

Annex VII: Terms of Reference for the Independent Audit (IA)

I. INTRODUCTION

According to Article 10 of the legal text of this Voluntary Partnership Agreement provides for the independent audit (IA), as key element of the Thailand's Timber Legality Assurance System (THTLAS), to assess the functioning and effectiveness of the THTLAS thereby ensuring the credibility of the FLEGT licensing scheme. This Annex describes the process and procedure for carrying out an independent audit of the THTLAS.

The independent audit shall be carried out by an independent third party that is appointed by Thailand in consultation with the Union. The [draft] Terms of Reference (ToR) contained herein sets out the tasks, functions, considerations relevant for a methodology to be followed, as well as the qualifications required by the potential service provider.

II. PURPOSE AND SCOPE OF THE INDEPENDENT AUDIT

The purpose and objective of the IA is to assess the functioning and effectiveness of the THTLAS thereby ensuring the credibility of the FLEGT licensing scheme. The IA may also recommend any adjustments to the THTLAS and/or its implementation that may prove necessary.

III. TASKS

The overall task of the IA is to evaluate and monitor implementation of the system established to verify 'legal production' of timber and timber products in accordance with all aspects of the THTLAS. Key issues that will be assessed include the way the system functions to ensure compliance with the requirements established in the legality definition and its verification, supply chain controls and its verification, licensing as well as the relevant associated processes - and institutional aspects - that are required for the effective and efficient functioning of the THTLAS and the FLEGT Licensing scheme. All these aspects are described in the VPA and its Annexes, in particular Annexes II [LD], V [TLAS] and VI [SCC] respectively.

The methodology to be used by the IA must be evidence-based and include documentary checks as well as field or on-site visits. Specific tasks of the independent auditor will be to:

- (a) prepare a manual of procedures outlining the framework for the IA's operations including methods for gathering information, assessing evidence and reporting;
- (b) assess that the THTLAS is functioning effectively and that timber harvested, imported, processed, transported and traded have been produced and checked in accordance with

- the requirements of the THTLAS. This includes requirements in respect of the source (and/or source allocation), pre-harvesting, harvesting, transport, processing and export;
- (c) verify that the supply chain controls system is effective and functioning appropriately, confirming that requirements are fulfilled from source allocation (including imports), pre-harvesting operations through to export or sale on the domestic market, including the adequacy of data management;
 - (d) assess the performance and effectiveness of all government agencies in relation to their THTLAS verification activities;
 - (e) assess the process for issuance of licences to provide a confirmation that a shipment of timber products has been legally produced and verified in accordance with the requirements of the THTLAS, and that the licence function is efficient and does not unduly delay or burden the licence-holder;
 - (f) assess how non-compliances reported by the different government agencies involved in the THTLAS verification are recorded, addressed and archived by the relevant authorities. This includes assessing the effectiveness of information flow between these agencies with a view of informing compliance with the THTLAS by an operator [and civil society];
 - (g) identify gaps and weaknesses, to the extent relevant, in the design and implementation of the THTLAS, i.e. the functioning of the supply chain controls, legality verification and licensing components of the THTLAS, and the level of impact on the credibility of the THTLAS, and suggest recommendations to the Joint Implementation Committee (JIC);
 - (h) report findings and recommendations to the JIC, which is required to publish the summary of these audit reports regularly; and,
 - (i) assess the implementation of corrective measures agreed by the JIC to address deficiencies identified in IA reports.

The tasks listed above may be further developed and/or refined, once the JIC has been established, with a view to procuring a suitable service provider.

IV. METHODOLOGY: METHODS FOR GATHERING AND ASSESSING INFORMATION AND REPORTING

The IA is required to demonstrate professionalism and integrity in the discharge of its responsibilities. The IA shall prepare a manual of procedures outlining methods for gathering information, assessing evidence and reporting. The IA shall use the procedures established in the Independent Auditor Manual to conduct audits, field visits and investigations, to seek feedback from stakeholders and to document and report its findings to the JIC for subsequent publication. The manual of procedures proposed by the IA will be reviewed, agreed to and approved by the

JIC. The approval of the IA's methodology, associated procedures for evidence gathering and reporting format (as contained in the IA manual) will be a mandatory precondition for the IA to commence its operations.

4.1. Work schedule.

- (a) The IA shall assess or evaluate the performance of the THTLAS on an annual basis.
- (b) The IA may, in the event of good reason, increase the frequency of its annual audit. In the event that such a need arises, it will be considered and approved by the JIC.
- (c) The IA may also conduct impromptu audits and spot checks as necessary or conduct them at the request of one of the Parties.

4.2. Scope of work.

- (a) The activities of the IA shall cover all aspects of the THTLAS, including compliance with the Legality Definition, the Supply Chain Controls system, Verification and Licensing, and any certification scheme that the Government has approved as providing evidence of compliance with the THTLAS.
- (b) The IA shall audit the relevant activities of all institutions, including Government agencies, responsible for different aspects of implementation of the THTLAS.
- (c) The IA shall assess the coordination between the Licensing Authority in Thailand and the competent authorities of the Member States of the Union.
- (d) The IA will provide information on the impact of FLEGT licences on trade in timber products to the Union (qualitative and quantitative criteria), including as regards to the free circulation of products covered by FLEGT licences within the Union market, by making use of the reports of the Independent Market Monitor (IMM) where possible.

4.3. Evidence gathering.

The IA Manual of Procedures shall describe procedures and practices for gathering evidence which will include field checks, investigations, interviews, documentation and how the IA will respond to complaints arising from its work.

4.4 Assessment.

During investigations, the IA will ensure that evidence is assessed in accordance with a documented and evidence-based methodology, which meets the requirements of ISO/IEC 19011 or an equivalent standard. The JIC will agree to the methodology / manual of procedures to be followed by the IA prior to the commencement of any of its activities. The IA will seek the views of stakeholders and use information received from stakeholders who are either directly or indirectly involved in the implementation of the THTLAS at any stage. The IA shall conduct its

assessment with integrity and respect the appropriate protocol in maintaining confidentiality of data received / resources.

4.5. Audit systems.

In documenting audit evidence, diagnosing failures and non-compliances in any part of the THTLAS and its implementation and following up corrective action taken, the IA shall:

- (a) keep appropriate records of audit evidence detailing performance, compliance, non-performance and non-compliance;
- (b) record and assess the overall performance of different aspects of the THTLAS, including licensing requirements, and the action taken to address the non-performance or non-compliance;
- (c) record observed system-related weaknesses, gaps and areas requiring improvement in the THTLAS and ensure that each is appropriately distinguished from the others;
- (d) record and assess the effectiveness of all corrective measures implemented by the parties concerned, including the Royal Forest Department (RFD), other Government authorities, private bodies, and partner institutions responsible for other aspects of the THTLAS.
- (e) evaluate the implementation of, and compliance with safeguard measures as agreed by the JIC.

V. REPORTS AND DISSEMINATION

The IA will draw up its reports in accordance with the format agreed with the JIC. It must:

- (a) report on its activities in accordance with the work schedule agreed with the JIC;
- (b) draw up its reports in accordance with internationally accepted auditing principles, as specified in its contract and/or endorsed by the JIC;
- (c) present all reports to the JIC, which will comment on them;
- (d) draw up final reports which reflect the JIC's comments.

Reports approved by the JIC will be considered public documents and summaries must be published on the Parties' websites.

VI. SOURCES OF INFORMATION

Primary sources of information shall include document reviews, field visits and consultations/meetings with relevant stakeholders who are identified in the Legality Definition of the legality verification matrix (Annex II). The Royal Thai Government and the Union will ensure that the IA has access to all necessary information, including documents and databases and or information systems (such as Thailand's ~~[e-tree]~~ or the National Single Window System (NSW), electronic certification system etc.) that it deems relevant, especially those that are needed to assess the efficiency of systems established to verify compliance with the THTLAS. This shall include access to information produced and/or held by branches and agencies of the public authorities as well as private bodies recruited by those public authorities. In accordance with their respective national legislation on data protection, the Parties may nonetheless refuse to disclose information that they are not permitted to communicate.

The IA shall also have full access to all forest production areas and timber industries. This will include access to logging sites and other areas where forest resources are being extracted, transported and processed, and to points of import and export. This broad access is designed to enable the IA to uncover weaknesses wherever they exist in the THTLAS.

Sources of information shall also include information and complaints brought to the attention of the IA – including on its own evaluation activities – from organisations and individuals about the operation of the THTLAS and the FLEGT Licensing scheme.

VII. QUALIFICATIONS REQUIRED

The potential service provider, or applicant IA body must be an independent institution capable of demonstrating its integrity, credibility, proven track record for conducting similar audits, as well as the capacity to conduct systematic analysis.

In accordance with Article 10(3) of this Agreement, the IA shall be a body with no conflict of interest resulting from an organisational or commercial relationship with the Union or with the Thai forestry sector regulatory authorities. Similarly, it shall have no affiliation with the Licensing Authority, or anybody given the responsibility of verifying the legality of timber production; or any operator exercising a commercial activity in its forestry sector. It is the responsibility of the potential service provider, or the applicant IA to ensure that its personnel declare any potential conflict of interest and, where such conflicts exist, to explain what measures it will take to mitigate them.

In addition, the potential service provider, or applicant IA body must have a documented internal quality management system in place with published policies, methods and procedures

that meet the requirements of ISO 17021,¹ or equivalent standards (and internationally accepted best practices). Its audits must be conducted in accordance with procedures that meet ISO 19011,² or equivalent standards. In line with the requirements of these standards, it must have experience in audits of management systems as well as have a method and mechanism for transparently handling complaints and grievances arising from its work.

The potential service provider or applicant IA body must have a range of skills in addition to auditing, preferably in relation to the forest sector, and adequate expertise and experience in performing similar functions in other parts of the world, preferably in Asia. Its team of experts must have sufficient and appropriate experience of Thailand, supplemented by a wider understanding of the commercial forestry sector and its dynamics in Asia. Personnel should display expertise in various fields of forestry, including forest management, processing, traceability and international trade in timber and timber products.

VIII. SELECTION PROCESS AND INSTITUTIONAL ARRANGEMENTS

The JIC will decide on the funding and/or financing mechanism for the appointment of the IA.

The potential service provider, or applicant IA body will be recruited by competitive bidding process that is open to national and international entities in accordance with Thai law. Based on the above terms of reference, subject to the needs of the tendering process, more specific terms of reference may be drawn up by the JIC.

It is the responsibility of the Government of Thailand to initiate the recruitment and selection of the body/ institution to carry out the independent audit, based on the JIC's recommendations. The tender evaluation process must be transparent, and all stakeholders must be informed of the criteria that will be applied. A summary of the tender evaluation report will be made public.

¹ ISO/CEI 17021:2006. Conformity assessment - Requirements for bodies providing audit and certification of management systems. The ISO 17021 standard of the International Organization for Standardization (ISO) applies to the IA and its operation. This standard contains principles and requirements for the competence, consistency and impartiality of the audit and certification of management systems, as well as for the bodies carrying out these activities.

² ISO 19011:2002. Guidelines for quality and/or environmental management systems auditing. This Standard contains: the principles of auditing management systems; advice on the competence and evaluation of auditors; guidance on the management of audit programmes; and guidance on the conduct of internal or external audits.