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**GUIDELINES FOR THE INTERPRETATION OF
REQUIREMENTS IN MC&I(NATURAL FOREST)**



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This document has been developed to provide additional clarity to ensure consistency in the interpretation of some of the requirements in the MC&I(Natural Forest), the forest management standard used for the certification of natural forest under the Malaysian Timber Certification Scheme (MTCS).

The requirements of the MC&I(Natural Forest) shall apply to the activities of all operators in the forest management unit (FMU). It shall be the responsibility of the FMU manager to ensure that all operators comply with the applicable requirements.

Requirement	Interpretation
<p>1.3 The provisions of all binding international agreements applicable to forest management shall be respected.</p>	<p>Binding international agreements are not confined to conventions that have been ratified by Malaysia.</p> <p>In addition to the applicable agreements and conventions ratified by Malaysia, all agreements and conventions that are listed as Verifiers in the standard shall also be complied with by the FMU.</p>
<p>6.6 Forest manager shall adopt, where possible, environmentally friendly non-chemical methods of pest management, and strive to avoid the use of chemical pesticides. World health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimise health and environmental risks.</p>	<p>Any pesticides banned by international agreement also include those that are defined by the Stockholm Convention on Persistent Organic Pollutants, 1998 and are prohibited.</p>
<p>6.10 Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:-</p> <ul style="list-style-type: none"> a) entails a very limited portion of the forest management unit; and b) does not occur on high conservation value forest areas; and c) will enable clear, substantial, additional, secure, long-term conservation , economic and social benefits across the forest management unit.” 	<p>The overall allowable threshold for conversion of natural forest to forest plantations and any non-forest land use shall not be more than 5% of the total area of the FMU.</p> <p>The manner in which the conversion is carried out has to comply with the definition of the term “a limited portion” as described in Indicator 6.10.1.</p> <p>The extent of 5% of the FMU for conversion includes all the natural forest which has already been converted; and all the forest areas that have been ear-marked to be converted to forest</p>

Requirement	Interpretation
<p>6.10.1 The forest manager shall ensure that conversion from natural forest to forest plantations or non-forest use:</p> <p>a. Shall not include any High Conservation Value Forest areas; and</p> <p>b. Covers a very limited portion* of the FMU and shall enable clear, substantial, additional, secure, long term conservation, economic and social benefits across the FMU</p> <p>* A limited portion is defined as:</p> <ul style="list-style-type: none"> • not more than 2.5% of the total area of the FMU in the first 3 years • not more than 1.5% for the subsequent 2 years • not more than 1% for the next subsequent 2 years <p>This definition may be modified in the next review process of this standard.”</p>	<p>plantations or non-forest land use, such as for development purposes, as at 1 July 2012 which is the application date of the MC&I(Natural Forest).</p> <p>Criterion 6.10 and Indicator 6.10.1 require that the forest areas converted or ear-marked for conversion shall enable clear, substantial, additional, secure and long-term conservation, economic and social benefits across the FMU.</p> <p>In this connection, the FMU manager will be required to furnish information on the social, environmental and economic cost benefit analysis, and the environmental impact assessment (EIA) conducted for the forest areas prior to conversion being carried out, if the EIA is required under the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987.</p> <p><u>Note 1:</u></p> <p>Logs obtained from the conversion of natural forest in the certified FMU are considered “as originating from controversial sources” and shall not be declared as certified logs, and the logs shall not be used to constitute the non-certified portion of any certified products under the MTCS.</p> <p><u>Note 2:</u></p> <p>The next review of the MC&I(Natural Forest) is expected to begin in 2015 where the threshold for conversion will be considered through a transparent and participatory process involving all the relevant stakeholders in the three regions of Malaysia.</p>
<p><u>Interpretation of “within the relevant federal, state and local laws”</u></p> <p>2.1.1 Availability of documentation of legal status, and established forest use rights of the land or forest resources within the relevant federal, state and local laws in the forest management unit (FMU).</p> <p>2.2.1 Availability of documentation, if any, of legal or customary tenure or use rights of</p>	<p>Under the Malaysian Federal Constitution, natural resources including land, forest and water are under the competence of the respective State Governments in terms of ownership, management and utilisation. There are a number of federal laws that deal specifically with environment and conservation, and many of these laws are applicable at the state level.</p> <p>It is within this context that the MC&I(Natural Forest) standard has been formulated and thus the need to stipulate “within the relevant federal, state</p>

Requirement	Interpretation
<p>local communities within relevant federal, state and local laws in the FMU.</p> <p>2.2.2 Forest managers shall recognise, respect and collaborate with holders of duly recognised legal or customary tenure or use rights within relevant federal, state and local laws, in activities that may affect such rights.</p> <p>3.1.1 Availability of documentation of the customary rights of indigenous peoples' lands within relevant federal, state and local laws, if any. Availability of documentation of the customary rights of indigenous peoples' lands within relevant federal, state and local laws, if any.</p> <p>3.2.1 Forest management practices in indigenous people's lands recognised within relevant federal, state and local laws shall not threaten or diminish, either directly or indirectly, their resources or tenure rights.</p> <p>3.3.1 Availability of appropriate procedures within current administrative processes for identifying and protecting such sites and provisions for rights of access to these sites by indigenous peoples within relevant federal, state and local laws or by mutual agreement.</p> <p>4.5.1 Provisions and measures within relevant federal, state and local laws shall be taken to prevent loss or damage affecting the local communities' legal or customary rights, property, resources, or their livelihoods.</p>	<p>and local laws” in addressing specific aspects related to established forest use rights of the land or forest resources, legal or customary tenure and customary rights, as mentioned in Indicators 2.1.1, 2.2.1, 2.2.2, 3.1.1, 3.2.1, 3.3.1 and 4.5.1. This is to ensure that the stipulated requirements are consistent with the various state legislation besides ensuring that forest management complies with all the applicable laws of Malaysia as listed under Principle 1 of the MC&I(Natural Forest).</p> <p>In addressing sustainability requirements, forest certification requires the FMU manager to take actions that may go beyond the mandate of the federal, state and local laws. Hence, relevant international conventions and declaration have been included in the MC&I(Natural Forest). This is to take cognisance that indigenous peoples, in varying degrees, rely on the resources in their customary lands.</p> <p>In order to accommodate these situations on the ground and in the spirit of the <i>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</i>, and based on the principle of free, prior and informed consent (FPIC), FMU managers are required to undertake effective consultations with the affected local communities and indigenous peoples on matters relating to their legal or customary rights, the application of their traditional knowledge, and fair and equitable compensation for the use of this knowledge.</p> <p>The FMU manager is expected to recognise and respect customary rights where these actions would not result in FMU's violation of the legislative requirements and statutory licensing processes.</p>
<p><u>Interpretation of the term “free, prior and informed consent”</u></p> <p>Criterion 2.2: Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest</p>	<p>Free, prior and informed consent (FPIC) is the principle that a community has the right to give or withhold its consent to proposed projects or activities that may affect the lands they customarily own, occupy or otherwise use.</p> <p>FPIC implies informed, non-coercive negotiations</p>

Requirement	Interpretation
<p>operations unless they delegate control with free, prior and informed consent to other parties.</p> <p>Criterion 3.1: Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free, prior and informed consent to other parties.</p> <p>Indicator 3.1.2: Management and use of such lands and resources are controlled by indigenous peoples unless they delegate control with free, prior and informed consent to other parties.</p> <p>Criterion 3.4: Indigenous peoples shall be acknowledged and compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free, prior and informed consent before forest operations commence.</p> <p>Criterion 3.2: Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.</p> <p>Criterion 3.3: Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognised and protected by forest managers.</p> <p>Criterion 4.4: Management planning and operations shall incorporate the results of evaluations of social impact. Consultations shall be maintained with people and groups directly affected by management operations.</p> <p>Criterion 4.5: Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of</p>	<p>between the proponents and indigenous peoples prior to the commencement of development activities on their customary lands. This principle means that those who wish to use the customary lands belonging to indigenous peoples must enter into negotiations with them. It is the indigenous peoples who have the right to decide whether they will agree to the project or not once they have a full and accurate understanding of the implications of the project consistent with the principle of FPIC.</p> <p>The term FPIC is specified in Criteria 2.2, 3.1 and 3.4 as well as Indicator 3.1.2 of the MC&I(Natural Forest), in relation to the requirement to obtain the FPIC of the indigenous peoples regarding any forest management activities that may affect the forests owned by them (Criteria 2.2 and 3.1, and Indicator 3.1.2), and any compensation for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations (Criterion 3.4).</p> <p>Several other criteria and indicators in the MC&I(Natural Forest) recognize the traditional use of the permanent forests by the indigenous peoples (i.e. Criteria 3.2, 3.3, 4.4, 4.5, 9.1 and 9.2).</p> <p>FPIC is not specifically mentioned in these criteria and indicators, but in order to ensure that the indigenous peoples are able to continue their traditional use of the forest, the forest manager is required to undertake a process of consultation: (i) to identify the presence and locations of indigenous peoples in and adjacent to the FMU; and (ii) to confer and determine the areas they traditionally use. These areas may include sites of significant importance to them (e.g. cultivated areas, water sources, burial sites, sacred sites etc).</p> <p>Criterion 3.2 requires the FMU manager to ensure that forest management practices shall not threaten or diminish the indigenous peoples' resources or tenure rights.</p> <p>Criterion 3.3 requires that sites of special cultural, ecological, economic or religious significance to the</p>

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<p>loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local communities. Measures shall be taken to avoid such loss or damage. Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local communities. Measures shall be taken to avoid such loss or damage.</p> <p>Criterion 9.1: Assessment to determine the presence of the attributes consistent with High Conservation Value Forests will be completed, appropriate to scale and intensity of forest management.</p> <p>Criterion 9.2: The consultative portion of the certification process must place emphasis on the identified conservation attributes, and options for the maintenance thereof.</p>	<p>indigenous peoples shall be clearly identified in cooperation with them, and shall be recognized and protected.</p> <p>Under Criteria 4.4 and 4.5, where the indigenous peoples are living in or adjacent to the forest, the FMU manager shall consult them to evaluate their dependence on the forests and the potential social impacts of the forest operations on these peoples, prior to the commencement of the operations.</p> <p>The FMU manager has to take into account the results of such evaluations into the forest planning and management process so as to prevent loss or damage affecting the indigenous peoples' customary rights, property, resources, or their livelihoods. Where such loss or damage has been caused by the forest operations, appropriate mechanisms shall be employed to resolve the grievances and provide fair compensation to the affected party.</p> <p>Under Criteria 9.1 and 9.2, the FMU manager is also required to consult the affected indigenous peoples and other relevant stakeholders to assess the attributes consistent with high conservation value (HCV) which are found in the FMU.</p> <p>In the case of the indigenous peoples, the HCV areas may be those that are important to meeting the basic needs of these peoples and/or critical to their traditional cultural identity. The FMU manager has to demonstrate that steps have been taken to protect these HCV areas, which may include marking these areas on maps and having management prescriptions in the Forest Management Plan to maintain and enhance the HCV attributes.</p> <p>The FMU manager is also required to conduct annual monitoring to assess the effectiveness of such measures. The results of monitoring into shall be incorporated into the revision of the Forest Management Plan.</p>