

# SHINING LIGHT ON THE SHADOWS

Toward a uniform methodology for establishing  
common corporate control



# A methodology to assess corporate groups

- Developed in collaboration by Greenpeace, C4GA, FPP, Profundo, RAN
- Already supported in principle in an earlier version by 25 other organisations and individuals, as part of FSC's public consultation on the Remedy Framework in 2022.
- Implementing the AFi definition of a corporate group



# Context

- From supply chains to finance and certification, the principle of group-level responsibility is becoming widely accepted as the way to ensure that sustainable practices are implemented consistently by all entities under common control.
- Emerging regulatory instruments in jurisdictions such as the European Union include disclosure, due diligence/'know your customer' requirements imposed on corporates and financial institutions. These include:
  - UNGPs (not legally binding) and associated national and regional legislations for corporate due diligence - mHRDD
  - Sustainable Finance Disclosure Regulation
  - Paris Agreement (and associated tools)
- Assessing the extent of a corporate group thus takes on commercial and regulatory significance.

# In practice

- Shadow companies and opaque structures repetitively exposed by NGOs and CSOs
- But in the absence of a common standard
  - Findings are disputed
  - No decisive action is taken by relevant stakeholders
  - Environmental and social harms continue
- A shared definition and approach would allow widened accountability to group-level

# Relevance to FSC

- Industry benchmark
  - Great power, great responsibility
  - Remaining credible is paramount to keep status – and market access for certified products
- Adoption of the AFi definition of a corporate group
  - PfA v3-0 and associated Remedy framework – applied from January 2023 and retrospectively in specific cases
  - Motion 45

# Shining light on the shadows

- Origins
- Structure
- Contents
- Example



# The AFi definition as framework

- The AFi's Terms and Definitions (2019), developed as part of the Accountability Framework, include a list of factors potentially indicative of group membership to take into consideration when researching the extent of a corporate group.
- The methodology uses this list of factors as framework, and:
  - Defines terms introduced in the definition (e.g. 'control', 'ownership', 'extensive overlap') to close potential loopholes
  - Lists and explicitly defines 6 types of control
  - Introduces 8 indicators with corresponding questions to assess evidence for each type of control
- Key tools drawn on
  - Specific legal frameworks (e.g. Indonesia, UK, EU)
  - Best practice (e.g. FATF, WB)
- Final document reviewed by lawyers and forensic accountant

# Indicators and types of control

Indicator	Key question(s)	Indicates which type of control?
Indicator 1 (Formality of relationship)	Is there formal (legal) ownership of one company by another company or corporate group, such as through an investment holding structure?	Legal ownership
Indicator 2 (Declared as a member of a group)	Has a known corporate group declared the company or companies under consideration to be under its control?	Any, depending on nature of declaration
Indicator 3 (Potential concealed beneficial ownership)	Is there evidence that beneficial ownership of the company or companies under consideration may be hidden via arrangements in secrecy jurisdictions, by the use of nominee shareholders, or by other means?	Beneficial ownership
Indicator 4 (Shared resources)	Do companies share a registered or office address, physical assets, or provision of company services?	Operational control, management control or beneficial ownership
Indicator 5 (Family links)	Is there evidence that companies are owned or managed by members of the same family? If so, is there evidence that they are being run in the interests of the family as a whole?	Family control
Indicator 6 (Financial arrangements)	Is there evidence of loans or other investment or financial arrangements, including supply contracts, which indicate that a party exerts significant influence over the activities of the company or companies under consideration and thus has financial control?	Financial control
Indicator 7 (Shared management)	Is there evidence of extensive overlap in officers and/or key managers with decision-making power between companies, indicating that they are under common management control?	Management control
Indicator 8 (Operational arrangements)	Is there evidence that landholdings and/or infrastructure and facilities are under a group's operational control, for example via a management contract, even if they are not owned by the group's controlling entity or any of its companies?	Operational control



# Structure

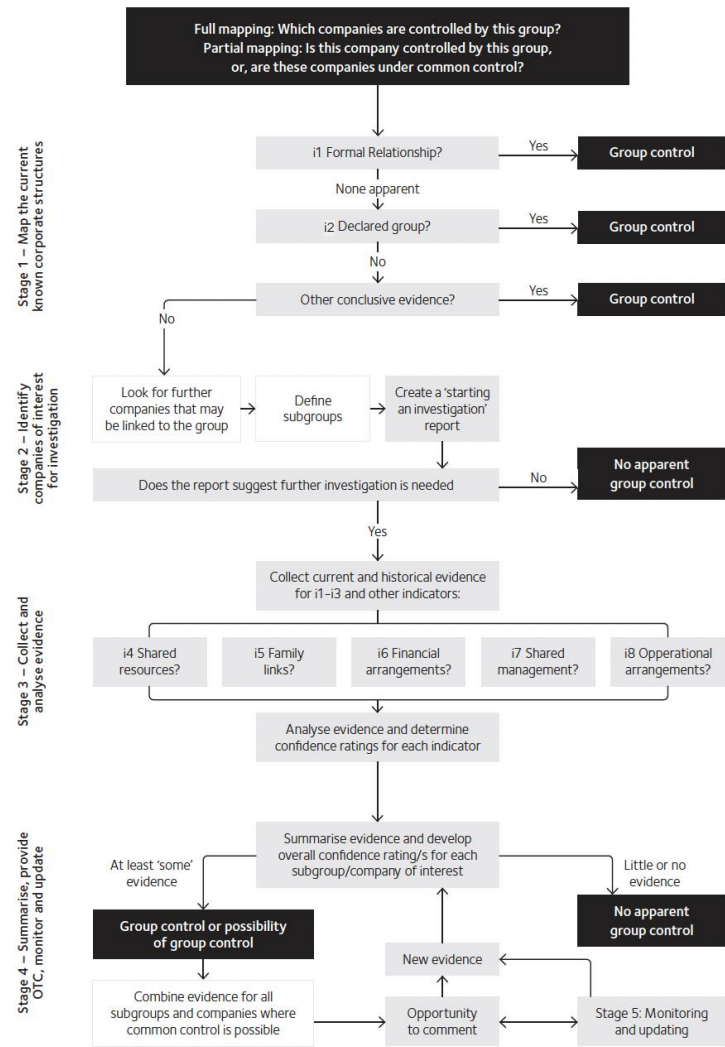
- Context of use
  - Full mapping
  - Partial mapping
- Step-by-step methodology
  - Stage 1 Map the structure of the known corporate structures
  - Stage 2 Identify companies of interest for investigation
  - Stage 3 Collect and analyse evidence
  - Stage 4 Summarise and provide opportunity to comment
  - Stage 5 Monitor and update
- Investigation guidance
  - Potential sources of information
  - Using historical information
  - Guidance per indicator
  - Specific considerations e.g. 'critical stake'

# Full and/or Partial group mapping

- Full mapping
  - Mapping the composition of an entire group: aim to identify all companies and operations which may be part of a corporate group
  - **FSC**: due diligence on prospective new members / association
- Partial mapping
  - Assessing whether certain companies are under common control or whether a company is under the control of a given corporate group.
  - **FSC**: complaint, NGO report

# Step by step

- Investigation and decision-making process
- 5 stages
- Articulated around the core 8 indicators



# Indicator 1

## FORMAL RELATIONSHIP

- Type of control: Formal control / Legal ownership
- Majority stake = above a determined 'critical stake'
  - Voting rights or shares held
  - Direct or indirect
- Potential sources of information
  - Official company register
  - Annual report
  - Audited financial statement

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
1 - Formal relationship	None	<p>60% of Listed company X's shares indirectly owned by a trust (Trust A) with 30% floated on the stock exchange.</p> <p>Subgroup Y has an individual majority shareholder, owning 90% of shares in its parent company.</p> <p>The remaining 10% of both Listed company X and Subgroup Y's parent company is owned by the same offshore holding company, company Z. However since 10% is below the critical stake, this is not regarded as evidence of a formal ownership link.</p>

# Indicator 2

## DECLARED AS A GROUP

- Type of control: any
- Self-declaration
  - By the company or its controlling entity
  - Through official channels
- Potential sources of information
  - Annual report
  - Official and current group / company website
  - Declaration to a certification body

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
2 - Declared as a group	Some	<p>Listed company X has accepted that Subgroup Y is a related party in recent annual reports. The related party status appears to stem from the family relationship, see Indicator 5.</p> <p>Listed company X has stated in a response to a grievance procedure that Subgroup Y "is managed entirely separately and is not part of our group". It is noted that this wording may use a more restricted definition of corporate group than that employed here.</p>

# Indicator 3

## POTENTIAL CONCEALED BENEFICIAL OWNERSHIP

- Type of control: Beneficial ownership
- Beneficial owner
  - Natural person
  - Ultimate ownership and/or control
- Potential sources of information
  - Leak / whistleblower
  - Official company register
  - Annual report

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
3 - Concealed beneficial ownership	Some	<p>Listed company X and Subgroup Y have previously engaged in a series of transactions using offshore companies, possibly intended to disguise transfers of landholdings between them, over a period from at least 2007-2012. The evidence presented is relatively old hence reducing the final 'strong evidence' rating to 'some evidence'.</p> <p>The joint minority shareholder (Holding company Z, see indicator 1) is owned offshore and its beneficial owner(s) remain unknown. Since Holding company Z owns less than the critical stake, this may only be regarded as supporting evidence, but strengthens the overall picture of multiple links between the companies.</p>

# Indicator 4

## SHARED RESOURCES

- Type of control: management or operational control, or common beneficial ownership.
- Resources shared can be:
  - Addresses, facilities, infrastructure, company services, etc.
  - **Control only IF** beyond economic efficiency
- Potential sources of information
  - Official company register
  - Annual report
  - Audited financial statement

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
4 - Shared resources	Strong	Several companies in Subgroup Y use a registered address also used by Listed company X and this address has also appeared on job adverts for Subgroup Y. A visit to that address has confirmed that there is only one office suite on the relevant floor of the building but staff were unwilling to respond to questions.

# Indicator 5

## FAMILY LINKS

- Type of control: Family control
- Close family relationships between beneficial owners
  - First or second degree
  - **Control only IF** companies managed in the interest of the family
- Potential sources of information
  - Official company register
  - Annual report
  - Audited financial statement

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
5 - Family links	Strong	Listed company X reveals in its annual report that the beneficiaries of Trust A are all members of the same family. The description of the family appears to include the family member who is also the majority owner of Subgroup Y's parent.



# Indicator 6

## FINANCIAL ARRANGEMENTS

- Type of control: Financial control
- Financial arrangements can be
  - Loans, investments, debt purchase
  - **Control only IF** significant amounts (e.g. in relation to turnover)
- Potential sources of information
  - Contract / Agreement
  - Annual report
  - Audited financial statement

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
6 - Financial arrangements	No evidence	

# Indicator 7

## SHARED MANAGEMENT

- Type of control: Management control
- Same personnel in key management positions
  - Either overlap in officers/managers, or key managers with links to controlling entity
  - **Control only IF** 'extensive overlap'
- Potential sources of information
  - Official company register
  - Annual report

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
7 - Shared management	Some	<p>A large number of company officers and senior employees of Listed company X companies have simultaneously held positions in Subgroup Y companies at various times since at least 2007, but since 2016 there has been no overlap of named officers. The rating has been downgraded to 'some evidence' due to the older nature of the links.</p> <p>It is noted that since 2015 Listed company X has faced repeated allegations of association with Subgroup Y which has led to pressure from customers concerned about potential environmental harm from groups in their supply chain. Since it is possible that the changes to company boards since 2016 was due to this pressure, it is not being regarded as counter-evidence.</p>

# Indicator 8

## OPERATIONAL ARRANGEMENTS

- Type of control: Operational control
- Contract to manage a landholding or facility
- Potential sources of information
  - Contract
  - Staff testimony
  - Field visit

- Example

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
8 - Operational control	Strong	Extensive evidence from local sources, including testimony from former employees, local government officials responsible for licencing and residents suggests that Listed company X has run plantations owned by Subgroup Y, using the same officials and organising structures such as training, payroll and IT services, over a period from at least 2009 to 2019.

# Interpretation and preliminary conclusion

- Principles
  - Collect all evidence for and against
  - Analyse and rate all evidence for and against
  - Assess direct and indirect links (relevant in the case of multiple subgroups)
- Confidence rating
  - Per indicator, combined into assessment of overall control; or
  - Per type of control; or
  - For the whole group or for individual subgroups; or
  - Per given scenario

# Example

- Is Listed company X under common control with Subgroup Y?
- Evidence rating per indicator combined into an overall assessment of control

Indicator	Evidence rating	Links between Listed company X and suspected Subgroup Y
1 - Formal relationship	None	<p>60% of Listed company X's shares indirectly owned by a trust (Trust A) with 30% floated on the stock exchange.</p> <p>Subgroup Y has an individual majority shareholder, owning 90% of shares in its parent company.</p> <p>The remaining 10% of both Listed company X and Subgroup Y's parent company is owned by the same offshore holding company, company Z. However since 10% is below the critical stake, this is not regarded as evidence of a formal ownership link.</p>
2 - Declared as a group	Some	<p>Listed company X has accepted that Subgroup Y is a related party in recent annual reports. The related party status appears to stem from the family relationship, see Indicator 5.</p> <p>Listed company X has stated in a response to a grievance procedure that Subgroup Y "is managed entirely separately and is not part of our group". It is noted that this wording may use a more restricted definition of corporate group than that employed here.</p>
3 - Concealed beneficial ownership	Some	<p>Listed company X and Subgroup Y have previously engaged in a series of transactions using offshore companies, possibly intended to disguise transfers of landholdings between them, over a period from at least 2007-2012. The evidence presented is relatively old hence reducing the final 'strong evidence' rating to 'some evidence'.</p> <p>The joint minority shareholder (Holding company Z, see indicator 1) is owned offshore and its beneficial owner(s) remain unknown. Since Holding company Z owns less than the critical stake, this may only be regarded as supporting evidence, but strengthens the overall picture of multiple links between the companies.</p>
4 - Shared resources	Strong	<p>Several companies in Subgroup Y use a registered address also used by Listed company X and this address has also appeared on job adverts for Subgroup Y. A visit to that address has confirmed that there is only one office suite on the relevant floor of the building but staff were unwilling to respond to questions.</p>
5 - Family links	Strong	<p>Listed company X reveals in its annual report that the beneficiaries of Trust A are all members of the same family. The description of the family appears to include the family member who is also the majority owner of Subgroup Y's parent.</p>
6 - Financial arrangements	No evidence	
7 - Shared management	Some	<p>A large number of company officers and senior employees of Listed company X companies have simultaneously held positions in Subgroup Y companies at various times since at least 2007, but since 2016 there has been no overlap of named officers. The rating has been downgraded to 'some evidence' due to the older nature of the links.</p> <p>It is noted that since 2015 Listed company X has faced repeated allegations of association with Subgroup Y which has led to pressure from customers concerned about potential environmental harm from groups in their supply chain. Since it is possible that the changes to company boards since 2016 was due to this pressure, it is not being regarded as counter-evidence.</p>
8 - Operational control	Strong	<p>Extensive evidence from local sources, including testimony from former employees, local government officials responsible for licencing and residents suggests that Listed company X has run plantations owned by Subgroup Y, using the same officials and organising structures such as training, payroll and IT services, over a period from at least 2009 to 2019.</p>
Overall:		<p>Strong evidence of group control.</p> <p>Listed company X should be held accountable for violations by Subgroup Y</p>

# Where to from here?

- How to follow up on findings?
  - Findings associated with confidence rating - not always 100%
  - **FSC**: full (due diligence prior to association) vs. partial (e.g. complaint)
- More broadly: how to apply fairly (esp. to **FSC** associated groups)?
  - With a common, transparent procedure
  - Providing applicability criteria
  - Using opportunity to comment: create a 'case to answer' by groups/companies

# Thank you

Any questions?