











Australian Government







应有的注意/尽职调查及通用指南



立法史

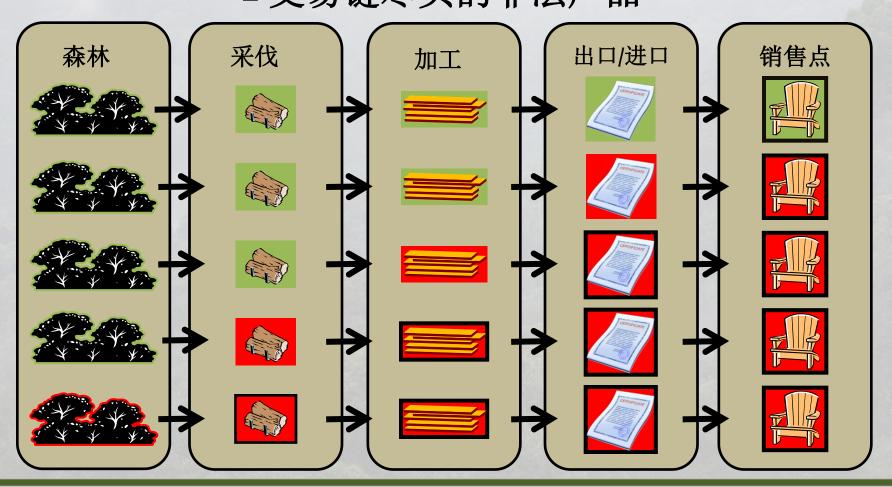
应有的注意 / 尽职调查 =

采取措施尽最大努力保证自己不会违反法律

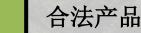
因针对个人的知识和职责不同,适用的内容也不相同。

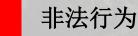
合法性和交易链

交易链任何环节存在的任何非法活动 = 交易链尽头的非法产品



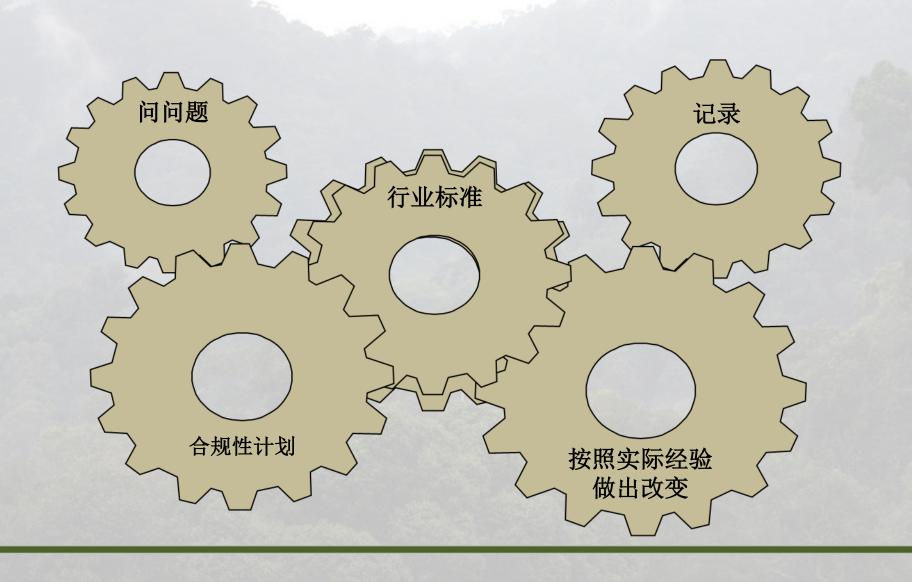
合法行为







非法产品



应有的注意 / 尽职调查三要素



- 采伐国家
- 树种
- 数量
- 合法性等

风险评估

• 风险评估标准

风险降低

最小化风险:

- 采取充分适当的措
- 按照程序进行

经营者应该采用什么体系?

- 1. 采用自身已有的体系
- 2. 建立新的体系
- 3. 采用"监管机制"(EUTR)建立的体系
- 4. 采用FSC或PEFC(AILPA)建立的体系

免责声明



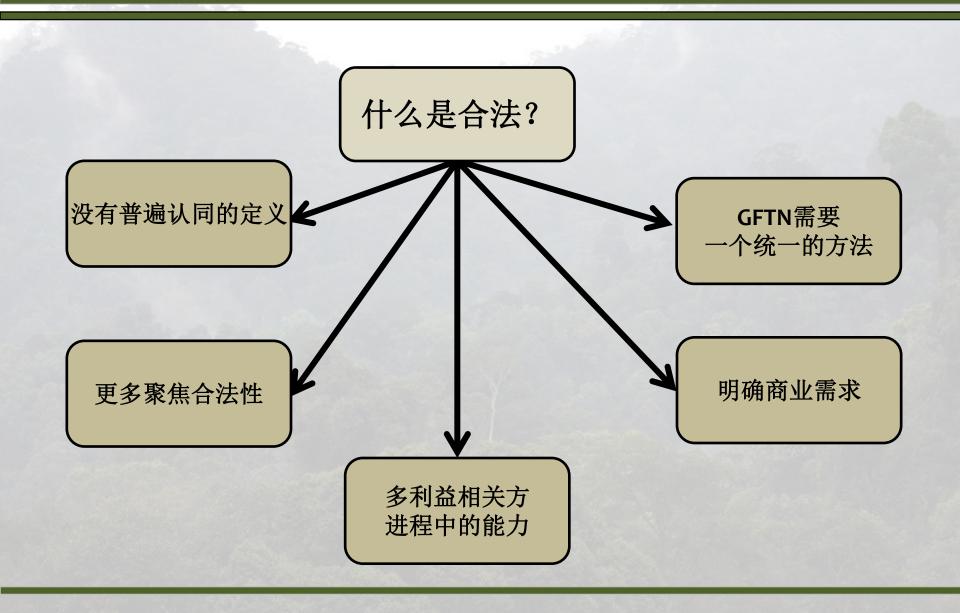
阅读本演讲稿,请注意:依据《雷斯法案》,在美国检察官完成举证责任的情况下,没有任何认证或证明文件能够保护持有者免于承担责任。

希望提供的信息让您有信心展示自己的"尽职调查,"并帮助您的客户实施"尽职调查"

寻求合规性合法建议可咨询专业法律从业人员。

讲师或编辑制作培训材料的人员不承担培训产生的任何责任。

应有的注意/尽职调查 - 问题所在



WWF-GFTN/TRAFFIC合法性框架——目标 成为涵盖整条供应链 扶持目标国家 的辅助工具 目标 帮助制订一个更为 补充说明森林法 统一的框架 帮助监管者了解什么 是合法的

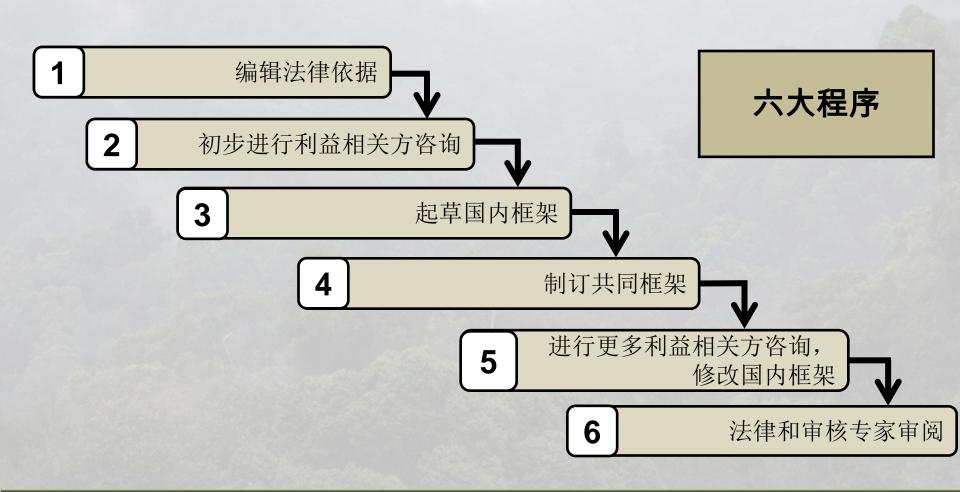
WWF-GFTN/TRAFFIC共同的合 法性框架

涉及内容广泛的原则和标准

数据和指南/审核者要依据国家法律

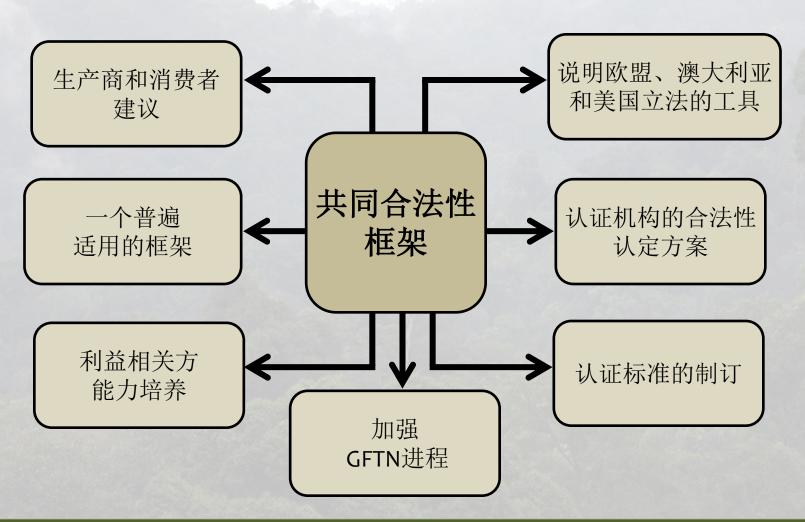


WWF-GFTN/TRAFFIC框架——制定过程



WWF-GFTN/TRAFFIC框架——原则 取得途径、使用权 环境法规 和使用期限 采伐法规 保护法规 原则 原木与木制品运输 社会法规 税、费和版税 加工法规 进出口法规

WWF-GFTN/TRAFFIC框架



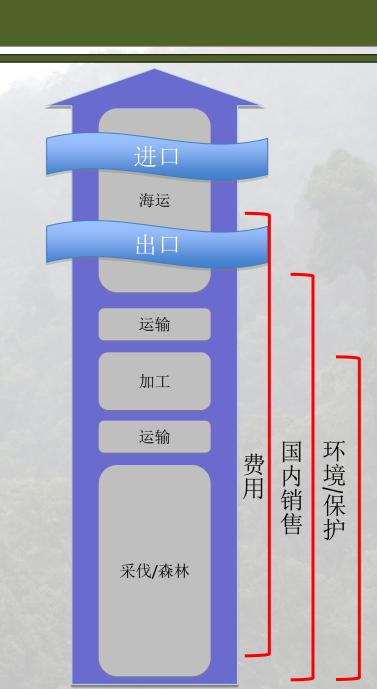
应有的注意和尽职调查

通过WWF-GFTN/TRAFFIC框架满足应有的注意和尽职调查要求需要遵循的准则:

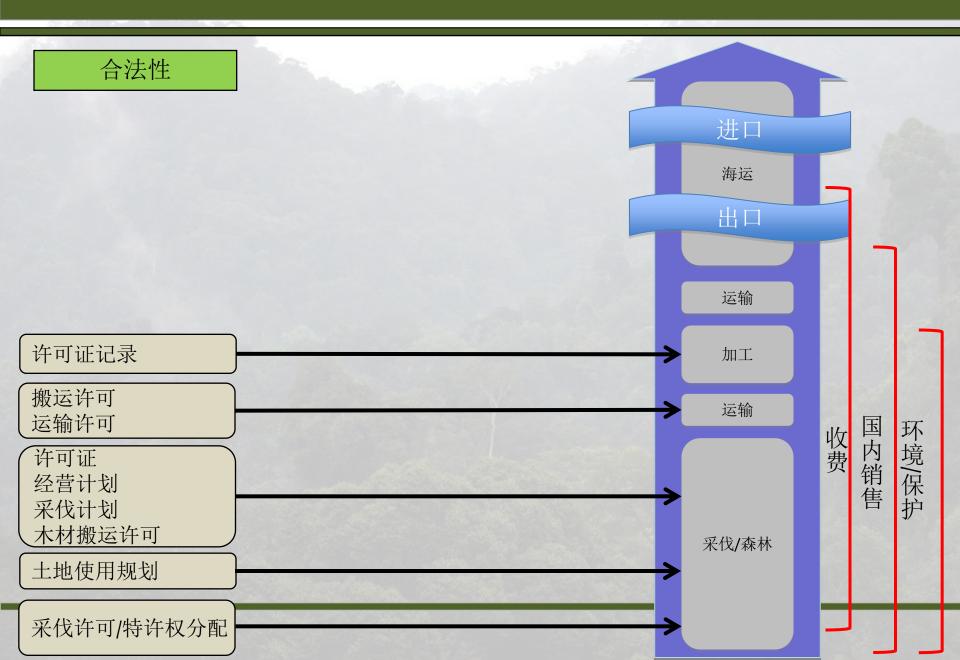
- 1. 取得途径、使用权和使用期限
- 2. 采伐法规
- 3. 原木与木制品运输
- 4. 加工法规
- 5. 进出口法规
- 6. 环境法规
- 7. 保护法规
- 8. 社会法规
- 9. 税、费和版税

应有的注意

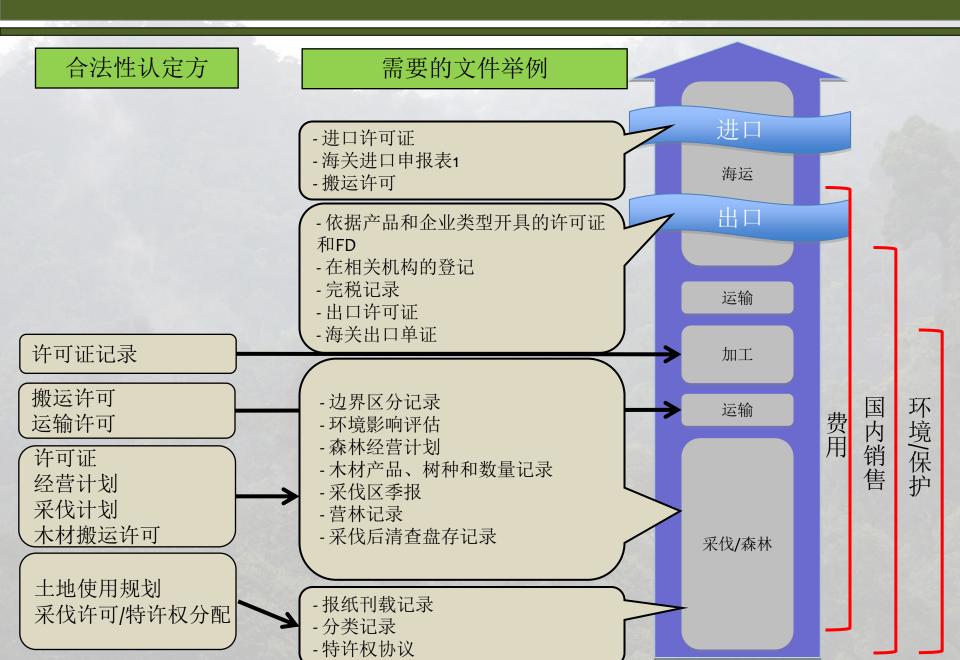
我应该准备什么文件?



应有的注意



应有的注意



Stage in	Legislation	D	5 1 60 11 10	Notes
Supply Chain	Component	Relevant Laws to Comply With	Examples of Compliance/Documents to Check	to Remember
Forest	Legal right of tenure, access and harvest	All forest management enterprises, whether public, private or community managed must be able to demonstrate that they have the right of: Tenure; Manage the forest; Access the forest:	Establish that there is permission to conduct management, harvest, transport and commerce in plant products (including trees or logs from trees). Establish that the company has the tenure to the harvest area. Establish that the company has access rights to the harvest area.	Theft of plants (including trees or logs from trees) such as: A. Taking plants (including trees or logs from trees) from an officially protected area, such as a park or reserve; D. Taking plants (logs) from other types of "officially designated areas of protection" that are
		Harvest forest products from the forest.	Establish that there is authorised pre-approval to the harvest area. Establish that there is a legal or permissive right to harvest.	recognized by a country's laws and regulations; c. Taking plants (including trees or logs from trees) without, or contrary to, the required harvesting authorization;
			Ensure that only species that can be harvested legally were harvested. Ensure that the harvesting was conducted in compliance.	d. Taking plants (including trees or logs from trees) without the authorisation of pre-approval conditions (such as social customary rights and tenure and environmental impact assessments).
			with the harvesting conditions in the permission. 8. Ensure that the harvest took place at the site defined within the permission.	Taking plants from areas where environmental laws have been violated (e.g. river buffer, steep slopes, etc.). The state of the st
			9. Ensure that the trees harvested are included within the scope of the permission such as quota and diameter at breast height limits. 10. Ensure that third parties' legal use and tenure rights are not affected by harvesting.	Taking plants from areas, where third party customary tenure rights are in place or in conflict. Taking plants from areas without taking into consideration measures outlined in environmental impact assessments, social impact assessments,
			11. Ensures environmental and social laws such as Environmental Impact Assessments and Social Impact Assessments, etc. are taken into account in management and harvesting plans. 12. Ensures that conservation laws are followed, including CITES legislation.	etc. 3. Documentation for tenure may have pre-conditions for a successful right to the forest. These pre-conditions may include payment of deposits, shortlist of applicants, evidence of staff and equipment, social impact studies, environmental impact assessments, previously agreed consent, stc.
			Evidence that the company has a valid agreement that confers on the company the right and permission to manage and harvest the forest. Synonyms/Equivalent include:	Documentation for right to harvest will have many criteria which should be checked separately, such as: Inventories conducted; Boundary demarcation on the ground and on a
			Forest Authority Certificate Forest Management License Agreement Concession agreement Forest Timber License Forest Management Permit Alicense to operate in the logging sector	identified scale map, which may be geo-referenced; c. logging road and skid trail construction specifications; d. identification and marking of protected species, fragile ecosystems, cultural and customary use areas
			Approved management plan Timber Heruseting Liesesse	e. Identification of environmentally sensitive areas

Stage in Supply Chain	Legislation Component	Relevant Laws to Comply With	Examples of Compliance/Documents to Check	Notes to Remember
Forest	Legal Right to Harvest	Forest management companies and harvesting companies are required to be legally registered to operate in this sector. Registration may require a number of other processes to be observed.	Evidence that the company is legally registered and has the required permissions to operate in the forest management and logging sectors. Ensure that all relevant documents and receipts are available including for pre-harvesting, during and post harvesting permission. Evidence that the company has a valid registration and license that confers on the company the right to manage and harvest the forest. Synonyms/Equivalent include: Business license Land use certificate Company establishment document Signed Decision on land allocation Contract of land use right transfer agreement Contract of land rental Document of community's agreement Forest Authority Certificate	Checks for court cases concerning social or other issues that are pending in the harvest area to get a better overview about the risk and legal situation. In many countries the harvesting of timber is undertaken by third parties who are employed by the forest manager to undertake harvesting. Social issues and land tenure rights applies to sub-contractors as well.
Forest	Payment of Taxes and Royalties	Companies are liable to pay taxes or fees to national or local government (or both) to authorize their management and harvesting.	Evidence that the company has paid any fees or taxes that must be paid to the state or local government in connection with obtaining the permission to manage or harvest; and any fees or taxes associated with the volume of timber actually harvested. Synonyms/Equivalent: Proof of payment of taxes and fees (e.g. Reforestation fee, Forest Resource Royalties, Value added tax, Income tax) Valid business license Tax registration documents Tax returns	Ensure that all relevant royalties, taxes or fees have been paid by the forest management company or harvesting company.

Stage in Supply Chain	Legislation Component	Relevant Laws to Comply With	Examples of Compliance/Documents to Check	Notes to Remember
Transport	Legality of possession and transport	Forestry and transportation laws. Most countries require those transporting timber to be correctly licensed for this purpose and for them to carry required documentation and markings on the timber that identifies both the origin of any logs or timber, royalties paid, and the final destinations of the material being transported.	Evidence that the company has used the required documents when transporting logs or timber. Synonyms/Equivalents: Timber transportation certificate Conveyance certificate License to carry logs or timber Timber consignment documents Removal pass Removal pass Removal permit Packing lists Lading bill Evidence that the company has used the required stamps or marks when transporting logs or timber. Synonyms/Equivalents: Log tags Log identification marks Hammer marks Paint marking	Some countries have highly regulated systems that require all logs or sawn wood that are being transported outside of the forest to carry markings that identify the wood with the original stump from which it was harvested.
Processing	Legality of processing	Processors of logs or manufacturers using timber. Most countries require all sawmills, plywood mills, secondary manufacturers or pulp mills to be licensed and to pay for any fees and taxes to carry out these activities.	Evidence that the company has acquired any required license to process logs or timber. The license may state the production capacity. Synonyms/Equivalents: Operating license Timber processing certificate Evidence that the company has paid any fees or taxes that must be paid to the state or local government in connection with timber processing. Synonyms/Equivalents: Valid busin ess license Tax registration documents Tax returns Evidence that the company has documentation for timber trade records in connection with timber processing. E.g.: Log reservation quota Shuttle returns Monthly production returns Log input book Sales contract Sales invoice	Some countries require submissions of records of inputs and outputs of the mills to the relevant government agencies for nominal monitoring. While the US, EU and Australian legislation does not make explicit mention of processing in their due care and due diligence requirements, processing is one stage in the supply chain, and would be applicable as illegal timber could enter the supply chain during processing. However, for the EUTR, if the processing took place after the timber has been placed on the EU market, the company is deemed to be a trader and should know who they brought the products they used for processing from.

Stage in Supply Chain	Legislation Component	Relevant Laws to Comply With	Examples of Compliance/Documents to Check	Notes to Remember
Export	Legality of Sale and Export	Laws governing export or trans- shipment, such as a log-export ban. Exports of species that are listed in international conventions (such as CITES). For re-export, laws governing import will need to be followed.	Evidence that the company has the required permission to export forest products and that it complies with all the requirements for legal export of the product. Synonyms: The company holds an export licence. Packing list Invoice Bill of lading Customs declaration form Tariffs arepaid and receipted Sales contract Shipping order Delivery order Correct CITES documentation (where required) from the designated CITES Management Authority of the country of export. For some species and countries, a pre-condition of export is to have a CITES import permit beforehand for CITES Appendix Il listed species.	Export companies are required to be licensed to perform this function and should routinely provide sufficient documentation to allow the state authorities in the country of export and the country of import to monitor the transaction. Some countries ban the export of certain species or types of material (for example logs or sawn wood) or highly regulate the volume of these materials that can be exported. Companies importing timber products should request for the Customs Export declaration form. Ensure that the company acting as the exporter is legally established and suitably licensed to export forest products. Ensure that the required export permits are complete, accurate and available. Ensure that the customs import and export documents are available.
Export	Payment of Fees and Roy alties	Export companies are required to pay all appropriate taxes and duties when exporting forest products. This may include payment of Value Added Tax in some countries.	Evidence that the company has paid the appropriate tariffs associated with the products being exported. Synonyms/Equivalents: Tariffs are paid and receipted Export tax receipts Customs Duties receipts Value Added Tax receipts	The tariffs are usually administered by Customs during export. However, the tariffs may be imposed by other Ministries, including trade and industry, forestry, revenue, etc. Failure to get the Customs release for the shipment would render the consignment illegal as all trade of a country have to get customs approval for both import and export. While the EUTR and the Australia Illegal Logging Prohibition Act Ltd are not explicit in mentioning import and export, a due diligence system would need proof of legality for export and import in the traded commodity as a component of the supply chain legality management.

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Plant Quarantine Certificate

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月无效:3.一年(前)一位,全程有效。

DEPARTEMEN KEHUTANAN Second-leg Log Transportation FAKTUR ANGKUTAN KAYU BULAT (FA-KB) (Merupakan surat keterangan sahnya hasil hutan) serial number listed by the company Nomor Seri : PT.XX 000000 Province: District/City Kabupaten/Kota PENGIRIM Alamat dan Alamat Lengkap PT. XX -Transportation means-Nomor Telepon PENERIMA empat Muar Identity of receiver Alamat dar ongkar Nomor Telepon Specification of Logs Kayu Bulat Kayu Bulat Kecil REKAPITULASI KAYU BULAT YANG DIANGKUT KELOMPOK JENIS KAYU (Batang) Stapel Meter (SM) Meter Kubik (M3) JUMLAH DENGAN ANGKA Kayu Bulat/Kayu Bulat Kecil yang diangkut sesuai kolom-kolom tersebut di atas, merupakan rekapitulasi dari DKB/DKB-FA/DKBK Nomor:.... ... Tanggal ... PENERBITAN FAKTUR ANGKUTAN KAYU BULAT LEgalization of document . Tanggal penerbitar KOLOM ISIAN P3KB Receivina No. Register Jabatan Dari tanggal s/d tanggal

DK A 301

Untuk sortimen Kayu Bulat Kecil (KBK), kolom "JUMLAH (Batang)" tidak diisi/dikosongkar

应有的注意与尽职调查

能够提供帮助的机制

- USAID的RAFT项目
 http://www.responsibleasia.org
- WWF的全球森林与贸易网络(GFTN) http://gftn.panda.org
- 英国森林协会
 http://www.tropicalforesttrust.com
- 热带森林基金会
 http://www.tff-indonesia.org
- 雨林联盟
 http://www.rainforest-alliance.org
- EIA/WRI的森林合法性联盟 http://www.wri.org/fla

欢迎提问

• 更多信息请访问: gftn.panda.org/legality