

Confirming the Extent of Corporate Groups

Policy for Association (FSC-POL-01-004 V3-0)

Introduction

To respond to the increasing complexity of corporate governance structures, the revised version 3-0 of the Policy for Association (PfA) modified the scope of corporate responsibility for unacceptable activities:

- From a purely **ownership-based approach** as stipulated by the PfA V2-0
- To a **control-based corporate relationship**

Annex 1 of the Policy for Association V3-0 provides:

- New definitions for 'corporate group' and 'control'
- Eight factors of control with guiding questions
- A rebuttable presumption of control (50+ Shareholding)
- Analysis method (case-by-case basis)

The scope for corporate groups is used in the following processes:

- Disclosure Requirements for Association with FSC (FSC-PRO-10-004)
- Processing FSC Policy for Association Complaints (FSC-PRO-01-009)
- FSC Remedy Framework (FSC-PRO-01-007)
- FSC Remedy Framework (FSC-PRO-01-004)

Key elements of the corporate group assessment: In a nutshell

Principles

Purposive interpretation
and good faith

Equality and non-
discrimination

Transparency and disclosure



Formality of
relationship



Declaration
as group



Family
control



Financial
control



Managerial
control



Operations
control



Beneficial
ownership



Shared
resources

Corporate Group & Control

Burden of proof and evidence

Qualitative and quantitative
evidence from various
sources

Standard of proof:
Ability to exert decisive
influence

Standard of certainty:
Preponderance of the
evidence

Five stages of the assessment process

Consequences and actions

Principles

Good faith and purposive interpretation	<ul style="list-style-type: none">The key concepts for the corporate group assessment shall be interpreted in good faith in accordance with the ordinary meaning to be given to them in their context and in the light of the object and purpose of the Policy for Association.The purposive interpretation shall be applied to ensure that the focus of the process in which the corporate group assessment is used is consistent with FSC's values and mission.
Equality and non-discrimination	<ul style="list-style-type: none">Equal treatment of all natural and legal persons shall be ensured through a uniform and consistent application of the key concepts for the corporate group assessment.
Transparency and disclosure	<ul style="list-style-type: none">The organization and its corporate group shall ensure openness, clarity and unobstructed access to and disclosure of information, operations, structures, processes, services, outcomes, resources, actions, performance and other market-related activities.

Meaning and scope of corporate group and control

Concept	Components	
Corporate group	(i) Affiliation in a corporate relationship	It refers to the business connection or involvement between one or more legal entities and an associated organization.
	(ii) Control of performance	See control.
Control	(i) Possession of power or decisive influence	Positive control: the ability to determine the strategic economic decision-making of a company.
		Negative control: the ability to block such decision-making for the company.
	(ii) Means of power	Contracts and rights refer to a formal relationship through a recognizable agreement.
		Authority refers to an informal relationship in which the decisive influence of a person or entity affects another's will by acts performed in accordance with the other's manifestations of assent.
	(iii) Test of decisive influence	The test is whether the controlling natural or legal person can exercise decisive influence over the controlled entity with the result that the latter does not enjoy 'real autonomy' in determining its course of action in the market.
Rebuttable presumption of control	<ul style="list-style-type: none">A decisive influence in any case must be presumed, if an organization or individual owns more than 50 percent share interest in another legal entity.A legal or natural person can rebut the presumption. The burden of proof shifts to the person making the objection.	

Meaning and scope of the factors of control

Factor	
Formality of relationship	<ul style="list-style-type: none"> The legal connection between shareholders, shareowners or stockholders and the legal entity (business) in which they own or hold a share or shares. The reference to an investment holding structure indicates the possibility of joint control, in cases in which decisive influence is exercised by more than one controlling natural or legal person, as is the case of a joint venture.
Declaration as group	<ul style="list-style-type: none"> A formal statement, proclamation or announcement made by the controlling natural or legal person or any controlled entity. To consider the public declaration as formal, it must be made through the official communication channels of the corporate group, the controlling or the controlled entity. The public formal declaration may be made in any format, including written, visual, audio and electronic The formal declaration must be made in a public manner, namely open and available for all to use, share or enjoy.
Family control	<ul style="list-style-type: none"> The common decisive influence exercised by members of the same family over the totality of companies owned or managed by them. The strength of the family bond in cases of (only) first- or second-degree relationships makes it possible to assume the high probability that family members need to listen to each other in order to maintain the family and business relationships. The existence of the family link does not necessarily lead to the loss of the real autonomy of the family members or legal persons in their ownership, which can be demonstrated by disclosing the family business dynamics/relationships.
Financial control	<ul style="list-style-type: none"> The ability of a natural or legal person (borrower) to exert decisive influence by providing the necessary economic resources to ensure the survival of the controlled entity (lender) for a certain period. Suppliers not controlled by corporate group are NOT included in scope: When a corporate group or legal entity is the sole or the largest buyer of another legal entity's product, it may exert control over the latter. The abuse of a superior bargaining position shall be analysed on a case-by-case-basis.
Managerial control	<ul style="list-style-type: none"> The simultaneous exercise of executive, administrative and supervisory powers by a large number of middle management officials or by one or more senior management officials in two or more companies resulting in common control.
Operations control	<ul style="list-style-type: none"> The relationship between a corporate group and/or its legal entities with a landholder/s in which the former controls the business activities and process that take place in the landholding.
Beneficial owner	<ul style="list-style-type: none"> The natural person(s) who ultimately owns or controls the customer and/or the person on whose behalf a transaction is being conducted.
Shared resources	<ul style="list-style-type: none"> The allocation to two or more companies of a registered address, land or other physical assets, or to the provision of company functions or services by those companies. Resource sharing arrangements can be part of sharing economy business models. Therefore, these arrangements do not necessarily imply control.

Burden of proof and evidence

Burden of proof	<ul style="list-style-type: none">The burden of proving the extent of a corporate group is on FSC. When the organization and its corporate group are applying for or seeking to maintain association with FSC, they are obliged to submit the information and documents required by FSC to assess the extent of the corporate group.FSC may provide a legal entity or individual with evidence that requires an explanation or justification through a notice to show cause. Failure to provide a response or reasonable justification will lead to the conclusion that FSC has met its burden of proof.
Evidence	<ul style="list-style-type: none">Precise and consistent qualitative and quantitative data from various sources
Standard of proof	<ul style="list-style-type: none">Mere ability to exert decisive influence so that no actual exertion of influence is necessary
Standard of certainty	<ul style="list-style-type: none">Preponderance of the evidence <div><p>Corporate Group Control (i.e., Policy for Association violation)</p><p>0% 50% 100%</p><p>Event certainly not occurred Balance of probabilities Event certainly occurred</p><p>Suspicion</p><p>Preponderance of evidence</p><p>Clear and convincing evidence</p><p>Beyond reasonable doubt</p></div>

Consequences and actions

Confirmation of the extent of the liable corporate group shall trigger the following actions depending on the process in which the assessment has been conducted:	
Disclosure Requirements for Association with FSC (FSC-PRO-10-004)	<ul style="list-style-type: none">Reject applications for FSC membership or certification
Processing FSC Policy for Association Complaints (FSC-PRO-01-009)	<ul style="list-style-type: none">Corporate group-level disassociation
FSC Remedy Frameworks (FSC-PRO-01-004/007)	<ul style="list-style-type: none">Scope of remedy processes determination

Five stages of the corporate group assessment process

