

ANNEX VIII- CRITERIA FOR ASSESSING THE OPERATIONALITY OF GUYANA'S TIMBER LEGALITY ASSURANCE SYSTEM



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BACKGROUND

A joint independent technical evaluation of the GTLAS will be carried out before the Forest Law Enforcement, Governance and Trade (FLEGT) licensing of timber exports to the European Union commences. This joint technical evaluation will assess the entire system to determine whether adequate mechanisms are in place to ensure the GTLAS functions and performs in practice as intended. The evaluation will review the system description with special focus on any revisions made to the Agreement after ratification. The Terms of Reference (TOR) for the independent technical evaluation will be jointly agreed between the Parties, within the Joint Review and Monitoring Committee (JRMC).

The technical evaluation will cover the following:

- The Legality Definition which lists the laws of Guyana that must be complied with in order for a licence to be issued.
- The control of the supply chain to track timber products from the forest to the point of export or domestic sale, and from the point of import to the point of export or domestic sale;
- The verification procedures to determine compliance with all elements of the definition of legality and control of the supply chain.
- The procedures for issuing Export Certificates and for issuing FLEGT licences.
- The Independent auditing to ensure that the system is functioning as intended.

Based on the experience of other Agreements, the assessment of the GTLAS may be carried out using a stepwise and iterative approach where any weaknesses and non-compliances of the GTLAS identified during the assessment can be progressively addressed through the planned implementation of corrective measures.

1. DEFINITION OF LEGALITY

Legally produced timber should be defined on the basis of the laws applicable in Guyana. The definition used must be unambiguous, objectively verifiable and operationally workable and, as a minimum, include the laws and regulations that cover:

- Harvesting rights: the allocation of forest concessions and the granting of legal rights to harvest timber within legally defined boundaries.
- Forestry operations: compliance with legal requirements regarding forest management and operations including compliance with relevant environmental and social legislation.
- Fees and taxes: compliance with legal requirements concerning taxes, royalties, and fees (or any other revised revenue system) directly related to timber harvesting and harvesting rights.
- Other users: respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist.
- Trade and customs: compliance with legal requirements for trade and customs procedures.

Key Questions:

1.1.1: Are the legal requirements clearly identified in the Legality Definition?

1.1.2: Are principles, criteria and indicators that can be used to test compliance with each element of the Legality Definition specified?

1.1.3: Are the verifiers which are used to verify compliance with each Principle and Criterion of the Legality Definition specifically based on documented legal references, within the mandated Ministry or Government Agency, which describes how the verifier ensures compliance with the indicator?

1.1.4 Are the verifiers clear, objective and operationally workable? Is there any possible confusion with regards to the nature of the verifier? Does the verifier cover all iterations and / or real-world practices in terms of the entities and activities to which they apply? Does the verifier hold a legal basis? Is the verifier appropriate and adequate to confirm compliance with the intent of the indicator? Is the verifier currently used by operators and responsible authorities?

1.1.5: Are the roles and responsibilities of all relevant stakeholders and regulatory agencies identified clearly for each criteria and indicator?

1.1.6: Does the Legality Definition cover the relevant sections of the related current laws and regulations? If not, why are some of these relevant sections not reflected in the Definition?

1.1.7: Has there been stakeholder engagement in developing the Legality Definition?

1.1.8: Have the legal requirements that were identified during stakeholder discussions been included in the GTLAS?

1.1.9: Has the Legality Definition been adjusted after the ratification of the Agreement? Are the verifiers which are used to check compliance with each Principle and Criterion of the Legality Definition specifically based on documented legal references, within the mandated Ministry of Government Agency, which describes how the verifier ensures compliance with the indicator?

In the event of amendments to the Legality Definition, key questions will include:

1.2.0: Were all relevant stakeholders consulted on these amendments, and were any subsequent changes to the legality verification system done through a process that took adequate account of their viewpoints?

1.2.1: In the event of amendments to the Legality Definition do all revisions conform to questions 1.1.1 to 1.2.0?

2. CONTROL OF THE SUPPLY CHAIN

Systems to control the supply chain must provide credible assurance that timber products can be traced throughout the supply chain from:

- the point of harvest in the forest to the point of export;
- the point of harvest in the forest to the point of sale on the domestic market;
- the point of import to the point of sale on the domestic market; and
- the point of import to the point of export.

2.1. Rights of use

There is clear delineation of areas where forest resource use rights have been allocated and the holders of those rights have been identified.

Key Questions:

2.1.1: Is the supply chain control system robust enough to prevent contamination with materials for which valid use rights are not assured?

2.1.2: Does the control system ensure that FSOs carrying out harvesting operations have been granted appropriate rights of use for the specific forest areas?

2.1.3: Are the procedures for issuing harvesting rights and the information on such rights, including their holders, publically available?

2.2. Methods for controlling the supply chain

There are effective mechanisms for tracing timber throughout the supply chain from harvesting or point of import to the point of domestic sale or export covering the following:

- legal status of FSOs;
- legal access to the forest;
- legal rights to harvest;
- forest management and timber harvesting (including salvaged timber);
- post harvest (log tagging and documentation);
- transportation of timber products;
- processing of timber products;
- sale of timber products on the domestic market;
- confiscated and abandoned timber products;
- export of timber products;
- import of timber products;
- timber products in transit for export;
- social, labour and fiscal aspects related to FSOs' operations;
- the legal establishment and fiscal compliance of the FSO; and
- the environmental aspects related to FSOs' operations.

The approach for identifying timber may vary, ranging from the use of labels for individual items to reliance on documentation accompanying a load or batch. The selected method should reflect the type and value of timber and the risk of contamination with unknown or illegal timber.

Key Questions:

2.2.1: Are all the different types of supply chain operations and sources of timber, identified and described in the control system?

2.2.2: Are all stages in the supply chain identified and described in the control system?

2.2.3: Is a credible risk-based approach included in the verification methodology to ensure that sections of the supply chain that present the highest risk of contamination with unknown or illegal timber receive specific attention? Are risk-based approaches included in the verification methodologies implemented and functioning as intended, in practice?

2.2.4: Have methods to identify the product origin and to prevent mixing with timber from unknown sources in the following stages of the supply chain been defined and documented? Are these methods implemented and functioning as intended, in practice?

- standing timber (inventory for large concessions)
- logs in the forest
- transport and interim storage (log yards/ponds, interim log yards/ponds)
- arrival at processing facility and storage of materials
- entry into and exit from processing facility
- storing of processed products at the processing facility
- exit from processing facility and transport
- arrival at point of export

2.2.5: Which organisations are in charge of controlling the timber flows? Do they have adequate human and other resources for carrying out the control activities?

2.2.6 Are the supply chain control procedures clearly defined and communicated to relevant stakeholders? Are the supply chain control procedures implemented and functioning as intended, in practice?

2.3. Quantitative data management

There are robust and effective mechanisms for measuring and recording the quantities of timber products at each stage of the supply chain, including reliable and accurate pre-harvest estimations of the standing timber volume (where applicable) in each harvesting site.

Key questions:

2.3.1: Does the control system produce quantitative data of inputs and outputs, including conversion ratios where applicable, at the following stages of the supply chain?

- standing timber (inventory for large concessions)?
- logs in the forest (at log landings)?
- transported and stored timber (log yards/ponds, interim log yards/ponds)?
- arrival at the processing facility and storing of materials?
- entry into and exit from production lines?
- storing of processed products at the processing facility?
- exit from processing facility and transport?
- arrival at point of export?

2.3.2: Are the functions of information systems for the verification of the supply chain clearly defined?

2.3.3: If confiscated timber is authorized to re-enter the supply chain, is it managed by the system to ensure that all necessary steps for regularization have been followed beforehand?

2.3.4: Does the absence of an inventory of standing timber before harvesting from small concessions, State forests in conversion, Amerindian land and private lands constitute a real risk based on the possibility that unverified timber may enter into the supply chain? If yes, how is this risk being addressed? Is it being addressed effectively?

2.3.5: Which organisations are responsible for maintaining records of the quantitative data? Are they adequately resourced in terms of personnel and equipment? Are the organisations responsible for maintaining records on the quantitative data fulfilling their mandate and responsibilities?

2.3.6: Are all quantitative data recorded in a way that makes it possible to verify quantities with the prior and subsequent stages in the supply chain in a timely manner? Is the recorded data being used to verify quantities with the prior and subsequent stages?

2.3.7: What information on the supply chain control is made publicly available? How can stakeholders access this information?

2.4. Segregation of legally verified timber from timber of unknown sources

Key Question:

2.4.1: What control measures are applied to ensure that verified and unverified materials are segregated throughout the supply chain? Are the control measures applied effectively?

2.5. Imported timber products

There are adequate controls to ensure that imported timber products have been legally sourced.

Key Questions:

2.5.1: What evidence is required to demonstrate that imported timber products originate from trees harvested legally in the country of origin? Is this evidence provided consistently and correctly?

2.5.2: Where imported timber is used, can the country of harvest be identified on the FLEGT licence? Is country-of-harvest information being systematically included in the FLEGT licence?

2.6. Timber in transit

There are adequate controls and procedures in place for managing timber products in transit. The system in place prevents transit timber from mixing with other sources of timber for manufacturing of processed products or sale.

Key Questions:

2.6.1: Are the procedures and controls in place for managing timber products in transit clear and adequate?

2.6.2: Are there established procedures ensuring that transit timber does not mix with other sources of timber for manufacturing of processed products or sale in Guyana?

2.6.3: Are the procedures and controls implemented and functioning effectively as intended? Are the procedures and controls effective in ensuring that transit timber does not mix with other sources of timber for manufacturing of processed products or sale in Guyana?

2.6.4: What records are kept to enable subsequent verification?

2.6.5: What information on timber products in transit is made publicly available? How can stakeholders access this information?

2.7. Confiscated timber products

There are adequate procedures and controls in place to ensure confiscated timber products suspected to be in breach of Guyana's forest legislation regulations are dealt with appropriately before they enter the supply chain.

Key Questions:

2.7.1: Is there a clear definition of what constitutes confiscated timber?

2.7.2: Are procedures and controls for clearing confiscated timber for entry into the supply chain effective?

3. VERIFICATION PROCEDURES

Verification provides adequate checks to ensure the legality of timber. It must be sufficiently robust and effective to ensure that any non-compliance with requirements, either in the forest or within the supply chain, is identified and prompt action is taken.

3.1. Organisation

Verification is carried out by a Government or a third-party organisation that has adequate resources, management systems, skilled and trained personnel, as well as robust and effective mechanisms to control conflicts of interest.

Key Questions:

3.1.1: Has the Government appointed a verification body or bodies to undertake the verification tasks? Is the mandate (and associated responsibilities) clear and in the public domain?

3.1.2: Have the verification body or bodies' adequate resources for carrying out the verification of the legality? Resources include, but are not limited to: human, financial, logistics, IT, energy supply and connectivity.

3.1.3: Are the verification body or bodies operational to carry out their required verification tasks?

3.1.4: Are institutional roles and responsibilities clearly defined and functional?

3.1.5: Does the verification body have a fully documented management system that:

- ensures its personnel have the necessary competence and experience to carry out effective verification?
- applies internal control / supervision?
- includes mechanisms to control conflicts of interest?
- ensures transparency of the system?
- defines and applies verification methodology?

3.3. Verification with respect to the definition of legality

There is a clear definition that sets out what has to be verified. The verification methodology is documented and ensures that the process is systematic, transparent, and evidence-based, carried out at a defined frequency and covers everything included within the definition.

Key Questions:

3.3.1: Does the verification methodology used by the verification bodies cover all elements of the legality definition and describe clearly how indicators are complied with?

3.3.2: Is the risk-based approach documented through comprehensive and practical procedures?

3.3.3: Is the risk-based approach contributing effectively to the Legality Definition-based verification?

3.3.4: Do the verification bodies:

- check documentation, operating records and on-site operations (including through spot checks)?
- collect information from external interested parties?
- record their verification activities?

3.3.5: Are the verification results made publicly available? How can stakeholders access this information?

3.3.6: Are verification results clearly and unambiguously informing on the level of compliance of the indicator (Yes/No)?

3.4. Verification of systems for controlling the integrity of the supply chain

There is a clear scope of criteria and indicators to be verified which covers the entire supply chain. The verification methodology is documented, ensures that the process is systematic, transparent, evidence-based, carried out at regular intervals, covers all criteria and indicators within the scope, and includes regular and timely reconciliation of data between each stage in the chain.

Key Questions:

3.4.1: Does the verification methodology fully cover each stage of the supply chain controls? Is this clearly spelt out in the verification methodology?

3.4.2: What evidence is there to demonstrate application of verification of supply chain controls?

3.4.3: Which organisation is responsible for data reconciliation and verification? Do they have adequate resources for carrying out the data management activities? Resources include, but are not limited to: human, financial, logistics, IT, energy supply and connectivity.

3.4.4: Are there methods for assessing reconciliation between standing timber, harvested logs and timber entering the processing facility or point of export? If yes, are the methods effective in identifying where data does not correspond and allowing for follow-up and/or further investigation?

3.4.5: Are there methods to assess the coherence between inputs of raw materials and the outputs of processed products at sawmills and other plants? Do these methods include specification and periodic updating of the conversion ratios? If yes, are the methods effective in identifying incoherence between data flows, allowing for follow-up and/or further investigation?

3.4.6: Are the information systems and technologies applied for storing, verifying and recording data sufficient to ensure adequate verification?

3.4.7: Are there effective backup systems to ensure speedy and effective data recovery in the event of a major catastrophic event such as fire or system malfunction?

3.5 Mechanisms for handling complaints

There are adequate mechanisms for handling complaints and disputes that arise from the verification process.

Key Questions:

3.5.1: Do the verification bodies have a complaints mechanism that is available to all stakeholders?

3.5.2: Do the verification bodies have mechanisms in place to receive and respond to objections from stakeholders?

3.5.3: Do the verification bodies have mechanisms in place to receive and respond to infringements / breaches detected by Government officials?

3.5.4: Is it clear how complaints are received, documented, escalated (where necessary) and responded to?

3.6. Mechanisms for dealing with non-compliance

There are adequate mechanisms for dealing with cases of non-compliance identified during the verification process or brought forward through complaints and independent monitoring.

Key Questions:

3.6.1: Does the verification system define mechanisms for dealing with cases of non-compliance identified during the verification process or brought forward through complaints and independent monitoring? Is this mechanism effective?

3.6.2: Are there adequate records available on cases of non-compliance and of correction of the verification results, or on other actions taken? Is there also an evaluation of the effectiveness of such actions?

3.6.3: Have mechanisms been developed for handling cases of non-compliance and their consequences on FLEGT licensing and issuance of Export Certificates? Are these applied in practice?

3.6.4: What kind of information on cases of non-compliance goes into the public domain?

4. LICENSING OF EXPORTS AND SALE ON THE DOMESTIC MARKET

A Licensing Authority for the overall responsibility for issuing FLEGT Licences and Export Certificates has been designated. FLEGT licences and Export Certificates are issued for individual shipments destined to the European Union. Export certificates only are issued for exports to non-European Union markets, and there are systems in place to verify the legality of timber products placed on the domestic market.

4.1. Organisational set-up

Key Questions:

4.1.1: Which body is assigned the responsibility of issuing FLEGT licences and Export Certificates?

4.1.2: Are there procedures in place for ensuring only legal timber enters the domestic market?

4.1.3: Are there controls in place to ensure the adequacy and effectiveness of these procedures?

4.1.4: Are the roles of the Licensing Authority and its personnel with regard to the issuance of FLEGT licences and Export Certificates clearly defined and publicly available?

4.1.5: Are the competence requirements defined and internal controls established for the personnel of the Licensing Authority?

4.1.6: Does the Licensing Authority have adequate resources for carrying out its task? Resources include, but are not limited to: human, financial, logistics, IT, energy supply and connectivity.

4.2. Issuance of FLEGT licences and Export Certificates

Adequate arrangements have been made to issue FLEGT licences and Export Certificates.

Key Questions:

4.2.1: Do the FLEGT licences comply with the technical specifications contained in Annex IV?

4.2.2: Are the roles and responsibilities of the personnel of the Licensing Authority clearly defined and publicly available?

4.2.3: Are the procedures of the Licensing Authority applied effectively in practice? What evidence supports this conclusion?

4.2.4: Are there adequate records on issued FLEGT licences and Export Certificates? Are there adequate records in cases where FLEGT licences and Export Certificates were not issued due to non-compliance? Do the records clearly show the evidence on which the issuing of FLEGT licences and Export Certificates are based?

4.2.5: Is there a system in place to detect and identify counterfeit legal documents?

4.2.6: Is the system adequate in detecting counterfeit legal documents?

4.2.7: Does the Licensing Authority have adequate procedures to ensure that each shipment of timber meets the requirements of the legality definition and supply chain controls based on information from all the relevant Ministries and Government Agencies involved in the implementation of the GTLAS?

4.2.8: Have the requirements for issuing licences been clearly defined and communicated to exporters and to other concerned parties?

4.2.9: What kind of information on issued licences goes into the public domain? How can stakeholders access this information?

4.2.10: Has Guyana developed a numbering system for FLEGT licences that enables differentiation between FLEGT licences and Export Certificates? Has the Licensing Authority adhered to this numbering system?

4.2.11: Does the licensing system allow for the replacement of FLEGT licences in case the document is lost?

4.2.12: Does the licensing system allow for modification of the FLEGT licence in case of one or more of the following scenarios:

- the destination or consignee of the shipment changes or;
- the discrepancy between the actual volume/quantity of the shipment of timber and timber products to be exported exceeds 10%?

4.3. Queries on issued FLEGT licences

There is an adequate mechanism in place for handling queries from competent authorities in the Union with regard to FLEGT licences, as set out in Annex III.

Key Questions:

4.3.1: Has a Licence Information function been assigned and established in the Licensing Authority, inter alia, to receive and respond to inquiries from the competent authorities in the Union and other parties?

4.3.2: Have clear communication procedures been established between the Licensing Authority and the competent authorities in the Union?

4.3.3: Are there communication channels for Guyanese or international stakeholders to inquire about issued FLEGT licences?

4.4. Mechanism for handling relevant complaints and disputes

There is an adequate mechanism for handling relevant complaints and disputes that arise from licensing. This mechanism makes it possible to deal with any complaint relating to the operation of the licensing scheme.

Key Questions:

4.4.1: Are there a mechanism and documented procedures for handling relevant complaints that are available to all stakeholders and are they effective?

4.4.2: Is it clear how complaints are received, documented, escalated (where necessary) and responded to?

5. RESPONSIBILITIES OF OTHER GOVERNMENT ORGANISATIONS

The GFC, which has the official mandate of managing Guyana's national forest resources, is the coordinating agency for implementing this Agreement. It does this in collaboration with Ministries and Government Agencies that are involved in the implementation of the GTLAS and whose statutory mandates impact on the sustainable management of the country's forest resources.

Key Questions:

5.1.1.: Is there a mechanism in place, such as a Memorandum of Understanding (MoU) or other mechanisms, governing the roles and responsibilities of the other Ministries and Government Agencies in relation to the implementation of this Agreement?

5.1.2: Are these other Ministries and Government Agencies informed of their statutory responsibilities and do they understand them?

5.1.3: Do Ministries and Government Agencies have adequate resources to carry out their tasks outlined in this Agreement? Resources include, but are not limited to: human, financial, logistics, IT, energy supply and connectivity.

5.1.4: Is there a verification system in place to verify that these other Ministries and Government Agencies are undertaking their responsibilities under this Agreement adequately and effectively?

5.1.5: Is it clear how often are these verifications done? Are reports generated from these verifications and are they publicly available?

5.1.6: Is there a system in place to use the outcomes from these verifications to improve the GTLAS continually? Is the system in place working effectively?

6. THE INFORMATION SYSTEMS SUPPORTING GTLAS IMPLEMENTATION

In the context of the implementation of the GTLAS, Guyana in partnership with the European Union, will implement a comprehensive upgrade of the Information and Communication Technologies (ICT) systems supporting the GTLAS, prior to issuing FLEGT licences and Export Certificates.

In particular, ICT systems will be developed and implemented to enable near real time transmission and sharing of FSOs' data and information between the GFC and Ministries and Government Agencies involved in implementing this Agreement.

Key Questions

6.1.1: Does the ICT system allow connectivity (with effective encryption capability) for transmitting information between and among the GFC divisions and units, including between GFC Headquarters and the field stations, as well as among the field stations?

6.1.2: Does the ICT system supporting the implementation of the GTLAS allow near real time access and exchange of data and information between the GFC and the Ministries and Government Agencies involved in implementing this Agreement?

6.1.3: Do the other Ministries and Government Agencies have the capacity through staff training and equipment upgrade to facilitate free flow of communication (including data and information exchange) with the GFC?

7. INDEPENDENT AUDITOR

The Independent Audit (IA) will be established before the operationalisation of the FLEGT Licensing Scheme. Its objective will be to identify any weaknesses in the GTLAS system, make recommendations for its improvement on a continuous basis, and thereby contribute to operation, credibility and efficiency of the GTLAS and this Agreement in general.

Key Questions:

7.1.1: Is the implementation of the Independent Audit in line with the ToRs in Annex VI?

7.1.2: Has the Government made the guidelines for the Independent Audit publicly available?

7.1.3: Do the guidelines provide clear requirements on the eligibility of organisations to perform Independent Audit functions to ensure impartiality and avoid conflicts of interest?

7.1.4: Do the guidelines provide procedures to access the information?

7.1.5: Can stakeholders access the information contained in Annex IX in practice?

7.1.6: Do the guidelines provide procedures for the submission of complaints as it relates to the GTLAS and other elements of the Agreement and for these to be made publicly available?

7.1.7: Have reporting and public disclosure provisions that apply to Independent Audit been clarified and established?

7.1.8: Does the Independent Audit methodology conform to best international practice suitable with ISO 19011, ISO 17021 or equivalent?

7.1.9: Does the JMRC provide a no objection for the selection of the Independent Audit, and Guyana contract the Independent Audit to undertake the verification tasks? Is the mandate (and associated responsibilities) clear and in the public domain?

7.1.10: Are institutional roles and responsibilities of Ministries and Government Agencies as identified in the GTLAS clearly defined and applied?

7.1.11: Does the Independent Audit have adequate resources for carrying out verification against the legality definition and the systems for controlling the timber supply chain?

7.1.12: Does the Independent Audit have a fully documented management system that:

- ensures its personnel have the necessary competence and experience to carry out effective verification?
- applies internal control / supervision?
- includes mechanisms to control conflicts of interest?
- ensures transparency of the system?
- defines and applies verification methodology?

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