



# Systems for verification of legal compliance in the forest sector, Malaysia

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# Ownership



- Policy set by National Forestry Council
- States have full jurisdiction over management & licensing.
- Three verification systems
  - Peninsula – forest management by State, short-term licences under annual coupe
  - Sabah & Sarawak – forest management by long-term licensees



# Ownership

- Monitoring and audit systems led by desire for:
  - continuous and stable revenue streams.
  - access to higher-value markets (certification)
  - stable supply of timber for local processing
  - tackling excessive opening and over-harvesting by the States

# Legal standard

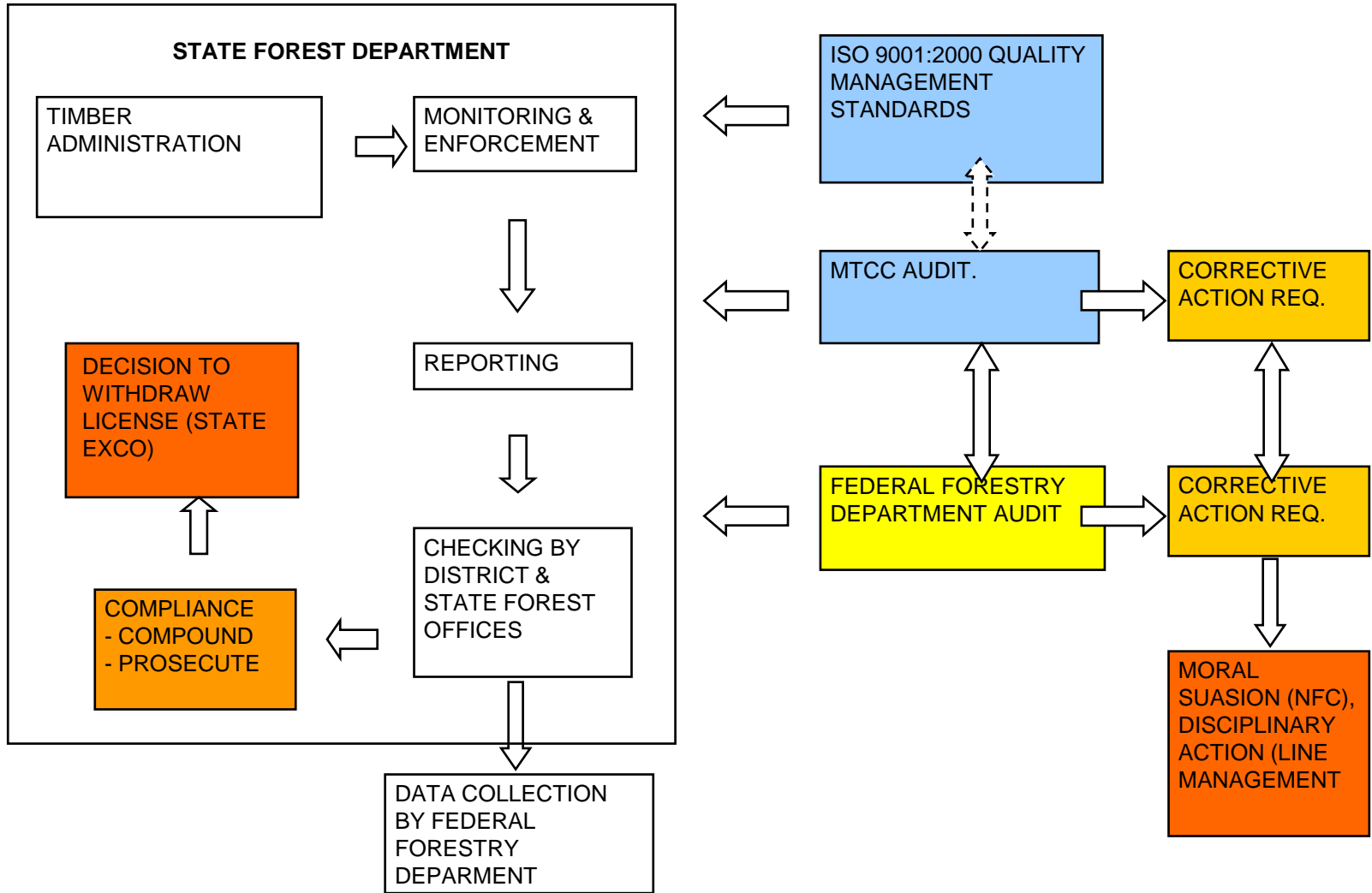


- Federal laws, State Ordinances and related administrative orders, including Malaysia Criteria and Indicators for Sustainable Forest Management (MC&I).
- Conflict over scope and validity of claims by aboriginal/native groups;
  - Outstanding claims in Permanent Reserved Forests – arbitration, negotiation, native courts (Sabah, Sarawak), civil courts
  - Fiduciary duty to gazette and compensate (Court of Appeal).
  - As yet no clear scheme for compensation.

# Independence - Peninsula

- Checks and balances between public-sector audits (Federal) and external audits (Malaysian Timber Certification Council and ISO):
  - complementary standards of performance,
  - ISO 9000 enhances auditability of administrative procedures by Federal and MTCC audits.
- MTCC under authority of Ministry of Plantations and Commodities. Measures to enhance independence:
  - trust fund in place;
  - accreditation system to be established.

# 1. PENINSULAR MALAYSIA





# Independence - Peninsula

Compliance by licensees (monitoring and enforcement):

- 2005 National Forestry Council guidance on which cases must go to Court; reduces discretionary power of State Forestry Department.
- State Executive Committee may withdraw license but no clear rules on
  - license withdrawal;
  - public access to decision, respecting contractual confidentiality.

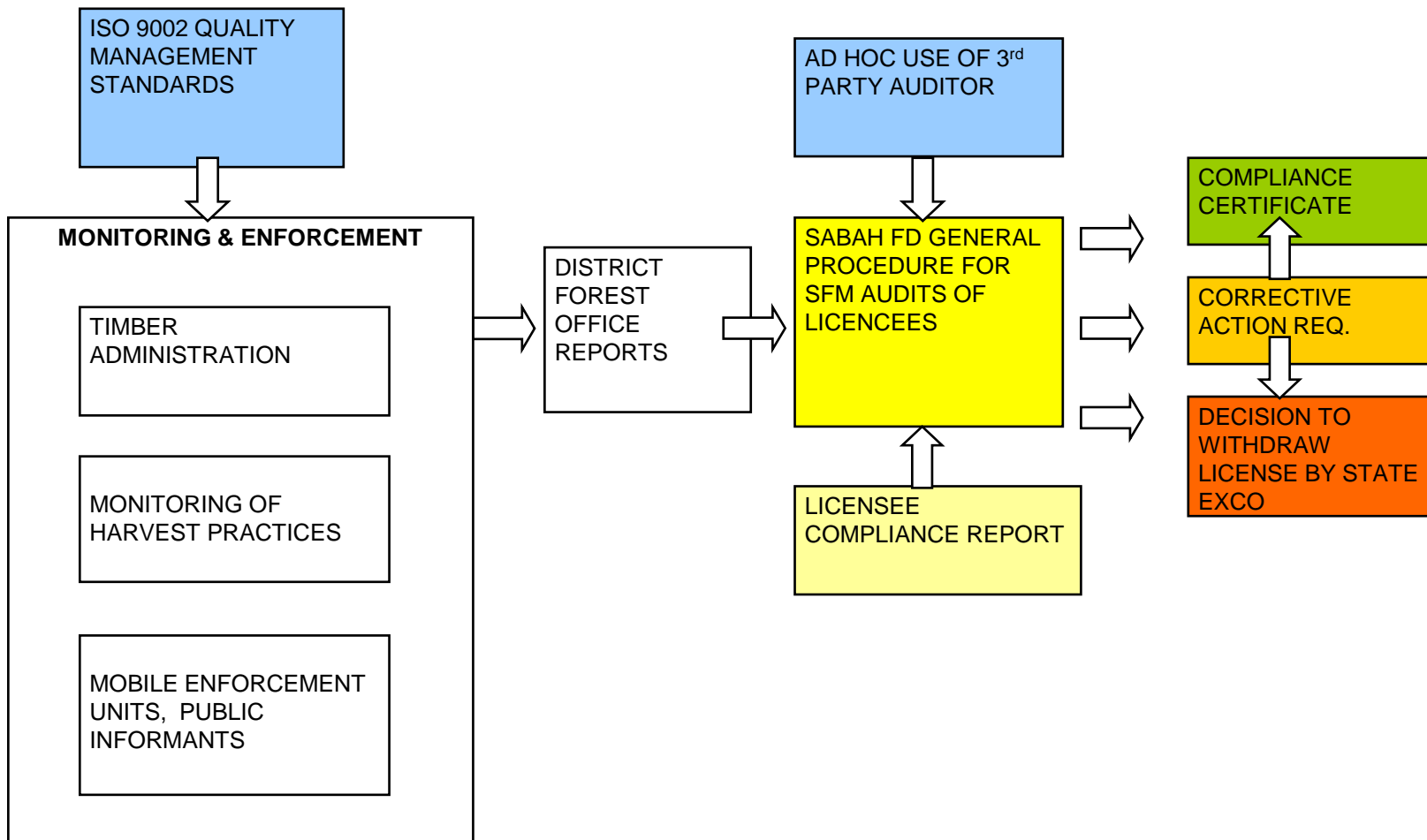
Cogpliance by States (Federal audits):

- Emphasis on 'compliance management'
- 'Moral suasion' of National Forestry Council
- Disciplinary action against State Forestry staff under Federal line management

# Independence - Sabah

- No Federal audit in Sabah (no jurisdiction)
- Sabah Forestry Department: *General Procedure for Audit of 100-year Sustainable Forest Management Licensing Agreements (SFMLAs)*
  - progresses licensees towards 3rd party certification
  - Emphasises compliance management (capacity building)
  - State Forestry Director issues Certificate of Compliance
- Exceptional use of 3rd party auditors where Forestry Department's audits of licensees are in potential dispute.

## 2. SABAH - SUSTAINABLE FOREST MANAGEMENT LICENSE AGREEMENTS



# Independence - Sabah



- Lack of clear guidance on public access to audit reports (MTCC on website)
- Lack of 'routinisation' on when to bring in 3rd party auditors.
- Decision to withdraw a license for non-performance lies with State Executive Committee
- Like Peninsula no clear guidance on when a license should be withdrawn; and on public access to decision.
- Measure would enhance transparency and limiting liability

# Impacts



- Relatively efficient timber administration and revenue capture; low incidence of illegality given high penalties
- Potentially weaker harvest monitoring:
- lack of capacity at District level,
- frequency and sampling intensity of public sector and third party audits may not be high enough.
- Limited pro-poor impacts; not within scope of public-sector audits (except 100-year SFMLAs in Sabah).
- Limits on transparency – licensing, license withdrawal