any company or person/Organisation who intends to harvest forest produce from a forest area needs to have a valid harvesting licence. The issuance of a harvesting licence is subject to:</p> <ul style="list-style-type: none"> • Approval of forest harvesting area (refer criteria 1.1, 1.2, 1.3). • Letter of approval for issuance of licence from NRO (PF & SL - short term licence). • Approved EIA study / PMM where applicable (criteria 1.5). • Demarcation of harvesting area (criteria 7). • Approved Inventory Report (criteria 8). • Payment of licence fees and other charges imposed (criteria 3.1). • Letter of approval for issuance of harvesting licence in AL from DoF (criteria 1.1). 	<p>There are well described procedures for obtaining each of the required subjects that are necessary prior to obtaining a harvesting license according to TLAS. The process of obtaining the actual harvesting license is also described and verified through a process.</p>
<p>2. Taxes and fees</p>				
<p>2.1 Payment of royalties and harvesting fees</p>	<p>Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.</p>	<p>Table 15: Royalty and fees</p>	<p>i. Organisation pays license fees upon issuance of a license and other charges prior to issuance of harvesting licence. ii. Organisation pays all royalty based on volume and species, premium (unless exempted), Community Forestry Cess, Forest Rehabilitation Fees (unless exempted) before the Organisation can remove the timber from the licensed area. iii. Organisation pays Removal Pass fees before removal of timbers.</p>	<p>It is well described in TLAS what shall be paid and how the process and verification process takes place.</p>
<p>2.2 Value added taxes and other sales taxes</p>	<p>Legislation covering different types of sales taxes which apply to the material being sold, including selling material as growing forest (standing stock sales).</p>	<p>None</p>	<p>NA</p>	<p>Not applicable</p>
<p>3. Timber Harvesting</p>				

<p>3.1 Timber harvesting regulations</p>	<p>Covers legal requirements for harvesting techniques and technology, including selective cutting, shelter wood regenerations, reduced impact logging, clear felling, transport of timber from felling site and seasonal limitations etc.</p>	<p>Table 9: Control of harvesting operation (PF, SL & AL (excluding ITP))</p>	<p>i. The Organisation must adhere to the harvesting licence condition/coupe permit.</p> <p>a) RIL (PF)</p> <ul style="list-style-type: none"> - approved CHP, including meeting operational elements of RIL (such as road alignment and construction, directional felling, log extraction, etc.) - registered RIL contractors - Trained RIL workers - Daily Felling Records - Quarterly Logging Progress Report & Closing Inspection Report <p>b) Non-RIL (SL & AL)</p> <ul style="list-style-type: none"> - Registered logging contractor - Quarterly Logging Progress Report & Closing Inspection Report <p>ii. The Organisation must register Property hammer mark.</p> <p>iii. The Organisation must incise each extracted log with a serial number.</p> <p>iv. The Organisation must obtain an occupation permit for stumping area inside PF or TOL for area inside SL.</p> <p>v. The Organisation transports marked logs to approved stumping area.</p> <p>vi. The Organisation and/or appointed contractors must comply with the AEC and MD.(refer Table 5)</p> <p>vii. The Organisation must notify the Director of Wildlife Department one month before commencing harvesting operation for any area to be harvested.</p>	<p>The timber harvesting regulations and practices (harvesting, transport, marking etc.) are well described through several criteria in TLAS. Reduced Impact Logging (RIL) is a part of the Harvesting Plan and must therefore be followed during harvesting operations as well. Even though it is not directly mentioned under any of the control criteria.</p> <p>This description enables that through verification measures (procedure & documents) harvesting is managed and controlled.</p> <p>OBS: It is noted that the requirements contained in the Sabah TLAS are limited in their requirements for performance. The current Sabah TLAS standard almost exclusively relates to reporting requirements. It is therefore proposed to add a number of more performance oriented indicators to the Conformance Checklist that also reflects the present SFMLA checklist developed by GFS.</p>
<p>Table 11: Control of timber production (PF, SL & AL(ITP - Including rubber wood from small holders))</p>	<p>1. ITP (PF)</p> <p>i. Organisation only allowed to extract planted trees from compartments approved in the AWP.</p> <p>ii. Organisation records all productions of plantation logs based on volume or weight and submits records to DFO for the issuance of Transit Pass and submits monthly production reports to the DFO.</p> <p>iii. The Organisation must adhere to the harvesting license condition/coupe permit.</p> <p>iv. Organisation ensures that their logging contractor is registered with FDS.</p> <p>v. The Organisation submits the Quarterly Logging Progress Report to DFO.</p> <p>vi. The Organisation must register Property Hammer Mark for sawmill/plymill processing.</p> <p>vii. Organisation must incise a serial number on all logs for sawmill processing.</p> <p>viii. The Organisation must obtain an occupation permit for their stumping area inside forest reserve.</p> <p>ix. The Organisation must stamp all logs transported for sawmill/plymill processing to an approved stumping area with Property Hammer Mark.</p> <p>x. The Organisation and/or appointed contractors must comply with EIA mitigation measures. (refer Table 5)</p>			

			<p>2. ITP (SL/AL)</p> <p>i. Land owner and developer must get all harvested trees inspected by the DFO prior to removal.</p> <p>ii. Plantation logs to be removed are covered by Removal Pass.</p> <p>iii. DFO records all productions of plantation logs based on the number of logs or volume as in the Removal Pass.</p> <p>iv. The land owner must comply with EIA/PMM. (refer Table 5)</p>	
		Table 6: Harvesting Plan	<p>i. The Organisation (SFMLA/LTLA) must have an approved Annual Work Plan (AWP) consisting of harvesting components.</p> <p>ii. The Organisation must have an approved Comprehensive Harvest Plan (CHP) consisting of harvesting components (except area zoned for ITP development)</p> <p>iii. CHP must comply with Reduced Impact Logging (RIL) Operation Guide Book such as roads, skid trails and log landings density and location, harvestable tree marking and stream buffer zones identification.</p> <p>iv. The Organisation must employ registered CHP contractor.</p>	
3.2 Protected sites and species	Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats.	Table 9: Control of harvesting operation	<p>Control of harvesting operation</p> <p>i. The Organisation must adhere to the harvesting licence condition/coupe permit.</p> <p>c) RIL (PF)</p> <ul style="list-style-type: none"> - approved CHP, including meeting operational elements of RIL (such as road alignment and construction, directional felling, log extraction, etc.) - registered RIL contractors - Trained RIL workers - Daily Felling Records - Quarterly Logging Progress Report & Closing Inspection Report <p>d) Non-RIL (SL & AL)</p> <ul style="list-style-type: none"> - Registered logging contractor - Quarterly Logging Progress Report & Closing Inspection Report <p>ii. The Organisation must register Property hammer mark.</p> <p>iii. The Organisation must incise each extracted log with a serial number.</p> <p>iv. The Organisation must obtain an occupation permit for stumping area inside PF or TOL for area inside SL.</p> <p>v. The Organisation transports marked logs to approved stumping area.</p> <p>vi. The Organisation and/or appointed contractors must comply with the AEC and MD.(refer Table 5)</p> <p>The Organisation must notify the Director of Wildlife Department one month before</p>	<p>There are no description of the requirements for identification of protected protected sites and species (neither on a map or physical). However the RIL Guidelines does contain some requirements for avoiding harvest damage to buffer and riparian zones (no mention of wildlife).</p> <p>The EIA requirement also includes identification of environmental issues, but here there is also no mention of actual implementation</p> <p>The notification to the director of Wildlife Department is the only requirement in TLAS and even this does not mention why notification shall take place or what actions shall take place in the forest.</p> <p>OBS: it is considered that the Sabah TLAS should include more clear requirements on the actual implementation of protection of species and special sites (buffer zones etc.) and it is proposed to include these issues an indicators in the</p>

			commencing harvesting operation for any area to be harvested.	Conformance Checklist. It is proposed to add these to the requirements under the "Harvesting Operations Criteria).
		Table 5: EIA requirement	<ul style="list-style-type: none"> i. The Organisation/Land Owner has an approved EIA Report from the Director of Environment Protection Department (EPD) for forest related activities involving removal of timber in an area of 500 ha and above. ii. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 100 ha and 500 ha. iii. The Organisation / Land Owner has an approved EIA from the Director of EPD for forest related activities involving removal of timber in an area of 100 ha or more bordering any protected areas. iv. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 50 ha and 100 ha bordering any protected areas. 	
3.3 Environmental requirements	Covers legislation related to environmental impact assessment in connection with harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, sessional limitation of harvesting time, and environmental	Table 5: EIA requirement	<ul style="list-style-type: none"> v. The Organisation/Land Owner has an approved EIA Report from the Director of Environment Protection Department (EPD) for forest related activities involving removal of timber in an area of 500 ha and above. vi. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 100 ha and 500 ha. vii. The Organisation / Land Owner has an approved EIA from the Director of EPD for forest related activities involving removal of timber in an area of 100 ha or more bordering any protected areas. viii. The Organisation/Land Owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber in an area between 50 ha and 100 ha bordering any protected areas. 	OBS: The criteria requirements are mainly related to reporting and no mention is made of performance to implement mitigation measures. It is proposed to add indicators and requirements that require the license holder to implement applicable mitigation measures as identified in the PMM.

	requirements for forest machineries.	Table 6: Harvesting Plan	<p>i. The Organisation (SFMLA/LTLA) must have an approved Annual Work Plan (AWP) consisting of harvesting components.</p> <p>ii. The Organisation must have an approved Comprehensive Harvest Plan (CHP) consisting of harvesting components (except area zoned for ITP development)</p> <p>iii. CHP must comply with Reduced Impact Logging (RIL) Operation Guide Book such as roads, skid trails and log landings density and location, harvestable tree marking and stream buffer zones identification.</p> <p>iv. The Organisation must employ registered CHP contractor.</p>	
3.4 Health and safety	Legally required personal protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage.	Table 14: Worker safety and health	<p><u>Employer</u></p> <ol style="list-style-type: none"> i. Pays insurance premium/contribution for all workers. ii. Provides adequate training on safety measures/personnel protective equipment. iii. Undertakes remedial measures as directed by relevant authorities (DOSH and FDS) following their inspection. iv. Submits appropriate report to DOSH / Department of Labour (DoL) in a timely manner as required. v. Reports to: <ul style="list-style-type: none"> ➤ SOCSO ➤ DOSH and ➤ Department of Labour on accidents related to employment immediately. vi. Maintains monthly records of contribution to SOCSO. vii. Maintains records of worker's training on safety and health showing what training was conducted, who attended and any certificates were awarded. viii. Provide protective clothing and safety equipment requirement in accordance to the RIL Operation Guide Book. ix. Directional felling technique to be complied. <p>Ensure adequate precaution for worker's safety in the event of fire or other accidents.</p>	OBS: Table 14 of the Sabah TLAS is considered to cover relevant health and safety regulations. However the criterion is very focused on documentation rather than performance. It has therefore been suggested to include more performance based indicators as part of the new Conformance Checklist.
3.5 Legal employment	Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements. Furthermore, the points cover	NA	NA	OBS: the Sabah TLAS does not include any reference to legal employment of workers in forests or in mill operations. It is proposed to add such requirements to the Checklist.

	compliance to the minimum working age and minimum age for personal involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association.			
4. Third parties' rights				
4.1 Customary rights	Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and tenure rights.	Table 16: Community benefits and rights to occupy and use (PF)	i. SFMLA/LTL holder or its appointed consultant conducts Social Baseline Survey of the licensed area during the preparation of a 10-year FMP. ii. SFMLA /LTL holder identifies and set aside Community Forestry Areas in their licensed area (where relevant) in the Forest Management Plan (FMP).	<p>TLAS describes the obligation to conduct a social baseline and that areas are set aside as Community Forestry Areas.</p> <p>GAP: It is not mentioned how the social baseline survey shall be used. Also there are no clear requirements in the criteria for operation performance, though mention of exclusion from harvest is included in the description of the process. It is therefore recommended to include more clear requirements for performance as indicators in the Conformance Checklist.</p>
4.2 Free, Prior and Informed Consent	Legislation covering "free, prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.			OBS: TLAS does not mention "free, prior and informed consent". Since the Land Ordinance mentions that Native land rights cannot be transferred without the consent of the customary owner it is proposed to include this as a separate requirement of the Sabah TLAS.
4.3 Indigenous peoples rights	Legislation that regulates the rights of indigenous people as far as it's related to forestry activities.	Table 17: Users' Right by Natives *SL & AL	1. Area with Native Customary Right (NCR) claim described under the Land Ordinance is excised from Temporary Occupation Licence (TOL) area after a land inquiry is conducted to verify the claim and found to be justifiable by the Lands and Surveys Department prior to the issuance of TOL and the timber harvesting licence.	The requirements and process for native people to claim certain land rights is described and there is a process for natives to be exempt from payment of certain royalty.

	Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.		2. On application, the DoF may exempt Natives from payment of royalty through the issuance of Form IIA licence for any of the following forest produce taken from SL and AL: <ul style="list-style-type: none"> • The construction or repair of a dwelling - house for the abode of himself and his family; • The construction of fences and temporary huts on any land lawfully occupied by him; • The construction or repair of native boats; • The upkeep of his fishing stakes and landing places; • Fire-wood to be consumed for his domestic purposes; or • The construction and upkeep of clinics, schools, community halls, places of worship, bridge and any work for the common benefit (including for traditional medicine purposes)of the native inhabitants of his kampong. 	OBS: The requirements related to native rights are not clearly outlined in the Sabah TLAS. Also Permanent Forest is not mentioned at all related to native rights. It is proposed to clarify the legal requirements for Organisations related to the respect of native rights in the Conformance Checklist, as well as adding a new requirement related to native rights in Permanent Forest.
5. Trade and transport				
5.1 Classification of species, quantities, qualities	Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees.	<p>Table 9 Control of harvesting operation (PF, SL & AL (excl. ITP))</p> <p>Table 11 Control of timber production (PF, SL & AL(ITP - including rubber wood from small holders))</p>	<p>iii. The Organisation must incise each extracted log with a serial number.</p> <p>v. The Organisation transports marked logs to approved stumping area.</p> <p>vi. The Organisation and/or appointed contractors must comply with the AEC and MD.(refer Table 5)</p> <p>1. ITP (PF)</p> <p>ii. Organisation records all productions of plantation logs based on volume or weight and submits records to DFO for the issuance of Transit Pass and submits monthly production reports to the DFO.</p> <p>vi. The Organisation must register Property Hammer Mark for sawmill/plymill processing.</p> <p>vii. Organisation must incise a serial number on all logs for sawmill processing.</p> <p>ix. The Organisation must stamp all logs transported for sawmill/plymill processing to an approved stumping area with Property Hammer Mark.</p> <p>2. ITP (SL/AL)</p> <p>iii. DFO records all productions of plantation logs based on the number of logs or volume as in the Removal Pass.</p>	<p>Volume and weight is mentioned as a part of the Transit pass where a serial number shall be incised on logs for sawmill processing. Marking and identification of products are described as a part of transport.</p> <p>OBS: The Transit Pass requirement in TLAS does not describe any requirements related to the actual classification of species, volumes and qualities. It is proposed to add indicators related to assurance of conformance between actual logs and Removal Pass and TDP as part of the Conformance Checklist to ensure that this issue is evaluated in the field.</p>
5.2 Trade and transport	All required trading and transport permits shall exist.	Table 11 Control of timber production (PF, SL & AL(ITP - including rubber wood from small holders))	2. ITP (SL/AL) Land owner and developer must get all harvested trees inspected by the DFO prior to removal. Plantation logs to be removed are covered by Removal Pass	<p>It is well described how logs are transported from different points depending on where royalty is assessed. Requirements related to other parts of the transport is described as well.</p> <p>OBS: It is not considered adequate to exclude only timber from Sarawak. Any timber sourced with a high risk of been illegally harvested, transported or</p>

		<p>Table 12 Log transportation (PF, SL & AL (excluding ITP))</p>	<p>1. For logs where royalty is assessed at the Pangkalan or Weigh Bridge at the Mill Gate:</p> <p>i. Organisation transports all logs from the Stumping Point to the Pangkalan, or weigh bridge at the mill gate bearing Property Hammer Mark and FDS Inspection Hammer Mark. Logs must be accompanied with a Transit Pass and/or CS Form.</p> <p>ii. Organisation transports all logs from the Pangkalan to the Port of loading/to the mill bearing FDS Royalty Hammer Mark. Logs must be accompanied with Removal Passes upon payment of royalty.</p> <p>2. For logs where royalty is assessed at the Stumping Point/licensed area: The Organisation transports all logs from the Stumping Point/licensed area to the mill or port of loading bearing Property Hammer Mark, FDS Inspection Hammer Mark, FDS Royalty Hammer Mark. Logs must be accompanied with Removal Passes upon payment of royalty.</p> <p>3. Logs transported between mills must be accompanied with Removal Passes.</p> <p>4. Logs transported from a designated area to another destination only allowed from 07:00a.m. to 07:00p.m., unless with the DoF's approval outside the stipulated time period.</p> <p>5. The validity of Removal Pass is determined by the distance and mode of log transportation and may range from 1 to 3 days for land transportation or maximum 1 week for river/sea transportation subject to extension with a new removal pass by the DoF.</p>	<p>traded, shall be excluded. It is proposed to revise the requirement to reflect that any timber originating from countries or regions where there exist risk of illegal logging should not be imported, except where these risks can be mitigated.</p>
		<p>Table 13 Log transportation (ITP (PF, SL & AL) (Including rubber wood from small holders))</p>	<p>1. For ITP Logs With Royalty (PF)</p> <p>i. The Organisation transports all plantation logs from the harvesting area to an approved weigh bridge/weigh bridge at the mill gate for royalty assessment bearing Property Hammer mark and FDS inspection Hammer Mark (Marked randomly). All plantation logs must be accompanied with a Transit Pass.</p> <p>ii. The Organisation transports all plantation logs from the weigh bridge to the Port of loading/to the mill bearing FDS inspection Hammer Mark (marked randomly).All plantation logs must be accompanied with Removal Passes upon payment of royalty.</p> <p>2. For ITP Logs With No Royalty (SL/AL, Including rubber wood from small holders)</p> <p>i. The land owner has a letter/agreement/contract/[Power of Attorney (PA)] with the contractor to remove logs.</p> <p>ii. Land owner/authorized contractor obtains approval to transport plantation logs to an approved weigh bridge from the DoF (SL) or the District Forestry Officer (AL).Logs must bear Property Hammer Mark and FDS Inspection Hammer Mark (marked randomly).</p> <p>iii. Land owner/authorized contractor transports all logs from the weigh bridge to the Port of loading/to the mill must be accompanied with Removal Passes upon recording of volume (weighed volume).</p> <p>3. Logs transported between mills must be</p>	

			<p>accompanied with Removal Passes.</p> <p>4. Organisation transport logs from a designated area to another destination only from 7.00am to 7.00pm, unless with the DoF's approval for transportation outside the stipulated time period.</p> <p>5. The validity of Removal Pass is determined by the distance and mode of log transportation and may range from 1 to 3 days for land transportation or maximum 1 week for river/sea transportation subject to extension with a new removal pass by the DoF.</p>	
		Table 22 Transportation of imported logs, sawn timber and veneer (Imp)	Importer of logs/sawn timber/veneer applies to the nearest DFO to inspect the consignment of imported logs/sawn timber/veneer and pays inspection fees.	
		Table 23 Timber from Sarawak	<p>i. Company operating in Sabah ensures that no timbers brought in from Sarawak are included in export consignments to be shipped to the EU.</p> <p>ii. Company submits Customs Declaration form (CD3) to FDS and requests for physical inspection upon arrival of timber.</p> <p>iii. Company maintains records of buyers, sales and distribution of timber from Sarawak and timber products manufactured using such timber.</p> <p>iv. Timber exporter to EU must declare that the products exported to EU do not contain or include any timber sourced from Sarawak.</p>	
5.3 Offshore trading and transfer pricing	Legislation regulating offshore trading and transfer pricing.			OBS: Neither offshore trading or transfer pricing are mentioned in the current version of Sabah TLAS. There are new Rules promulgated relating to transfer Pricing that should be considered as part of legality.
5.4 Custom regulations	Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).	Table 20 Export Regulations (PF, SL, AL & Imp)	<p>i. A company intending to export timber and timber products must possess an Annual Export Licence from the FDS.</p> <p>ii. Company/sole proprietor (Enterprise) declares timber and timber products to be exported to the District Forestry Officer with a valid export permit or annual export licence with supporting documents such as Log summary, Sales Contract, Invoice, Packing List, Borang EIS 1/2000 (declaration on the source of processed timber to be exported), CITES Permit, where applicable, receipt of royalty payment and other</p>	It is well described how the export/import permit is obtained and also what documents are necessary prior to issue.

			fees where applicable (for logs, sawn timber, veneer, plywood and moulding) (not applicable to planted timber from SL and AL and other products not mentioned herein).	
		Table 21 Import Regulations	<p>i. A company intending to import timber and timber products needs to register with the Registrar of Companies (ROC), FDS and poses a trading licence. Note: ROC registration is not applicable to sole proprietors/enterprise/individual and only a trading licence is required.</p> <p>ii. Company intending to import timber products (logs/veneer/sawn timber) is subject to phytosanitary requirements and obtains an import permit from the Department of Agriculture (DoA).</p> <p>iii. Company intending to import timber products is required to obtain Customs' clearance (using CD1 Form) by Royal Malaysian Customs (RMC).</p> <p>iv. Company requests for inspection of imported timbers and pay the inspection fees to the FDS.</p>	
5.5 CITES	CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention).	6.1 Export Regulations (PF, SL, AL & Imp)	<p>i. A company intending to export timber and timber products must possess an Annual Export Licence from the FDS.</p> <p>ii. Company/sole proprietor (Enterprise) declares timber and timber products to be exported to the District Forestry Officer with a valid export permit or annual export licence with supporting documents such as Log summary, Sales Contract, Invoice, Packing List, Borang EIS 1/2000 (declaration on the source of processed timber to be exported), CITES Permit, where applicable, receipt of royalty payment and other fees where applicable (for logs, sawn timber, veneer, plywood and moulding) (not applicable to planted timber from SL and AL and other products not mentioned herein).</p>	CITES permit is mentioned briefly related to export regulation.

Annex 2: Terms of Reference

Consultancy for Preparation of Sabah TLAS Compliance Audit Checklist for P5 & P6 with revision of current Compliance Audit Checklist for Principle 1 - 4 based on the revised Sabah TLAS

Introduction

Malaysia has yet to conclude its Voluntary Partnership Agreement (VPA) with European Union on FLEGT though series of consultation have been held to develop the TLAS for the Peninsular Malaysia, Sabah and Sarawak. After the 11th consultation held in Kuala Lumpur on the 28th March 2013, it has been agreed that Malaysia will enter the VPA though the implementation of the TLAS will be in phased approach. Peninsular Malaysia and Sabah will proceed immediately while Sarawak will go through a phased approach in participating as a region in the VPA. Both the PM TLAS and Sabah TLAS have taken steps to exclude timber from Sarawak to enter the supply chain for companies carrying out trade with EU.

Sabah re-engaged into the process in 2012 after the federal government agreed with the state of Sabah's demand for the return of the licensing authority power to the state. The state of Sabah is working in partnership with WWF-Malaysia to develop the Sabah TLAS further and support the implementation of the Sabah TLAS and VPA between Malaysia and EU. Three consultations have been held on the Sabah TLAS and after 2 targeted Joint Expert Meeting (JEM) on the Sabah TLAS, much changes and improvement to the Sabah TLAS have been achieved. The work is now to finalize the Compliance Audit for the state of Sabah based on the updated Sabah TLAS.

Previously with the support of the Dutch government, Sabah commission a compliance audit for Principle 1 to Principle 4 for the forest sector from the forest floor to the mill gate based on the old Sabah TLAS. The State Government of Sabah foresee that it is imperative that all stakeholder collaborate to improve the tracking system for timber materials entering the supply chain from origin to exit point for legality assurance systems, consistent with the chain of supply system. The challenge is now to develop the Compliance Audit for P5 & P6 for Sabah region and update or improve the gaps identified for the previous compliance Audit for P1 to P4, entitled Audit of Sustainable Forest Management License Agreement (SFMLA). It is therefore anticipated that this project will apply the same procedures and process in order to get positive impacts and consistency through consultation with all the target groups.

Target group are government agencies, trade associations and industry, indigenous and local community groups, environment and social NGO, civil society and financial institutions.

Objectives

- a. Develop compliance audit verification standards checklist for Principle 5 & Principle 6
- b. Review and update existing compliance verification standards checklist for Principle 1- 4 against the new Sabah TLAS version

Methodology

The following are the tasks that have been identified in order to undertake the project:

Desktop Study: Identify any relevant reference material and organizations to contact for information, i.e, Sabah Forestry Department (FDS), Sabah Timber Association (STIA), WWF-Malaysia and other relevant stakeholders. The existing compliance audit for verification standards checklist will be revised and updated against the new Sabah TLAS version for Sabah.

Interviews: Identify and ensure appropriate communication is established between the various agencies involve in the Sabah Timber Legality Assurance System (TLAS) e.g. FDS, STIA, NGOs and other relevant stakeholders.

Report: Final report will be produced at the end of the project by which it will be submitted as draft report to the relevant agencies. This will be reviewed and requirements for clarification or recommended amendments which do not affect the legitimacy/credibility of the study can be proposed by stakeholders. The stakeholders will have the opportunity to ask for editorial changes. Eventually, the consultant will then make any necessary changes prior developing the final version of the report. This report will be made publicly available, as well as across the WWF network and to key partners and funders.

Coordination with FDS, Customs Department, STIA and WWF-MY: It is anticipated that an opening meeting with the Consultant will be held to discuss the TOR and henceforth regular communications via telephone, email and internet shall be established and arranged during the course of this project.

Workshop: 1) the organization of a **workshop** for this particular project that will allow to inform stakeholders concerned of the objectives and expected outputs of the project and information needs; 2) the organization of a **close out workshop** of outputs and lessons learned at the end of the project, in the presence of the main stakeholders.

The contractor must include in its activities a communications/visibility component in order to communicate the outputs and activities of the project to all stakeholders in the forestry sector. This may include the use of EU and WWF logo in any activities in relation to this project as well as the reports for submission.

WWF-Malaysia's collection of technical reports will be made available to the Contractee. Where available, digital copies will be provided to the Contractee and in cases where they are not available, the Contractee should consult the printed copies of the documents within the confines of the WWF-Malaysia office. In some cases, photocopies of the relevant documents will be made available for the Contractee. The Contractee is also expected to consult relevant literature from sources beyond WWF-Malaysia's publication collections and use his own equipment and resources in preparing the proposals and reports. Procurement of additional materials from external sources incurring additional costs must first be discussed with and approved by WWF-Malaysia.

Output

The outputs of the consultancy are as follows:

Below are the expected tasks within the project and must be fully addressed with the corresponding results shall be presented in the final report. This shall be done in consultation with Sabah Forestry Department and multi-stakeholders incorporating comments and revision after the consultation. In addition, the consultant must develop a detailed budget and timeline for the deliverables.

- Proposal for revised criteria and verification procedures related to verifying industry conformance with Principles 5 and 6 and its Compliance Audit Checklist
- A revised Compliance Audit Checklist for Principle 1 - Principle 4 based on the updated Sabah TLAS

Timeline

This assignment should commence on 5th July 2103 and be completed by 5th August 2013.

Due to the requirements of the project, all deadlines (see below) must be strictly adhered to facilitate complementary activities.

- | | |
|--|-----------------|
| 1. Submission of 1st draft Compliance Audit Checklist for P4 & P5 and revised Compliance Audit Checklist for P1 - P4 for Sabah TLAS | 30th July 2013 |
| 2. Submission of revised Compliance Audit Checklist for P4 & P5 and revised Compliance Audit Checklist for P1 - P4 for Sabah TLAS incorporating comments and reviews from stakeholders | 5th August 2013 |

Reporting

The Contractee will report to Nicholas Fong, FLEGT Coordinator WWF-Malaysia with respect to all tasks and assignments, or in his absence Ivy Wong, Senior Manager, WWF-Malaysia.

Copyrights And Other Intellectual Property Rights

The Contractee agrees that all intellectual property rights including the copyrights throughout the world in all outputs developed and created by the Contractee shall vest in and be wholly and exclusively owned by WWF-Malaysia. The Contractee hereby irrevocably and unconditionally waives and consents any so-called "moral rights" as author to all outputs to the fullest extent permitted by law (either present or future), to WWF-Malaysia.

Report Format

All reports should be written in English. The report should be supported by helpful diagrams, charts, maps and plates as necessary to support the discussions or conclusions presented. Please refer to the Standard Conditions of Contract (Annex C) for additional information on the format of the report.

The contract should commence from 5th July 2013 and be completed (with the submission of a fully-edited version of required reporting meeting WWF-Malaysia's requirements) by 5th August 2013. Any diagrams for inclusion in the report should be on either **A4** or **A3**-sized paper. The reports should be saved in a format compatible with Microsoft Office XP.

The Contractee should adhere to the detailed regulations contained within the WWF-Malaysia Standard Conditions of Contract.

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