



**RECORDS OF DISCUSSION:  
SABAH'S FLEGT CONSULTATION ON FLEGT-VPA (1<sup>st</sup> CONSULTATION)**

**DATE : 14-15 JANUARY 2013  
TIME : 8.00 A.M. – 5.00 P.M.  
VENUE : KENINGAU ROOM, LE MERIDIEN  
HOTEL, KOTA KINABALU**

**ATTENDANCE**

List of attendance is as per Annex 1.

**1.0 INTRODUCTION:**

The first Stakeholders Consultation on Sabah TLAS was organized as a follow-up of the TLAS Workshop which was held on 08<sup>th</sup> October 2012 at Le Meridian Hotel, Kota-Kinabalu, and the latest development with regard to Sabah's participation in the FLEGT-VPA, namely on the transfer of export licensing power of all forest products under the Customs Act from MTIB to the Sabah Forestry Department.

**2.0 OPENING REMARKS BY THE DEPUTY DIRECTOR OF SABAH FORESTRY DEPARTMENT**

- Mr. Frederick Kugan, the Deputy Director of the Sabah Forestry Department welcomed all the participants to the Sabah's FLEGT Consultation Meeting and gave some updates on the development of the Sabah TLAS documents. He highlighted amongst others the recommendations of the TLAS Workshop (08<sup>th</sup> October 2012) that called for:-
  - The revision of the Sabah TLAS document based on the latest format as suggested by the EU and to include relevant stakeholders in the exercise;
  - The expansion of the current Sabah TLAS audit to include Principle 5 (Mill operations) and 6 (Trade and Customs).
  - The inclusion of all other forest licenses (Form 1 and Form IIB) in the current TLAS audit;
  - The expansion of the products scope to be covered by the FLEGT-VPA to include pulp and paper products.

- He informed that four (4) principles of the Sabah TLAS have been used/tested in the current TLAS audit in Sabah.
- He further requested that all participants of the stakeholders consultation to have a closer look at the revised Sabah TLAS document based on the latest EU format. The Sabah TLAS document has been circulated to all stakeholders in order for stakeholders to understand the document better and hence provide inputs, ideas and appropriate comments to improve the Sabah TLAS document. The outcome of the consultation meeting will be presented in the coming Joint Expert Meeting (JEM) between Malaysia and the EU on the 22<sup>nd</sup> – 25<sup>th</sup> January, 2013 which will be held at the Sabah Forestry Department, Sandakan.
- He concluded his opening remarks by calling upon Dr. John Tay to moderate the two-day consultation meeting.

### **3.0 DISCUSSION ON SABAH TLAS DOCUMENT**

#### **3.1 Introduction to Sabah TLAS Document**

- Dr. John Tay gave a short briefing on the TLAS document and the expectation of the consultation.
- Dato'Dr. Freezailah added that there will be two doors for timber to be exported into the EU market after the FLEGT-VPA is signed i.e. (i) Through the FLEGT license and; (ii) Through the Due Diligence process. The Due Diligence shall consist of (i) Information on Supply; (ii) Risk Assessment and; (iii) Mitigation Measures. Even if the VPA is not yet signed, in the interim period, the Malaysian TLAS will be implemented in support of the due diligence and will be promoted to the EU. He further stressed that the TLAS will not fulfill 100% of the stakeholders requirements and he called for compromises from all stakeholders. The most important to the whole process is to get the TLAS started and to revise the TLAS if needed.
- Mr Frederick Kugan also reminded all to remain focus on 'legality' and not 'sustainability' throughout the consultation meeting.
- The stakeholders consultation was conducted by examining each table covered by the six TLAS principles.

#### **3.2 PRINCIPLE 1 - RIGHT TO HARVEST**

##### **3.2.1 Table 1 : Criterion 1 - Approval of harvesting area**

The followings were highlighted and amended in Table 1:

- Approval of harvesting area is needed from *Setiausaha Hasil Bumi* prior to getting approval from FDS (Forestry Department Sabah).

- The abbreviation “SFD” or “FDS” in the document must be consistently used throughout the TLAS document (“FDS” stands for Forestry Department of Sabah, while “SFD” should not be used in Sabah TLAS as this has been used in Pen. Malaysia’s TLAS which stands for State Forestry Department).
- The representative of the Lands and Surveys Department (LSD) informed that LSD issues license to occupy land for State Land. He also emphasized that Gazetted Land is not State Land (SL).
- The Sabah Land Ordinance has been amended repeatedly since 1930, and hence it is best to just mention Sabah Land Ordinance (Section 18) without putting any reference to the year.
- Under responsibility, the Lands and Surveys Department was added into the list.
- Matters on Rubber Plantation and NCR Land were raised and the meeting was informed that these will be discussed under the relevant Principles/Tables i.e. Principle 2 and Principle 4.
- ‘PMM’ (Proposed Mitigation Measures) was added in addition to ‘EIA’ under approval conditions for PF/SL/AL.
- The categorization of verification procedure based on the type of licence/land status (SFMLA/PF/SL ) is to be clearly defined.
- “Letter of Approval” is added to the output in replacement of the current output.
- It was decided that only the final document need to be listed as the required output as other pre-requirements are considered internal process.

### **3.2.2 Table 2: Criterion 2 - Issuance of harvesting License**

The followings changes were made:

- It was decided that the word ‘harvest’ be applied in this context, in replacement of the word ‘take or remove’ which is the equivalent terminology used by FDS.
- The Issuance of Temporary Occupation License (TOL) was added to the list of documents needed prior to the issuance of harvesting licence under Criterion.
- The Lands and Survey Department need not be in the responsibility list.

### **3.2.3 Table 3: Criterion 3 - Consent by owner to remove logs and woods residues**

The followings were highlighted and amendments made in Table 3:

- Forest Rules 1969 is to be included in the legislative reference.
- This table only refers to areas in SL and AL that are planted with industrial tree.
- The meeting was informed by the representative of the Lands and Surveys Department that Gazetted land is not State Land; Native Land is Alienated Land; Trust Land is land which has been authorized to the Ketua Kampung (Village head) as Pemegang Amanah (trust holder). The representative from FDS however informed that consistency must be used based on the Court's interpretation of "gazetted land" in the past which is deemed as "State land" when dealing with timber extraction.
- Under Criterion: The words "contract to remove" were added in and the words "from the gazette land (SL) or titled land (AL) were removed. Under verification; the word 'ensures' was replaced by 'verifies' and the reference to Land Ordinance be made consistent (No year).

### **3.2.4 Table 4: Criterion 4 - Environmental Management**

Several changes were made as follow:

- Under Criterion: The sentence 'the licensee has conducted an EIA' is replaced with the sentence 'the licensee/landowner has an approved EIA Report from the Director of EPD'.
- Under Verification Procedure ii): The sentence is restructured to " FDS verifies that EIA/PMM report has been approved by EPD prior to the issuance of harvesting licence".
- Under Output: To delete List of Registered consultants and to add "Letter of compliance towards environmental condition/mitigation declaration" as new output.
- EPD will update the relevant section in the Legislative Reference based on recent amendments in the EPD's legislation.
- The meeting was informed that the Proposed Mitigation Measures (PMM) is prepared by a third party consultant once an EIA/PMM is approved for a licensee. The consultant will also undertake periodical monitoring report submitted to the EPD. To verify the monitoring report, EPD will examine the report and will conduct ground inspection. Upon satisfaction of compliance, the department will issue a letter of verification of compliance towards environmental condition depending on the subject's compliance.

- It was agreed that criteria are to be made as simple as possible for clarity.

### **3.2.5 Table 5: Criterion 5 - Plan Preparation**

There were no changes made under this table and the followings were highlighted to the stakeholders:

- SFMLA is covered under PF and not in this table.
- The process dealing with Stakeholders is covered in Table 3.

### **3.2.6 Table 6: Criterion 6 - Area Demarcation**

A minor amendment has been made under this table as below:

- To include Forest Rules 1969 as one of the legislative reference.
- For clarity, the followings were highlighted:
  - First class survey is not required within PF or FMU (Second Class Survey is adequate).
  - 'Forest Ranger/Forester to mark trees' refers to responsibility, which may be delegated to qualified assistants.

## **3.3 PRINCIPLE 2 - FOREST OPERATION**

### **3.3.1 Table 7: Criterion 7 - Forest Inventory**

The following changes/clarifications were made:

- "AL" was deleted from the source of timber.
- Under Verification Procedure: Long Term Licence (LTL) is added to the heading PF (SFMLA).
- The meeting was informed that there is no requirement for the Intensity of Inventory. For Short Term License, timber cruising is required for an area of less than 600 ha (including AL). For larger area, an "L shaped" cruising is carried out. Inventory is not needed for Form IIB.
- Under Verification Procedure: The field verification of inventory is restructured to 'if necessary' instead of 10% of the total plot.

- It was agreed that tree harvest list is already covered in the CHP (Table 5), hence the stock table and stand table under output should be deleted. Tree harvest list however is not relevant for timber sourced from AL. Another table therefore (Table 7b) will be created for timber sourced from AL (Form IIB) with an explanation on what Form IIB is.
- The final output will have only one output i.e. Approved Inventory Report.

### **3.3.2 Table 7B: Criterion 7 - Forest Inventory**

- The new Table (Table 7B) on Forest Inventory specific to Form IIB (with the definition of Form IIB) was presented and accepted in the meeting.

### **3.3.3 Table 8: Criterion 8 - Tree Marking**

The following changes/clarifications were made:

- Trees meant to be retained do not have to be marked.
- Forest Rules 1969-Schedule I (Rule 11) as legislative reference was deleted as it only refers to commercial list and the minimum felling diameter and that the list and minimum diameter limit have since been revised. .
- Verification procedure no (ii) in the verification procedure is to be deleted since no one checks every tree when verifying the marked trees.
- There were suggestions to either attach the ISO document which list entities and their responsibilities or the work flow chart available in RIL document.

### **3.3.4 Table 9: Criterion 9 - Control of timber production [PF, SL & AL (excluding ITP)]**

The following changes/clarifications were made:

- It was highlighted in the meeting that some local terms such as “Pangkalan” and “Panggung” could not be translated to English equivalent. It was agreed that such terms be continued to be used but defined in the document.
- There was some confusion on the verification procedure in particular the place for royalty assessment and that Form IIB timber assessment was not mentioned. It was suggested that the table be re-arranged into three categories of royalty assessment areas/places and to add Form IIB timbers into the verification procedure. The revised verification procedure was later on presented in the meeting and was accepted by the meeting.
- Monitoring of harvesting operation does not apply to Form IIB timbers in the verification procedures.

### **3.3.5 Table 10: Criterion 9 - Control of timber production [ITP (PF,SL & AL)]**

Some clarifications were made with respect to Table 10, while some issues were raised as below:

- The table also covers the transportation of rubber wood sourced from AL.
- The meeting was informed that some of the requirements under the criterion need to be simplified (example; exemption on the inspection of planted timber from AL/rubber smallholders prior to removal by FDS staff) in view of the fact that they are royalty exempted. In the case of rubber, they need to be removed fast in view of the problem of blue-stains. There are some 40,000 ha of existing post-productive rubber plantation owned by small holders and are being cleared in stages for replanting. They are scattered throughout the state and that extracted rubber wood may end up in the supply chain to the EU. FDS will consult the stakeholders for the creation of a new table with a simplified procedure to cater for rubber wood production from smallholders and other planted trees.

### **3.3.6 Table 11: Criterion 10 - Log transportation [PF, SL & AL (excluding ITP)]**

- No significant changes proposed except for the addition of 'TDP' in the output and the clarification that tree stumps are treated as 'logging residues'.

### **3.3.7 Table 12: Criterion 10 - Log transportation [ITP (PF,SL & AL)]**

- No significant changes proposed except for the addition of 'TDP' in the output.

### **3.3.8 Table 13: Criterion 11 - Worker safety and health**

- DOSH/SOCSO to comment on this criterion, particularly on the issue of foreign workers, the frequency of reporting and the requirement of safety committee.

## **3.4 PRINCIPLE 3 - STATUTORY CHARGES**

### **3.4.1 Table 14: Criterion 12 - Royalty and Fees**

The following changes/clarifications were made:

- The issue on the necessity for drivers to carry the receipt of royalty payments as a proof of royalty payment was raised. It was clarified that the current practice does not require the driver to carry any receipt as a proof of royalty payment. The driver will only have the TDP and Removal Pass (which also bear the payment receipt reference/ payments made) and that timber being transported bears royalty

hammer mark. Timbers whose royalty are not paid will not have such documents and bear royalty hammer mark.

- It is suggested that a new table specific for pulp which uses Weigh Bridge for volume assessment be developed.
- 'Transit Pass' was removed from the output as it is not relevant and does not prove that royalty has been paid.

### **3.5 PRINCIPLE 4 - OTHER USER'S RIGHT**

#### **3.5.1 Table 15: Criterion 13 - User rights by natives**

The following changes/clarifications were made:

- The table covers all sources of timber (SL, AL and ITP). A new criterion was added for Domestic Forest Reserve (Class III) under criterion.
- The term 'Local consumption' in the table means "for domestic use", and not for commercial use.
- It was suggested that areas for "other users' rights" must be clearly demarcated, be exempted from commercial activities and verification be specified for this criterion.
- It was clarified that Form 2A Licence allows for the removal of timber i.e. for constructing of houses and use as firewood but not for commercial purposes.
- Land Ordinance sections 64 and 65 and issuance of TOL are to be included in the legislative reference.
- Under the verification procedure [Extraction of Forest Produce (SL & AL)] the sentence under (i) be rephrased to 'DFO verifies application for Form IIA including application involving PF (Domestic Forest Reserve Class III)'.  
'
- The meeting was informed that consultation is always carried out in the preparation of Forest Management Plan, if the area involves NCR claim.
- The treatment of claims in SL is dealt with in accordance with the provision of the Land Ordinance (i.e. One-month notice for claims/objections, if there is no claim/objection within the stipulated period, the case will be closed for any future claims). However, issues or later claims do occur and in cases like this the Lands and Surveys Department still have to resolve such claims.
- Forest produce extracted and removed from AL (not cultivated), which are not meant for "Natives' and for "local use"are subject to royalties.

### **3.6 PRINCIPLE 5 - MILL OPERATIONS**

#### **3.6.1 Table 16: Criterion 15 - Issuance of mill license and conditions for operations**

The following changes/clarifications were made:

- To focus on what is required by FDS before the issuance of a mill license, including EPD's clearance on the mill site.
- The meeting was informed that since pulp & paper is still under consideration to be covered in the product scope, the additional criterion for the issuance of a pulp and paper mill licence will not be included in the table although the rest of the requirements are exactly the same as in any other mill licence application. For now, the purpose of Table 16 is only for Primary Processing Mills.
- The TLAS emphasized traceability of timber up to the mill gate of the primary wood processing mill. Traceability issue should not be a problem as long as existing logs arrival records are properly maintained.
- The sentence "primary processing mills" was added after the Log arrival Book in the output.

#### **3.6.2 Table 17: Criterion 16 - Worker Safety and Health**

The followings were discussed:

- The issue of hiring illegal immigrant workers in the FMU was raised. It was clarified that the TLAS is focused more on Safety and Health, thus issues on illegal immigrants as forests workers would not necessarily disqualify an FMU from TLAS.
- The issue on the requirement of Certificate of Identity (COI) was raised. It was clarified that the Certificate of Identity (COI) is not required in the output as the table is only for Safety and Health.
- The Sabah Labour Ordinance has been amended in 2005.

### **3.7 PRINCIPLE 6 - TRADE AND CUSTOMS**

#### **3.7.1 Table 18: Criterion 17 - Export Regulations**

The following changes/clarifications were made:

- The meeting was informed that a new table for Table 18 (Export Regulation), was drafted based on the latest development on the handing over of export and import licensing powers to the Sabah Forestry Department.

- It was highlighted that the requirement of documents to prove the legality of any company/trader/individual involved in export be specifically mentioned in the criterion. All exporters must be registered with the ROC or/and poses a trading licence and comply to CITES requirement for CITES regulated forest produce.
- 'Timber products' is added in after the sentence "a company intending to export timber.." in the Criterion.
- The sentence 'not mentioned herein" was clarified to mean 'not subject to royalty payment'; and the abbreviation 'imp' under the source means 'imported timber and re-exported once processed".
- For consistency, the term 'Royal Malaysian Custom Department' was changed to 'Royal Malaysian Custom'.

### **3.7.2 Table 19: Criterion 18 - Import regulations**

The following changes/clarifications were made:

- The meeting was informed that Table 19 was also prepared based on the latest information conveyed by the Ministry of Plantation and Commodities that FDS will be given the roles previously run by MTIB in Sabah on imports of forest products. Currently only three products: logs, veneer and sawn timber, require physical inspection by FDS as required by the Fees Enactment.
- It was further clarified that any company intending to import must have the imported timber be verified by FDS upon arrival. Other requirements include import declaration. The importation process was simplified and no certification related to the Country of Origin is required, as long as the imported timber is approved by the Royal Malaysian Customs. The need for inspection is not for the purpose of grading but for verification on details as stated in the declaration i.e. volume, quantity; species and for monitoring purposes namely on CITES compliance of CITES requirements on regulated forest produce.
- The requirement to prove the importers legality (ROC registration or/and a trading licence) and imported timber document such as sales contract has been incorporated into the Table.

### **3.7.3 Table 20: Criterion 19 - Transportation of imported logs, sawn timber and veneer**

- With no relevant issues raised, the table was considered accepted at this stage with no revision.

### **3.7.4 Table 21: Criterion 20 - Timber from Sarawak [& Labuan]**

The following changes/clarifications were made:

- It was explained that Sarawak is not part of the VPA as it has opted for a phased approach. That however does not mean that timber products from Sarawak are illegal. Once Sarawak adopts FLEGT, the temporary table will be removed.
- Labuan was included in the table as a small volume of timber was exported from Labuan in the past. Based on its territorial classification (Federal Territory), it is under the Prime Minister's Department's jurisdiction and not FDS'. Based on FDS definition, any timber brought out of Labuan to mainland Sabah is considered as import.
- The meeting agreed that Labuan be taken out from the Table since timber coming in from Labuan is defined as an import which is already covered by Table 19.
- The issue as to whether timber from PEFC or FSC certified area will automatically qualify to be granted a FLEGT licence was raised. It was clarified that timbers from PEFC/FSC do not granted FLEGT license. Conformance to TLAS and FLEGT licence is only required for timber to be exported to the EU. Other standards could be used in the Due Diligence process while the demand for PEFC or FSC timber also depends on buying company's policy on sustainability/ procurement policy.

### **4.0 CONCLUSIONS BY THE MODERATOR:**

The Moderator, Dr. John Tay concluded the consultation process by thanking all the participants of the stakeholders consultation for their active participation.

### **5.0 CONCLUDING REMARKS BY THE DEPUTY DIRECTOR OF FORESTRY AND THE WAY FORWARD**

Mr. Frederick Kugan briefly recapped on what had been discussed in the past two days and outlined the way forward for Sabah TLAS as follows:

- The consultation is being recorded and minutes will be sent to all. The output of this discussion will be brought up to the Joint Expert Meeting (JEM). Once agreed, the documents will be considered by the Technical Working Group before being endorsed by the Senior Official Meeting.
- The VPA may not be entered well before the EUTR is enforced. Due Diligence will be the order of the day instead of the Green Lane to the EU. Sabah may adopt TLAS implementation to facilitate/support due diligence.
- Follow up consultation will be needed for the TLAS trial run. Passing this, MyTLAS licence may be issued, and ultimately the FLEGT licence.

- Annex E on Supply Chain will be prepared and is proposed to take cue from Peninsular Malaysia TLAS document.
- The consultation must be an ongoing process and will be ensured that it does not burden the industry but rather facilitate the implementation.
- FDS has thus far received proposals from NIOSH (capacity building) and STIA (support and capacity building).
- FDS is looking forward for support from FAO, EFI and WWF to support implementation. In this regard, WWF has set aside funds for capacity building.
- Funds have also been set aside for the development of P5 and P6 audit check list and the audit implementation for P1-P6. Funds are also available for studies on data reconciliation, illegal logging and study on Institutional Regulatory Function. All feedback is welcomed. The TOR for these studies will be discussed at a later date. FDS will come up with a guideline or toolkit for communications through a series of consultations.
- It is recognized that more explanations on the European Union Timber Regulation (EUTR) are still needed.
- The next 7 crucial steps were highlighted as below:
  - Finalize TLAS review and to expand TLAS audit to include P5 and P6 with the involvement of the wood manufacturing industries.
  - Pilot the revised TLAS with the support from partners e.g. EFI, etc.
  - Capacity building
  - Continuous stakeholders consultation, as an important pre-requisite for standards development.

As concluding remarks, Mr. Frederick thanked WWF-Malaysia for sponsoring the event and also everyone for their attendance, cooperation and active participation in the workshop. He also thanked Dr. John Tay who has willingly accepted the role of a moderator in the consultation process. Having no matters to be discussed, the workshop was adjourned at 3.30 p.m. on the 15<sup>th</sup> January 2013.

Recorded by:  
 SECRETARIAT  
 SABAH FORESTRY DEPARTMENT