



Myanmar Timber Legality Assurance System (MTLAS) Gap Analysis Project Final Report

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1. Background

The Myanmar Principles & Criteria (P&C) for legality were developed in 2013 based on the Association of Southeast Asian Nations (ASEAN) Criteria and Indicators for Legality of Timber. These ASEAN Criteria and Indicators were adopted in 2009 as the regional reference framework for legality of timber in support of market integration objectives. These P&C have formed the basis for the development of the Myanmar Timber Legality Assurance System (MTLAS) and are based on Myanmar's existing legal framework. The MTLAS has been proposed as a means for assuring the legality of timber exports from Myanmar.

The MTLAS includes a definition of legal timber, 6 associated Principles and 15 Criteria. It specifies relevant laws and regulations as well as means to verify that specific indicators have been met. Since the MTLAS was first developed, Myanmar has engaged in a Forest Law Enforcement, Governance and Trade (FLEGT)- Voluntary Partnership Agreement (VPA) process with the European Union (EU), with a preparatory phase initiated in January 2015. This is being undertaken under the guidance of a FLEGT-VPA Interim Task Force (ITF) representing relevant government, civil society and private sector stakeholders. At the same time, the enforcement of the EU Timber Regulation (EUTR), US Lacey Act and Australian Illegal Logging Prohibition Act (AILPA) are creating demand for greater supply chain transparency, demonstration of due diligence and legal sourcing by the trade. This, as well as the prospect of similar legislation elsewhere, is a relevant consideration for Myanmar going forward.

In early 2016, the Myanmar Forest Certification Committee (MFCC), supported by the Food and Agriculture Organization of the United Nations (FAO), commissioned a multi-stakeholder, participatory gap analysis of the current MTLAS. The gap analysis was conceived as a capacity building exercise and the main target beneficiaries included MFCC and FLEGT-VPA Interim Task Force (ITF) members. The gap analysis was concluded in March 2017 and aims to inform the development of a VPA-TLAS through a multi-stakeholder process that would meet FLEGT requirements and incorporate elements of best practice for legality assurance systems. The exercise also provide inputs to MFCC in terms of exploring other options for utilizing the MTLAS going forward.

This report outlines the results of the MTLAS gap analysis exercise. It documents the existing MTLAS and describes some of the gaps observed between MTLAS and existing international frameworks and best practice for standards and assurance systems. It proposes areas where MTLAS could be strengthened going forward.

The information provided in this report has been based on a review of available documentation, inputs provided during an initial stakeholder workshop, observations made during field visits to selected sites, information provided by a Core Expert Group and other individuals as well as the feedback received from national and international stakeholders during a final national stakeholder consultation workshop. While the information reviewed is extensive it is possible that not all aspects of the existing system have been observed nor all gaps identified.

2. Methodology

A Core Expert Group was formed to provide input and guidance to the assessment and to contribute to and participate in key project activities. A wider Consultative Group was also invited to provide input and support to the overall project and its results through key project events and workshops. The Terms of Reference for these two groups are provided in Annex 1. The members of the Core Expert Group are provided in Annex 2 below. Three members of the Core Expert Group are also members of the FLEGT-VPA Interim Task Force.

A draft gap analysis framework (see Annex 3 below) was compiled containing key elements of standards systems against which to assess the MTLAS. The gap analysis framework includes key elements of existing international timber legality/certification frameworks as well as guidelines outlining international best practice for standards and assurance systems¹.

Following an initial stakeholder workshop in February 2016 to present the gap analysis initiative and a round of input from interested parties on the gap analysis framework, in mid-2016 a desk study was conducted, supported by a national expert and MFCC, to document the current MTLAS and identify potential gaps between MTLAS and the key elements included in the gap analysis framework.

In late 2016, field visits were undertaken with members of the Core Expert Group in selected Forest Reserves, Community Forests, Forest Department Administrative Offices, Myanmar Timber Enterprise (MTE) depots, transport checkpoints and MTE and privately owned manufacturing facilities in Yangon, Taungoo, Mawlaik and Kalay Districts (see Annex 4 for a list of the sites visited). The objective was to establish an understanding of MTLAS in practice; solicit input from and build the understanding of the Core Expert Group on key issues; and provide additional input to the identification of potential gaps and considerations for MTLAS going forwards.

A report was drafted drawing on the information obtained from the desk study, field observations and discussions with Core Expert Group members and other individuals during the course of the assessment. The report was shared with Core and wider Consultative Group, ITF members and other stakeholders and presented at a consultative workshop in February 2017 with the purpose of generating discussion and soliciting input on potential next steps for MTLAS. This is the final version of the gap analysis report which has undergone final minor revisions in March 2017 including addition of key recommendations presented by stakeholders at the workshop.

¹ Relevant guidelines and frameworks considered include: The ASEAN Criteria & Indicators; FLEGT Briefing Notes; the EUTR and related Guidelines; International forest certification standards and related requirements; and guidelines for bodies providing certification/auditing/conformity assessment services (e.g. ISO/IEC 17021, ISEAL Standard Setting Code v6 December 2014, ISEAL Credibility Principles)

3. Summary of findings

Through the information obtained during study, the following observations were made:

MTLAS as a legality assurance system

(MTLAS gap analysis framework, Elements 1-6)

MTLAS has been based on the existing legal framework of Myanmar. It includes a definition of legal timber, 6 associated principles and 15 criteria, references relevant laws and regulations as well as control measures and means to verify that specific indicators have been met. It incorporates elements of supply chain control covered by the legal framework and the issuance of export licenses by the Directorate of Trade, Ministry of Commerce. It includes the operational checks carried out in the forest and supply chain as the means for assuring that required laws and regulations have been met. Some elements of legality assurance systems including licensing (MTLAS gap analysis framework, Element 4- Criterion 4.1-4.3); monitoring and oversight (MTLAS gap analysis framework, Element 5- Criterion 5.1-5.6); and transparency, stakeholder engagement, rigor, relevance and impartiality (MTLAS gap analysis framework, Element 6- Criterion 6.1-6.5) have yet to be specified. Others, including the standard definition (MTLAS gap analysis framework, Element 1-Criterion 1.1-1.3) and verification (MTLAS gap analysis framework, Element 3-Criterion 3.1-3.4) would need to be strengthened to meet specific international frameworks and/or best practice.

It is also noted that MTLAS P&C and related indicators and control procedures largely cover parts of the legal framework governing extraction, transport, processing and trade of timber and wood products sourced from natural forests which include reserved forests, protected public forests and unclassified forests. However, there are other important sources that are not specifically addressed by MTLAS. These include non-state controlled timber sources in contested ethnic areas, community forest sources, trees considered as agricultural crops (e.g. rubber), commercial plantations, confiscated timber and imported timber.

MTLAS Principles and Criteria (P&C) for legal timber

(MTLAS gap analysis framework, Element 1- Criterion 1.1-1.3)

The MTLAS P&C and related indicators address aspects of the legal framework and related operational instructions for the extraction of timber and associated royalty payments, transport, processing and export of timber and wood products. MTLAS does not sufficiently address some legality aspects covered by existing international frameworks - and in particular those related to environment, social and governance considerations. Some of these (e.g. International laws and regulations to which Myanmar is signatory) may be addressed by Myanmar's current regulatory framework and could therefore be incorporated into the current MTLAS P&C, whilst others (e.g. provisions for granting customary rights or free prior informed consent in connection with the transfer of forest management rights to forest organizations in charge of harvesting) might require a process of legal review and/or reform.

MTLAS and supply chain control

(MTLAS gap analysis framework, Element 2- Criterion 2.1-2.3)

MTLAS bases its system for supply chain control on the laws and operational instructions governing extraction, transport, processing and export. This system is well established and provides for tracking the movement of logs from the forest of origin to point of export.

However, within the system there are possibilities for loss of information or contamination of legal and unknown sources through e.g. partial visible or missing hammer marks on logs, paper based record keeping and lack of measures for tracking materials through production. MTLAS could be strengthened by addressing some of the potential weaknesses in the current system for supply chain control.

Verification in the forest and supply chain

(MTLAS gap analysis framework, Element 3- Criterion 3.1-3.4)

Checks related to relevant legal requirements and operational procedures are carried out by the Forest Department and/or sometimes MTE throughout the supply chain from forest to export. Checks in the forest are mainly related to compliance with the extraction plan and disbursement of royalty payments and do not provide specific assurance that broader aspects of the legal framework covered by e.g. the national code of forest harvesting or environmental conservation law or the protection of wildlife and conservation of natural areas law have been met. The reliability of checks undertaken are at risk of being affected by factors such as capacity, physical risk to personnel, corruption or conflicts of interest. There is no mechanism for monitoring completeness and effectiveness of checks or making the results of the checks available to interested parties as would be required by international frameworks or best practice for assurance systems. MTLAS does not incorporate external third party verification or assurance.

Stakeholder engagement in standards, governance and assurance

(MTLAS gap analysis framework, Element 6- Criterion 6.2 a) and b))

In the case of MTLAS, the P&C was developed by MFCC based on the current legal framework. At the time, MFCC did not have a mandate to develop or adapt legislation and/or consult stakeholders on the appropriateness of the legal framework. Thus, only limited stakeholder engagement has been achieved. Stakeholder engagement in both standards/scheme development and governance, monitoring and evaluation have yet to be defined.

Defining MTLAS operational processes

(MTLAS gap analysis framework, Element 6- Criterion 6.1, 6.3, 6.4, 6.5)

The operational processes of TLAS as a system that are crucial to creating rigor, consistency, transparency and accessibility have yet to be defined or documented.

4. MTLAS as a legality assurance system

(MTLAS gap analysis framework Criteria Elements 1-6)

Assurance systems such as a Timber Legality Assurance System (TLAS), enable communication on specific attributes of a product between buyers and sellers and can be instrumental in facilitating international trade. Assurance provides the demonstrable evidence that specified requirements relating to a product, process, system, person or body are fulfilled².

A TLAS is a tool to provide assurance to interested parties that a timber product has been legally sourced.

Elements of a TLAS typically include:

1. A **standard/definition** of legal timber -to define what is legal timber, establish which laws of the country must be met under the system and provide criteria, indicators and verifiers with which to test compliance with these laws. It may include both performance benchmarks and systems components.
2. Mechanisms for **control of the supply chain** –identifies critical control points to track verified/legal timber through the supply chain and keep illegal or un-verified timber out.
3. **Verification** of legality and supply chain control -to provide demonstrable evidence that relevant legal and or system requirements have been met.
4. Issuing of a **statement of conformity, license or certificate** to attest to the fulfillment of the specified requirements having been demonstrated.
5. **Independent monitoring/oversight** –e.g. to assess an assurance provider’s demonstration of competence to carry out specific assurance tasks and/or to assess how well the system is working and assure credibility.

Standards and assurance systems are usually underpinned by operational procedures and work instructions which provide for e.g. consistency, transparency, rigor and access. International norms defining such requirements for standards and assurance systems include ISO FDIS 17065³; ISO 17021:2011⁴; ISO 17011:2004⁵. International best practice for standards and assurance systems include in the ISEAL code of good practice for standards setting (V-6 Dec 2014) and the ISEAL Assurance Code.

MTLAS is based on the existing legal framework of Myanmar. It includes a definition of legal timber, 6 associated principles and 15 criteria and associated procedures and verifiers based on the existing national legal framework. It specifies indicators and control procedures for log transportation and mill operations. It covers the first and second party operational checks in the forest and in the supply chain by relevant authorities required under the current legal framework. It incorporates the legal requirements for the issuance of export licenses by the Ministry of Commerce.

² Adapted from ISO 17000

³ Requirements for bodies certifying products, processes and services

⁴ Requirements for bodies providing audit and certification of management systems

⁵ General requirements for accreditation on bodies accrediting conformity assessment bodies

MTLAS does not incorporate specific licensing or attestation to the compliance of the timber or an operator with specific legality requirements (MTLAS gap analysis framework, Element 4- Criterion 4.1-4.3), independent oversight or monitoring for continuous assessment of the system (MTLAS gap analysis framework, Element 5- Criterion 5.1-5.6) or mechanisms to ensure transparency, stakeholder engagement, rigor, relevance and impartiality (MTLAS gap analysis framework, Element 6-Criterion 6.1-6.5).

Other elements, including the standard definition of legal timber and associated C&I, mechanisms for supply chain control, and associated verification or assurance and would need to be strengthened to meet specific international frameworks for legality assurance. These aspects are presented in more detail below.

5. MTLAS Principles and Criteria (P&C) for legal timber

(MTLAS gap analysis framework Element 1- Criterion 1.1-1.3, Element 6-Criterion 6.3, 6.4)

The definition of legal timber adopted by a TLAS is always based on the laws and regulations of the country in question. However, the framework of laws and regulations addressed by an assurance scheme can be more or less comprehensive depending on the objectives e.g. meeting international market requirements such as EUTR, or to align with a specific scheme owners' expectations of coverage⁶.

In the case of a VPA or legality standards development process, the practicality of assessment, its impact on reaching the overarching goals, consistency between laws and equity in relation to forest stakeholders' rights are all usually considered when deciding which laws should comprise a legality definition or standard. Some laws may be more relevant than others in addressing stakeholder concerns.

It may be that there are inconsistencies or contradictions between laws. In such cases the country or standards setting organization or group may establish which law takes precedence - at least on an interim basis until such contradictions are resolved. Should existing laws not adequately address significant stakeholder concerns, for example, excluding local people from access to forest resources and thus livelihoods, examination of the current law with a view to legislative reform may be required. Effective stakeholder deliberative processes for standards development are required by most international frameworks and are designed to achieve consensus on the above as well as to strengthen ownership, give credibility and transparency to its outcomes.

The definition of legal timber provided in the current MTLAS is as follows: 'Timber harvested by an authorized agency from approved areas, and timber and timber products extracted, transported, manufactured and exported in accordance with the laws, regulations and procedures pertaining to forestry, timber industry and trade of Myanmar'.

⁶ For example, the EUTR legality principles are indicative and if the corresponding laws simply do not exist in that given source country then these gaps would be overlooked. A VPA and associated legality definition development process on the other hand aim at the strengthening/ completion of the legal framework against the same EUTR legality principles. Thus, to achieve FLEGT licensing, any gaps in the legal framework would be need to addressed.

Six principles and associated criteria, indicators and control procedures are specified. These address:

1. The right to harvest (Principle 1)
2. Forest operations (Principle 2)
3. Statutory charges (Principle 3)
4. Other users rights (Principle 4)
5. Mill operations (Principle 5)
6. Trade and customs (Principle 6)

The review of the MTLAS P&C against the MTLAS gap analysis framework, Element 1 (Criterion 1.1-1.4) indicates that MTLAS does not sufficiently address some potentially important areas covered by existing international frameworks and best practice. These include:

1. The use of legal methods to obtain tenure or management/harvesting rights⁷.
2. Provisions for the granting of customary rights⁸.
3. Free prior and informed consent in connection with transfer of forest management rights and customary rights to forest organisations in charge of harvesting.
4. Legal requirements pertaining to environment and biodiversity considerations⁹.
5. International laws and regulations to which the country is signatory (e.g. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), The Convention on Biodiversity (CBD), and relevant ILO Conventions which have been ratified by Myanmar)¹⁰.

Some of these (e.g. International laws and regulations to which Myanmar is signatory) may be addressed by the current regulatory framework and could therefore be incorporated into the current MTLAS P&C, whilst other areas (e.g. provisions for granting customary rights or free prior informed consent in connection with the transfer of forest management rights and customary rights to forest organizations in charge of harvesting) might require a process of legal review and/or reform.

MTLAS could be strengthened through addressing a broader framework of legality in the forest. Decisions on how to address gaps to specific international frameworks would need to be considered to foster support for MTLAS with stakeholders inside and outside the country going forward. The standard should be fit for purpose. The requirements of the standard should be set at a performance level that is likely to achieve the desired outcome.

⁷ The granting of rights to harvest is broadly included in definition specified in the EUTR and for TLAS's developed under VPAs

⁸ Third parties rights are broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs. The level of detail required and some specific requirements will differ between schemes

⁹ Legal requirements pertaining to environment and biodiversity considerations are broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs

¹⁰ Legal requirements pertaining to International laws and regulations to which the country is signatory are broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs

6. Supply chain control

(MTLAS Gap analysis framework Element 2- Criterion 2.1-2.3)

Traceability and supply chain control is an essential part of securing a legality or other related forest product claim. It ensures products can be tracked and traced through the supply chain and in the case of a TLAS, ensures that no timber of unknown or illegal origin is included in verified supply.

International frameworks or best practice for supply chain control would typically require:

1. Effective mechanisms for tracing timber throughout the supply chain from harvesting to the point of export or sale¹¹.
2. Robust mechanisms for measuring and recording quantities of timber or timber products at each stage in the supply chain, including reliable pre-harvest estimates¹².
3. Reconciliation of species and quantities at each step in the supply chain¹³.
4. Mechanisms to avoid the mixing of legally verified timber with other timber¹⁴.
5. Controls for imported wood products.

In the case of MTLAS, the criteria and indicators for supply chain control are based on the existing legal framework. They include:

1. Area demarcation in the forest- including demarcation and repairing of boundary pillars, marking of trees (MTLAS Criterion 2.1).
2. Pre-felling inventory- including marking of trees which attain the prescribed girth limit, selection marking for felling (MTLAS Criterion 2.2).
3. Marking on trees for felling - hammer marking felled trees and measuring and recording remaining trees (MTLAS Criterion 2.3).
4. Control of timber production- including recoding logs and volumes (MTLAS Criterion 2.4)
5. Log transportation- including the movement of logs from forest to measuring point, delivery point and on to sawmill or terminal depot (MTLAS Criterion 2.5).
6. Control of value added processing by the MTE -including records of incoming logs, scantlings obtained and used in different stages of processing, records of outputs, inspection and monitoring of mill operations by MTE staff (MTLAS Criterion 5.1).
7. Control of value added processing by the private sector -including records of incoming logs, permission to cut logs by the Forest Department, records of scantlings at different stages of processing, outgoing products, inspection of records by Forest Department staff (MTLAS Criterion 5.3).
8. Export regulations for the MTE-including the sorting of logs and forest products into lots for sale by size and quality, shipping documents (MTLAS Criterion 6.1).

¹¹ Broadly required for certification/third party included in the risk assessment for EUTR; ASEAN Guidelines; and TLAS's developed under VPAs, though specific requirements can differ between schemes.

¹² Covered by TLAS's developed under VPAs

¹³ Broadly required for certification/third party verified schemes being included in the risk assessment for EUTR; ASEAN Guidelines; and TLAS's developed under VPAs, though specific requirements can differ between schemes

¹⁴ Broadly required for certification/third party verified schemes included in the risk assessment for EUTR; ASEAN Guidelines; and TLAS's developed under VPAs, though specific requirements can differ between schemes

9. Export regulations for the Private Sector- including exporter registration, forest recommendation on legality of forest products, export license (MTLAS Criterion 6.3).

The review of the MTLAS P&C against the MTLAS Gap analysis framework Element 2 (Criterion 2.1-2.3) and field investigation revealed that the current legal framework provides a well-established system for the tracking the movement of logs from the forest of origin to point of export whereby traceability of logs from the forest of origin to MTE depots could be established for a number of samples obtained.

However, the following observations were also made regarding potential for loss of information or contamination of legal and unknown sources:

1. The system for tracking logs from forest of origin to forest depots and point of export is largely paper based and supported by hammer markings applied to stumps and logs in the forest and at MTE depots. Important paper based information can be lost by human error or discrepancy or e.g. fires, water damage or loss. Whilst carbon copies are made for some documents others may have no back up.
2. Hammer marks are applied to logs in the forest provide information on e.g. species, grade, district of origin, forest department responsible person and royalty payment. However, hammer marks on logs are often partly visible or missed altogether¹⁵.
3. Logs from different forest sources may be mixed at MTE depots. If hammer marks pertaining to forest of origin and/or revenue number cannot be distinguished on the logs, traceability may be lost. Whilst it may be still possible to trace logs based on log measurement statistics, this may be difficult when dealing with large volumes.
4. The revenue number and royalty number (issued by the Forest Department at the forest of origin and essential for demonstrating traceability) are carried on relevant documentation until the MTE depot. This number is not usually carried on MTE logs lists that accompany timber from MTE depots to mills. This can make traceability more difficult to establish.
5. At the processing facility, the origin of incoming material may be able to be established through log markings and paperwork, however tracking of input materials through production to the final product is not addressed.
6. There is no mechanism for reconciliation of species and quantities at each step in the supply chain.

MTLAS could be strengthened by addressing potential weaknesses in supply chain control.

In particular, the following aspects could be considered:

1. Computerized storage of information (that is critical to establishing traceability).
2. Consistent recording of information critical to demonstrating traceability and supply chain control by FD and MTE (e.g. consistent provision of revenue serial number on logs lists and other relevant MTE forms).
3. Provision of tools that allow reconciliation of species and volumes at each step in the supply chain.
4. Tracking and tracing of timber through the production including provision of actual conversion factors from raw material to final product.

¹⁵ This includes confiscated timber on which associated hammer markings could not always be found

7. Verification in the forest and supply chain

(MTLAS Gap analysis framework Element 3- Criterion 3.1-3.4 and Element 5- Criterion 5.5, Element 6, Criterion 6.1)

Verification is a critical element of a legality assurance system. It provides the demonstrable evidence that specified requirements relating to a product, process, system, person or body are fulfilled. Verification is carried out internally (1st of 2nd party) and externally (3rd party). Different models of assurance may be applied by an assurance system depending on the needs and objectives of the users.

For a TLAS developed as part of a VPA, verification is carried out by government agencies, market participants or third party organizations which have adequate resources, management systems and skilled and trained personnel as well as effective mechanisms to avoid conflict of interest.

Verification activities within TLAS's developed under a VPA would typically include the following¹⁶:

1. Verification, carried out by government agencies, a market participant or third party organization (or a combination of these), with adequate resources, management systems and skilled and trained personnel, as well as mechanisms to avoid conflict of interest at the individual and organisational level.
2. Verification in the forest that is clearly described and documented so that the process is systematic, transparent, evidence based, carried out at regular intervals and covers everything within scope.
3. The verification of systems to control the supply chain that cover the entire supply chain from harvest to export.
4. A verification methodology that is documented and ensures the process is systematic, transparent, evidence based and includes regular and timely reconciliation of data between each stage in the chain.
5. An effective and functioning mechanism for requiring and enforcing corrective action where non-compliances are identified.

Independent third party verification activities against most management system standards, including those of forest certification schemes are carried out by accredited certification entities operating in accordance with ISO/IEC Guide 65: 2006¹⁷ and/or ISO/IEC 17021:2006; ISO 19011:2002 and/or scheme specific requirements.

In the case of MTLAS, operational checks are carried out in the forest and supply chain by the FD. These checks include:

In the forest:

- Compliance with the extraction plan after logging.
- Measurement of extracted volumes for payment of royalties.

¹⁶ Forest Law Enforcement Governance and Trade (FLEGT) Briefing Note 5: Legality assurance systems: requirements for verification

¹⁷ General requirements of bodies operating product certification systems

At checking stations:

- Volume and species of timber transported against information provided on removal passes and trucking slips.
- Log measurements, star classification marking, tree species, royalty number and volume of individual logs.

At private sawmills:

- Log deliveries at the manufacturing site.
- Supervised cutting (where FD official observes processing) **or** volume-out/volume-in percentage check, conversion ratios.
- Products bound for export.

At MTE sawmills¹⁸:

- Products bound for export.

However, the following observations are made regarding such operational checks in the context of international frameworks and best practice (Criterion 3.1-3.4):

1. Checks in the forest focused on compliance with the Annual Allowable Cut (AAC) and royalty payment and do not provide specific assurance that other broader aspects of legality have been met.
2. The completeness and effectiveness of internal FD/MTE checks are not independently monitored or evaluated.
3. There is no implemented system for requiring and enforcing appropriate corrective and preventative action where non-conformities are detected¹⁹.
4. The FD is limited in its resources and capacity to ensure timber extraction and supply chain checks are carried out in accordance with required laws, regulations and operational procedures.
5. The adequacy of checks undertaken by the FD can be affected by e.g. physical risk to FD personnel, dishonest or unethical conduct or conflicts of interest.
6. Verification by external parties may be hindered by permissions or access to information.

MTLAS would be strengthened through:

1. *Addressing verification of broader aspects of legality in the forest and supply chain.*
2. *Developing mechanisms to identify and address lack of capacity, physical risk, dishonest or unethical conduct and real and potential conflicts of interest in the verification process.*
3. *Supporting internal (FD) capacity and resources to provide complete and effective (first party) checks of compliance with critical aspects²⁰.*

¹⁸ Note that internal checks at MTE mills are first party i.e. undertaken by MTE rather than FD personnel

¹⁹ Whilst the Forest Law stipulated penalties for violating the conditions of the harvesting permit in the forest (Forest Law 1995, Section 34), it has been noted (e.g. UNODC criminal justice response to forest and wildlife crime in Myanmar Oct 2016) that actions are rarely taken

²⁰ This might include a strengthening of the role of the Inspection Division, whose role should be to ensure that field-level staff are carrying out their role

4. *Incorporating independent (3rd party) expert verification of compliance with MTLAS standard definition in the forest and in the supply chain.*

8. Stakeholder engagement in standards development, governance and assurance

(MTLAS Gap analysis framework Element 6- Criterion 6.1, 6.2)

Meeting national or international market requirements and/or aligning with a specific scheme can also involve meeting specific process related expectations or requirements.

For example, stakeholder engagement in the development of the standard definition is both a necessary and mandated part of the FLEGT process and is also required by international assurance schemes, though the specific details will differ. CSO involvement in assessments, 3rd party verification and monitoring are also key aspects of robust and transparent systems.

The nature of the process to develop a definition or standard has a major influence on the definitions' acceptability to different stakeholders. An inclusive and participatory process can help create a common understanding and broad support for the system with stakeholders inside and outside the country²¹.

In the case of MTLAS the P&C was developed by MFCC based on the current legal framework. At the time, MFCC did not have a mandate to develop or adapt legislation and/or consult stakeholders on the appropriateness of the legal framework. Thus, only limited stakeholder engagement was achieved. Furthermore, the current MTLAS does not incorporate mechanisms for CSO involvement in 3rd party verification, governance and monitoring or mechanisms for receiving and handling complaints and disputes related to activities and/or results.

MTLAS would be strengthened by providing meaningful opportunities for stakeholders to engage with future processes to review and if necessary modify the existing scope and definition of legality and its related principles, criteria and indicators. Other aspects of the MTLAS (e.g. monitoring and oversight and corresponding transparency and public data disclosure) would also benefit from stakeholder engagement and input.

9. MTLAS operational processes

(MTLAS Gap analysis framework Element 6- Criterion 6.1)

A standards assurance system is described and documented e.g. in the form of policies, standards, guidelines and checklists to ensure transparency, accessibility and consistent application. These include specification of who is responsible for various tasks within the system (e.g. standards setting, verification, issuance of licenses, oversight) and the processes and checks that are made to ensure that tasks are performed in accordance with a given framework.

In the case of MTLAS, the documented element is the MTLAS P&C (February 2013). The operational processes of MTLAS essential to transparency and defined by international frameworks (e.g. assigning responsibility for developing and or amending standards, conducting verification, monitoring and oversight) have yet to be defined and or clearly specified.

²¹ Forest Law Enforcement Governance and Trade (FLEGT) Briefing Note 2: What is legal timber?

MTLAS would be strengthened by the specification and documenting of its operational processes for e.g. standards development, assurance, issuing evidence or statements of conformity or licenses, monitoring and oversight and making them available to interested parties.

10. Other considerations

Forest sources addressed by MTLAS

The scope of a standards or assurance system is usually specified by the system or scheme owner in accordance with specific objectives.

The sources of timber covered by MTLAS are listed in Section 5 of MTLAS C&I, February 2013. They are (1) Reserved forests (ii) Protected public forests (iii) Unclassified forests (iv) Planted forests/forest plantations.

The corresponding MTLAS indicators and control procedures specify the legal framework for extraction, transport, processing and export of timber from natural forests which fall under the authority of the Forest Department and whose use is largely governed by the forest policy framework (e.g. Forest Policy (1995), the Forest Law (1992), the Forest Rules (1995)).

There are other noteworthy sources of timber in Myanmar that have not been specifically addressed by MTLAS criteria, indicators and control procedures. They include:

1. Forests being converted for agriculture, infrastructure, mining or other landuse (so called 'conversion timber')
2. Timber sourced from non-state controlled sources in contested ethnic areas
3. Timber from commercial plantations
4. Timber from tree crops (e.g. rubber)
5. Imported timber
6. Confiscated timber
7. Reclaimed timber

Conversion timber is thought to make up a significant proportion of Myanmar's current timber sources (according to MTE figures provided for this study between 2014-2015 conversion timber made up around 16% of total extracted volumes and in 2015-16 around 8% of total extracted volume at a quantity of around 112,457 hoppus tons²² and also potentially makes up a significant portion of the existing stockpiles. The effectiveness of the national legal framework (laws, regulations and enforcement bodies) to regulate these sources has been brought into question²³ and consequently there may be a greater risk of the occurrence of illegalities associated with such sources.

²² One hoppus ton is equal to 50 hoppus feet or 1.8027 cubic metres

²³ Commercial Agriculture Expansion in Myanmar: Links to Deforestation, Conversion Timber, and Land Conflicts, Kevin Woods

For timber sourced in conflict areas experiencing low levels of government control it may not be possible to secure effective implementation of laws and regulations, thus increasing the risk of the occurrence of illegalities.

Timber from commercial plantations, smallholder and community forestry makes up a small portion of the current timber source. It has been noted that the control procedures for such sources differ from those governing natural forests and would thus need to be addressed by MTLAS going forward.

MTLAS would be strengthened by addressing within its scope all the possible sources of timber and, for each, defining legal framework and/or requirements for meaningfully incorporating or isolating such sources from the verified legal supply. In the case of isolation of specific timber sources from the legally verified supply, robust mechanisms for their segregation would need to be established.

Dishonest or unethical conduct

Finally, of broader stakeholder concern is the potential for conflict of interest and dishonest or unethical conduct, which remains a factor of risk at all levels of the supply chain, from the forest to export. Indicators of dishonest or unethical conduct/corruption at a national level are often considered by existing frameworks when specifying measures for assurance in the forest and throughout the supply chain.

Transparency is key in addressing risk of dishonest or unethical conduct. Assurance models that can be examined build confidence of stakeholders and have less risk of dishonest or unethical conduct or conflict of interest.

MTLAS would be strengthened by identifying risks for dishonest or unethical conduct/corruption and or conflict of interest within the existing system and building in necessary checks and balances to address them.

11. Next steps

Going forward, MFCC, together with relevant stakeholders, could consider strengthening MTLAS as a tool to provide assurance to interested parties that a timber product has been legally sourced. The following areas could be considered:

1. **A multi-stakeholder participatory review** of the current MTLAS scope and definition of legality to e.g. identify most important laws and regulations for achieving specific objectives. Decisions are made how to address important gaps in the definition that cannot be addressed by the current regulatory framework e.g. by being fed into a wider process of legal reform.
2. **The strengthening and simplifying of existing mechanisms for supply chain control.** This could include computerized storage of information critical to securing and demonstrating traceability and due diligence, mechanisms for reconciliation of species and quantities at each step in the supply chain and/or creating opportunities for increasing the industry capacity to demonstrate tracking and tracing of timber through the production.
3. **Strengthening internal and external (independent) verification of a broader scope of compliance in the forest and supply chain,** carried out by qualified and competent personnel who work according to a documented methodology that is systematic, and creates transparent, verifiable evidence of compliance. Verification includes mechanisms for requiring and enforcing corrective action when non-conformances are identified. Verification reports (or summaries of) are made publically available.
4. **A mechanism for monitoring and oversight of MTLAS** that is competent, independent, carries out monitoring at specified intervals and includes a publically available system for handling complaints and disputes. A register of verified/licensed organisations is provided that is up to date and publicly available. It includes mechanisms for CSO involvement in monitoring and oversight.
5. **A mechanism for the issuance of statements, licenses or other evidence of conformity** based on compliance with the specified definitions and supply chain controls. Information on licenses, permits or statements are publically available.
6. **The documentation and public availability of the systems, processes and procedures,** including on development and content of standards, system governance, stakeholder engagement as well as summaries of verification reports in the forest and procedures for handling disputes and complaints.

12. Workshop outcomes, February 2017

This report was shared with Core Expert Group and wider Consultative Group, ITF members and other stakeholders in early 2017 and was presented at a consultative workshop in February 2017 with the purpose of generating discussion and soliciting input on potential next steps for MTLAS. Below are some of the actions that were proposed by participants at the workshop. The proceedings of the workshop are being made available with this report.

In the short term:

- The documentary or other evidence required for demonstrating legality and traceability of timber exported and subjected to due diligence requirements needs to be identified and documented.
- The physical access to forest areas and documentation needed for demonstrating legality and traceability needs to be improved.
- The documentary or other evidence for demonstrating legality and traceability could be digitized and made readily available and the issue of counterfeit documentation and/or unethical conduct in obtaining documentation/evidence of legality needs to be addressed.
- Options for 3rd party verification (filling current gaps in the MTLAS system until they are defined and operationalized) needs to be established.

Medium term:

- The gaps between existing laws and international market requirements need to be clarified.
- A multi-stakeholder review of the current legality standard/definition for a wider scope of timber sources needs to be undertaken.
- The capacity of national organisations and institutions (e.g. Forest Department and MTE in relation to securing legality (e.g. verification/compliance/oversight) needs to be built.
- Civil Society Organisations and Communities should be engaged in independent monitoring and reporting of misconduct and non-compliance.

Other considerations:

- The need to consider handing over follow up responsibility to the ITF and eventually the Multi-Stakeholder Group (MSG).
- The need to avoid undermining the national and longer term reform process by ring-fencing legal supply chains for more demanding markets.

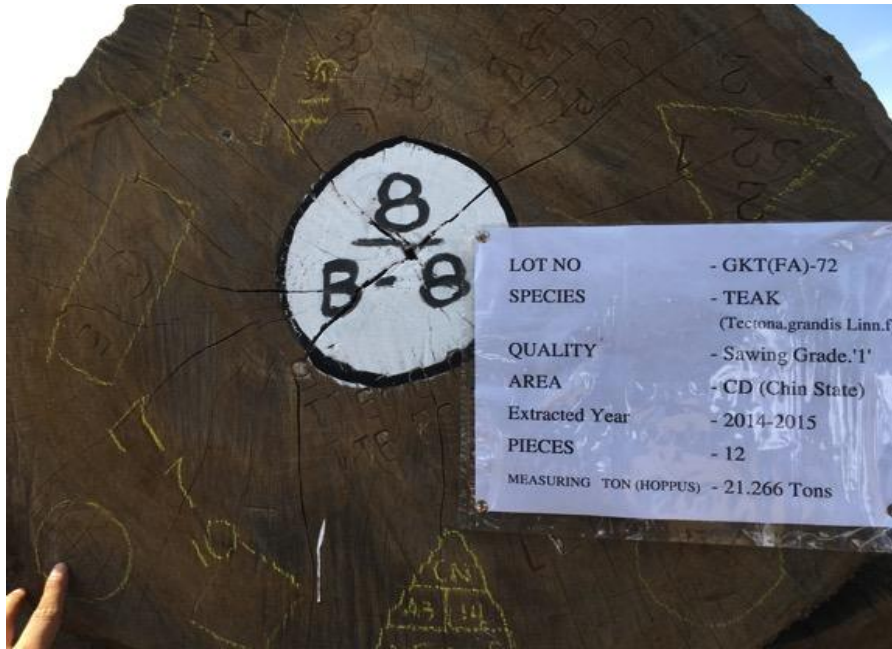


Photo 1: Hammer marks are applied to logs in the forest provide information on e.g. species, grade, district of origin, forest department responsible person and royalty payment.



Photo 2: However, marks on logs are sometimes poorly applied, partly visible or missed altogether.



Photo 3: Logs from different forest sources may be mixed at MTE depots. If hammer marks pertaining to forest of origin and/or revenue number cannot be distinguished on the logs, traceability may be lost. Whilst it may be still possible to trace back logs based on individual log measurement statistics, this may be difficult when dealing with large volumes of logs.



Photo 4: Tracing back and/or verifying a origin of timber necessitates travel to administrative FD and MTE offices to obtain information necessary to piece together the supply chain.



Photo 5: At checking stations volume and species of timber transported against information provided on removal passes and trucking slips.



Photo 6: At private sector sawmills FD performs operational checks on products bound for export.

Annex 1: Terms of reference of the Core and Consultative Groups of the MTLAS gap analysis project

Core Group

The role of the Core Group is to provide guidance to the Expert Team and to contribute to or participate in key project activities including:

1. Assist the Expert Team in compiling the proceedings of the Inception workshop
2. Consolidate the MTLAS gap analysis assessment framework based on comments and guidance received from the Consultative Group during the Inception workshop
3. Conduct a desk review of the MTLAS against the criteria or elements of the assessment framework
4. Participate in a study tour to Indonesia to 1) gain a better understanding of the VPA process and the development and implementation of the SVLK system
5. Consolidate the MTLAS gap analysis desk review based on feedback provided by members of the Consultative Group during the Interim Workshop/meeting
6. Conduct a field review to assess the level of implementation of and compliance with the present MTLAS
7. Compile a consolidated MTLAS gap analysis report based on experience gained through the Indonesian study tour and observations made during the field review
8. Assist the Expert Team in compiling the proceedings of the Final Workshop
9. Finalise the MTLAS gap analysis report by incorporating comments from workshop participants

Consultative Group

The role of the Consultative Group is to provide overall project oversight by contributing to key project events during which the following decisions will be made:

Inception workshop:

1. Review and approve draft MTLAS gap analysis methodology and assessment framework;
2. Review and approve the overall project work plan
3. Identify a Core Team of maximum 10 members (among the members of the Consultative Group) who will guide and supervise the work of the International and National Experts
4. Review and approve workshop proceedings

Interim workshop/meeting:

1. Review and comment on the results of the MTLAS gap analysis desk review
2. Review and approve the proposed field review (scope and plan, participation)
3. Discuss scope and timing of Final Workshop

Final workshop:

1. Provide comments on the draft MTLAS gap analysis report
2. Identify future activities for the improvement of the existing national traceability and verification systems
3. Agree on possible next steps on how to further develop the MTLAS in the context of Myanmar VPA process
4. Review and approve workshop proceedings



Phyo Sithu Forest Plantation office



Pho Kyar Elephant Camp



Forest Department of Mawlaik District office

Annex 2: Core Team Group members

Mr Barber Cho	MFCC
Mr Kyaw Zaw	Director of Forest Department , MFCC
Mr Aung Myin	EC, MFCC
Dr. Tin Tin Myint	ITF Member , MFCC
Mr. Zaw Win	ITF Member, Government
Dr. Myo Lwin	Private
Ms. Thit Thit Mar	Deputy Director Office of PS
Mr. Aung Thaung	EC, MFPMF
Mr. Kyi Soe	EC, ECCDI
Mr. Sein Moe	Member CFNWG
Mr. Ohn Lwin	National Consultant, C&I for NF and PF
Mr. Kyaw Min Htut	ITF Member, CSO
Ms. Khin Mya Mya Htway	Deputy Director, Trade Department

Annex 3: MTLAS gap analysis framework criteria

1. The Definition of legal timber (the standard)²⁴

1. The definition of legal harvesting covers the following areas of applicable legislation:		
Criterion	Sub criterion	Interpretation
1. Legal right to harvest	a) Legal requirements pertaining to land tenure and management rights. <i>Broadly included in definition specified in the EUTR, ASEAN C&I and for TLAS's developed under VPAs.</i>	The standard covers legal requirements pertaining to land tenure rights, customary rights, use of legal methods to obtain tenure rights and management rights. It covers legal requirements pertaining to legal business registration & relevant legal licenses including their issuance under legally prescribed procedures.
	b) Legal requirements pertaining to concession licenses. <i>Broadly included in definition specified in the EUTR, ASEAN C&I and for TLAS's developed under VPAs.</i>	The standard covers compliance with legislation regulating procedures for issuing concession licenses, including legal methods to obtain concession licenses.

²⁴ Adapted from Nepcon LegalSource™ Procedure

<p><i>Broadly included in definition specified in the EUTR, ASEAN C&I and for TLAS's developed under VPAs. The level of detail required and some specific requirements will differ between schemes.</i></p>	<p>c) Legal requirements pertaining to forest management and harvesting, environment, biodiversity and social considerations.</p> <p><i>Broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard covers legal requirements pertaining to management planning including conducting forest inventories, Forest Management Plan (FMP), related planning and monitoring and approval by competent authorities. It covers legal requirements pertaining to environment and biodiversity conservation as well as social laws and regulations, including employees and workers occupational health and safety requirements.</p>
	<p>d) Legal requirements pertaining to issuing of harvesting permits.</p> <p><i>Broadly included in definition applied in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard covers legal requirements regulating the issuing of harvesting permits, licenses or other legal documents required for harvesting operations. It includes consideration of the application of legal methods to obtain permits.</p>
<p>2. Taxes and fees</p> <p><i>Broadly included in definition specified in the EUTR, ASEAN C&I and for TLAS's developed under VPAs. The level of detail</i></p>	<p>a) Legal requirements pertaining to the payment of royalties and harvesting fees.</p> <p><i>Broadly included in the definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard covers legally required forest harvesting specific fees such as royalties, stumpage or volume based fees. It includes consideration of the payment of fees based on the correct measurement of quantities.</p>

<p><i>required and some specific requirements will differ between schemes.</i></p>	<p>b) Legal requirements pertaining to value-added taxes and other sales taxes.</p> <p><i>Broadly included in definition applied in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard covers compliance with legislation pertaining to sales taxes that apply to the material being sold, including sales of material as growing forest/standing stock.</p>
<p>1.3. Third parties rights</p> <p><i>Broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's</i></p>	<p>a) Legal requirements pertaining to customary rights.</p> <p><i>Specific requirements can differ between schemes.</i></p>	<p>The standard includes covers compliance with legislation pertaining to customary rights relevant to forest harvesting activities including obligations relating to sharing of benefits, and Indigenous rights.</p>
	<p>b) Legal requirements pertaining to free, prior and informed consent.</p> <p><i>Specific requirements can differ between schemes.</i></p>	<p>The standard includes requirements covering compliance with legislation covering free prior and informed consent in connection with transfer of forest management rights and customary rights to the organization in charge of the harvesting operation.</p>

<p><i>developed under VPAs. The level of detail required and some specific requirements will differ between schemes.</i></p>	<p>c) Legal requirements pertaining to Indigenous and traditional peoples rights.</p> <p><i>Specific requirements can differ between schemes.</i></p>	<p>The standard includes requirements covering compliance with legislation that regulates the rights of indigenous/traditional peoples as far as those rights relate to forestry activities. Possible aspects to consider are land tenure, and the right to use certain forest related resources or practice traditional activities, where these may involve forest-lands.</p>
<p>1.4. Trade, transport and export</p> <p><i>Broadly included in definition applied in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>a) Legal requirements pertaining to the classification of species, quantities, qualities.</p> <p><i>Specific requirements can differ between schemes.</i></p> <p>b) Legal requirements pertaining to trade and transport.</p> <p><i>Broadly included in the definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard includes requirements covering compliance with legislation regulating how harvested material is classified in terms of species, volumes and quantities in connection with trade and transport.</p> <p>The standard includes requirements covering compliance with required trading permits as well as legally required transport documents that accompany transport of wood from forest operations.</p>

<p><i>The level of detail required and some specific requirements can differ between schemes.</i></p>	<p>c) Legal requirements pertaining to CITES.</p> <p><i>Broadly included in definition specified in the EUTR, ASEAN C&I and guidance for TLAS's developed under VPAs.</i></p>	<p>The standard includes requirements covering compliance with legislation related to CITES permits.</p>
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Notes:

1. The practicality of assessment, its impact on reaching the overarching goals, consistency between laws and equity in relation to all forest stakeholders' rights are all usually considered when deciding which laws should comprise a legality definition or standard.
2. Some laws may be more relevant than others in addressing e.g. illegal logging or sustainable forest management. Most schemes (e.g. forest certification, ASEAN) define a set of overarching principles that need to be covered by a country standard, for example to provide an international reference and/or in order to meet a specific goal(s).
3. It may be that there are inconsistencies or contradictions between laws. In such cases the country or standards setting organization or group may establish which law takes precedence - at least on an interim basis until such contradictions are resolved. Should existing laws exclude local people from access to forest resources and thus livelihoods may require examination of the current law with a view to legislative reform²⁵.
4. Effective stakeholder deliberative processes for standards development are designed to achieve consensus on 1-3 the above as well as to strengthen ownership, give credibility and transparency to its outcomes.

²⁵ FLEGT Briefing Notes No 2, What is Legal Timber?

2. Control of the supply chain

2. The supply chain is controlled from forest to point of export or sale.		
Criterion	Sub criterion	Interpretation
<p>2.1. Species and quantities</p> <p><i>Broadly required for certification/third party verified schemes being included in the risk assessment for EUTR; ASEAN Guidelines for CoC; and TLAS's developed under VPAs, though specific requirements can differ between schemes.</i></p>	<p>a) Reconciliation of species and quantities is possible at each step in the supply chain.</p> <p><i>Some differences in specific requirements between schemes exist for this sub-criterion.</i></p>	<p>It is possible to accurately measure and record species and quantities of timber or timber products at each stage in the supply chain, including reliable pre-harvest estimates at the forest level.</p>

<p>2.2. Tracking and tracing</p> <p><i>Broadly required for certification/third party included in the risk assessment for EUTR; ASEAN Guidelines for CoC; and TLAS's developed under VPAs, though specific requirements can differ between schemes.</i></p>	<p>a) The supply chain is identifiable and timber or timber products can be traced from harvesting to the point of export/sale.</p>	<p>Robust mechanisms for: checking the location of standing timber to be harvested and confirming consistency with areas for which use rights have been allocated; identifying and documenting logs or loads prior to transport; identifying and documenting the storage and transport of material through the supply chain are implemented.</p>
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<p>2.3. Segregation</p> <p><i>Broadly required for certification/third party verified schemes included in the risk assessment for EUTR; ASEAN Guidelines for CoC; and TLAS's developed under VPAs, though specific requirements can differ between schemes.</i></p>	<p>a) Timber or timber products from unknown origin, or timber products which have not been harvested in accordance with applicable legislation do not enter the supply chain.</p>	<p>Measures are specified at each stage of the supply chain including in the forest, during transportation, interim storage, at processing facilities, during processing and at point of export.</p>
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3. Verification of legality and supply chain control²⁶

3. Verification provides assurance that the legality definition and supply chain controls have been met. Verification is sufficiently robust and effective to ensure any non-compliances are identified and timely action taken.		
Criterion	Sub criterion	Interpretation
3.1. Organization	<p>a) Organizations responsible for verification are competent, adequately resourced. Conflict of interest are effectively controlled.</p> <p><i>Broadly required by ASEAN Guidelines, TLAS's developed under VPAs and international forest certification schemes' requirements for bodies providing certification/ conformity assessment services.</i></p>	<p>Verification is undertaken by or more organizations who are competent and adequately resourced. Verification personnel (auditors and other relevant personnel) have skills and experience necessary to perform their jobs and are adequately supervised. Verification activities are carried out under a documented management system, which provides for transparency and impartiality. Conflicts of interest are identified, documented and effectively controlled.</p>

²⁶ Adapted from FLEGT Briefing note no. 5 Legality Assurance Systems: requirements for verification

<p>3.2. Verification in the forest</p>	<p>a) The verification process in the forest is systematic, transparent, evidence-based, regular and covers all aspects of the applicable standard(s).</p> <p><i>Broadly required for certification/third party verified schemes included in the risk assessment for EUTR; TLAS's developed under VPAs; international forest certification schemes' requirements for bodies providing certification/ conformity assessment services. Specific requirements can differ between schemes.</i></p>	<p>Verification follows a documented methodology, which includes adequate checks of documentation and records, operations and processes (i.e. including field operations) and collection of relevant information from external parties. Verification is carried out at regular intervals and unannounced verification visits can be undertaken. Records of verification activities are maintained in a form that allow monitoring by internal auditors and other parties e.g. the systems' monitoring or oversight body.</p>
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<p>3.3. Verification of control of the supply chain</p>	<p>a) Verification covers all parts of the supply chain. The process is systematic, transparent; evidence based, and carried out regularly.</p> <p><i>Broadly required for certification/third party verified schemes being taken into account in the risk assessment for EUTR; ASEAN Guidelines, TLAS's developed under VPAs; international forest certification schemes' requirements for bodies providing certification/ conformity assessment services. Specific requirements can differ between schemes.</i></p>	<p>Verification follows a documented procedure which sets out what must be verified and how. It includes adequate checks of documentation and records, operations and processes (i.e. including field operations). Verification is carried out at regular intervals and unannounced verification visits can be undertaken. Records of verification activities are maintained in a form that allows monitoring by internal auditors and other parties e.g. the systems' oversight body. Verification includes reconciliation of data between each stage in the supply chain.</p>
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<p>3.4. Non-compliances</p>	<p>a) There is an effective and functioning system for requiring and enforcing appropriate corrective action where non-compliances are identified.</p> <p><i>Broadly required for TLAS's developed under VPAs, by ASEAN Guidelines and international forest certification schemes' requirements for bodies providing certification/ conformity assessment services. Specific requirements can differ between schemes.</i></p>	<p>The system requires corrective and preventative actions where non-compliances are detected and enforce implementation of action to address non-compliances.</p>
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Note:

5. ASEAN and international forest certification schemes place additional requirements on entities providing verification/certification services. These include:
 - Certification/verification is undertaken by a certification body operating in accordance with ISO/IEC Guide 65: 2006 General Requirements of bodies operating product certification systems/ISO17065: 2012 Conformity assessment -- Requirements for bodies certifying products, processes and services, ISO/IEC 17021:2006 Conformity Assessment- Requirements for Bodies Providing Audit and Certification of Management Systems, or equivalent. In addition to the above broad criteria, these contain specific additional requirements relating to e.g. impartiality, confidentiality, handling complaints, organizational structure and information (ISO/IEC 17021:2006)
 - Certification/verification is undertaken by a body which is accredited to evaluate a specific standard
 - Certification/verification audits must be carried out at least once every 12 months

4. Licensing²⁷

<p>4. The issue of licenses, permits or certificates attests the compliance of a specified organization or the material or products in question. Licenses, permits or certificates are issued by eligible authorities based on evidence of compliance with the required definitions and supply chain controls.</p>		
Criterion	Sub criterion	Interpretation
<p>4.1. Organisation</p> <p><i>Broadly required by TLAS's developed under VPAs and international forest certification schemes.</i></p>	<p>a) The authority responsible for issuing legality licenses, permits or certificates is specified.</p> <p><i>Specific requirements differ between schemes.</i></p>	
<p>4.2. Licensing</p> <p><i>Broadly required by TLAS's developed under VPAs and international forest certification schemes.</i></p>	<p>a) The issue of licenses, permits or certificates is based on evidence of compliance with the relevant definitions and controls.</p> <p><i>Specific requirements differ between schemes</i></p>	<p>The licensing authority follows specific procedures governing the issue of licenses. It issues licenses, permits or certificates based on evidence of compliance.</p>

²⁷ Adapted from FLEGT Briefing note no. 8 Market participant-based legality assurance and FLEGT licensing

<p>4.3. Information</p> <p><i>Broadly required by TLAS's developed under VPAs and international forest certification schemes.</i></p>	<p>a) Information on licenses, permits or certificates is publically available.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>The system provides up to date registers of licenses/permits or certificates that are kept up to date and publically available.</p>
<p>4.4. Responding to failures</p> <p><i>Broadly required by TLAS's developed under VPAs and international forest certification schemes..</i></p>	<p>a) Failures in specified parts of the system are reported and responded to appropriately.</p> <p><i>Specific requirements differ between schemes</i></p>	<p>The licensing authority implements procedures for responding to e.g. the suspension or withdrawal of licenses, certificates or permits in response to a failure in the system and/or the results of monitoring/oversight.</p>

5. Monitoring and oversight²⁸

5. Monitoring and oversight covers all operational aspects. The monitoring/oversight body is independent and operates in accordance with a documented management structure, policies and procedures that meet internationally accepted best practice.		
Criterion	Sub criterion	Interpretation
<p>1. Organization</p> <p><i>Broadly required by international forest certification schemes and TLAS's developed under VPAs.</i></p>	<p>a) An independent provides monitoring/oversight. It is competent and operates in an effective and transparent manner.</p> <p><i>Specific set ups differ between schemes.</i></p>	<p>An independent organization, responsible for monitoring/oversight is specified and provided it with a mandate to carry out its function- including provision of resources and access to documents and sites as necessary. It is competent and should have at least 5 years experience of assessing e.g. forest management and Chain of custody verification.</p>
<p>2. Independence</p> <p><i>Broadly required by international forest certification schemes and TLAS's developed under VPAs.</i></p>	<p>a) There is a clear separation of organizations and individuals that are involved in management or regulation of the resource, the system and the monitoring/oversight function.</p> <p><i>Specific set ups differ between schemes.</i></p>	<p>Organizations or individuals with a direct role in the system or commercial interest in the forestry sector are not involved in independent monitoring. No commercial or institutional relationship exists with any organization involved in the operation of the system or whose activities are subject to monitoring.</p>

²⁸ Adapted from FLEGT Briefing Note No. 7 Guidelines for Independent Monitoring

<p>3. Management structure</p> <p><i>Broadly required by international forest certification schemes, TLAS's developed under VPAs.</i></p>	<p>a) The monitoring/oversight takes place in accordance with a documented management structure, policies and procedures that meet internationally- accepted best practice.</p> <p><i>Specific set ups differ between schemes.</i></p>	<p>The monitoring/oversight organization is subject to external audits by a body which meets the requirements of ISO17011 or equivalent.</p> <p>Audits verify (i) that the Monitoring Organization operates in accordance with the requirements of ISO Guides 62, 65, 66 or equivalent and (ii) that it is qualified to offer assessment services covering the forest sector and forest products supply chains.</p>
<p>4. Monitoring/oversight methodology</p> <p><i>Broadly required by international forest certification schemes, TLAS's developed under VPAs.</i></p>	<p>a) The methodology for monitoring/oversight is evidence based and carried out at minimum specified intervals.</p> <p><i>Specific set ups differ between schemes.</i></p>	<p>There is a documented monitoring methodology that includes adequate checks of documentation and records and operations. Monitoring/oversight is carried out at regular intervals and there is provision for unannounced monitoring. Monitoring activities seek and consider input from a wide range of stakeholder groups.</p>
<p>5.5. Monitoring</p> <p><i>Broadly required by international forest certification schemes, TLAS's developed under VPAs.</i></p>	<p>a) The monitoring/oversight organisation monitors all the agreed elements of the system.</p> <p><i>Specific set ups differ between schemes.</i></p>	<p>Monitoring determines whether the system is operating according to specified requirements for the issuance of licenses/permit/certificates. It includes checking all system elements from forest to verification and issuance of licenses, identifying non-compliances and assessing the effectiveness of actions taken to address non-compliances.</p>

<p>5.6. Reporting</p> <p><i>Broadly required by international forest certification schemes, TLAS's developed under VPAs.</i></p>	<p>a) The monitoring/oversight organization provides regular reports on the integrity of the system.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>Monitoring follows documented procedures for reporting, including content and timing of reports.</p>
<p>7. Complaints mechanism</p> <p><i>Broadly required by forest certification schemes, TLAS's developed under VPAs.</i></p>	<p>a) There is a mechanism for handling complaints and disputes.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>The complaints mechanism allows the monitoring body to investigate and monitor any complaints related to failure of the system.</p>

6. Transparency, stakeholder engagement, rigor, relevance, impartiality

6. Transparency, stakeholder engagement, rigor, relevance, impartiality support the effectiveness in achieving intended positive impacts.		
Criterion	Sub criterion	Interpretation
<p>6.1. Transparency</p> <p><i>Transparency is required for certification/third party verified schemes used in the risk assessment for EUTR compliance; international forest certification schemes and TLA's developed under VPAs.</i></p>	<p>a) Relevant information is made available, including on the development and content of standards, how the system is governed, who is evaluated and under what process, impact information and the way stakeholders are engaged.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>The standard and information about its development are made freely and publicly available at a minimum via the organizations' website. It includes draft and final versions of standards, information on governance (how decisions are made and by whom, and how to participate in decision making and standards development), and information on consultation (stakeholder input and how it was addressed in standards development).</p>
	<p>b) A register of verified/licensed organizations is provided by the scheme that is up to date and publically available.</p> <p><i>Specific requirements differ between schemes.</i></p>	

<p><i>Broadly required by international forest certification schemes and TLAS's developed under VPAs.</i></p>	<p>c) Certification/verification reports (or at least summaries of certification/verification reports) are made available on the internet by the scheme.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>Summary information includes the scope of the certificate (sites, products, date of issue, current status of validity), findings and non-conformances.</p>
	<p>d) Publically available procedures are in place for handling disputes and complaints related to activities and results.</p> <p><i>Specific requirements differ between schemes.</i></p>	
<p>6.2 Engagement</p>	<p>a) A balanced and representative group of stakeholders are engaged in standards development.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>The standard-setter informs stakeholders about why the standard is important and communicates to them how they can participate in the standards development or revision process. The standard-setter proactively engages with stakeholder groups that are likely to have an interest in the standard or that are likely to be affected by its implementation, and provides them with mechanisms for participation that are appropriate and accessible.</p>

<p><i>Broadly required by international forest certification schemes and TLAS's developed under VPAs.</i></p>	<p>b) Standards systems provide appropriate and accessible opportunities to participate in governance, assurance, monitoring and evaluation. They empower stakeholders with fair mechanisms to resolve complaints.</p> <p><i>Specific requirements differ between schemes.</i></p>	
<p>6.3. Rigor</p> <p><i>Broadly incorporated into international forest certification schemes systems, TLAS's developed under VPAs.</i></p>	<p>Assessments of compliance provide an accurate picture of whether an entity meets the standard's requirements and overall objective.</p> <p><i>Specific requirements and outcomes may differ between schemes.</i></p>	<p>The requirements of the standard are at a performance level that is likely to achieve the desired outcome.</p> <p>The standard is clear and adequate guidance documents are in place such that different, but equally competent, auditors assessing the same enterprise would arrive at the same result.</p>

<p>6.4. Relevance</p> <p><i>Broadly incorporated into international forest certification schemes systems, TLAS's developed under VPAs.</i></p>	<p>a) Standards are fit for purpose.</p>	<p>The standards address the most significant impacts, only include requirements that contribute to their objectives; reflect best scientific understanding and relevant international norms and are adapted where necessary to local conditions.</p>
<p>6.5. Impartiality</p> <p><i>Broadly incorporated into international forest certification schemes systems, TLAS's developed under VPAs.</i></p>	<p>a) Standards systems identify and mitigate conflicts of interest, particularly in the assurance process and in governance.</p> <p><i>Specific requirements differ between schemes.</i></p>	<p>Transparency, accessibility and balanced representation contribute to impartiality.</p>

Annex 4: Field sites visited

1. Phyo Si Thu Private Plantation
2. Pho Kyarr Camp, Za Ye Pauk village Forest Reserve
3. Taungoo FD and MTE Offices
4. Dyke Oo Community Forest
5. Inn Daing /Hle Gu transport checkpoint
6. MTE Log-Depot and Wood-Based Factories, Yangon
7. Private Wood-Based Factory, Yangon
8. Pyaung Bote Mawlaik Forest Reserve
9. Toon Pin MTE Depot
10. Kalay District FD