

6 LEGALITY REVIEW PER CONTRACT

6.1 FMC A – Alpha Logging

6.1.1 Principle 1: Legal existence/recognition and eligibility to operate in forestry sector

<i>Key Document & Responsible Party</i>	<i>Supporting Documents and Other Requirements</i>		<i>Document assessment</i>
Company	1.1.1	Business Registration Certificate	A
	1.1.2	Articles of incorporation	A
	1.1.3	Declaration of ownership	C
	1.2.3	List of shareholders and beneficiaries	A
	1.3.1	Notarized affidavit executed by its CEO declaring that company's owners do not include prohibited person	C

FMC A is mostly compliant with principle 1.

The company's registration is up to date and its articles of incorporation meet legal and regulatory standards. The declaration of ownership and notarized affidavit declaring that company's owners do not include prohibited persons were unavailable for review.

Therefore, **FMC A is partially compliant with Principle 1.**

6.1.2 Principle 2: Forest allocation

Key Document & Responsible Party	Supporting Documents and Other Requirements		Document assessment
FDA	2.1.1	Socio economic survey report	B
	2.1.3	Proof of community consultation	C
FDA	2.2.2	Approved concession certificate	C
	2.4.1	Public tender notice	C
	2.4.3	Due Diligence Report	C
	2.4.4	Final report of bid evaluation panel to the Inter-Ministerial Concessions Committee (IMCC)	C
	2.4.5	IMCC recommendation to President	C
Company/ FDA	2.3.1	Pre-qualification report	A
	2.3.2	Pre-qualification certificate	A
	2.3.4	Liquidity guarantee	C
	2.7.1	Bidder's bond receipt	C
	2.8.1	Performance bonds	A

A "Justification Document" was presented in place of the Concession Procurement Plan required by Section 79 of PPCC Act.

All other documents created prior to the allocation of the forestry contract, and held by the FDA, have been lost and were not available for review. The bidder's bond and liquidity guarantee documents are also missing.

Therefore, FMC A is not compliant with Principle 2.

6.1.3 Principle 3: Social obligations and benefit sharing

Key Document & Responsible Party	FMC A, Alpha Logging & Wood Processing Inc. Supporting Documents and Other Requirements		Document assessment
Community/ Company	3.1.3	Evidence that no complaint filed to FDA by an affected community alleging exclusion from negotiation or failure of contract holder to negotiate	A
	3.2.1	Executed Social Agreement signed by contract holder and CDFC	
	3.2.3	List of CFDC identified or registered with FDA	A
	3.3.2	Description of the minimum cubic meter fee that the contract/ permit holder will pay on a quarterly basis to the affected communities	A
	3.3.1	Code of conduct that determines rights and responsibilities of communities and contract holders	A
	3.3.3	Bank book or other records of the required interest-bearing escrow account opened by the contract/ permit holder in trust for the affected communities	C
	3.3.4	Social Agreement to include a dispute resolution mechanism	A
Quarterly Bank Statement of Escrow Account			
Company	3.5.1	Receipt of payments to escrow account	B
Compliance Audit Report (Post Harvest Report)			

<i>Key Document & Responsible Party</i>	<i>FMC A, Alpha Logging & Wood Processing Inc. Supporting Documents and Other Requirements</i>		<i>Document assessment</i>
FDA	3.5.2	FDA verification of payment to communities	C

V. 3.2.3: the list of CFDC identified or registered with FDA is found at the end of the Social Agreement and has not been extracted from this report to be included in verifier V.3.2.3 in LiberTrace.

V. 3.3.3: No evidence that a specific bank account has been opened by the holder for the payment of the concerned communities.

V. 3.5.1: It was not clear whether the payments were made in cash to communities or directly on their bank account.

V. 3.5.2: The FDA claims that they verify the payments made to the communities by the holder but does not mention them in LiberTrace.

Table 35 - Assessment of the Social Agreement

<i>Criteria</i>	<i>Comments</i>	<i>Validity</i>
Code of conduct		A
Financial benefit		A
Payment by the Holder	-	C
Funds released by the Holder	-	C
Practical settlement dispute mechanism		A

Summary on Alpha Logging's Social Agreement (SA):

- P. 11/14 & 12/14: error on the name s' Holder: put "Alpha Logging & Wood Processing" instead of "International Consultant Capital" (error of copy and paste?). Point (4) of standard content is missing (escrow account). Valid, but under conditions of point (4).
- As for the other FMC's reviewed below, the content complies with the REG document (Section 33, p. 65), except escrow account setting up (Payment by the Holder).
- Criteria "Payment by the Holder" and "Funds released by the Holder" are missing. It was explained by M. Andrew Y-Y ZELEMEN, representative of the CFDC/NUCFDC (on-site meeting holds on at Alpha Logging concession, near Gbarnga on August 12 2019), that payment arrangements are usually different from those indicated in FDA's Ten Core Regulation (105-07, §33, p. 66). Nevertheless, it is said that payments are consistently expressed on a regular basis, according with the matters negotiated with the company and approved by FDA. Furthermore, 90% of in-kind benefits negotiated have been implemented by the company.
- This document can be considered as partially compliant.

Therefore, FMC A is partially compliant with Principle 3.

6.1.4 Principle 4: Forest management operations and harvesting

Key Document & Responsible Party	Supporting Documents and Other Requirements		Document assessment
Company	4.1.3	25 Year Forest Management Plan (SFMP)	B
	4.1.1	Annual Harvesting Certificate	A
	4.1.2	5 Year Forest Management Plan (5YFMP)	C
	4.1.2	Annual Operational Plan (AOP)	B
	4.1.4	Written permission from land owner	C
		Approved annual blocks	C
FDA	4.2.4	Annual Compliance Audit Report (Post Harvest Audit)	C
Company / FDA	4.2.3	Tally sheets / Felled trees data verification	A
Company	4.2.3	TDF records on LiberTrace	A

Neither the SFMP nor the AOP are compliant (see tables below).

The 5YFMP was not sighted by the review team.

The company was granted a harvesting certificate despite its weaknesses on the management documents.

The company labels trees and logs and these are recorded on LiberTrace enumeration and TDF databases.

Therefore, FMC A is not compliant with Principle 4.

Table 36 - Assessment of the SFMP – FMC A

Criteria	Comments	Validity criteria
SFMP is existing		A
Ratification of the SFMP	No evidence of ratification	B
Stratification and mapping	-	C
Multi-resources inventory	"Some kind of" inventory was conducted in 2007. It can't be considered as a multi-resources inventory (wrong methodology, low sampling rate, no map)	C
Definition of protected and managed tree species	-	C
Definition of the rotation	No inventory made; no justification of the rotation chosen	C
Partitioning of the FMC into management units	-	C
Design of management procedures for the management units	No management units	C
Definition of DBH cutting limits	-	C
Stock calculation of the commercial species	-	C
Partition of the timber Production Unit into 5 years Compartments	No stock calculation. Compartments not based on an inventory,	C
Industrial planning	-	C
Implementation, monitoring and evaluation of the FMP	-	C
Economic and financial assessment	-	C
Overall compliance of the document	Most of the requirements of the guidelines are inexistent. The basics of a management plan are not met (no inventory, no stock calculation, no DBH calculation, etc.)	C

Table 37 - Assessment of the AOP - FMC A

Criteria		Validity criteria
AOP is existing		A
Ratification of the AOP	-	A
Location of the Annual Coupe (AC) on the FMC area (FMCs and CFMAs only)	The compartments were not based on an inventory. The compartments are not matching with the SFMP.	C
AC Area	The area of the compartment is not presented. The fact that the company is claiming to mix ancient and current blocks makes that it is hard to know exactly what is going to be harvested.	C
Annual audit report	The report is not detailed. The harvested volumes are not presented. In the audit report, the company was supposed to compare the harvested volumes against the forecasts.	C
Pre-harvest enumeration (stock survey)	The presented enumeration is the one for the blocks of the previous exercise. There was no enumeration for the current one.	C
Harvesting forecasts	The relevant harvesting forecast is for the volumes in only 16 blocks (on 48).	C
Annual Coupe Map	The annual coupe map was supposed to cover: <ul style="list-style-type: none"> · Location of the blocks, management units · Logging constraints (streams, slopes, rocks, swamps) · Existing and planned infrastructure 	C
Stock map	-	C
Planning of harvesting operations	No map presented, no enumeration	C
Planning of other activities	A table is provided	A
Overall compliance of the document	Most of the requirements of the guidelines are inexistent. The basics of an AOP are not met (no enumeration, no stock calculation, maps, compartment not in line with SFMP)	C

As a conclusion regarding the AOP, only **the enumeration** of the 2018/2019 could be considered as valid for the 16 previously approved blocks if there are stock maps and planning for harvesting operations and other activities in the 2017/2018 AOP for these blocks.

6.1.5 Principle 5: Environmental obligations

Key Document & Responsible Party	FMC A, Alpha Logging & Wood Processing Inc. Supporting Documents and Other Requirements		Document assessment
Environmental Impact Permit (for FMC, TSC, CFMA)			
Company	5.1.1	Environmental Impact Assessment Report prepared and approved	B
EPA	5.1.3	Environmental Impact Permit	A
	5.2.1	Annual Environmental Audit	C
FDA	5.4.2	Annual Compliance Audit (Post Harvest Audit) Report	C

This company meets most of its obligations regarding the supply of documents in LiberTrace. On the other hand, the EPA and the FDA do not provide tangible evidence on their inspections and audit.

The comments related to this section are the same for all FMCs and listed in Section 4.2.2.3.

The general comments on the EIA are as follows:

- The content of the report is not compliant with the 'EIA procedural Guidelines' of 2006, especially with lack of: 'Executive summary', 'Public consultation', 'Impact Rating Scores', Indicators and verifiers for mitigations measures, EMP Reporting procedures, Monitoring programme, Cost evaluation of implementing mitigation measures.... This report is insufficient and unusable for an implementation on site.
- Although the EI Permit has been issued to the company, EPA approved the content of the EIA which do not really match to the regular abstract and content of an EIA.
- The field visit (on August 12 2019) revealed the weakness of the environmental and social facilities compared to the content of EIA and EIP.
- Regardless of the EIA reports of companies describing different abstracts and content, the environmental permits issued by EPA to companies all have the same content.

Finally, it seems that the biannual environmental monitoring report is not issued by EPA (cf. 5.1.3 Environmental Permit, article 11). It was explained by the ALPHA Logging’s Forest Manager - ABRAM Angnems (?), that a joint team (EPA, FDA, MoL...) was coming on site once a year in order to verify compliance with the EIP. Nevertheless, no report was transmitted to the company.

As a result, FMC A is not compliant with Principle 5.

Table 38 - Assessment of the Environmental Impact Assessment

Criteria	Comments	Validity
Executive summary	Very short, no description of the planned facilities. No description of the findings	C
Introduction-overview of the project	Project rationale not clearly described	B
Policy, legal and administrative framework		A
Detailed project description	No detailed statement of activities. Some confusion with environmental chapters to go in other sections. Construction phase and operation phase missing, at this level, but addressed at § 6.	B
Description of the Environment	Human environment not clearly described	C
Impact Prediction and Evaluation	Most of the impacts are not rated.	B
Socio-economic analysis of project impacts	Analysis of the impacts is missing	C
Environmental Management Plan (EMP) and Mitigation Measures	-	C
Identification of Alternatives	-	C
Monitoring Program	-	C
Public Participation	Not clearly described	C
Description of the best available Technology	-	C
Conclusion and Recommendations		A
Annexes	Different elements are missing	C

6.1.6 Principle 6: Timber transportation and traceability

Key Document & Responsible Party	Supporting Documents and Other Requirements		Document assessment
Company / FDA		Barcode records in LiberTrace	A
Company / FDA	6.1.1	Waybills	A
	6.2.1	Tally sheets.	A
	6.2.1	LDF records in LiberTrace	A
	6.3.1	Cross cutting data in LiberTrace	A
	6.3.3	Annual Compliance Audit (Post Harvest Audit) Report	C

There is no specific observation for this company on Principle 6. The analysis made at Section 4.2.2.4 remains valid.

The annual compliance audit report was not sighted by the review team.

FMC A is partially compliant with Principle 6.

6.1.7 Principle 7: Transformation and timber processing

This Principle is not applicable as the company has no transformation and timber processing plant.

6.1.8 Principle 8: Workers rights, health safety and welfare

<i>Key Document & Responsible Party</i>	<i>Supporting Documents and Other Requirements</i>		<i>Document assessment</i>
Ministry of Labor	8.5.2	Ministry of Labor Audit Report	C
NASCORP	8.5.3	Attestation from National Social Security & Welfare Corporation (NASCORP)	C
FDA	8.6.1	Annual Compliance Audit (Post Harvest Audit) Report	C
Company	8.2.2	Payroll	C

The review team couldn't find enough objective evidence that the Workers Rights, Health Safety and Welfare requirements are being met either by the companies or the regulatory authorities.

Besides, the reports supposed to be produced by the Ministry of Labor, NASCORP and FDA were not sighted.

As a result, FMC A is not compliant with Principle 8.

6.1.9 Principle 9: Taxes, fees and other payments

<i>Key Document & Responsible Party</i>	<i>Supporting Documents and Other Requirements</i>		<i>Document assessment</i>
Company Alpha Logging	9.1.1	Tax clearance certificate	A
	9.4.1	Tax return	C
FDA LVD / Company	9.2.1	Invoices and receipts for Annual Area Fees (including Previous Bid Premium) in Libertrace.	Area fees paid
	9.2.2	Invoices and receipts for Bid Premium Fee Payment in Libertrace.	A, not due
	9.2.3	Invoices and receipts for Annual Registration Fees in Libertrace (Timber Processor).	A
	9.3.2	Invoices and receipts for Stumpage Fees in Libertrace.	C, 59074 USD overdue in stumpage fee
	9.3.3	Invoices and receipts for Contract Administration Fee in Libertrace.	A
	9.3.4	Invoices and receipts for Annual Coupe Inspection Fees in Libertrace.	A
	9.3.5	Invoices and receipts for Waybill Sticker Fees in Libertrace.	A
		Invoices and receipts for Barcode Tag Fee in Libertrace.	C, 1000 overdue
	9.3.6	Invoices and receipts for Chain of Custody Fees in Libertrace.	A
		Invoices and receipts for Exports Fees in Libertrace.	C, 119571 USD overdue

Alpha logging is a company with good repayment quota (Table 39).

All annual area fees have been paid. Overdue export fees are considered temporarily. Tax clearance has been issued.

Bid premium arrears are considered as not due yet, while these payments are pending since 2013.

No records were sighted regarding the community payments.

As a result, FMC A is not fully compliant with Principle 9.

Table 39 - State of concession fee payments (in USD - 1/2017-7/2019) – Alpha Logging

<i>Area Fee</i>	<i>Export fee</i>	<i>Stumpage fee</i>	<i>arrears</i>	<i>other fees</i>	<i>Bid Premium</i>	<i>sum</i>	<i>status</i>
0	0	0		0	1 018 857	1 018 857	undue
0	119 571	59 074	0	1 000	0	179645	overdue
596 200	1 145 617	1 064 077	0	57 575	0	2 863 469	Paid
596 200	1 265 188	1 123 151		58 575	1 018 857	3 882 326	total

6.1.10 Principle 10: Export, processing and trade requirements

<i>Key Document & Responsible Party</i>	<i>Supporting Documents and Other Requirements</i>		<i>Document assessment</i>
Company	10.2.1	Export Permit report from LiberTrace	A
	10.2.2	Export shipment specification log (SOP 20) in LiberTrace	A
	10.2.3	Export specification-sawn timber (SOP 21) in LiberTrace	NA
	10.2.4	Log export volume report	A
LVD	10.2.5	Proof of payment of export fees (SOP 26) in LiberTrace	A
		Reference price as found in market intelligence data base (MIDB)	C

There is no specific observation for this company on Principle 10. The analysis made at Section 4.2.2.8 remains valid.

The MIDB report was not sighted by the review team. Besides, the official FOB prices have not been reviewed for at least the last four years.

FMC A is partially compliant with Principle 10.