



Forest Stewardship Council®



Policy for the Association of Organizations with FSC

DRAFT for Reference Only

FSC-POL-01-004 V3-0 EN




DRAFT 4-1

NOTE: THIS DRAFT IS TO BE USED FOR REFERENCE PURPOSES ONLY, WITH THE INTENT TO HELP UNDERSTAND THE PROPOSED REVISIONS OF THE TWO DRAFT PFA PROCEDURES: THE PFA DUE DILIGENCE PROCEDURE AND THE PFA EVALUATION PROCEDURE.

THIS DRAFT POLICY IS NOT CURRENTLY UNDERGOING PUBLIC CONSULTATION AND COMMENTS ON THIS POLICY ARE NOT BEING ACCEPTED. THIS CURRENT CONSULTATION IS FOR THE TWO PROCEDURES OF THE PFA NORMATIVE FRAMEWORK.

A FEASIBILITY ASSESSMENT IS BEING CONDUCTED ON THIS DRAFT POLICY. UPON COMPLETION OF THE ASSESSMENT, AND ONCE FINAL DRAFTS OF THE TWO PROCEDURES ARE READY, THE FSC BOARD OF DIRECTORS WILL TAKE A DECISION ON ALL THREE NORMATIVE DOCUMENTS AS A PACKAGE.

FOR MORE INFORMATION ON THE CHANGES MADE TO THIS POLICY SINCE ITS SECOND PUBLIC CONSULTATION, PLEASE SEE THE GUIDANCE PREPARED FOR THIS CONSULTATION.

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Contact for comments	Director's Office FSC Global Development Charles de Gaulle Strasse 5 53113 Bonn Germany  +49 (0)228 367660  +49 (0)228 3676630  fsc@fsc.org

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The Forest Stewardship Council® (FSC) is an independent, not-for-profit, non-government organization established to promote environmentally appropriate, socially beneficial, and economically viable management of the world's forests.

FSC's vision is that the world's forests meet the social, ecological, and economic rights and needs of the present generation without compromising those of future generations.

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A INTRODUCTION

[For terms defined in Section H below, their first use is marked with an asterisk]

FSC-POL-01-004 *The Policy for the Association of Organizations with FSC* is an expression of the values shared by organizations associated* with FSC. It defines six unacceptable activities that associated organizations* and their affiliated groups* commit to avoid in both certified and non-certified operations.

The *FSC Policy for Association*, adherence to which is overseen directly by the FSC Secretariat, serves as a risk management tool for FSC, protecting the credibility and reputation of the FSC brand and of all organizations associated with it, by allowing for the termination of all contractual ties with an organization found to be in violation of the policy.

Allegations of violations of the *FSC Policy for Association* against associated organizations will be accepted and evaluated by FSC only upon presentation of substantiated evidence that the associated organization (or its affiliated group) is accountable for violating the policy.

Disassociation* is considered as a measure of last resort. The policy also allows FSC to impose other, less punitive, consequences for violations, depending on the gravity of the violation. Stakeholders should engage in all reasonable efforts to address concerns before presenting an *FSC Policy for Association* complaint. The specific manner in which allegations and complaints are addressed, and decisions are made to disassociate, is elaborated in the *Procedure for Evaluating Compliance with the FSC Policy for Association* (see below).

FSC procedural documents: Policy implementation

To put the *FSC Policy for Association* into practice, two procedural documents are used at different stages of implementation:

1. Any organization seeking to associate with FSC must undergo a screening process for compliance with the policy, in accordance with FSC-PRO-10-004 *Due Diligence Evaluation for the Association with FSC*.
2. If a potential violation of the policy is brought to the attention of the FSC Secretariat, then FSC-PRO-01-009 *Procedure for Evaluating Compliance with the FSC Policy for Association* is applied.

B VERSION HISTORY

V1-0 The FSC Board of Directors approved the essential elements of the *FSC Policy for Association* in July 2009 – the six unacceptable activities in which organizations wishing to associate with FSC could not be directly or indirectly involved in (see Part I)– but recognized that further work was needed to describe the policy implementation process in more detail.

V2-0 The FSC Board of Directors approved the policy implementation details (see Part II) in September 2011. This is the current version of the *FSC Policy for Association*.

V3-0 DRAFT: Proposed changes to the policy

- Clarification on policy purpose and application
- Interpretation on timeframe for when a past activity can be considered a policy violation, and on 'intent' to engage in an unacceptable activity
- Revised terms and measures for determining accountability for a policy violation and for defining the entities affiliated with and affected by the policy violation
- Minor revisions to other terms and definitions
- Minor revisions to the scope of the unacceptable activities
- Addition of probation as a possible consequence to a policy violation
- Addition of what may be included in the decision to disassociate in order for re-association to occur

C NORMATIVE DATES

Approval date	XX
Publication date	XX
Effective date	XX
Transition period	XX
Period of validity	XX

D REFERENCES

The following referenced documents are essential for the application of this document. For undated references, the latest edition of the referenced document (including any amendments) applies.

- *Procedure for Evaluating Compliance with the FSC Policy for Association* (FSC-PRO-01-009)
- *Due Diligence Evaluation for Association with FSC* (FSC-PRO-10-004)
- *Guideline for Panels Evaluating Complaints against the Policy for Association* (FSC-GUI-01-004)

E SCOPE

The *FSC Policy for Association* applies to all associated organizations and their affiliated groups.

The policy states six unacceptable activities (see Part 1: Policy elements) that associated organizations and their affiliated groups must commit to avoid, and defines the consequences of a violation to this policy (see Part 2: Policy implementation).

This policy applies to situations where the unacceptable activity is occurring or has occurred. *Intent* to engage in an unacceptable activity is not sufficient grounds to trigger an investigation or complaint; however, intent to engage in an unacceptable activity may trigger other, proactive measures, including information-gathering and monitoring, on the part of FSC to help ensure that the unacceptable activity will not occur.

According to the *Principles of the FSC Dispute Resolution System*, disputes should always be addressed at the lowest level possible and stakeholders are encouraged to follow this principle. Complaints related to a violation of the *FSC Policy for Association* that overlap with compliance with an organization's certification requirements should therefore first be addressed with the respective Certification Body through its established complaints procedure (or additionally to the Certification Body in cases where there are violations in both certified and uncertified operations).

The timeframe for how far back a violation is considered relevant is handled on a case-by-case basis, using conditions such as, but not limited to: i) whether there is a lingering dispute; ii) whether the issue is still current; iii) the scale and impact of the damage done; iv) whether the associated organization or affiliated group attempted to make amends; v) demonstrable systemic change to prevent the re-occurrence of the activity.

The intent of the FSC Policy for Association is to address unacceptable activities that severely impact forests and people on-the-ground; other controversial activities that fall outside this scope will be addressed through other mechanisms.

F PART I POLICY ELEMENTS

FSC aims to associate with organizations aligned with the FSC mission and values and does not want to be associated with organizations accountable for the following unacceptable activities:

- a. illegal harvesting or trade in forest products*
- b. violation of traditional or human rights* within the forestry or forest products sector
- c. violation of any of the ILO core conventions* within the forestry or forest products sector¹
- d. significant damage to high conservation values* in forests
- e. significant conversion* of forests to plantations or non-forest use
- f. use of genetically modified trees* for purposes other than research (which can include field trials), such as for commercial purposes

G PART II POLICY IMPLEMENTATION

Due diligence

FSC will only enter into, or maintain, an association with an organization that has passed the due diligence evaluation, conducted according to FSC-PRO-10-004.

Evaluating allegations

Any stakeholder can call for an evaluation if there is substantiated evidence that an associated organization or its affiliated group is suspected of a violation of this policy as listed in Part I. Evaluations are conducted according to FSC-PRO-01-009.

Consequences of a violation of this policy

An associated organization found to be in violation of this policy will, together with its affiliated group, face one of two consequences, as further elaborated in FSC-PRO-01-009:

¹ Any existing process or procedure approved by FSC related to compliance with this category and the ILO Core Conventions is unaffected by this revision of the *FSC Policy for Association* and will remain in effect until such time as FSC directs otherwise and in conformance with the outcome of the ILO Core Conventions Working Group.

- a. Disassociation from FSC, with specified conditions for ending the disassociation. Timelines may also be specified for re-association. Actions to terminate the contractual relationship will be taken within a 30-day period upon the decision to disassociate.
- b. Probation, with time-bound conditions that must be met in order to remain associated with FSC. The associated organization must agree to meet these conditions, and failure to implement them within the agreed timelines will be grounds for disassociation.

See FSC-PRO-01-009 for a list of the factors considered in determining the consequences of a violation, and also the types of conditions that must be met for ending the probation or disassociation.

Re-association

A disassociated organization interested in re-associating with FSC enters into a roadmap process for ending the disassociation.

The roadmap is developed by FSC, in consultation with the disassociated organization and the affected parties, and builds off the conditions established as part of the decision to disassociate. It may further consider other actions of the disassociated organization and its affiliated group that were not part of the evaluation process yet that may be a violation of the *FSC Policy for Association*. See FSC-PRO-01-009 for more information on the roadmap process.

Upon completing the roadmap and FSC in return ending the disassociation, the organization may take steps to re-associate with FSC by applying for an FSC Trademark License and by pursuing FSC certification.

H TERMS AND DEFINITIONS for Reference Only

For the purposes of this international document, the terms and definitions given in *FSC-STD-01-001 V5-2 FSC Principles and Criteria for Forest Stewardship* and the following apply:

Accountable (Accountability)

There are several possible definitions that are currently being considered for determining when accountability exists; a definition is therefore not available.

Affiliated group

The totality of legal entities to which an associated organization is affiliated in a corporate relationship in which either party controls the performance of the other (e.g. parent or sister company, subsidiary, joint venture, etc.). [Note: this definition is being further reviewed to determine if it covers only ownership aspects or other relationships]

Association (associated, associate)

An association with FSC is formally established through any of the following contractual relationships:

- FSC membership agreement
- FSC certificate holder license agreement
- FSC certification body license agreement

Associated organization

An entity which has an association with FSC, and is therefore responsible for demonstrating conformity with this policy and other requirements upon which the association is based.

Control

The power to direct, restrict, regulate, govern, or administer the performance of a legal entity through authority, rights, contract, or other means.

Explanatory notes:

- To determine whether control exists, FSC may consider all factual circumstances including, but not limited to, shareholding, commercial relationships, financial links and managerial or board relationships, and/or familial relationships, among others.
- A commercial relationship with a legal entity that has engaged, or is engaging in, an unacceptable activity does not, by itself, constitute control. However, where an organization has a commercial relationship with another legal entity that is commercially equivalent to organizational control, such commercial relationship may be used as evidence of control.
- When applying this definition, control may exist irrespective of the percentage share of ownership. However, it shall be deemed to exist – unless it is determined to not exist based on evidence to the contrary – in corporate relationships that include, but are not limited to, an organization owning more than 50 per cent share interest in another legal entity, or an organization owning the right to use all of the assets of another legal entity.

Disassociation

The termination of all existing contractual relationships (member and license) between FSC and the associated organization and affiliated group. Disassociation also prevents entry into any new contractual relationships with FSC. Disassociation decisions are taken by the FSC Board of Directors, due to a violation of the *FSC Policy for Association*. Ending a disassociation also requires a decision of the FSC Board of Directors and does not mean that any previous contractual relationships are automatically resumed, or that any certificates are reinstated; rather, it implies that the associated organization may take the steps to re-associate if it wishes to do so. Disassociation normally includes a set of conditions that must be met in order for re-association to be considered. See the *FSC Policy for Association Complaints Procedure* for additional information related to disassociation.

Genetically modified (trees)

An organism in which the genetic material has been altered in a way that does not occur natural by mating and/or natural recombination. This policy is specific to organisms that are trees.

Human rights

Rights as established by the Universal Declaration of Human Rights of the United Nations.

<http://www.un.org/en/documents/udhr/>

Illegal harvesting or trade in forest products

Harvesting of timber and non-timber forest products in violation of any laws applicable in that location or jurisdiction including, but not limited to, laws related to the acquisition of harvesting rights from the rightful owner, the harvesting methods used, and the payment of all relevant fees and royalties. The term 'trade' refers to both 'illegal trade in forest products' and 'legal trade in illegal forest products'.

ILO core conventions

These are as defined in the International Labor Organization's *Declaration on Fundamental Principles and Rights at Work*. <http://www.ilo.org/declaration>. See also *FSC-POL-30-401 FSC certification and ILO Conventions (2002)*.

Significant conversion

Conversion is normally considered significant in any case of:

- conversion of high conservation value (HCV) forests, or

- conversion of more than 10 per cent of forests under the associated organization and/or affiliated group's control within a national jurisdiction in the past five years, or
- conversion of more than 10,000 ha of forests under the associated organization and/or affiliated group's control within a national jurisdiction in the past five years.

Explanatory Notes:

- The 10,000 ha and 10 percent thresholds represents the total percentage or area of forest managed by the associated organization and the affiliated group.
- These thresholds are intended as triggers for determining whether forest conversion is considered to be significant. Exceeding these thresholds will usually be considered a violation of the policy; further, conversion that is below these thresholds could also be considered significant if it is determined to have high impact.
- In judging cases, other factors will be taken into account, including but not limited to: regional ecological and social impacts; plans for continued conversion; repeated conversion in other national jurisdictions; past conversion (beyond the past five years); and restoration efforts.
- The establishment of ancillary infrastructure necessary to implement the objectives of responsible forest management (forest roads, skid trails, log landings, etc.) is not considered conversion.

Significant damage to high conservation values (HCVs) in forests

Damage to HCVs is considered significant if the attributes that constitute these values no longer exist, or they cannot be repaired, or their survival is immediately threatened.

Explanatory Notes:

- The term "HCVs" refers to those defined in the FSC system and those assessed following FSC requirements and guidance.
- It is not expected that the associated organization or affiliated group will systematically conduct HCV assessments to determine the existence of HCVs and the threats to them; rather, it is expected that they make use of available tools such as FSC national or centralized risk assessments, and have mitigation strategies in place in situations where potential risk to HCVs exist.

See *FSC-STD-01-001 V5-2* for the definition of the six HCVs.

Traditional rights

Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit. It also encompasses the rights of Indigenous and Tribal Peoples established by the ILO Convention 169.

Annex 1: Examples of Control

The FSC Policy for Association provides a definition of control, yet it is expected that there will be situations where the existence of control will need to be evaluated on a case-by-case basis, with its application built over time through case law.

Guidance on determining whether “control” exists is provided in the Explanatory Notes. Below are three examples that further illustrate these Explanatory Notes:

- 1. *Shareholdings (parent, subsidiary, joint venture, etc):*** Control may exist irrespective of the percentage share of ownership; however, it is deemed to exist (unless evidence points to the contrary) when an organization owns more than 50 percent share interest in another legal entity.
- 2. *Managerial/Board/relations:*** Similar to above, control may exist when the organization is found to have managerial control over the entity engaged in the unacceptable activity. For example, Company A holds multiple FSC FM/CoC certificates, and Company B does not have any FSC certificates. The owner of Company A sits on the Board of Company B, though with voting power of only 20%. Nevertheless, the owner of Company A sets the performance benchmarks for the management of Company B. If Company B were found to be engaged in an unacceptable activity, then a PfA evaluation would be triggered to determine whether Company A had managerial control over the actions of Company B and whether the unacceptable activities constitute a violation of the PfA.
- 3. *Commercial relationships:*** The unacceptable activities of suppliers may or may not constitute a violation of the PfA, depending on whether the organization had control over the actions of its supplier. For example, Company A has an FSC chain of custody certificate and buys timber from Company B, which is not FSC certified. Company B is a supplier to Company A, and both are completely separate corporate entities. Company A, however, is the sole buyer of Company B and the sales contract between both companies gives Company A the right to veto Company B’s management plan. If Company B were found to be engaged in an unacceptable activity, then a PfA evaluation could be triggered to determine whether Company A contributed to the occurrence of the unacceptable activity.