LINKING VERIFICATION OF
'LEGAL ORIGIN' AND 'LEGAL COMPLIANCE'
WITH PHASED APPROACHES
TO FOREST CERTIFICATION

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**SGS**

WHEN YOU NEED TO BE SURE

- **SGS:** providing independent inspection, verification, testing and certification through 1200 offices and laboratories and 39,000 collaborators in over 140 countries

- **SGS QUALIFOR:** a founder-member of the FSC back in 1994, today a global leader in forest certification with a network of 100 auditors, and accreditations under the main global and national schemes

- **SGS Forestry Monitoring Programme:** established to operate outside accredited certification programmes; since 1995, has developed and implemented independent Verification of Legal Timber (VLT) programmes in several countries

Different concepts and approaches

- **SFMC:** Legal compliance a basic requirement
  in practically all SFMC (SFM Certification) standards

- **MIV:** In MIV (Modular Implementation and Verification)
  1 SFM principle = 1 module; verified one after the other
  (no steps, full compliance with all C&Is within each module)

- **VLT:** VLT includes 'Verification of Legal Origin' and 'Verification of Legal Compliance' to demonstrate that timber products are legally owned and have been legally produced

  Has been designed as an alternative but complementary approach to SFMC

- **PA:** In PAs (Phased Approaches) towards SFM/C, Verification of Legality (VL) is recognised by many as a relevant (1st) step

- **Other PAs:** WWF, FoE, LEI, IKEA, DHL, TTF, VVNH, Forecoms, TFT etc. have developed similar/ related PAs and certification support programmes, although criteria and implementation differ – usually, no "certificate" issued

Different concepts and approaches (2)

SFMC   MIV   VLT   PA to SFMC   Other PAs
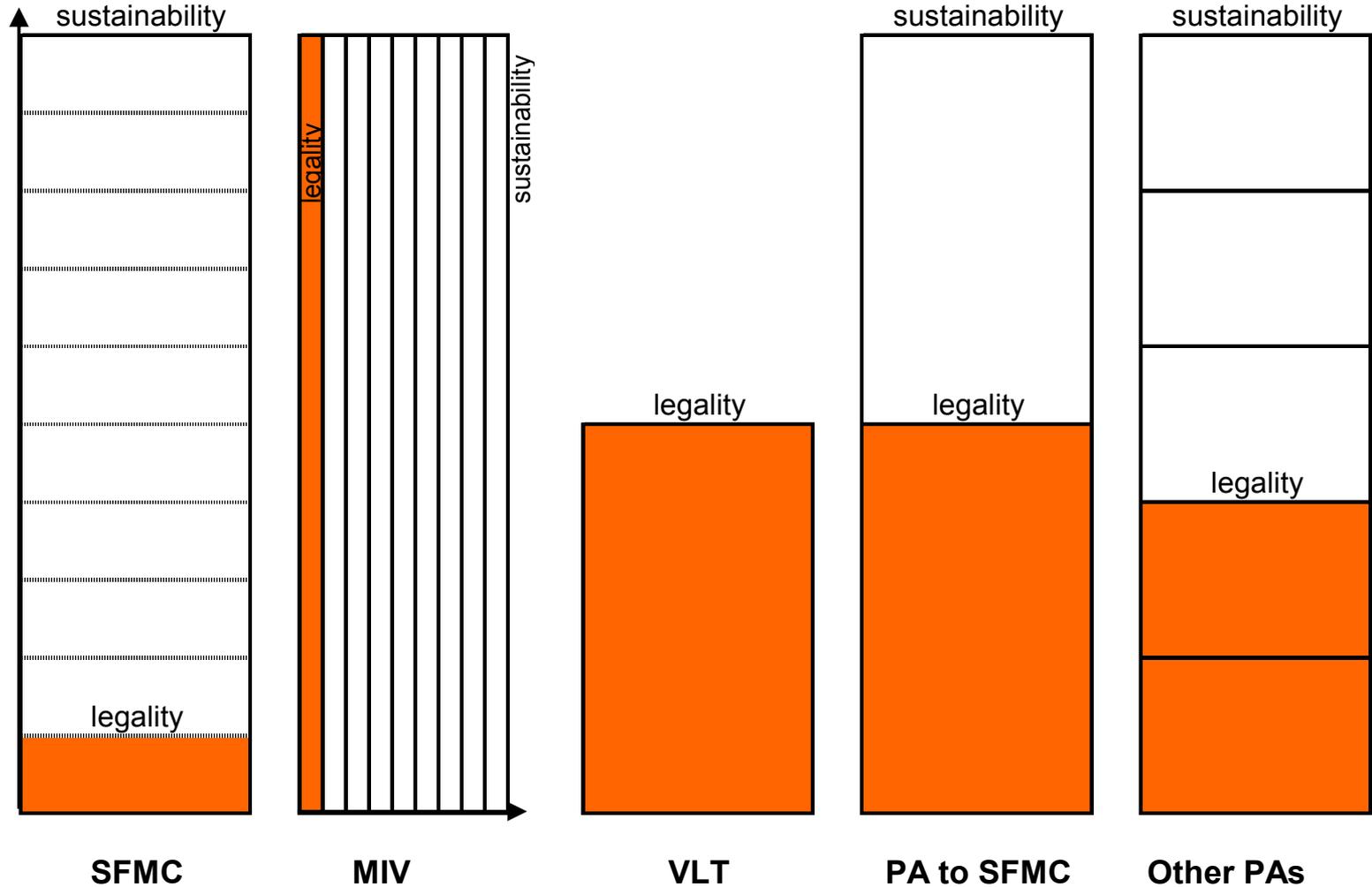
VLT programmes – Common features

- can be implemented on a mandatory or voluntary basis, at country/ region level
- endorsement of national/ regional scheme by Government
- a combination of activities implemented centrally (separate agency):
  - computerised log/ timber tracking,
  - continuous and systematic data management
  - verification/ auditing incl. documentary checks, field inspections
  - coordination with authorities for data collection and field verifications
- modular scope: export/ import, traceability, FM, timber processing, domestic market
- funding through industry fees
- costs reduced by economies of scale: commonly USD 0.5 to 2 or 3 per m3
- recognition of VLT Statements by Gov't, markets, and civil society as valid proof of legal compliance
- official validation of Timber Export Permits, condition to access export markets
- modular structure and gradual implementation:
  - phased enforcement of scheme at country level, as a new scheme is established
  - stepwise process at company level; steps to be completed within a set timeframe

Key features of *mandatory* VLT schemes

VLT programmes initially developed and implemented:

- as mandatory programmes, at country (/ state/ region/ province) level in forest sector
- on behalf of a producer country's Government
- to be compulsory for all producers.

Additional benefits from MVLT being compulsory and centralised:

- comprehensive, fair, cost-efficient
- log/ timber tracking possibly including administration of checkpoints
- cross-checking of forest sector information/data for consistency
- reliable forest sector and timber trade data
- long-term public/ private partnership between Govt and Verifier, incl. institution capacity building and transfer of expertise where required; and
- civil society involvement.

Examples:

- SGS has experience of implementing MVLT programmes or modules in Cameroon, Central African Rep., Congo, Ghana, Ecuador and Papua New Guinea, plus small pilot projects.

Key features of *voluntary* VLT schemes

Design and implementation:

- a combination of voluntary initiative by individual companies, and support from/ collaboration with the authorities
- an alternative to MLTV where political, legal or institutional difficulties
- could also meet the requirements of bi-/ multilateral agreements (e.g. EU FLEGT VPAs)

Note: EU VPAs may turn voluntary into mandatory schemes for exports, to the EU, and possibly for *all* export destinations to avoid illegal exports through non-VPA countries

Success of voluntary schemes depends on:

- the incentives for companies to participate: export trade facilitation, technical support, facilitation of administrative processes, tax incentives, and
- their capacity and willingness to participate.

Examples:

- Pilot 'Timber Legality Verification & Tracking' Project (UK DfID, TNC Indonesia), proposal in progress in one region of Russia

Key features of *customized VL services*

Outside of any formal, local MVLT or VVLT scheme:

- "2nd or 3rd party audits with flexible scope and methodology
- designed to meet the varied requirements of buyers, including individual companies, timber trade federations and national/ local governments in consumer countries, or producers' associations in producer countries
- usually based on a producing company's internal supply-chain management systems, purchasing policies, action plans and self-declarations
- and possibly involving tracking timber, from port back to stump in legitimate forest concession, on a sampling test basis; and continuous data monitoring

■ Verification Statements:

- reflect the exact scope and methodology
- backed by schedule and audit report

■ As they are currently performed, VL audits may not be enough to comply with future trade regulations or to attract official recognition, but:

- they may help a forest company to sell better and
- get prepared for more demanding schemes, including SFM Certification

Examples:

- VL audits for several individual companies in central and western Africa, and in Asia

Differences between 'Verification of Legality' in traditional SFMC and in VLT

- ■ 'Legality' level on the diagram higher up in VLT than for traditional certification, to suggest that:
    - • VLT has a wider scope, and
    - • is a more robust system for the verification of legality

- ■ "Is Forest Certification appropriate for the verification of legality?":
    - • the simple fact that we are gathered here to discuss PAs is an indication that this is a legitimate question
    - • SFMC is beyond the technical/ financial/ managerial means of many producing companies

- ■ There is also a paradox about verification of legality in current SFM Certification systems:
    - • even if 'legal compliance' is an essential requirement in many systems (ex: FSC P1)
    - • and certification adds 'sustainability' criteria that are more stringent than the law in many aspects,
    - • certification audits are often not used to provide in-depth verification of legality

- There is a potential for such use but:
  - full legality is not the primary purpose
  - SFMC is a QA system based on good will
  - it assumes legal compliance rather than it verifies it systematically:
    - interest is in broad 'legality' picture
    - search is for "no evidence of non-compliance" rather than "evidence of compliance"
    - quick document review and checklist-based interviews, but limited field inspections
    - not unannounced audits
    - spot checks for legal compliance are difficult (esp. if absence of a local standard to focus on)
    - reliance on official documents and on conventional product identification and paper-based CoC monitoring systems that are vulnerable to abuses
  - it relies on what a team of auditors, within the range of skills available, is able to pick up during an annual audit – they may not be able to uncover non-conformities if these are deliberately concealed

Differences between 'Verification of Legality' in traditional SFMC and in VLT (3)

- **Limitations may be inherent to the technical and economical conditions in which these audits are performed**

- **Provision of auditing services by multiple certification companies:**
  - cost-driven selection of best price is fair, but
  - competition increases pressure on time spent and/or on fee rates;
  - system does not allow for continuous monitoring, aggregation and cross-checking of forest sector information and data at country level – as in mandatory (and voluntary) VLT schemes

- **Voluntary SFM Certification as a proof of legality:**
  - acceptable under a voluntary procurement/ purchasing policy (public procurement prescriptions, code of conduct of individual/ groups of timber buyers)
  - questionable under trade regulations (EU timber licensing scheme)
  - ideal combination: SFM Certification undertaken after thorough VLT

VLT/ VL within Phased Approaches

- Diagram suggests VLT/ VL and SFM Certification are complementary concepts

- There is value in disconnecting VLT/ VL from the next certification phases in PA:
  - VLT/ VL are more robust systems than SFM Certification for verification of legality
  - VLT/ VL have the potential to strengthen and add-value to both the SFM and the CoC certification elements, through efficient wood tracking, continuous data monitoring, and systematic verification of legality
  - SFM Certification would benefit from being implemented after VLT/ VL
  - SFM Certification in PA would draw on the results of VLT/ VL for legality
  - VLT/ VL should be a baseline requirement in PA to enter a SFM Certification scheme
  - VLT/ VL may be implemented under a different set up (e.g. local M/V LTV schemes) and/or by a different verification/ certification body or units than SFM Certification

- VL audits will be the only way where there is no VLT scheme in place locally

- There should be minimum requirements (threshold) for any VLT/ VL to be recognised as valid baseline for SFM Certification (in terms of: credibility, legality criteria retained, and how they should be verified)

'Legality' principles

- **PC&Is, 'Standards', or 'Definitions' for Legality Verification developed under different international/ national initiatives, under SFMC, MVLT, VVLT or VL systems**

- **Harmonization:**
  - comparing the different standards and trying to match principles and criteria would deserve a separate study
  - processes for merging these standards into one universal system, or for mutual recognition among these initiatives, are not considered feasible in the short to medium term
  - while most of these lists of principles are generic, some of them have been developed to serve local conditions
  - a threshold system could be relevant

- **SGS has developed generic principles; while MVLT gives more importance to timber flow control in the initial phases, VVLT considers:**
  - Legal Origin (timber can be tracked back to a legitimate source): Company registration, licensing, and overall probity; Land and forest resource access and use rights documentation; Land classification and tenure; Company's management and monitoring systems
  - Legal Compliance (management of the forest source): Operating framework - Pre-operative conditions; Legal compliance and product conformity during and after logging; Chain of custody; Authorised volumes and quotas; Payments and social obligations

'Legality' principles

- **A workable 'definition of legality':**
  - should consist of auditable 'legality' criteria
  - should draw on relevant national laws & regulations and nationally/ internationally agreed principles
  - should be acceptable to the stakeholders

- **Revision of a producer country's legislative framework to make it more consistent or compatible with SFM objectives:**
  - is desirable,
  - but is not a pre-requisite in VVLT, if legality standards can be partly disconnected from the law in order to overcome weaknesses in the law (this without being above the law (voluntary, no legal sanction))

- **The more the gap between 'legality' and 'sustainability' closes in the law:**
  - the more 'legal compliance' requirements in SFMC (e.g. FSC P1) will overlap with the other principles and become irrelevant as a principle to be complied with and verified separately, unless the scope is refocused on essential LO/LC criteria
  - the more verification of legality becomes important, potentially,
  - however, neither VL nor certification can monitor compliance with the entire legislation

- **There are areas in which voluntary certification methods will always be suitable, relying on VLT/ VL as a tool to confirm basic Legal Origin and Legal Compliance**

Proposed PA model

sustainability

SFM Certification

legality

VLC

VLO

PA model
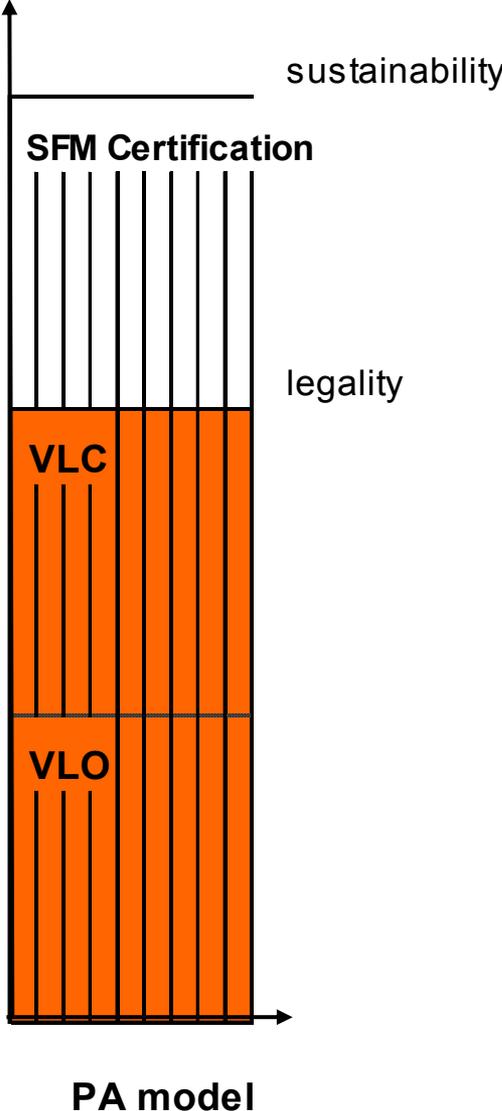
THANK YOU

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