

An overview of legality verification systems

Briefing note
February 2011

There are several legality verification systems operating; these systems are not approved forest certification schemes like the Forest Stewardship Council (FSC) or Programme for the Endorsement of Forest Certification schemes (PEFC), but may be used to ensure legality and traceability of wood and timber products.

This briefing note aims to provide an overview of the voluntary legality verification systems available and clarification on NGO initiatives. Furthermore, it provides advice on their relation to meeting the UK Government public procurement policy and the EU Illegal Timber Regulation.

Please note that the information provided in this briefing note is correct as of February 2011, but availability of systems and what they deliver is constantly changing.

1. WHAT IS LEGALITY VERIFICATION ?

Verification refers to the process of checking that the forest management and supply chain controls meet a defined set of requirements; in this case, legality. It usually involves audits of forest management units and processing facilities, including field inspections, and reviews of documentation and management systems. Legality verification systems can be broadly categorised into two types:

- **Mandatory legality verification**
- **Voluntary legality verification**

Mandatory legality verification programmes are implemented by, or on behalf of, governments. They are applicable at national or sub-national level. There are three main types of mandatory programmes globally:

1. legality assurance and export licensing that will be required for the Voluntary Partnership Agreement

(VPA) under the EU FLEGT Action Plan;

2. national or sub-national government regulation and documentation, and
3. control services delegated by governments to private sector firms, such as the Mandatory Legal Timber Validation (MLTV) services offered by SGS.

A range of organisations provide **voluntary legality verification systems**¹. The most commonly used legality verification systems are those developed by certification bodies (CBs), sometimes referred to as conformity assessment bodies. These are organisations that are accredited by independent competent bodies to relevant ISO Guides to ensure that they follow internationally recognised best practice for auditing for forest certification schemes such as FSC and PEFC. However, it is important to note that there is no accreditation for legality verification systems.

¹ the process is referred to as 'programmes', 'schemes' or 'systems', in the following sections, 'systems' is used for consistency.



2. VOLUNTARY LEGALITY VERIFICATION SYSTEMS

There are a number of voluntary legality verification systems available in the market, some of which may be used to meet market requirements on legality. They are used by forest management companies and manufacturers/traders in the supply chain to respond to requests from their customers of proof that the products supplied have been legally produced. The table below lists the main voluntary legality verification systems available in the market.

Voluntary legality verification systems are not as well-developed as forest certification schemes in

the sense that they are not required to be following international good practice (such as ISO Guides) in standard setting process, certification, accreditation, product tracing and labelling. This is due to the fact that there is no accreditation for legality verification systems therefore there is no common approach on how legality verification systems are developed and managed. Voluntary legality verification systems are developed by certification bodies and there are differences how legality is defined, how verification is carried out, and what kind of public claims can be used.

Recent developments include a process to discuss potential of harmonizing legality standards applied

Systems	Introduction
Timber Legality & Traceability Verification (TLTV) by SGS	TLTV originated in 2005 when SGS began to undertake legality verification audits for clients in Cameroon and the Republic of Congo in order to provide proof of legality to customers in the European market. Following the success of these first audits, the TLTV service was created. Note that since 2010 SGS has offered the TLTV service in two steps: Verification of Legal Origin (VLO) and Verification of Legal Compliance (VLC). SGS VLO is only allowed for a maximum of two years at which point it is required that VLC certification is achieved. There is no limit to how long VLC is allowed.
Verification of Legal Origin (VLO) and Verification of Legal Compliance (VLC) by SmartWood (SW)	VLO and VLC are run by SmartWood, a programme of Rainforest Alliance based in New York, US. The first generic SmartWood VLO and VLC standards were developed in November 2007 and they have recently been revised. SmartWood VLO is potentially only allowed for a maximum of 3 years at which point it is required that VLC is achieved (decided on a case-by-case basis). VLC is likewise potentially only allowed for 3 years at which point forest certification, such as FSC, should be sought (decided on a case-by-case basis).
Origine et Légalité du Bois (OLB – origin and legality of wood) by Bureau Veritas (BV)	The standard for OLB (“ <i>Origine et Légalité du Bois</i> ” Origin and Legality of Wood) was developed in 2004 by Eurocertifor (which later became part of Bureau Veritas Certification) based in Paris, France. The development of this system was based on forest companies’ need to prove the legality of their activities and of wood supply, mainly in tropical areas. Eurocertifor developed its first standard based on its experience in Central Africa and its knowledge of forest legality requirements in this region. There is no time bound requirement to move towards a higher level of forest certification.
Legal Harvest Verification (LHV) by Scientific Certification Systems (SCS)	The LHV standard is a relatively new verification standard developed and managed by Scientific Certification Systems (SCS). The second standard consultation phase was concluded in March 2010, and the latest version of both the forest and CoC is 19 July 2010. There is no time bound requirement to move towards a higher level of forest certification.
Legality Verification System by Certisource	The Certisource Legality Verification System was launched in March 2007 as a means to verify the legality of merbau timber products from Indonesia. The latest version of Certisource legality criteria for Indonesia was finalised in June 2009. It is currently working only with timber concessions and processing sawmills in Indonesia exporting timber and timber products for customers in the United States, Europe, Australia, New Zealand and Singapore. Certisource policy is to offer legality verification for a period of up to two years at which point commitment to achieve FSC certification is required.

TABLE 1

List of voluntary legality verification systems

The definitions of legality under the FLEGT VPA, the EU Timber Regulation and the UK's Public Procurement Policy are broadly consistent.

by the relevant certification bodies. This process is led by Rainforest Alliance while BV, SGS and SCS actively participate. A range of interested parties supports this process and preliminary results are expected in mid 2011.

3. DEFINING LEGALITY

Legality is defined by the aspects of legislation required to be addressed at the forest management level. There is no universally agreed definition of legality; however, in many the following aspects are covered:

- Legal right to harvest
- Compliance with legislation related to forest management, environment, labour and welfare, health and safety

- Compliance with legislation related to relevant taxes and royalties
- Respect for tenure or use rights to land and resources that may be affected by timber harvest rights
- Compliance with requirements for trade and export procedures including CITES

The definition of legality under the FLEGT VPA, EU Timber Regulation, and under the UK, Denmark, Belgium and Netherland's public procurement policies are addressing the same aspects and are therefore broadly consistent. The requirements are outlined in the table below.

TABLE 2

Definition of legality

FLEGT VPA ²	EU Timber Regulation ³	NL, UK, Be and DK Public procurement policies ⁴
Granting of and compliance with rights to harvest timber within legally-gazetted boundaries	Rights to harvest timber within legally gazetted boundaries	The standard requires that the forest owner/manager holds legal use rights to the forest
Compliance with requirements regarding forest management, including compliance with relevant environmental, labour and community welfare legislation	Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting	The standard requires compliance from both the forest management organisation and any contractors with local and national legal requirements including those relevant to: <ul style="list-style-type: none"> • Forest management • Environment • Labour and welfare • Health & safety • Other parties' tenure and use rights
Compliance with requirements concerning taxes, import and export duties, royalties and fees directly related to timber harvesting and timber trade	Payments for harvest rights and timber including duties related to timber harvesting	The standard requires payment of all relevant royalties and taxes
Respect for tenure or use rights to land and resources that may be affected by timber harvest rights, where such rights exist	Third parties' legal rights concerning use and tenure that is affected by timber harvesting	[Compliance with 'Other parties' tenure and use rights' addressed above]
Compliance with requirements for trade and export procedures	Trade and customs legislation, in so far as the forest sector is concerned.	The standard requires compliance with the requirements of CITES in signatory countries.

² FLEGT Briefing Note Number 2 What is legal timber?

³ REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market

⁴ UK Government Timber Procurement Policy: Criteria for Evaluating Category A Evidence

The FLEGT Legality Assurance System applies at a national scale and complements and supports the move towards forest certification.

3.1 FLEGT VPA PROCESS

Though the elements of a legality definition referred to in the legality assurance system of a VPA Partner Country are broadly consistent with relevant requirements of the EU Timber Regulation and the public procurement policies, it is important to remember that it is a mandatory legality verification programme.

The FLEGT VPA requirements apply at a national scale and the FLEGT legality assurance system is therefore not directly comparable to voluntary legality verification schemes which are applicable only at forest management unit level. The FLEGT VPA process, for example, requires national level stakeholder agreement on the interpretation of contentious areas of forest legislation through multi-stakeholder processes, including government, which result in clear and transparent requirements and promote good governance of the forest sector. The FLEGT VPA process reduces the costs and challenges of effective FMU-level control and certification and thereby compliments and supports the move towards forest certification. The partner country's government can also endorse existing legality verification systems and forest certification schemes as delivering legality in the context of the VPA. The briefing note 'FLEGT licensed timber and EU member state procurement policies'⁵ provides further details on what the signed FLEGT VPAs deliver.

3.2 VERIFICATION OF LEGAL ORIGIN (VLO) AND VERIFICATION OF LEGAL COMPLIANCE (VLC)

Some legality verification systems, as shown in table 1, refer to a two step approach; verification of legal origin (VLO) and verification of legal compliance (VLC). However, the differences between the two are not always well explained and the requirements may differ. The step-wise approach is useful to support producers especially in tropical producer countries where there is often a lack of clarity of applicable legislation, weak law enforcement and poor governance in the forest sector. In these countries ensuring full legal compliance can be a big challenge and can therefore in some cases take years to achieve. The two steps can be described as follows:

- **Verification of Legal Origin (VLO)** verifies that timber comes from a known and licensed source and that the entity that carried out the harvest had a documented *legal right to do so*.
- **Verification of Legal Compliance (VLC)** expands upon the basic component of VLO by verifying that timber harvesting and other relevant management activities in the forest where it was harvested complied with *all applicable and relevant laws and regulations*.

⁵ www.proforest.net/publication-objects/flegt_briefing_note_web_final



All voluntary legality verification systems include chain of custody control requirements through the supply chain, from the source to the point of supply.

VLO verifies the legal right to harvest, but not that all applicable and relevant laws and regulations are complied with.

Both SGS and SmartWood offer VLO and VLC services, while BV, SCS and Certisource do not differentiate these two levels of legality and offer a legal compliance service. The differences between these two in terms of what aspects of legality they cover are demonstrated in Table 3 below. Please note that the analysis is based on a rough review of documents.

As discussed above and illustrated in Table 3, some of the systems have gradual steps with respect to which aspects they cover and which they do not. For example, VLO standards from SGS and SmartWood do not fully cover all aspects of legality.

The SGS TLTV-VLO standard covers aspects on legal right to harvest and compliance with legislation related to taxes and royalties. However, it only partially covers compliance with legislation related to forest management, environment, labour and welfare, health and safety. It does not cover the requirements for trade and export procedures.

SmartWood VLO standard covers aspects on legal right to harvest, compliance with legislation related to taxes and royalties, and respect for other parties' tenure or use rights and compliance with requirements for trade and export procedures. However, it only partially covers the criterion on compliance with legislation related to forest management, environment, labour and welfare, health and safety.

4. REQUIREMENTS FOR CHAIN OF CUSTODY

All voluntary legality verification systems include chain of custody control requirements through the supply chain, from the forest source to the point of supply. A key requirement for this is that companies are not allowed to mix verified and unverified materials during processing storage and transport. Some systems (SmartWood and BV) allow mixing of other verified materials. Under the SmartWood system?, 'only products containing 100% verified material (or material verified or certified against an equivalent or higher level standard approved by SmartWood are eligible for SmartWood claims'. BV, however, allows mixing of 'acceptable timber' with verified timber. 'Acceptable timber' includes Keurhout Legality and/or Sustainability⁶, and the forest certification schemes FSC, PEFC, SFI, CSA and MTCC. In addition, a suppliers assessment programme is also considered as acceptable. In this case, the company applying for OLB certification carries out assessment on its suppliers. This is essentially a second party audit and there is no guarantee that the assessors have the required skills or experience to carry out the check on its suppliers and therefore that verified legal compliance (VLC) is ensured.

⁶ Certification systems and certificates validated by Keurhout protocol as ensuring legal origin (VLO and not necessarily VLC) or sustainable forest management. See: www.keurhout.nl/pdf/keurhout_protocol_15mei2009.pdf

TABLE 3

Aspects of legality covered by different systems

Criterion	SGS TLTV-VLO	SGS TLTV-VLC	SW VLO	SW VLC	SCS LHV	BV OLB	Certi-source
1. Legal right to harvest	✓	✓	✓	✓	✓	✓	✓
2. Compliance with legislation related to forest management, environment, labour and welfare, health and safety	⊖	✓	⊖	✓	✓	✓	✓
3. Compliance with legislation related to taxes and royalties	✓	✓	✓	✓	✓	✓	✓
4. Respect for tenure or use rights of land and resources that may be affected by timber harvest rights	✓	✓	✓	✓	✓	✓	✓
5. Compliance with requirements for trade and export procedures	X	✓	✓	✓	✓	✓	✓
6. Additional criteria, compliance with international treaties e.g. ILO, CBD, CITES	✓	✓	✓	✓	✓	✓	✓
Key: ✓ Fully covered			⊖ Partially covered		X Not covered		

Stepwise technical support programmes are initiatives aimed at helping companies and are not designed to be used as legality verification *per se*.

5. STEPWISE TECHNICAL SUPPORT PROGRAMMES

Stepwise technical support programmes are NGO initiatives aimed at helping companies to achieve forest certification. Examples of these are WWF's Global Forest and Trade Network (GFTN), The Forest Trust (TFT) and Rainforest Alliance's SmartStep. They are not designed to be used as legality verification *per se* although participants of these programmes have to demonstrate legal compliance as part of validating progress towards forest certification.

In addition, two NGO initiatives focus on achieving legality verification. These are the Tropical Forest Foundation (TFF) and Timber Trade Action Plan (TTAP). The TFF developed a standard for Reduced Impact Logging (RIL) in 2006, which was revised in 2008 and 2009. The RIL standard is not equivalent to a legality verification system but contains a legality component. TFF does not carry out verification, but endorses the verification audit carried out by an independent auditor.

The Timber Trade Action Plan (TTAP), managed by The Forest Trust (TFT) is a private sector project that provides technical assistance to suppliers of the members of European TTFs to achieve legality verification of their supply chains. It is not a legality verification system. TTAP provides assistance to forest managers or manufacturers to achieve legality verification, by using TTAP legality checklists developed for a range of producer/processing countries to identify the gaps. TFT provides technical assistance throughout the whole supply chain to raise the level of management to pass an audit against the legality standard requested by the buyer and supplier.

6. MEETING UK GOVERNMENT PROCUREMENT POLICY AND EU TIMBER REGULATION

One important question is whether legality verification systems and NGO initiatives meet requirements of the public procurement policies represented by the UK Government's policy and of the EU Timber Regulation.

EU Timber Regulation

The EU Timber Regulation does not pre-approve specific legality verification or forest certification schemes to meet its requirements, though it mentions '*assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation*'. The due diligence system, which needs to be applied by operators, will assess the level of risk associated with the trade of a specific timber product. Therefore, voluntary legality verification systems that verify legal compliance in the country of harvest are likely to be low risk as they cover applicable laws on right to harvest, payments for harvest rights and other duties, forest management and environmental legislation, third parties' legal rights, trade and customs legislation. Additional information is required for systems which verify legal origin only, as to ensure that it meets all relevant laws covered under the legislation.

In addition, as mentioned in section 4, OLB allows mixing of other acceptable materials such as other legally verified timber and those under the suppliers' assessment programme. The suppliers' assessment programme is a second party audit and there is no guarantee that the assessors have the required skills or experience to carry out the check on its suppliers. It is less credible than those that are verified independently. Therefore, OLB verified products containing timber from the suppliers assessment programme require further investigation to verify legal compliance.

Where mixing of timber from a suppliers assessment programme is allowed, further investigation to verify legal compliance is required.

All NGO initiatives such as SmartStep, GFTN, TFF and TTAP (run by TFT) can support suppliers in meeting the EU Timber Regulation as participants enrolled in these programmes have to undergo baseline assessment of legality and have to demonstrate that they are working towards achieving forest certification. However, members are potentially only in transition to legality and sustainability, and there is no requirement for independent verification of legality of participants. Hence, there is no guarantee that they meet all aspects of legality as defined under the Regulation.

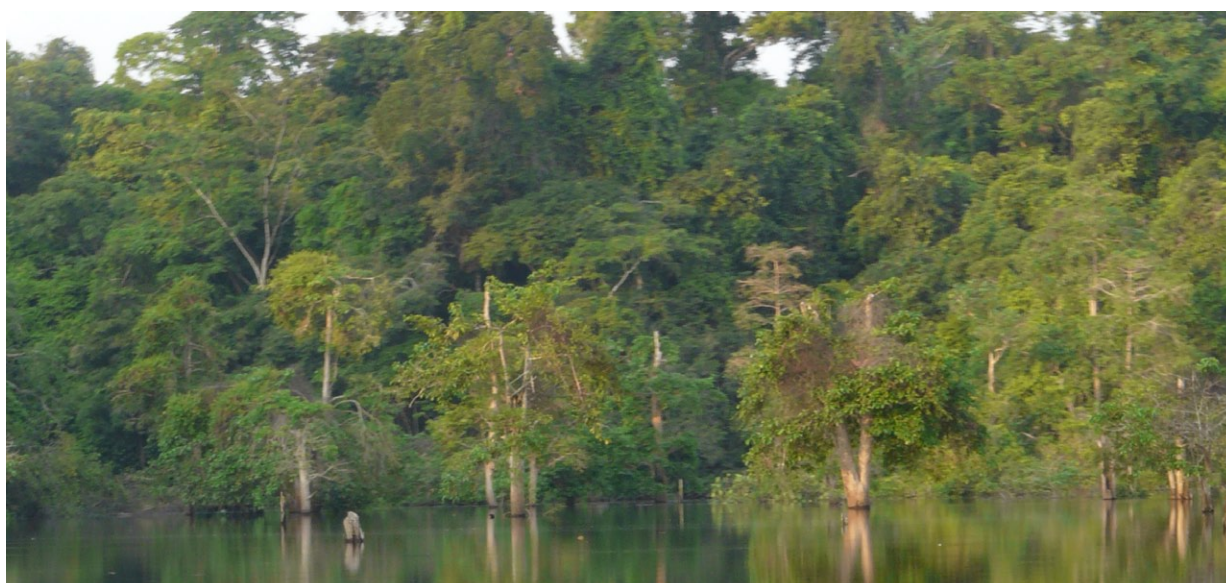
UK Government procurement policy

The UK Government's timber procurement policy requires that all timber and wood-derived products originate from either Legal and Sustainable or FLEGT-licensed or equivalent sources. FSC and PEFC have been assessed by the Central Point of Expertise on Timber (CPET) and found to ensure compliance with the legality and sustainability requirements. Apart from PEFC, FSC and FLEGT licensing, all other evidence of legality and sustainability is required to be assessed on a case by case basis.

The UK policy requires Legality *and* Sustainability. However, where a particular type of product or

timber species is required and where there is no sustainable timber or FLEGT-licensed timber or alternative available, timber which can be verified to meet the UK government requirements for legality will be accepted. Voluntary legality verification systems can therefore play an important role in ensuring legality and ensuring compliance with the UK government's timber procurement policy where no sustainable source is available. The UK's policy requires compliance with legislation related to forest management, environment, labour and welfare, health and safety, which, as outlined in section 3.2 above, is not delivered by the Verified Legal Origin level and the VLO standards from SGS and SmartWood. Only voluntary legality verification systems ensuring full legal compliance as delivered by the VLC definition will be accepted.

Please note that FSC Controlled wood is not 'FSC certification' on its own but a system developed for the trade to ensure that the non-certified portion in mixed products do not come from 'unwanted sources'. Therefore, it should not be accepted as ensuring compliance with the UK Government's timber procurement policy.



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If you'd like to find out more about how Proforest can help your organisation achieve its sustainability goals, please get in touch.

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