



# Legality of Exporting Forest Products to the European Union, Australia and USA

City, Country  
Date, 2013





## Due Care/Due Diligence and General Guidance



# Due Care / Due Diligence

## Legislative History

**Due care / Due Diligence =**

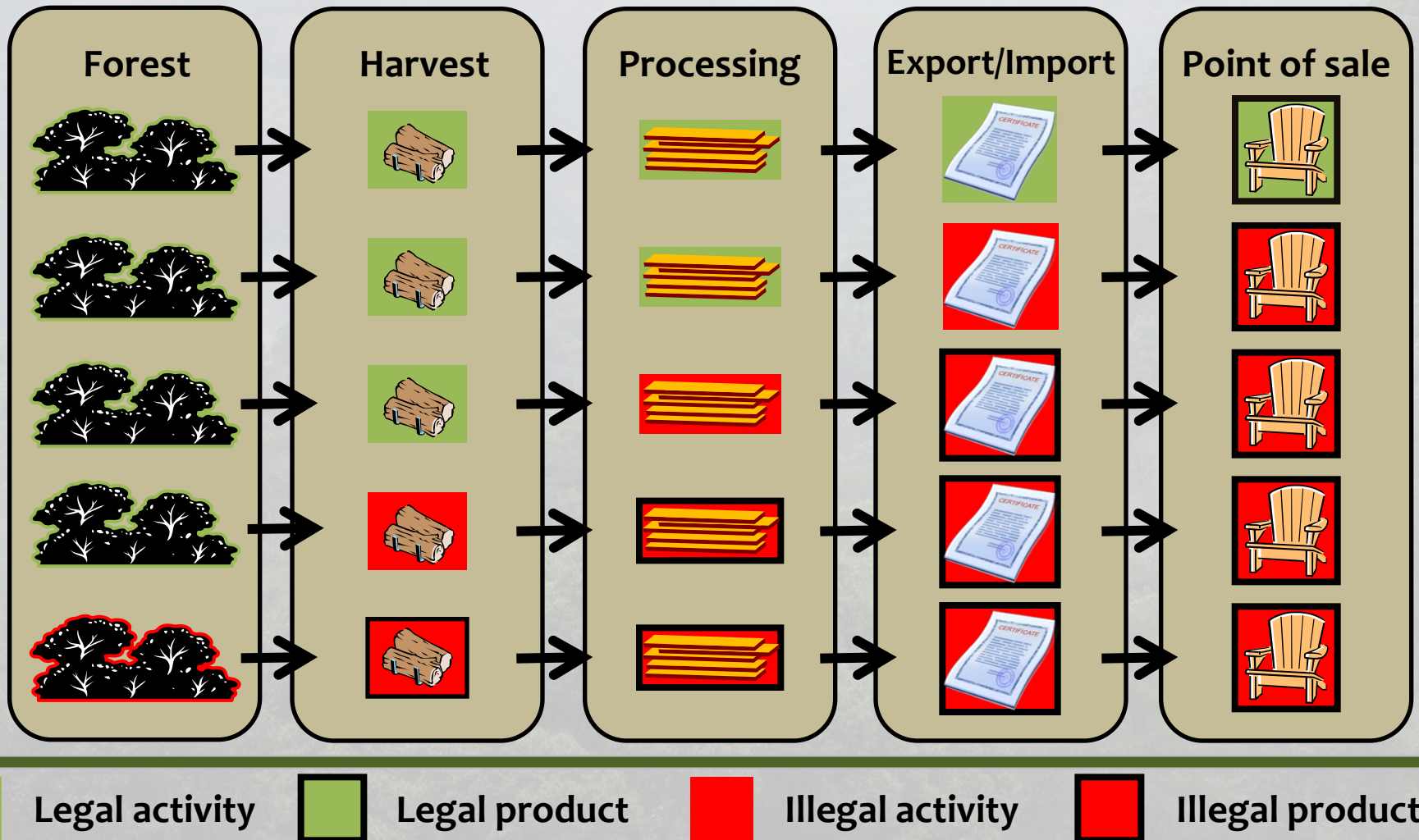
take certain steps to do your best to ensure  
you are not violating the law

These are applied differently to different categories of persons  
with **varying degrees of knowledge and responsibility.**

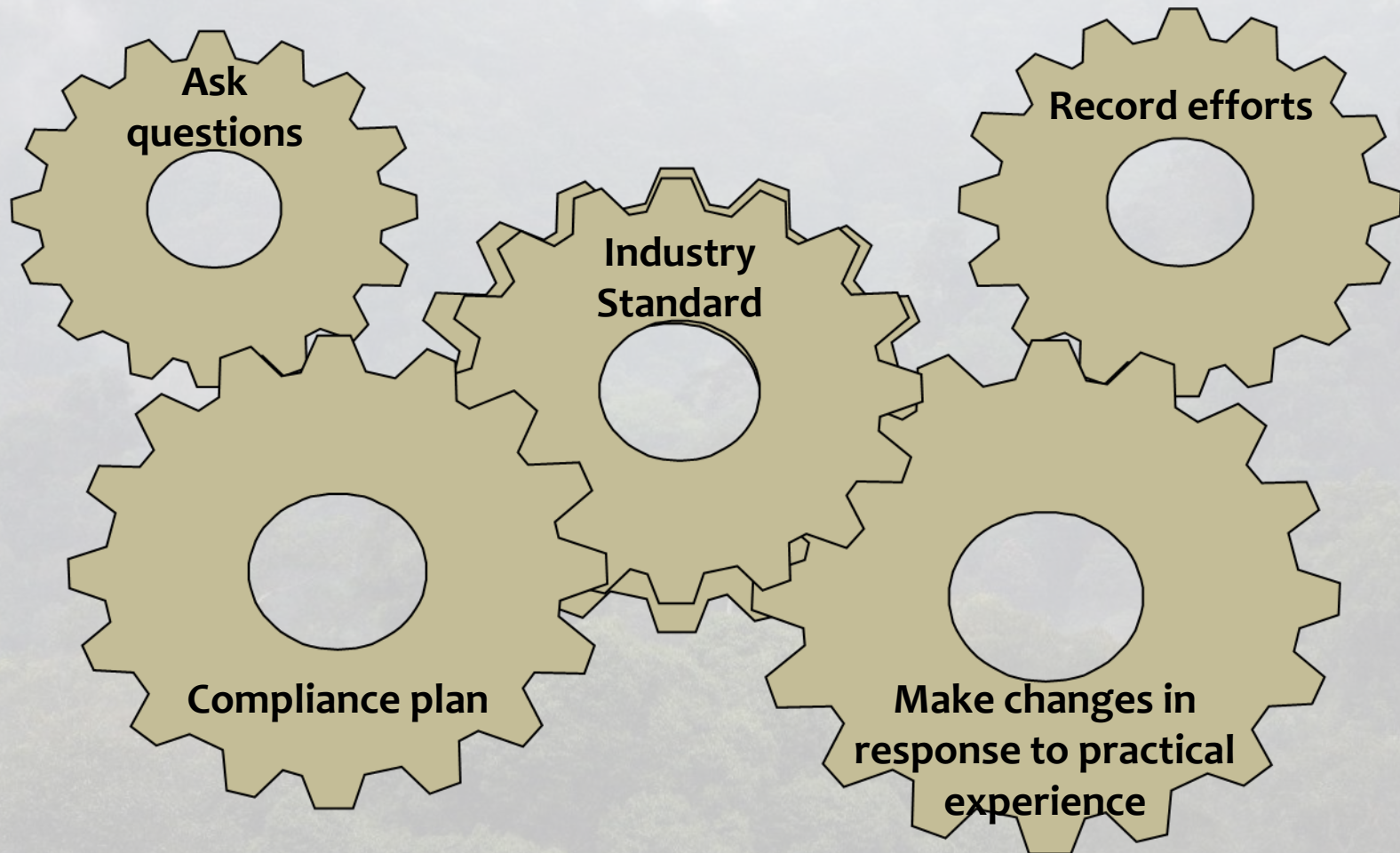


# Legality and the Trade Chain

**ANY ILLEGAL ACTIVITY** anywhere along the Trade Chain  
= **Illegal Product** at the end of the Trade Chain



# Demonstrating Due Care / Due Diligence



# Due Care / Due Diligence – 3 Elements

**1**

## **Information**

- Countries of Harvest,
- Species,
- Quantity,
- Legal Compliance, etc.

**2**

## **Risk Assessment**

- Risk Assessment Criteria

**3**

## **Risk Mitigation**

Minimise Risk:

- Take adequate and proportionate measures
- Follow procedures

**Which system should an operator use?**

- 1. Use their existing system**
- 2. Set up a new system**
- 3. Make use of a system set up by “monitoring organisation” (EUTR)**
- 4. Make use of systems set up by FSC or PEFC (AILPA)**



# Due Care / Due Diligence

## Disclaimer



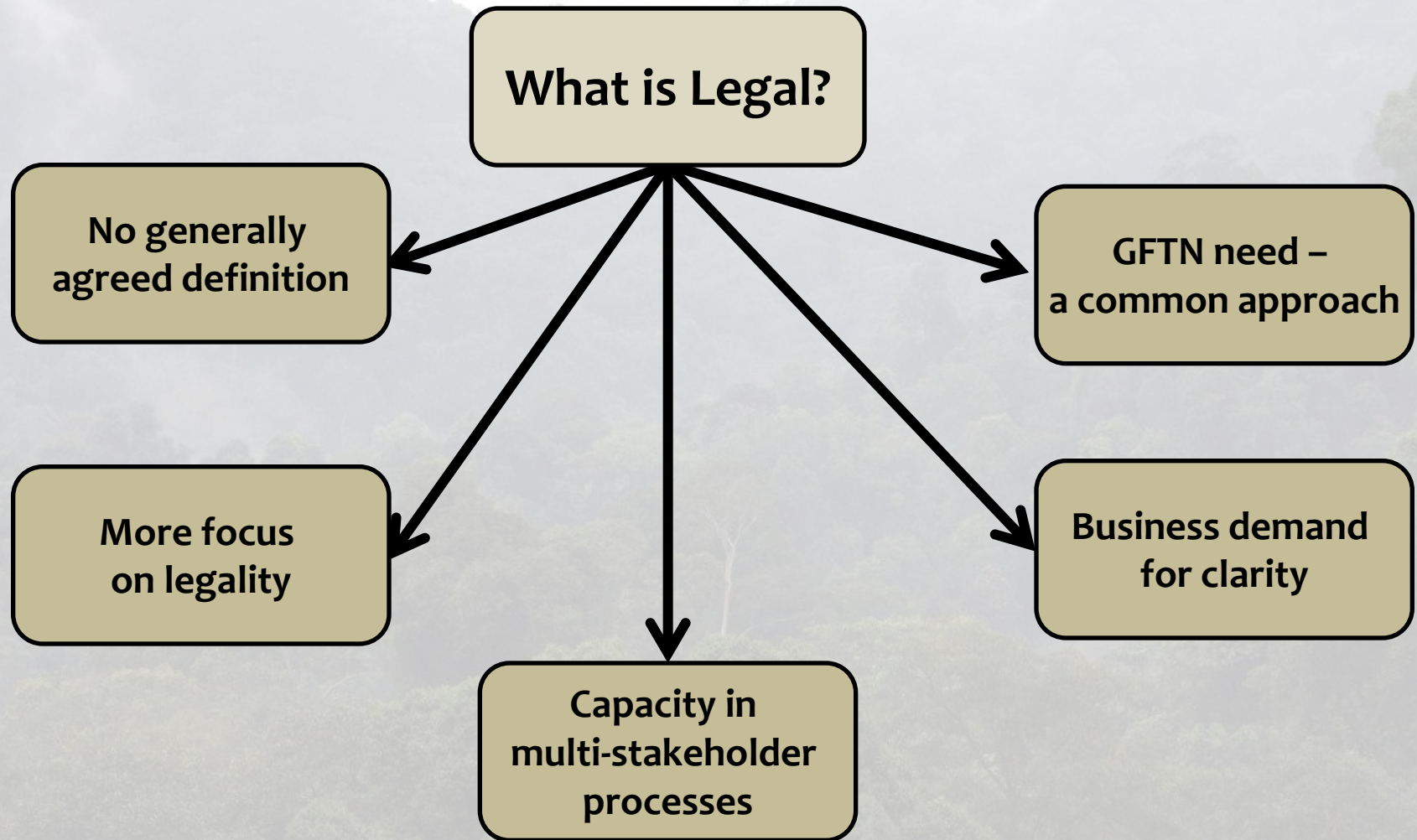
For this whole presentation, note that under Lacey, no certification or document will protect against liability where the US prosecutor can meet its own burden of proof.

It is hoped that the information presented will give you the confidence to demonstrate due care and in turn help your customer to do the same

Persons seeking legal advice on compliance should consult with a legal professional.

No liability whatsoever resulting from this training can be accepted by the trainers or those who developed these materials.

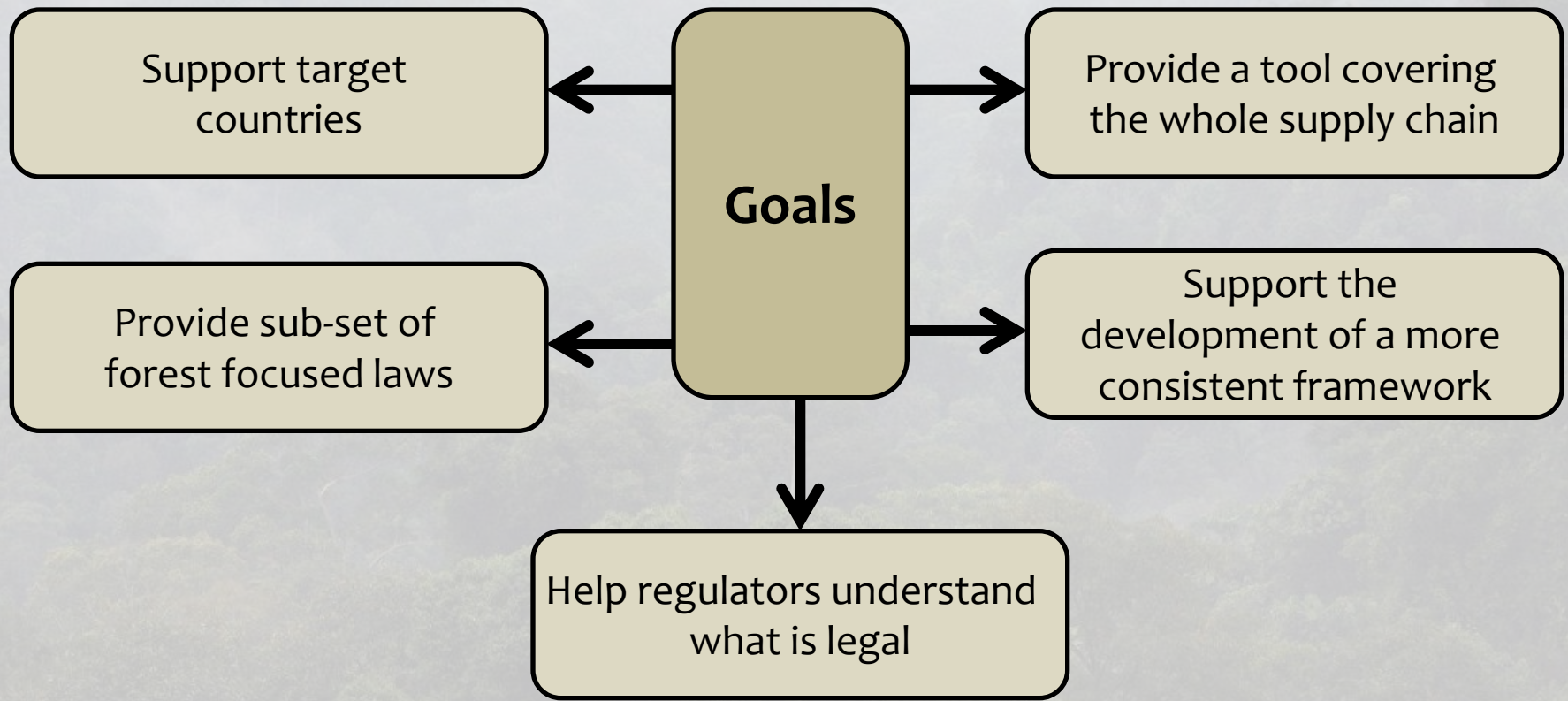
# Due Care / Due Diligence – The Problem





# Due Care / Due Diligence

## WWF-GFTN/TRAFFIC Legality Framework - Goals



# Due Care / Due Diligence

## WWF-GFTN/TRAFFIC Common Legality Framework

A broad set of  
principles & criteria

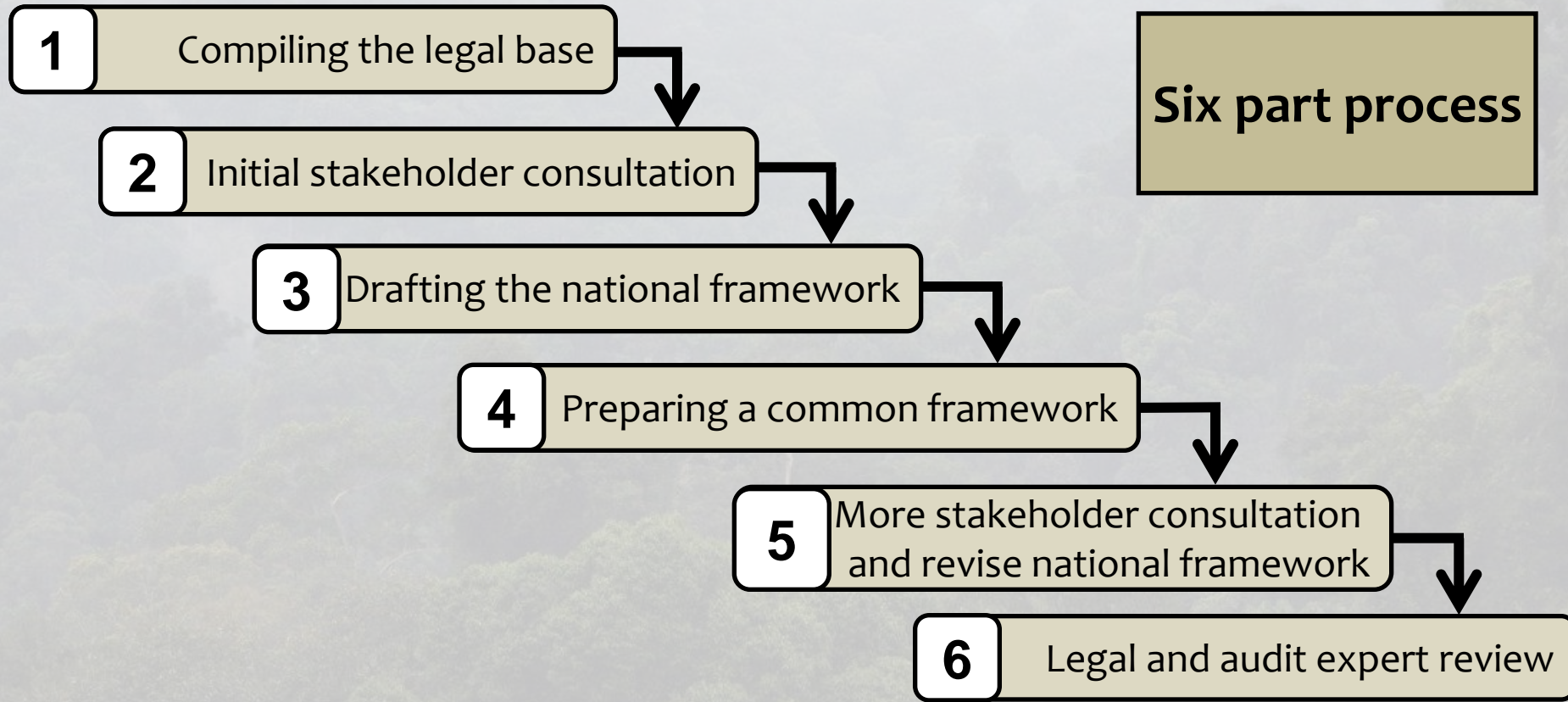
Indicators and guidance notes/  
verifiers are based on  
national legislative base





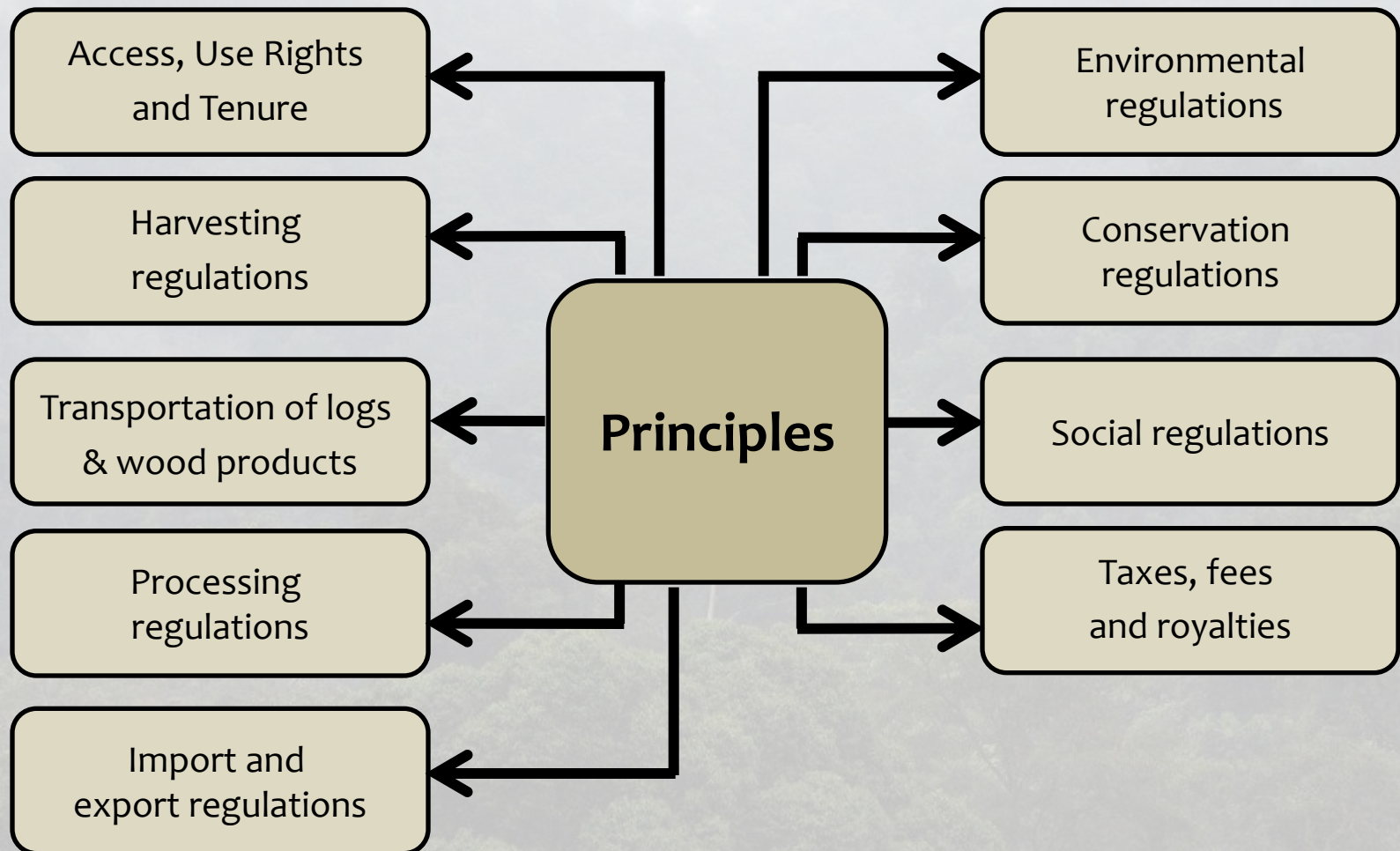
# Due Care / Due Diligence

## WWF-GFTN/TRAFFIC Framework - Development Process



# Due Care / Due Diligence

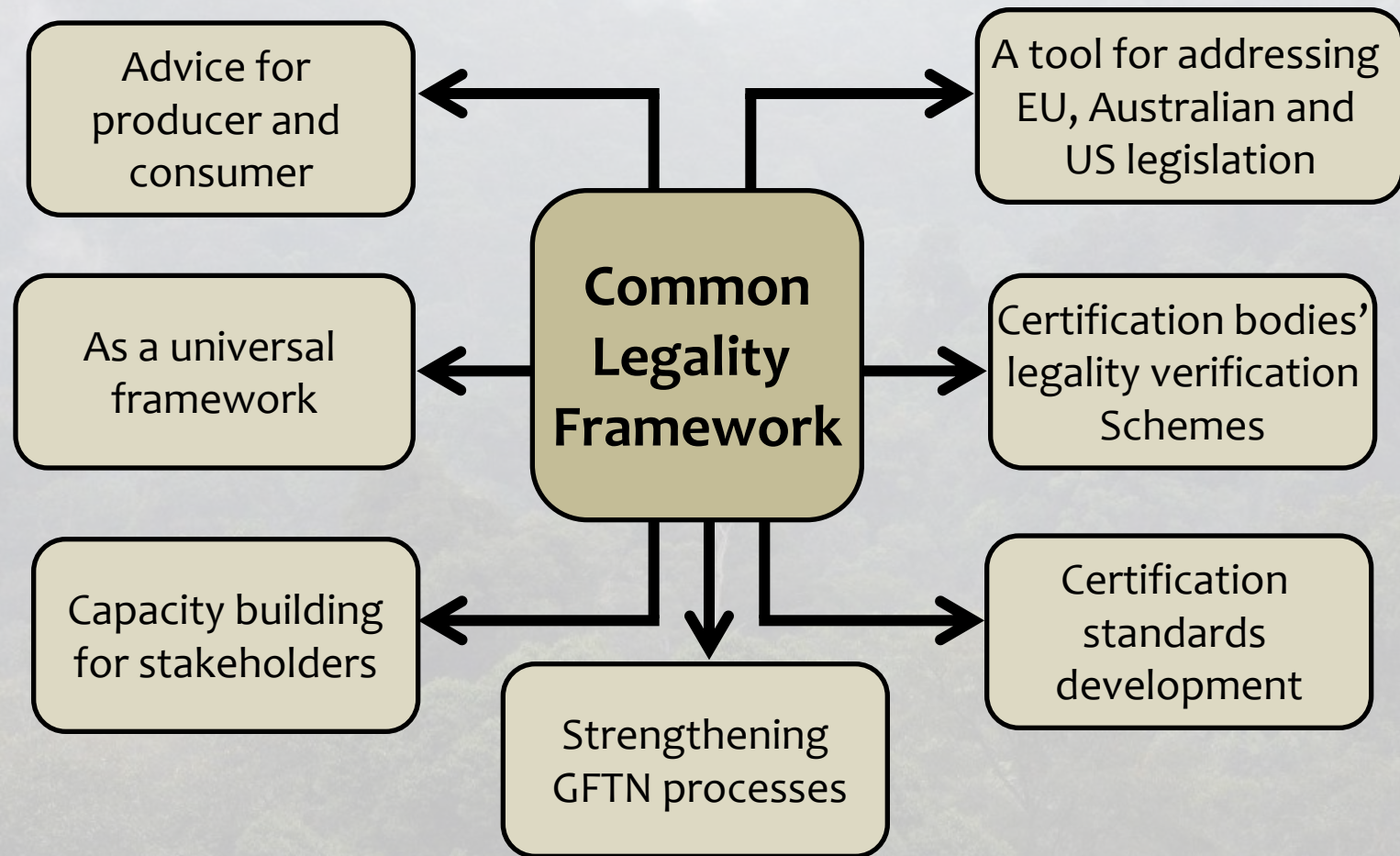
## WWF-GFTN/TRAFFIC Framework - Principles





# Due Care / Due Diligence

## WWF-GFTN/TRAFFIC Framework



# Due Care & Due Diligence

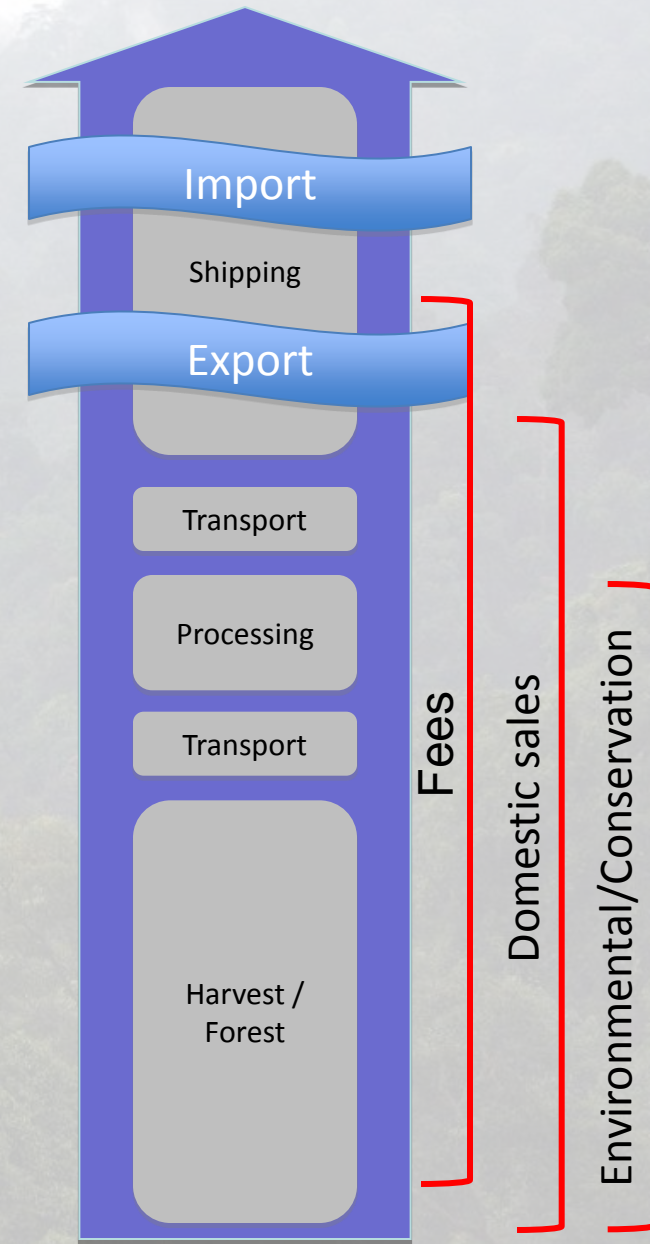
## Possible Principles to meet requirements of Due care and Due diligence through WWF-GFTN/TRAFFIC Framework:

1. Access, use rights and tenure
2. Harvesting regulations
3. Transportation of logs and wood products
4. Processing regulations
5. Import and export regulations
6. Environmental regulations
7. Conservation regulations
8. Social regulations
9. Taxes, fees and royalties

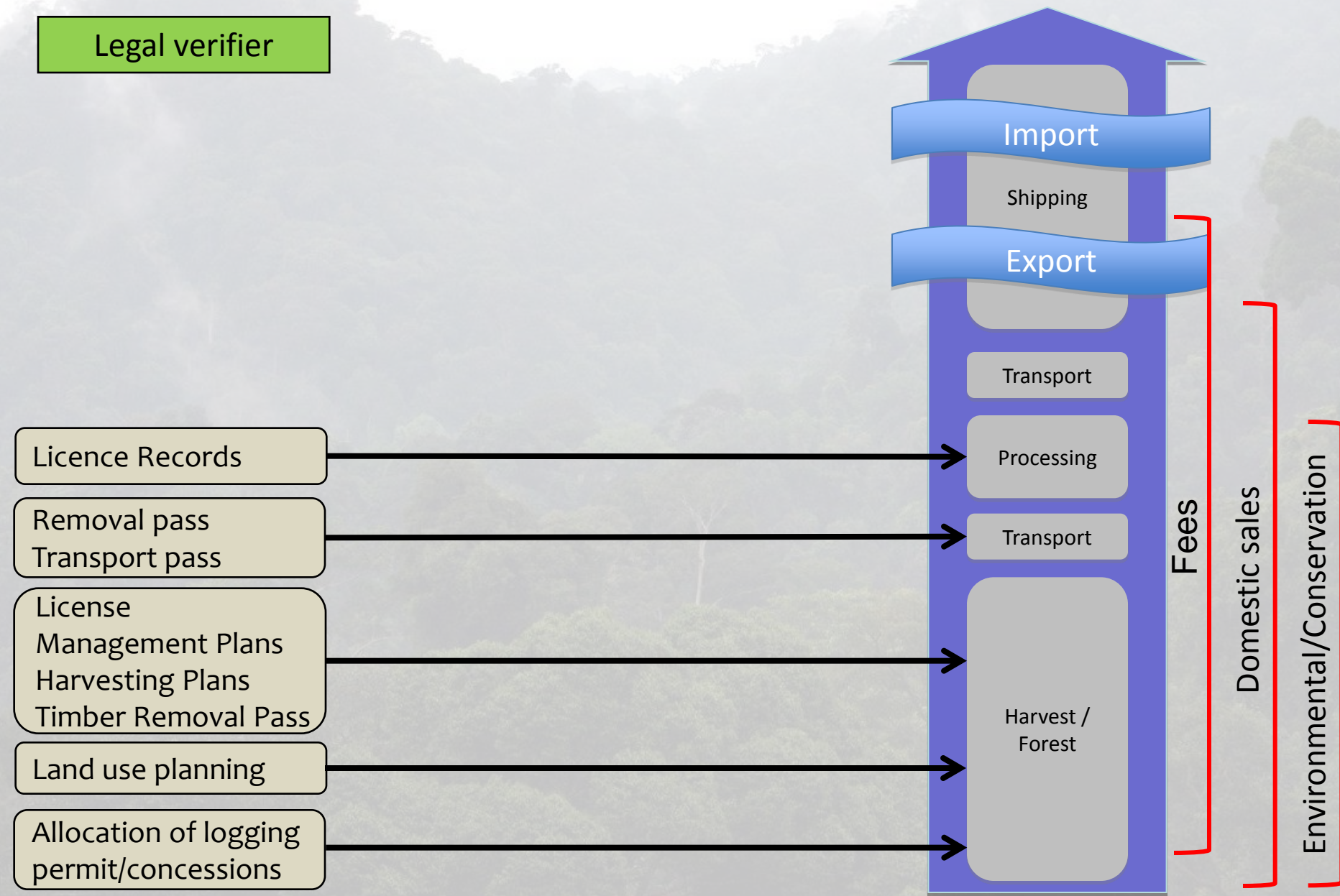


# Due Care

What documents should I have?

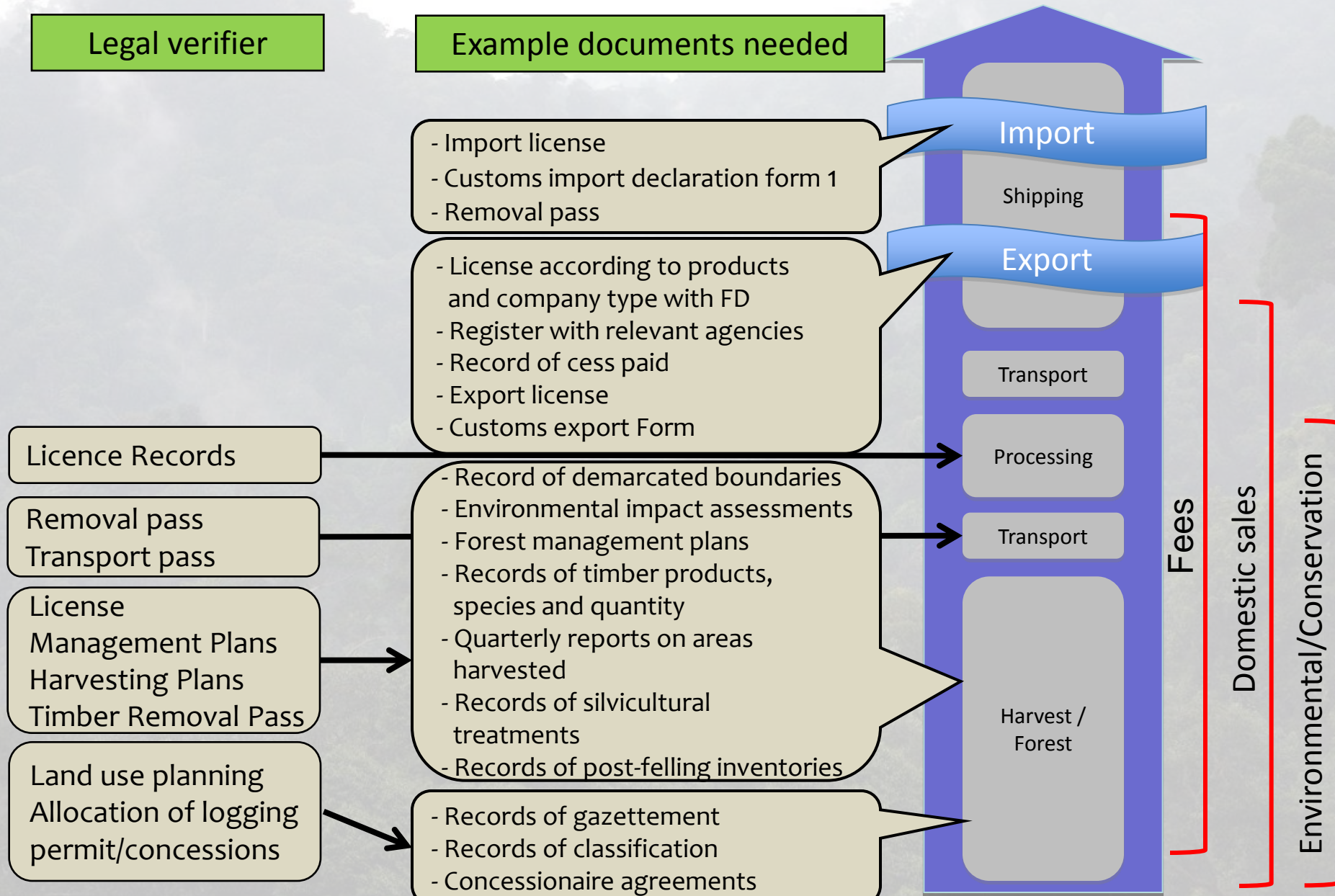


# Due Care





# Due Care



# Due Care - Guidance for Establishing Legality

Stage in Supply Chain	Legislation Component	Relevant Laws to Comply With	Examples of Compliance/Documents to Check	Notes to Remember
Forest	Legal right of tenure, access and harvest	<p>All forest management enterprises, whether public, private or community managed must be able to demonstrate that they have the right of :</p> <ul style="list-style-type: none"> <li>• Tenure;</li> <li>• Manage the forest;</li> <li>• Access the forest;</li> <li>• Harvest forest products from the forest.</li> </ul>	<ol style="list-style-type: none"> <li>1. Establish that there is permission to conduct management, harvest, transport and commerce in plant products (including trees or logs from trees).</li> <li>2. Establish that the company has the tenure to the harvest area.</li> <li>3. Establish that the company has access rights to the harvest area.</li> <li>4. Establish that there is authorised pre-approval to the harvest area.</li> <li>5. Establish that there is a legal or permissive right to harvest.</li> <li>6. Ensure that only species that can be harvested legally were harvested.</li> <li>7. Ensure that the harvesting was conducted in compliance with the harvesting conditions in the permission.</li> <li>8. Ensure that the harvest took place at the site defined within the permission.</li> <li>9. Ensure that the trees harvested are included within the scope of the permission such as quota and diameter at breast height limits.</li> <li>10. Ensure that third parties' legal use and tenure rights are not affected by harvesting.</li> <li>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.</li> <li>12. Ensures that conservation laws are followed, including CITES legislation.</li> </ol> <p>Evidence that the company has a valid agreement that confers on the company the right and permission to manage and harvest the forest.</p> <p>Synonyms/Equivalent include:</p> <ul style="list-style-type: none"> <li>• Forest Authority Certificate</li> <li>• Forest Management License Agreement</li> <li>• Concession agreement</li> <li>• Forest Timber License</li> <li>• Forest Management Permit</li> <li>• A license to operate in the logging sector</li> <li>• Approved management plan</li> <li>• Timber Harvesting License</li> </ul>	<ol style="list-style-type: none"> <li>1. Theft of plants (including trees or logs from trees) such as:               <ol style="list-style-type: none"> <li>a. Taking plants (including trees or logs from trees) from an officially protected area, such as a park or reserve;</li> <li>b. Taking plants (logs) from other types of "officially designated areas of protection" that are recognized by a country's laws and regulations;</li> <li>c. Taking plants (including trees or logs from trees) without, or contrary to, the required harvesting authorization;</li> <li>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).</li> </ol> </li> <li>2. Taking plants from areas where environmental laws have been violated (e.g. river buffer, steep slopes, etc.).               <ol style="list-style-type: none"> <li>a. Taking plants from areas, where third party customary tenure rights are in place or in conflict.</li> <li>b. Taking plants from areas without taking into consideration measures outlined in environmental impact assessments, social impact assessments, etc.</li> </ol> </li> <li>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, etc.</li> <li>4. Documentation for right to harvest will have many criteria which should be checked separately, such as:               <ol style="list-style-type: none"> <li>a. Inventories conducted;</li> <li>b. Boundary demarcation on the ground and on a identified scale map, which may be geo-referenced;</li> <li>c. logging road and skid trail construction specifications;</li> <li>d. identification and marking of protected species, fragile ecosystems, cultural and customary use areas</li> <li>e. Identification of environmentally sensitive areas such as river buffer areas, etc.</li> </ol> </li> </ol>



# Due Care - Guidance for Establishing Legality

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	<p>Forest management companies and harvesting companies are required to be legally registered to operate in this sector.</p> <p>Registration may require a number of other processes to be observed.</p>	<p>Evidence that the company is legally registered and has the required permissions to operate in the forest management and logging sectors.</p> <p>Ensure that all relevant documents and receipts are available including for pre-harvesting, during and post harvesting permission.</p> <p>Evidence that the company has a valid registration and license that confers on the company the right to manage and harvest the forest.</p> <p>Synonyms/Equivalent include:</p> <ul style="list-style-type: none"> <li>• Business license</li> <li>• Land use certificate</li> <li>• Company establishment document</li> <li>• Signed Decision on land allocation</li> <li>• Contract of land use right transfer agreement</li> <li>• Contract of land rental</li> <li>• Document of community's agreement</li> <li>• Forest Authority Certificate</li> </ul>	<p>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.</p> <p>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.</p>
Forest	Payment of Taxes and Royalties	<p>Companies are liable to pay taxes or fees to national or local government (or both) to authorize their management and harvesting.</p>	<p>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.</p> <p>Synonyms/Equivalent:</p> <ul style="list-style-type: none"> <li>• Proof of payment of taxes and fees (e.g. Reforestation fee, Forest Resource Royalties, Value added tax, Income tax)</li> <li>• Valid business license</li> <li>• Tax registration documents</li> <li>• Tax returns</li> </ul>	<p>Ensure that all relevant royalties, taxes or fees have been paid by the forest management company or harvesting company.</p>

# Due Care - Guidance for Establishing Legality

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.	<p>Evidence that the company has used the required documents when transporting logs or timber.</p> <p>Synonyms/Equivalents:</p> <ul style="list-style-type: none"> <li>• Timber transportation certificate</li> <li>• Conveyance certificate</li> <li>• License to carry logs or timber</li> <li>• Timber consignment documents</li> <li>• Removal pass</li> <li>• Removal permit</li> <li>• Packing lists</li> <li>• Lading bill</li> </ul> <p>Evidence that the company has used the required stamps or marks when transporting logs or timber.</p> <p>Synonyms/Equivalents:</p> <ul style="list-style-type: none"> <li>• Log tags</li> <li>• Log identification marks</li> <li>• Hammer marks</li> <li>• Paint marking</li> </ul>	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.	<p>Evidence that the company has acquired any required license to process logs or timber. The license may state the production capacity.</p> <p>Synonyms/Equivalents:</p> <ul style="list-style-type: none"> <li>• Operating license</li> <li>• Timber processing certificate</li> </ul> <p>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.</p> <p>Synonyms/Equivalents:</p> <ul style="list-style-type: none"> <li>• Valid business license</li> <li>• Tax registration documents</li> <li>• Tax returns</li> </ul> <p>Evidence that the company has documentation for timber trade records in connection with timber processing.</p> <p>E.g.:</p> <ul style="list-style-type: none"> <li>• Log reservation quota</li> <li>• Shuttle returns</li> <li>• Monthly production returns</li> <li>• Log input book</li> <li>• Sales contract</li> <li>• Sales invoice</li> </ul>	<p>Some countries require submissions of records of inputs and outputs of the mills to the relevant government agencies for nominal monitoring.</p> <p>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.</p> <p>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.</p>



# Due Care - Guidance for Establishing Legality (Cont.)

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	<p>Laws governing export or trans-shipment, such as a log-export ban.</p> <p>Exports of species that are listed in international conventions (such as CITES).</p> <p>For re-export, laws governing import will need to be followed.</p>	<p>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.</p> <p>Synonyms:</p> <ul style="list-style-type: none"> <li>• The company holds an export licence.</li> <li>• Packing list</li> <li>• Invoice</li> <li>• Bill of lading</li> <li>• Customs declaration form</li> <li>• Tariffs are paid and receipted</li> <li>• Sales contract</li> <li>• Shipping order</li> <li>• Delivery order</li> </ul> <p>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 II listed species.</p>	<p>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.</p> <p>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.</p> <p>Companies importing timber products should request for the Customs Export declaration form.</p> <p>Ensure that the company acting as the exporter is legally established and suitably licensed to export forest products.</p> <p>Ensure that the required export permits are complete, accurate and available.</p> <p>Ensure that the customs import and export documents are available.</p>
Export	Payment of Fees and Royalties	<p>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.</p>	<p>Evidence that the company has paid the appropriate tariffs associated with the products being exported.</p> <p>Synonyms/Equivalents:</p> <ul style="list-style-type: none"> <li>• Tariffs are paid and receipted</li> <li>• Export tax receipts</li> <li>• Customs Duties receipts</li> <li>• Value Added Tax receipts</li> </ul>	<p>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.</p>

# Due Care - Guidance for Establishing Legality

**LOG CERTIFICATE OF LEGALITY**

Lampiran : II

**SURAT KETERANGAN SAH KAYU BULAT (SKSKB)**  
(Merupakan surat keterangan sahnya hasil hutan)

Nomor Seri: **DG 0000000** SERIAL NUMBER

Provinsi: **PROVINSI** Kabupaten/Kota: **DISTRICT/CITY** Masa berlaku: **EXPIRATION DATE** Dari tanggal: **19/**

<b>PENGIRIM</b>		<b>PENGANGKUTAN</b>	
Nama	<b>IDENTITY OF SENDER</b>	Melalui	<input type="checkbox"/> Darat <input type="checkbox"/> Sungai <input type="checkbox"/> Laut <input type="checkbox"/> Udara
Alamat dan Nomor Telepon		Menggunakan	<b>TRANSPORTATION MEANS</b>
<b>PENERIMA</b>		Identitas	
Nama	<b>IDENTITY OF RECEIVER</b>	Alamat	
Alamat dan Nomor Telepon		Tempat Muat	
		Alamat lokasi bongkar	<b>TUJUAN PENGANGKUTAN</b>
		Transit	<b>DESTINATION</b>

No	KELOMPOK JENIS	JUMLAH (Batang)	VOLUME (M3)	ASAL USUL
	<b>SPECIES GROUP</b>	<b>PIECES</b>	<b>VOLUME</b>	<b>IDENTITY OF ORIGIN</b>
Jumlah		DENGAN ANGKA	DENGAN HURUF	<b>SUMMATION</b>

Kayu Bulat yang diangkut sesuai kolom-kolom tersebut di atas, merupakan rekapitulasi dari Daftar Kayu Bulat (DKB) sebagaimana terlampir.

<b>PENERBITAN SKSKB</b>		Tanda Tangan Penerima	
Nama Penerima	<b>IDENTITY OF CERTIFIED PERSONNEL</b>		<b>SIGNED BY CERT. PERSONNEL</b>
Nomor Register			
Tanggal penerbitan			
<b>PERPANJANGAN MASA BERLAKU SKSKB</b>		<b>PENERIM</b>	
Alasan	<b>EXTENSION OF EXP. DATE</b>	Nama Penerima	<b>IDENTITY OF RECEIVER</b>
Diperpanjang		Jabatan	
Nama Pejabat		Pembahasan	
Jabatan/NIP		Tanggal	
Lokasi		Lokasi	

Tanda Tangan dan Stempel Instansi Kehutanan, Tanda Tangan dan atau Stempel Perusahaan,

KOLOM ISIAN P3KB	
1. SKSKB ini merupakan surat keterangan sahnya hasil hutan sesuai Undang-Undang Risperada Indonesia Nomor 41 Tahun 1999 dan berlaku hanya untuk satu kali penggunaan.	<b>1. CHECKED AND VERIFIED BY P3KB</b>
2. Semua keterangan/kegiatan yang tercatat di dalam dokumen SKSKB ini harus sesuai dengan kondisi yang sebenarnya.	<b>2. Pemeriksaan Fisik Kayu Bulat</b>
3. Lembar ini terdiri dari 2 (dua) rangkap: rangkap pertama kayu bulat yang diangkut, dikawat dan atau teras, setelah kayu bulat tersebut di tempat tujuan wajib segera dilaporkan kepada P3KB untuk diarsipkan.	<b>3. Diterima tanggal</b> Dari tanggal: <b>s/d tanggal:</b> Tanda Tangan

Model DK-8491 Lembar 3a-1

Lembar Potongan Untuk Arsip P3KB

Ditai oleh Penerima pada waktu Penerimaan		Ditai oleh P3KB	
1. Nomor Seri SKSKB	<b>SLIP-COPY FOR P3KB</b>		<b>N a m a</b>
2. Provinsi			
3. Jumlah batang			
4. Volume		Tanggal Diperiksa	Pargil
5. Nama Pengirim			
6. Alamat Pengirim & No. Telepon			

**Plant Quarantine Certificate**

**植物检疫证书 (省内)**

林 检 字 第 02203595 号

调运单位(人)及地址	收货单位(人)及地址	植物或植物产品来源	运输工具
调运(承运)人姓名	收货人姓名	植物或植物产品名称	规格
身份证号	身份证号	品名(或材料)	单位
联系电话	联系电话	数量	备注
有效期限 自 年 月 日至 年 月 日			
运输起运地 自 经 至 运往何处			
植物或植物产品来源			
运输工具			
有效期限			
植物或植物产品名称			
品名(或材料)			
规格			
单位			
数量			
备注			

签发意见: 上列调运的植物或植物产品, 经 未发现林业检疫性有害生物和有害(区、市)补充林业检疫性有害生物, 同意调运。

签发机关: 植物检疫处 检疫员(签名) 王 旭 光

签证日期: 2004 年 02 月 02 日

注: 1. 本证无调出地林业植物检疫机构检疫专用章和检疫员签名无效; 2. 本证转让、涂改和重复使用无效; 3. 一年(期)一证, 全年有效。

Lampiran : II

**DEPARTEMEN KEHUTANAN**  
**FAKTUR ANGKUTAN KAYU BULAT (FA-KB)**  
(Merupakan surat keterangan sahnya hasil hutan)

Nomor Seri: **PT.XX 0000000** serial number listed by the company

Province: **District/City** Kabupaten/Kota: **District/City** Masa berlaku: **Expiration date** Dari tanggal: **19/**

<b>PENGIRIM</b>		<b>PENGANGKUTAN</b>	
Nama	<b>Identity of Sender</b>	Melalui	<input type="checkbox"/> Darat <input type="checkbox"/> Sungai <input type="checkbox"/> Laut <input type="checkbox"/> Udara
Alamat dan Nomor Telepon		Menggunakan	<b>Identity of Transportation means</b>
<b>PENERIMA</b>		Identitas	
Nama	<b>Identity of receiver</b>	Alamat	
Alamat dan Nomor Telepon		Tempat Muat	
		Alamat lokasi bongkar	<b>TUJUAN PENGANGKUTAN</b>
		Transit	

**Specification of Logs**

☐ Kayu Bulat ☐ Kayu Bulat Kecil

No.	KELOMPOK JENIS KAYU	JUMLAH (Batang)	Stapel Meter (SM)	Meter Kubik (M3)	ASAL KAYU
Jumlah		DENGAN ANGKA	DENGAN HURUF		

Kayu Bulat/Kayu Bulat Kecil yang diangkut sesuai kolom-kolom tersebut di atas, merupakan rekapitulasi dari DKB/DKB-FA/DKBK Nomor: ..... Tanggal: ..... sebagaimana terlampir.

PENERBITAN FAKTUR ANGKUTAN KAYU BULAT		Tanda Tangan Penerima	
1. Nama Penerima	<b>Legalization of document</b>		<b>SIGNED BY CERT. PERSONNEL</b>
2. No. Register			
3. Tanggal penerbitan			
4. Lokasi penerbitan			

PENERIMAAN KAYU BULAT	PERPANJANGAN	KOLOM ISIAN P3KB
Nama	<b>FA-KB</b>	Nama
Jabatan	Selama: ..... hari	No. Register
Lokasi	Dari tgl. s/d tgl.	Perlakukan Dokumen SKSH
Tanggal	Oleh (Nama/Jabatan/Tid/Cap)	Stempel/Cap Dimatikan
	Diterima tgl.	Dimatikan tgl.
		Pemeriksaan Fisik Kayu Bulat/Kayu Bulat Kecil
		Pelaksanaan
		Dari tanggal s/d tanggal

**CATATAN:**  
Untuk sortimen Kayu Bulat Kecil (KBK), kolom "JUMLAH (Batang)" tidak diisi/dikotakkan.

DK A 301



# Due Care & Due Diligence

## Organizations That Can Help

- USAID's RAFT Programme  
<http://www.responsibleasia.org>
- WWF's Global Forest & Trade Network  
<http://gftn.panda.org>
- Tropical Forest Trust  
<http://www.tropicalforesttrust.com>
- Tropical Forest Foundation  
<http://www.tff-indonesia.org>
- Rainforest Alliance  
<http://www.rainforest-alliance.org>
- EIA/WRI's Forest Legality Alliance  
<http://www.wri.org/fla>



## Any Questions?

- *For more information, visit*
- ***[gftn.panda.org/legality](http://gftn.panda.org/legality)***