

# Understanding the legality of rights, permits and certificates to harvest naturally occurring timber in Ghana

## Summary:

For our partners, this short legal briefing intends to clarify which kind of permits are legal according to Ghanaian law. There are 3 types of felling permits that are specifically recognised:

1. **Timber Utilisation Contract (TUC)** is a written contract signed by the Minister and ratified by the Parliament granting a timber harvesting right acquired upon competitive bidding.
2. **Salvage Permit (SP)** is an administrative permit signed by the Forestry Commission to salvage trees from an area undergoing development. To be considered legal, the permit needs to be accompanied by the application and an inspection report from Forest Service Division.
3. **Timber Utilisation Permit (TUP)** is a small scale permit to harvest a defined number of trees for social or community purposes signed by the Forestry Commission. Timber from these permits cannot be sold or exported.

A **Certificate of Purchase (CoP)** is not a felling permit but a certificate proving legal ownership of seized or abandoned timber.

## **Other felling permits?**

A provision has been inserted in the Timber Resources Management Act (1998, Act 547) that seems to allow the Minister to sign other types of felling permits on the recommendation of the Forestry Commission. This highly confusing provision can however not be used to justify the granting of timber rights without parliamentary ratification.

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## 1. Naturally occurring trees are vested in the President

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Within the limits defined by law, the power to grant natural resources rights is vested in the President. Under the laws of Ghana, there is a distinction between land and the natural resources that occur on or under it. Article 257 of the 1992 Constitution is a much cited example in this respect. This article vests minerals in their natural state under or upon *any* land in Ghana in the president. In the same way, **timber rights are vested in the President** by virtue of the Concessions Act of 1962 (act 124). Section 16 the Concessions Act provides for all timber rights to be vested in the president except for preexisting (customary or otherwise) rights in forest reserves or preexisting concessions in off-reserve areas (section 16 (1) – (4)).

Natural resources are resources that occur naturally and therefore not produced or planted. For timber, the law therefore makes the distinction between naturally occurring and planted trees. Timber rights, as part of natural resources rights **only concern naturally occurring trees**, no matter if they occur on lands previously subject to timber rights, public or stool lands or even alienated lands (family and private lands). However, section 4 of the Timber Resources Management Act (1998, act 547) as amended act 617 in 2002<sup>1</sup> clearly states timber rights do not apply to land with private forest plantations or land with timber grown or owned by an individual or group.

## 2. Timber utilization contract = Right to harvest timber = Timber right

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The right to harvest naturally occurring timber is enshrined in sections 1 and 4 of the Timber Resources Management Act (1998, Act 547): Except in the case of land with private forest plantations or lands with timber grown or owned by an individual or group, no person shall harvest timber unless that person holds timber rights in the form of a Timber Utilization Contract (TUC).

On behalf of the President, and based on the recommendation of the Forestry Commission<sup>2</sup>, it is the **Minister** responsible for Land and Natural Resources who has been given the **power to grant timber rights by entering into TUCs**<sup>3</sup>. However, these contracts concern granting natural resources rights and are therefore subject to **ratification by the parliament**.<sup>4</sup> The Timber Resources Management Act further provides for a number of additional conditions<sup>5</sup>, royalties<sup>6</sup> and incentives<sup>7</sup>.

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<sup>1</sup> Timber resources management (amendment) act 2002 (act 617)

<sup>2</sup> This recommendation is based on the evaluation report from the Timber Resources Evaluation Committee (Section 6 of the 1998 Timber Resources Management Act, as amended by act 617 )

<sup>3</sup> Section 7 of the Timber Resources Management Act

<sup>4</sup> Section 9 of the Timber Resources Management Act and Article 268 of the 1992 Constitution

<sup>5</sup> Maximum duration and area in section 6A, disqualification for involvement in illegal timber operations in section 6B, terms of contract in section 8, survey in section 11 and management capacity in section 12 of the 1998 Timber Resources Management Act as amended by Act 617 in 2002.

<sup>6</sup> Sections 13 and 14 of the 1998 Timber Resources Management Act.

<sup>7</sup> Sections 14A until 14J of the 1998 Timber Resources Management Act as amended by Act 617.

The procedure for applying for a timber right is included in The Timber Resource Management (Amendment) Regulations 2003 (L.I. 1721)<sup>8</sup>. These regulations amended the original Timber Resources Management Regulations (L.I. 1649 from 1998)<sup>9</sup> to include **competitive bidding** as the basis for the allocation of timber rights. The regulations further prescribe a two-stage process of pre-evaluation and bidding for timber rights.

### 3. Salvage permit = Permit to salvage timber from development

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Section 18 (g) of Act 547 allows the Minister to make regulations on the procedure *for salvage* and disposal of abandoned timber or seized timber produce. So regulation 38 of L.I. 1649 provides that the **Chief Executive Office of the Forestry Commission** may upon application and subject to the approval of the Forestry Commission **issue a permit for the salvage of trees from an area of land undergoing development** such as road construction, expansion of human settlement or cultivation of farms. So the minister cannot sign these kinds of permits. The Legality assurance System in the Voluntary Partnership Agreement (VPA) between Ghana and the European Union provides a little more information on the procedure by stating that a salvage permit needs to be accompanied by the applicants application and an **inspection report from the Forestry Services Division**. This report needs to confirm the reality of development plans for forested land not yet subject to a timber utilization contract.

From the logic underpinning the Timber Resources Management Act it seems SPs are not timber rights, they are merely permit to ensure efficient resource use in a specific situation. Therefore SPs would not be subject to parliamentary ratification.

### 4. Certificate of Purchase = Proof of legal ownership of abandoned or seized timber

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Section 18 (g) of Act 547 allows the Minister to make regulations on the procedure for salvage and disposal *of abandoned timber or seized timber* produce. Regulation 37 of L.I. 1649 empowers Forest Officers to sell seized or abandoned timber. Such a sale is accompanied by a Certificate of Purchase (CoP). However, a **CoP is not a felling permit, it merely validates that the buyer of such timber has legal ownership of it**. Timber covered by a CoP can be legally sold and exported.

### 5. Timber Utilization Permit = Permit to fell a number of trees for social or community use

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Section 18 (i) of Act 547 permits the Minister to make regulations prescribing conditions for harvesting trees for domestic or social purposes. This provision is given further clarity in regulation 35 of L.I. 1649 where it states that the Chief Executive Officer of the Forestry Commission may on an application by a District Assembly, town committee, any rural community group or a non-governmental organization and

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<sup>8</sup> Regulation 9-14 of L.I. 1721

<sup>9</sup> Timber Resources Management Regulations, 1998 (L.I. 1649)

subject to certain conditions, issue a Timber Utilization Permit (TUP). The TUP is limited for harvesting a specified number of trees for social or community purposes in an area of land not subject to a timber utilization contract. Further, timber or lumber originated from TUP cannot be sold or exported.

## 6. Other felling permits?

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The Timber Resources Management (amendment) Act from 2002 (act 617) inserted a new subsection (2) in Section 20 of Act 547 containing a provision that seems to allow the Minister to issue **other types of administrative permits**. This new subsection states:

*“The expression “timber utilization contract” shall apply with the modifications that are necessary, to a certificate of purchase, a permit or any other authorization for timber rights approved by the Minister on the recommendation of the Commission”*

This insertion seems incongruent with the legal logic that underpins the Timber Resources Management Act and its implementing LI's. Moreover, this new subsection should even be considered **unconstitutional to the extent it may be used to justify the attribution of timber rights without ratification by the Parliament**. The 1992 Constitution provides in article 268 that any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or *other natural resource* of Ghana made or entered into after the coming into force of the Constitution shall be subject to ratification by Parliament. The requirement of ratification can only be dispensed with a resolution supported by the votes of not less than two-thirds of all the members of Parliament.

Research into the **discussions of Parliament** during the adoption of the act containing this loophole clause failed to provide clarity on its purpose and limits<sup>10</sup>. Discussions in relation to other provisions concerning limitations of in area and duration of TUCs do however indicate that the parliament does not approve of extensive discretionary powers of the Minister without the approval of Parliament.<sup>11</sup>

Because only TUCs, SPs and CoPs are mentioned as legal sources of timber in the VPA, timber harvested on the basis of other permits **cannot be exported as legal timber to the European Union**.

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<sup>10</sup> Discussions on the Timber Resources Management (Amendment) Act (2002, Act 617) are recorded in the parliamentary Hansards of 8 and 18 March 2002. No discussion on insertion of subsection 20(2) in the original section 20 of the Timber Resources Management Act (1998, Act 547) has been recorded in either of the Hansards.

<sup>11</sup> The parliament amended subsection 4 of section 6A of Timber Resources Management (Amendment) Act to include that the power of the Minister to exceed the limits in duration and area should be subject to Parliamentary approval by resolution.

## 7. Legal sources of timber recognized under the Voluntary Partnership Agreement

The definition of legal timber included in the Voluntary Partnership Agreement<sup>12</sup> between Ghana and the EU mentions TUCs and SPs as legal sources of timber when the source is a felling permit. In addition to both of these legal felling permits, CoPs are mentioned as a third legal source of ownership of (formerly abandoned or seized) timber. In addition to the legality definition and accompanying table on principles and criteria for legal standard, the Legality Assurance System provides for verification procedures and outputs. Below is a summarizing table on the procedures that need to be followed and documents that prove the legality of the source of naturally occurring timber<sup>13</sup>.

| MATRIX OF FELLING PERMITS FOR HARVESTING TIMBER UNDER THE VPA IN GHANA |   |   |
|--|---|---|
| RIGHTS ALLOCATIONS   | PROCEDURE FOR ALLOCATION  | DOCUMENTATION REQUIRED  |
| <i>Natural Forest Timber Utilization Contracts</i>                     | <ol style="list-style-type: none"> <li>1. Logger participates in competitive bidding process;</li> <li>2. The Forestry Commission recommends to MLFM to award a TUC to Logger;</li> <li>3. Logger complies with all conditions specified in Minister's notice of award under the Act. This includes a secured consent from concerned individual, group or landowner;</li> <li>4. The Minister executes the TUC in the prescribed format;</li> <li>5. Parliament ratifies TUCs.</li> </ol> | <ol style="list-style-type: none"> <li>1. TREC pre-qualification report;</li> <li>2. Letter of Consent;</li> <li>3. TREC bidding report;</li> <li>4. FC report to MLFM on compliance;</li> <li>5. TUC;</li> <li>6. TUC and Parliamentary Hansard</li> </ol> |
| <i>Salvage Permit</i>  | <ol style="list-style-type: none"> <li>1. Enterprise applies to FC;</li> <li>2. FSD conducts inspection and submits a report to CEO of FC about the justification for commercial trees in a defined location to be salvaged;</li> <li>3. FC issues salvage permit;</li> <li>4. FSD enters details of salvage permit into the central database.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Applicant's application;</li> <li>2. FSD's inspection report;</li> <li>3. Salvage permit.</li> </ol>  |
| <i>Confiscated Timber</i>  | <ol style="list-style-type: none"> <li>1. FC determines the offence and court authorizes the sale of confiscated timber product;</li> <li>2. COP issued to the buyer according to statute due process for auctioning confiscated timber is followed.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Court Order;</li> <li>2. Certificate of Purchase;</li> <li>3. FC sale report.</li> </ol>  |

<sup>12</sup> Article 2 (i) and Annex II of the VPA

<sup>13</sup> For the purpose of this short briefing procedures and outputs in relation to plantations have not been included

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