

## GAZETTE PUBLISHED BY AUTHORITY

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THE GOVERNMENT OF THE REPUBLIC OF LIBERIA ANNOUNCES A REGULATION PROMULGATED BY THE FORESTRY DEVELOPMENT AUTHORITY IN PURSUANT TO CHAPTER 19, SECTION 19.1 OF THE NATIONAL FORESTRY REFORM LAW OF 2006 HAS ISSUED A REGULATION NO. 118-17 HEREINUNDER:

REGULATION ON CONFISCATED LOGS, TIMBER AND TIMBER PRODUTS.

BY ORDER OF THE PRESIDENT

MARJON V. KAMARA MINISTER OF FOREIGN AFFAIRS

MINISTRY OF FOREIGN AFFAIRS MONROVIA, LIBERIA OCTOBER 24, 2017

#### **Forestry Development Authority**

### Regulation No. 118-17 on Confiscated Log, Timber and Timber Products

#### **PREAMBLE**

**WHEREAS**, the National Forestry Reform Law of 2006 ("NFRL") establishes a transparent framework for the sustainable use, management, and protection of forest resources that balances the commercial, community, and conservation priorities of the Republic of Liberia;

**WHEREAS**, the National Forestry Reform Law of 2006 conferred on the Forestry Development Authority ("FDA") the power to make, promulgate, issue, amend and rescind rules and regulation to ensure the accomplishment of all the policies and objectives of the FDA (Chapter 19, Section 19.1);

WHEREAS, confiscated log and Timber Products are not compliant with the Legality Assurance System established for the Republic of Liberia which by virtue of their confiscation exclude such Timber or Timber Products from the Chain of Custody System and their former legal status;

**WHEREAS**, the Legality Assurance System requires the regulation of the circumstances under which Timber and Timber Products may be confiscated as well as the conditions under which such confiscated Timber and Timber Products may be reintroduced into the legal system in order to be acquired, owned and/or used by a person; and

**WHEREAS**, the Forestry Development Authority is authorized by law to promulgate and issue rules and regulations having the force of law to ensure the orderly and lawful confiscation of certain Timber and Timber Products as well as their reintroduction for legal use.

**NOW, THEREFORE**, the Forestry Development Authority does hereby rule and regulate as follows -

PART ONE: DEFINITION AND PURPOSE

**Section 1: Definitions** 

In this regulation, the following terms have the following meaning indicated unless the

context otherwise requires -

• "Authority" means the Forestry Development Authority, created in terms of the Act

Creating the Forestry Development Authority of 1976.

"Board" means the Board of Directors of the Authority established pursuant to section

6 of the Act Creating the Forestry Development Authority of 1976.

"Chain of Custody" means the path of custodianship followed by Timber and Timber

Products through harvesting, transport, interim storage, processing, distribution, sale,

import and/or export from source of origin in the forest to end-use.

"Confiscated Timber and Timber Products" means Timber and Timber Products

seized and confiscated by the competent authorities in terms of this Regulation.

• "FOB" or "Free of Board" is an international commercial term prescribed by the

International Chamber of Commerce, as amended, and means that the seller must

load the goods on board the vessel nominated by the buyer but that cost and risk are

divided when the goods are on board the vessel and the seller clears the goods for

export.

"FLEGT License" means the document, whether in paper or in electronic form, that is

used by the designated authority in the Republic of Liberia, confirming that a shipment

of Timber and Timber Products to the international market has been legally sourced

and verified in accordance with the requirements of Liberian Law and International

Law "Legality Assurance System" or "LAS" means the legal control mechanism

established in the Republic of Liberia hat ensures the legality of the allocation of forest

use rights and harvesting, transport, processing and selling of Timber and Timber Products in accordance with Liberian Law.

- "Log" a portion of a tree (i) with or without side limbs and barks remove, otherwise substantially intact and for further processing (ii) a felled tree of length not less than one (1) meter and not less than 30 centimeters at the top of diameter recognized defect 30%.
- "Premises" includes land, any building or structure, or any vehicle, conveyance, ship, boat or aircraft.
- "Timber" means cut wood or Logs.
- "Timber Products" mean any processed item deriving wholly or in part from wood, including without limitation, wood in the rough, sawn, chipped, shaped, or plywood, veneer, particleboard, laminated board or other ligneous materials, pulp, paper, fuelwood, frames, packing materials, tools, joinery, carpentry or furniture.
- "Trade" means to sell, buy, barter, exchange, offer or expose for sale, barter, exchange or offer Timber and Timber Products.
- "Vendor" means any natural or legal person who sells Timber and Timber Products.
- "VPA" means the Voluntary Partnership Agreement of 2011 entered into between the European Union and the Republic of Liberia on Forest Law Enforcement, Governance and Trade ("FLEGT") in Timber Products to the European Union.

Any other terms used in this Regulation have the meaning established in the National Forestry Reform Law of 2006, as amended.

#### **Section 2: Purpose**

(a) The purpose of this Regulation is to -

(1) Ensure that contract holders, concessions, and exporters operate in compliance with the Legality Assurance System of the Republic of Liberia. Clarify the conditions under which Logs, Timber and Timber Products shall be confiscated;

(2) Stipulate the requirements to be satisfied in order to have Confiscated Timber and Timber Products re-enrolled in the Chain of Custody System and reintroduced into the Legality Assurance System; and

(3) Formulate the rights to, and permissive use of, Confiscated Timber and Timber Products.

#### PART TWO: CONFISCATION OF TIMBER AND TIMBER PRODUCTS

#### **Section 3: Grounds for Confiscation**

- (a) No Timber and Timber Products shall be confiscated except on the following grounds -
- (1) The Timber and Timber Products are from an illegal source by virtue of the fact that the Timber and Timber Products -
  - (i) have been harvested outside the concession area;
  - (ii) have been harvested in a Protected Area;
  - (iii) have not been enrolled in the Chain of Custody System;
  - (iv) are of protected species; or
  - (v) were harvested in violation of any law, regulation, guideline, code of harvesting practice, authority, permit or license.

- (2) The Timber and Timber Products are imported into. or transported in the Republic of Liberia without a valid waybill and/or other prescribed transportation documents;
- (3) The Timber and Timber Products imported into the Republic of Liberia are infested or infected with harmful pests or diseases;
- (4) Applicable taxes in respect of Timber and Timber Products are not fully paid; and
- (5) Due to failure to comply with any other laws or regulations applicable to Timber and Timber Products.

#### Section 4: Procedure for Confiscation

- (a) Timber and Timber Products shall be confiscated only upon an order of the Circuit Court in the County where the Timber and Timber Products are located.
- (b) The Authority shall follow the following procedure to secure a confiscation order by the Court -
  - (1) A sworn forest officer pursuant to section 20.5 of the National Forestry Reform Law of 2006, but subject to a valid warrant issued in terms of Chapter 11 of the Criminal Procedure Act 1972, may visit and enter any area or any premises, search for and seize any Timber and Timber Products stipulated in section 3 of this Regulation for confiscation purposes;
  - (2) The sworn forest officer shall forthwith upon seizure, remove and transport or cause the removal and transport of such Timber and Timber Products to the location specified in the warrant for safe storage;
  - (3) The Authority shall ensure that any seized Timber and Timber Products for confiscation purposes are at all times kept in safe storage whilst preserving their condition until the Authority relinquishes control of the confiscated Timber and Timber Products on instruction of the Circuit Court;

- (4) The Authority shall lodge a confiscation application by way of a petition filed with the Circuit Court of the County in which the Timber and Timber Products were seized and kept in safe storage;
- (5) No Timber and Timber Products shall be finally confiscated unless by, and in conformance with, an order of the Circuit Court.

#### PART THREE: STATUS OF CONFISCATED TIMBER AND TIMBER PRODUCTS

#### **Section 5: Ownership of Confiscated Timber and Timber Products**

- (a) Confiscated Timber and Timber Products shall not be privately owned and/or used but are publicly owned until otherwise ordered by the Circuit Court.
- (b) The Circuit Court shall stipulate in the confiscation order if the Confiscated Timber and Timber Products are to be used only for public purpose or to be sold for private use on public auction.
- (c) The confiscation order by the Circuit Court shall remove and expunge all past claims and/or rights of any person to such Timber and Timber Products.

#### Section 6: Public Auction of Confiscated Timber and Timber Products

- (a) The Authority, on instruction of the Circuit Court, shall sell the confiscated Timber and Timber Products to the highest bidder at public auction at such time and at the place where the Timber and Timber Products are kept for safe storage as a unit or in such lots or combinations thereof, as in his judgement will bring the highest price, provided that the confiscated Timber and Timber Products shall not be auctioned for less than the total cost of seizure, transportation, storage and administration by the Authority and the cost of the public auction by the Authority.
- (b) The Authority shall access or cause to be accessed the monetary value of the Confiscated Timber and Timber Products prior to the auction along with the

associated cost of seizure, transportation, storage, administration and public auction.

- (c) No sale may be made to the Authority and the Circuit Court, any person employed by the Authority or to persons on the debarment and suspension lists as prescribed by section 44 of the Public Procurement and Concessions Commission Act of 2005 and Part Two of Regulation No 103-07 of the Authority, as well as anyone that is disqualified by law from owning forest products in the Republic of Liberia.
- (d) The Confiscated Timber and Timber Products to be auctioned shall be present and within the view of those attending the sale unless otherwise ordered by the Circuit Court.
- (e) The successful bidder at the public auction shall become the owner and take delivery of the Confiscated Timber and Timber Products upon presentation to the Circuit Court of the receipt confirming payment of the bid price.
- (f) The successful bidder of the public auction shall within five (5) working days from the date on which he takes possession of the Confiscated Timber and Timber Products, make written request to the Authority to enter such Timber and Timber Products into the Chain of Custody System with the appropriate notations that they were earlier confiscated and acquired through public auction.
- (g) The Authority shall not enroll Confiscated Timber and Timber Products into the Chain of Custody System -
  - (1) without a valid confiscation and subsequently released order from the Circuit Court in the County where the Confiscated Timber and Timber Products are located; and
  - (2) if the successful bidder who acquired the Confiscated Timber and Timber Products by public auction has not paid the bid price or is otherwise disqualified by law from owning forest products in the Republic of Liberia.

(h) Upon re-enrolment of the Confiscated Timber and Timber Products in the Chain of

Custody System, the legality of such Timber and Timber Products is re-established

and such Timber and Timber Products may be lawfully owned, traded and used.

Section 7: Public Use of Confiscated Timber and Timber Products

No Confiscated Timber and Timber Products may be sold by public auction, re-(a)

enrolled into the Chain of Custody System or reintroduced into the legal system, if

(1) it will support the illegal objective or illegal conduct that caused the

confiscation:

(2) it is so ordered by the Circuit Court in the confiscation order; or

(3) if no bid for the Confiscated Timber and Timber Products was successful at

the public auction.

(b) The Authority shall apply to the Circuit Court for an order that the Confiscated

Timber and Timber Products referred to in Section 7(a) must be made available

for public use only and be donated free of charge to a local community, civil

organisation, community-based organisation or non-governmental organisation for

non-commercial use as ordered by the Court.

PART FOUR: OFFENCES AND REPEAL

**Section 8: Offences** 

A person commits an offence if that person -(a)

(1) intentionally or negligently cause any Timber and Timber Products referred to

in Section 3(a) to be confiscated;

(2) uses, trades or owns Confiscated Timber and Timber Products in violation of Section 5(a) and Section 6(c) and (f).

#### **Section 9: Penalties**

- (a) A person convicted of Section 8(a)(1) is liable to -
  - (1) if he is the holder of a forest contract that contravenes Section 3(a), payment of a fine in United States Dollars equivalent to two times the prevailing FOB price in USD per cubic meter, for a first conviction, and four (4) times the prevailing FOB price in USD per cubic meter for repeated convictions of this offence;
  - (2) if he/she is a non-contract holder of a forest contract who was convicted of contravening Section 3(a), payment of a fine in United States Dollars of 3 times the prevailing FOB price per cubic meter, for a first conviction, and of 6 times the prevailing FOB price per cubic meter for repeated convictions of this offence;
  - (3) if he/she is an importer or exporter who is convicted of violating Section 3(a), payment of a fine in United States Dollars of 4 times the prevailing FOB price per cubic meter, for a first conviction and of 8 times the prevailing FOB price per cubic meter, for repeated convictions of this offence; or
  - (4) to imprisonment of 6 months, or to both such fine or imprisonment; and
  - (5) upon consecutive convictions of this offence, the Court may order forfeiture of the relevant forest resources licence, export licence and/or other authorisation by a competent authority.
- (b) All fines shall be paid into the revenue of the Government of Liberia.

#### Section 10: Review and Amendment

(a) This Regulation may be reviewed and amended from time to time as warranted by circumstances and in conformance with the provisions of Regulation No. 101-07 with respect to public participation in the promulgation of regulations, codes and manuals.

#### **Section 11: Effect of Previous Regulatory Actions**

(a) Notwithstanding this new regulation, anything lawfully done before the commencement of this regulation, shall continue to have legal force and effect until anything lawfully done under this regulation overrides it.

#### **Section 12: Effective Date**

The effective date of this Regulation shall be the date of its publication into the Official Gazette under the authority of the Ministry of Foreign Affairs as posted on the cover page.



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REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

# PASSING ON THE REGULATION ON CONFISCATION OF TIMBER AND TIMBER PRODUCTS

WHEREAS, the National Forest Policy and Strategy promotes sustainable management and use of forest resources in a manner that advances the availability of these resources for future generations while at the same time ensuring that said forest resources do contribute to the improvement of livelihood and economic development of the current generation;

**WHEREAS**, Section 5.1 (d) of the National Forest Reform Law of 2006 grants the Forestry Development Authority(FDA) the power to control any activity involving forestlands, forest resources or forest products though Regulation;

**WHEREAS**, Section 23 (a, b, c) of Regulation 101 – 07 mandates the FDA to adopt and/or amend Regulation that control and give guidance to all persons engaged in forest-sector activities;

WHEREAS, the FDA, seeking to adopt a Regulation on the Confiscation of Timber and Timber Products in accordance with Regulation 101-07, Section 23 d (1 & 2) has promulgated a Regulation with specificity on the Confiscation of Timber and Timber Products to enable the FDA confiscate timber and timber product through courts of competent jurisdiction;

**WHEREAS**, copy of the said Regulation on the Confiscation of Timber and Timber Products was distributed to each member of the FDA Board of Directors for review and comments upon which the Board resolved during its Regular Sitting on February 14, 2017 that if no comment(s) is/are received from the Board, then the subject Regulation shall be deemed/considered approved;

**NOW THEREFORE**, for the forgoing reasons above stated, it is hereby resolved by the FDA Board of Directors:

## REPUBLIC OF LIBERIA FORESTRY DEVELOPMENT AUTHORITY (FDA)

Office of the Board Chairperson

FORESTRY

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- That the Regulation on Confiscation of Timber and Timber Products having being reviewed by the members of the Board of Directors from February 14, 2017 up to and including the present; followed by no written comments is hereby considered adopted;
- 2. That the FDA Board of Directors adopted Regulation on Confiscation of Timber and Timber Products shall be presented to the Office of the President of the Republic of Liberia for approval before the implementation of the said regulation takes effect;
- 3. That upon taking effect, this Regulation on Confiscation of Timber and Timber Products shall be published in two (2) widely read newspapers and posted onto FDA Website.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed the seal of the Forestry Development Authority on this --------day of May AD.2017 in the City of Monrovia, Montserrado County, Republic of Liberia.

SEAL

Darlington S. Tuagben

SECRETARY

Approved:

Sr. Mary Laurene Browne, OSF

CHAIRMAN