Protecting FSC’s reputation – Workshop –

October 2017
Workshop Topics

- Update from May 2017 FSC BoD meeting
- Objectives and desired outcomes
- What are ‘controversial activities’?
- Tools to protect FSC reputation
- Practical cases: How are these mechanisms used in practice?
- Identify the gaps and addressing priorities
- Open questions for discussion
Questions raised by the FSC Board of Directors

1. Does FSC have a solid set of tools and mechanisms to protect its reputation?

2. Can the existing mechanisms effectively address cases of ‘controversial activities’ that could harm FSC’s reputation?

3. Are additional mechanisms required to address cases of ‘controversial activities’?

4. Is further guidance needed on the processes to be followed by FSC when addressing these cases?

5. Is the revised Policy for Association “package” in line with the outcomes of other related processes (Governance Review, Motion 12 and ILO)?
Objectives and Desired Outcomes

Main objectives

- **Review** existing portfolio of tools and mechanisms

- **Assess** – if tools address controversial activities, their effectiveness, quality of outcomes

- **Identify gaps** – need for further mechanisms, resource driven outcome oriented prioritization, etc.

- **Discuss and define:**
  - **Scope of controversial activities** unrelated to forest activities
  - **FSC’s sphere of control** and impact.

**Desired outcome:** Obtain informed input from the membership for final proposal.
What are “controversial activities”?

**Non-forest related activities outside the scope of the PfA**

- Environmental Pollution
- HCV destruction outside the forest sector
- Fraud
- Racism/ Discrimination
- Market price collusion
- Illegal/criminal activities outside forest sector
- Conflict of interest
- Lack of genuine support for FSC P&C/ values
- Activities/ Responsibilities not in line with FSC purpose
- Involvement in substantial social, environmental or legal grievances;
- Disrespect towards FSC processes
- Gross misconduct/ negligence/ dishonesty
Which organizations associated with FSC could damage FSC’s reputation?

**Actors**

- Members
- Applicant CHs and Members
- CHs
- CBs
- ASI
- Donors
- Network Partners
- FSC Board members
- Non-CH License Holders
TOOLKIT: Tools to protect FSC’s reputation

- Trademark License Agreement (TLA) and Certification Agreement
- Policy for Association + Self-Declaration
- Statutes + requirements for applicants to membership
- Complaint Procedures CH, CB, ASI, FSC
- FSC Appeals Procedure
- ASI Incident Procedure
TOOLKIT: Tools to protect FSC’s reputation

- Agreements/Procedures regulating association with: ASI, CB, Network, Donors, Members

- Conflict of Interest Policy for Board of Directors

- Policy for Accepting Contributions

- Trademark Infringement and Fraud Prevention and Enforcement

- Due Diligence Procedure

- Mediation

- Transaction Verification
## Certificate Holders: Activities and Consequences under FSC’s control

### Controversial activities

- Violation of Policy for Association
- Violation of FSC Standards
- Engagement in other controversial activities

### Measures/Consequences

- Disassociation / Conditions for ending disassociation
- Extraordinary Termination of License – immediate
- Ordinary Termination of License – 3 month notice

#### PROBATION

- CAB unannounced audit / CARs
- Suspension / Termination of License
- ASI incident report
- CAB complaint investigation

- Extraordinary Termination of License – immediate
- Ordinary Termination of License – 3 month notice
- Warning letter
International Members: Measures under FSC’s control

Controversial activities

- PfA unacceptable activities
- Acting in ‘bad faith’
- Lack of genuine support for FSC
- Substantial legal grievances
- Activities in conflict with Statutes

Measures/Consequences

- Cancelation of application
- Termination of membership
- PfA inv. /Disassociation/Probation
- Mediation + DDS
International Board Members: Measures under FSC’s control

Controversial activities

- Activities contrary to FSC’s interests
- Conflict of interest
- PfA unacceptable activities
- Acting in ‘bad faith’
- Lack of genuine support for FSC
- Substantial legal grievances
- Activities in conflict with Statutes

Measures/Consequences

- Documented evidence of modification of conduct (30 days)
- Removal BoD member
- Mediation + DDS
- PfA inv. /Disassociation/Probation
### FSC Partners and Affiliates: CBs, ASI, Donors, Network - Measures under FSC’s control

#### Controversial activities
- Violation of Policy for Association
- Confirmed damage to FSC reputation
- Confirmed action in bad faith
- Activities/Responsibilities not in line FSC mission and goals
- Serious shortcomings found
- Violation due to gross misconduct/negligence
- Found lack of support of FSC’s charitable mission
- Investigations by authorities
- Found not operating at high ethical Standards

#### Measures/Consequences
- Temporary suspension CB license
- Termination CB license (6 months, or immediate)
- ASI investigation - CB complaint/incident
  - CARs, susp., term.
- FSC credibility projects
- Termination ASI agreement (6 months or immediate)
- Reject grants
- Improvement measures to NPs/ lowering status
- End contract with NP
- PfA inv./Disassociation/Probation
- Mediation + DDS
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**Case 1: Water pollution**

**Country:** Sweden

**Actor:**
FSC CoC-certified processing facility, FSC International member, market leader.

**Activity:**
-Dumping toxic pollutants into a river of an internationally recognized biodiversity sanctuary, severely affecting endemic species.

**Evidence:** Environmental impact report by Swedish Environmental Authorities – Sanctions and fines for environmental damage, Satellite images of damage

**Media coverage:** Extensive global reports of environmental damage, illness of Sami People, environmental campaigning
Case 1: Water pollution – Addressing the case (II)

- Which of the available tools could FSC use to address this case?
  - Policy for Association?
  - Complaints Procedures (FSC, CAB, ASI) / regular auditing system? –
  - TLA?
  - Statutes/Membership?

- What is most effective at achieving the desired outcome considering the resources we have allocated to invest?
Case 1: Water pollution – Addressing the case

 TLA

Is there evidence of reputational damage?  (Internal/ Legal analysis)

- Yes → Immediate termination
- No → Ordinary termination (3 months notice) + Investigation to substantiate allegations

Questions

- Should FSC be investing its resources in investigating of this type of controversial case? Why?

- After termination: Should FSC establish a set of conditions to be fulfilled before the termination can be lifted?
Case 1: Water pollution – Addressing the case

- Statutes/ Membership
  - Termination of membership - “Lack of genuine support for FSC and its activities”

Questions:
- Does this case clearly constitute a case of ‘lack of genuine support for FSC’?
- What evidence of ‘lack of genuine support for FSC’ is present in this case?
- Should FSC also establish conditions for re-establishing membership?
Case 2: Conflict with land tenure rights in FSC certified forests

**Country:** Indonesia

**Actor:** FSC CH (FM), non FSC member

**Activity:** Land titles and boundaries conflict with indigenous community, (FM operations in land claimed by community). Lack of involvement of community in participatory mapping for the development of the land boundaries.

Formal PfA complaint alleging PfA violation and non compliance with P&C Principle 2 *Tenure and use rights and responsibilities* and Principle 3 *Indigenous peoples' rights*.

**Evidence:** Documented information as part of complaints submission

**Media coverage:** No media coverage
Case 2: Conflict with land tenure rights in FSC certified forests (II)

- Could this case have an impact on FSC’s reputation?
- Does the case merit FSC further looking into it?
- What is the scope of the activity?
- Which of the available mechanisms could be used to address the case?
  - Policy for Association?
  - Complaints Procedures/ regular auditing system?
  - TLA?
  - Statutes/Membership?
Case 2: Conflict with land tenure rights in FSC certified forests (III)

Applicable mechanisms:

- FSC complaints procedures/ regular auditing system
- Policy for Association (only as last resort)

❖ FSC Complaints system

- CB investigation: CARs, suspension/ termination of certificate
- ASI investigation: Complaint/ Incident – non conformities/ suspension of accreditation

❖ Policy for Association

- PfA complaint investigation - If investigation results point towards potential breach of PfA: Disassociation + Conditions for ending disassociation /Probation/ Maintained association
Case 2: Conflict with land tenure rights in FSC certified forests (IV)

Outcomes of real case

- CB complaint investigation + Re-assessment audit → Termination of certificate (multiple non conformities)
- CH needs to correct the non conformities to get recertified
- If certified by same CB → ASI will conduct compliance audit to verify issues with CB
- If certified by a different CB → ASI evaluate FPIC process and Conflict Resolution Mechanisms
Case 3: Racism and discrimination of indigenous communities

Country: Brazil

Actor: Managing Director of an FSC Member and CoC CH

Activity: Publish on private Twitter account racist comments and photos discriminating the indigenous peoples in the Amazon.

Evidence: Photos and racist comments documented

Media coverage: Geographically limited – at national/ local level
Significant concerns among social organizations key supporters of FSC in Brazil.
Case 3: Racism and discrimination of indigenous communities (II)

- **Trademark License Agreement**
  - Precautionary Immediate Termination – reputational damage
  - Precautionary Termination 3 months notice –
  - Warning Notice + Conditions

- **Statutes/Membership**
  - **Termination of membership** – ‘Lack of genuine support for FSC and its activities’, or ‘Substantial social grievances’ + Conditions
  - Warning Notice + Conditions
Identified Gaps

- **Gap 1.** Specification vs. flexibility

- **Gap 2.** Lack of guidance on *when* and *how* to apply each mechanism

- **Gap 3.** FSC’s sphere of control: What types of activities are most concerning to FSC, where FSC should focus its resources for investigating? How to ensure a risk informed and outcome oriented approach to managing FSC’s associations with organizations?

- **Gap 4.** Lack of guidance on procedures for investigating controversial activities and consequences
Questions ?
Questions for discussion

1. Do we need new tools/mechanisms for addressing controversial activities that fall outside the PfA or are the existing tools and mechanism enough to take action in order to protect FSC’s reputation?

2. Do we need further specification across the various mechanisms (TLA, Statutes, etc.) about what constitutes a controversial activity, as well as clear guidelines on how to investigate these cases? Or should the current flexibility and broad terms be kept in order to allow more latitude in decision making processes?

3. How much organization effort should FSC invest in resolving/ addressing cases of controversial activities?

4. Is an ‘escalatory framework’ needed in order to provide guidelines on how to address the various cases of controversial activities (in which higher ethical standards are required from members than from CHs, and where a breach of more funda-mental values will lead to more severe sanctions)?
Questions for discussion

5. What is the scope of controversial activities unrelated to forests and forest related activities that FSC should investigate and take action in relation to (in order to protect its reputation)?

6. Does FSC need to develop additional guidance on how to investigate controversial activities in relation to the scope, process and consequences of investigations of possible involvement in controversial activities? (See sub-questions listed under point #4 above).

7. How does the idea of the Ethics Committee (GA motion) and the possible development of a FSC ‘Code of Ethics’ fit with the possible further revisions of the existing mechanisms to consistently address controversial activities?

8. Would an additional framework on how to address controversial activities (or revisions to the existing mechanisms to further define what controversial activities are and how they should be investigated) create an unwanted additional barrier for certification?
Questions for discussion

9. How are reputational damages managed by other organizations? What are the processes followed by other organizations (CHs, ENGOs, etc.) to address potential controversial activities in which their associated organizations may be involved?