

<i>Guidelines</i>		
Interpretation of the Term ‘Free and Informed Consent’ under the <i>MC&I(2002)</i>	16 February 2011	MC&I 3/2011

INTERPRETATION OF THE TERM ‘FREE AND INFORMED CONSENT’ IN THE *MC&I(2002)*

1. Objective

The objective of these Guidelines is to provide guidance on the interpretation of the term ‘free and informed consent’ which is specified in several criteria and indicators in the *Malaysian Criteria and Indicators for Forest Management Certification [MC&I(2002)]*, the forest management standard for natural forest used under the Malaysian Timber Certification Scheme (MTCS).

2. Background

- 2.1 The term ‘free and informed consent’ is specified in Criteria 2.2, 3.1 and 3.4, as well as Indicator 3.1.2, in the *MC&I(2002)*, in relation to the requirement to obtain the free and informed consent of the indigenous peoples regarding any forest management activities that affect the forests owned by the indigenous peoples (Criteria 2.2 and 3.1, and Indicator 3.1.2), and any compensation for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations (Criterion 3.4).
- 2.2 Since the MTCS only covers the certification of permanent forests, where the ownership claims by the indigenous peoples have been legally defined, the issue of ‘free and informed consent’ as specified in Criteria 2.2, 3.1 and Indicator 3.1.2 does not arise. ‘Free and informed consent’ is however applicable for Criterion 3.4.

3. Interpretation of the Term “Free and Informed Consent”

- 3.1 The term ‘free and informed consent’ is described as a decision-making process where **consent** (involving granting or withholding consent, saying ‘yes’ or ‘no’ to an activity, programme or policy) is given or withheld following a process that is **free** (does not involve coercion or manipulation) and **informed** (is founded upon an understanding of the activity, programme or policy).
- 3.2 Therefore any consent given by the indigenous peoples in connection with Criterion 3.4 shall be on the basis of the indigenous peoples being given the full information and implications of the compensation proposed. In addition, the consent shall be freely given by the indigenous peoples without any pressure or coercion.

- 3.3 Several other criteria and indicators in the *MC&I(2002)* recognize the traditional use of the permanent forests by the indigenous peoples (i.e. Criteria 3.2, 3.3, 4.4, 4.5, 9.1 and 9.2). While ‘free and informed consent’ is not specifically mentioned in these criteria and indicators, in order to ensure that the indigenous peoples are able to continue their traditional use of the forest, the forest manager is required to identify the presence and location of indigenous peoples in and adjacent to the FMU, to confer and agree on what areas they traditionally use, including sites of significant importance to them (e.g. cultivated areas, water sources, burial sites, sacred sites, forest plants, etc). In doing so, the forest manager and indigenous peoples have to interact and agree on how these sites are to be managed, both by the indigenous peoples themselves and by the forest manager.
- 3.4 Under Criterion 3.2, the forest manager shall ensure that the forest management practices shall not threaten or diminish the indigenous peoples’ resources or tenure rights, while under Criterion 3.3, sites of special cultural, ecological, economic or religious significance to the indigenous peoples shall be clearly identified in cooperation with such peoples, and shall be recognized and protected by the forest manager.
- 3.5 Under Criteria 4.4 and 4.5, where the indigenous peoples are living in or adjacent to the forest, the forest manager shall consult with the indigenous peoples to evaluate the dependence of these peoples on the forests involved and the potential social impacts of the forest operations on these peoples, prior to the commencement of the operations. The forest manager shall incorporate the results of such evaluations into the forest planning and management process so as to prevent loss or damage affecting the indigenous peoples’ customary rights, property, resources, or their livelihoods. Where loss or damage affecting the indigenous peoples’ customary rights, property, resources or their livelihoods has been caused by the forest operations, appropriate mechanisms within relevant federal and state laws shall be employed to resolve the grievances and provide fair compensation.
- 3.6 In addition, under Criteria 9.1 and 9.2, the forest manager shall consult the affected indigenous peoples and other relevant stakeholders to assess the attributes consistent with high conservation value (HCV) which are found in the FMU. In the case of the indigenous peoples, the HCV areas may be areas fundamental to meeting the basic needs of these peoples and/or critical to their traditional cultural identity. The forest manager has to demonstrate that steps have been taken to protect these HCV areas, including marking these areas on maps and having management prescriptions in the Forest Management Plan to maintain and/or enhance the HCV attributes. The forest manager is also required to conduct annual monitoring to assess the effectiveness of the measures employed to maintain and/or enhance the HCV attributes, and incorporate the results of the monitoring into the implementation and revision of the Forest Management Plan.
- 3.7 All Certification Bodies shall ensure that the forest manager of the FMU undergoing the audit is assessed for compliance with the above requirements, and that the audit findings are reflected in the audit report and related public summary.

4. Effective Date

These Guidelines shall apply with **immediate effect** for the audits of the FMUs for forest management certification under the MTCS.