

GREENPEACE

SHINING LIGHT ON THE SHADOWS

TOWARDS A UNIFORM
METHODOLOGY FOR
ESTABLISHING COMMON
CORPORATE CONTROL

In collaboration with



PREFACE: KNOW YOUR CUSTOMER AND IDENTIFY RISK BY ASSOCIATION

REASONS FOR DEVELOPING THE METHODOLOGY

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. Investigations into the extent of a corporate group and the activities of its members take on important commercial significance. A standard methodology therefore needs to be developed which enables researchers to evaluate evidence as objectively as possible, and to gauge a confidence level for any conclusions reached.

Emerging regulatory instruments in jurisdictions such as the European Union include due diligence/know your customer requirements imposed on corporates and financial institutions. It is anticipated that regulators will benefit from the adoption of a robust, widely-accepted methodology to be followed by regulated entities in discharging their obligations. The methodology offers a solid and consistent basis for the development of a unified regulatory approach.

AIM OF THE DOCUMENT

This document sets out a framework for use by researchers to discover the structure of corporate groups, for example as part of money laundering investigations, sustainability due diligence or as a tool to use in complaints or grievance mechanisms. The methodology has been supported by a coalition of more than 25 organisations and individuals, and developed by Greenpeace with input from Centre for Global Advancement, Forest Peoples Programme, Profundo and Rainforest Action Network. It represents many years' experience of analysing corporate structures and has been reviewed and improved by a team of legal experts and a forensic accountant.

The methodology applies the AFi definition of corporate group, which has been or is in the process of being adopted by various organisations. A common approach to applying the definition will assist accountability processes.

The AFi definition of a corporate group is necessarily broad to reflect the realities of group control. It is further complicated as groups may, for one reason or another, not wish to be transparent about their membership. Determining whether companies are under common control is only possible through collecting and evaluating evidence.

The breadth of the AFi definition means the associated methodology will inherently be labour-intensive: agreement on a common process for the implementation of the definition should lead to and encourage wider sharing of ongoing publications and data by groups using the indicators, in order to promote greater transparency and reduce costs.

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DEFINITIONS

Associated company	A <i>company</i> in which another company legally owns a significant minority stake, usually between 20% and 50% of shares.
Beneficial owner (ultimate)	A natural person (i.e. an individual rather than a 'legal person' such as a <i>company</i>) who ultimately owns and/or controls a company, securities or other assets or has the right to benefit financially from such assets. ¹ As used in this methodology, the term 'beneficial owner' is used as shorthand for ' ultimate beneficial owner' unless specified otherwise.
Company	As used in this methodology, any business entity, regardless of legal status and whether private or state-owned, that could form part of a <i>corporate group</i> . Such entities may include (among others) corporations, partnerships, limited partnerships, co-operatives, foundations, syndicates, trusts, associations and funds.
Common control	<i>Control</i> by the same <i>controlling entity</i> or group of entities.
Control	In respect of a <i>controlling entity</i> , the power to ensure that a <i>company</i> acts in accordance with the entity's wishes, or the ability to exert effective influence over a company, whether by ownership or by any other means – direct or indirect, formal or informal. Control of a <i>company</i> may belong to more than one controlling entity (joint control), for example via a joint venture, or where one <i>group</i> operates a plantation owned by another group
Controlling entity	As used in this methodology, the term 'controlling entity' is used as shorthand for ' ultimate controlling entity', i.e. a <i>company</i> or natural person (or persons acting together, such as a family) that has <i>control</i> of a company and is not itself controlled by another company or natural person/s . For a company to be considered a controlling entity, it must itself be subject to no single control, e.g. a public company with many shareholders, none of whom is a controlling shareholder.
Corporate group, also referred to as 'group'	The totality of <i>companies</i> under common control. The Accountability Framework initiative gives the following definition of a corporate group: <i>The totality of legal entities to which the company is affiliated in a relationship in which either party controls the actions or performance of the other.</i> Clarifications to this definition and factors determining control are discussed in detail in Section 1.3 below.
Critical stake	The minimum stake (calculated as a percentage of either share capital or voting rights) in a <i>company</i> that needs to be legally or beneficially owned in order for the ultimate owner of that stake to be treated as a <i>controlling entity</i> of the company on grounds of ownership. See Section III 'Guidance on setting and applying a critical stake'.
Family control	Common control by a family occurs when a close family relationship exists between <i>beneficial owners</i> of different <i>companies</i> , and those companies are managed by, or in the interests of, the family.
Financial control	Any arrangement (other than share ownership) in which a group, its controlling entity or one of its members has invested in or otherwise financed a company with the result that it is able to exert control over that company. Financial control may also be assumed to exist as a result of an agreement in which a group or company is the sole buyer of another company's product through a contract or other tied arrangement, and the producing company is thus financially dependent on the purchasing group or company.
Grievance mechanism	The Accountability Framework initiative gives the following definition: <i>Any routinized process through which grievances concerning business-related negative impacts to human rights or the environment can be raised and remedy can be sought. Grievance mechanisms may be State-based or non-State-based and they may be judicial or non-judicial.</i>
Legal owner	The registered, official or formal owner of a <i>company</i> or other asset, or a stake in a <i>company</i> or asset, for example through share ownership. The term is often used in contrast to <i>beneficial owner</i> , in recognition that legal ownership does not necessarily entail control.

Management control	Management <i>control</i> is the power on the part of a <i>group</i> (or one of its members) to take management decisions over a <i>company</i> .
Nominee officer	An individual who holds a post as an <i>officer</i> in a <i>company</i> as a substitute or proxy for another who has a more substantive claim to <i>control</i> , owns the company, or both.
Nominee shareholder	A registered individual owner of shares who holds those shares as a substitute or proxy for the benefit of another person (the <i>beneficial owner</i>) whose identity is often not publicly disclosed. Nominee arrangements are legally enforceable and regulated in some jurisdictions but not others, although they may still be used informally.
Officer	An individual holding a legal post in a <i>company</i> . This includes directors, secretaries, treasurers, commissioners and any other posts appearing in the official register of the jurisdiction where the company is registered.
Operational control	Operational <i>control</i> by a <i>group</i> may be considered to occur when a landholding or facility is operated by a company that is part of that group.
Operations	As used in this methodology, any activities, landholdings or facilities of a <i>company</i> or <i>group</i> that have potential environmental or social impacts, including but not limited to plantations, land or forest management, mines, processing facilities, infrastructure, transportation, exploration and surveying, human resources management, acquisition of permits and licences, undeveloped land for which development or management rights have been obtained or are being sought, and ancillary projects to meet legal, sustainability or corporate social responsibility requirements or voluntary commitments.
Parent	As used in this methodology, a <i>company</i> that legally owns 50% or more of the voting rights in another company (its subsidiary). If information on the voting rights conferred by different classes of shares is unavailable, a company which is the legal owner of 50% or more of the shares in another company may be assumed to be its parent. NB This definition is purposefully more restrictive than some other definitions which include different forms of control in the parent-subsidiary relationship; these other forms of control are covered separately in this methodology for clarity purposes.
Power of attorney	Written authorisation allowing a third party the legal prerogatives to act on behalf of another person in specified legal or financial matters. Sometimes used as part of nominee arrangements to obscure the identity of the controlling entity of a company. As a private legal arrangement, it is rarely referenced in company documents.
Related party	A natural person or company related to a company, as defined in accounting standards; precise definitions vary by jurisdiction and context. Listed companies are obliged to report related party transactions to ensure transparency around potential conflicts of interest. The following definition is from International Accounting Standard 24: <i>A related party is a person or an entity that is related to the reporting entity:</i> <ul style="list-style-type: none"> • A person or a close member of that person's family is related to a reporting entity if that person has control, joint control, or significant influence over the entity or is a member of its key management personnel. • An entity is related to a reporting entity if, among other circumstances, it is a parent, subsidiary, fellow subsidiary, associate, or joint venture of the reporting entity, or it is controlled, jointly controlled, or significantly influenced or managed by a person who is a related party.
Secrecy jurisdiction	A jurisdiction that has put in place legal arrangements to enable individuals and <i>companies</i> to avoid disclosure of information relating to assets registered and/or held in the jurisdiction, such as the ownership and <i>control</i> of companies, the value of assets held there and details of financial transactions conducted there. Such arrangements enable users to avoid complying with the disclosure regulations of other jurisdictions and thus to maintain secrecy around their assets and activities.
Shadow company	A <i>company</i> that is under <i>common control</i> with a self-identified <i>group</i> , or under the control of a group, but which has not been publicly acknowledged as part of that group.
Subgroup	A subset of <i>companies</i> identified by the researcher for which there is reasonable certainty that they share the same <i>controlling entity</i> because they: <ul style="list-style-type: none"> • share the same <i>legal owner</i> (formal subgroup), and/or • are trading under the same name or are self-identified as a <i>group</i> (declared subgroup). <p>A subgroup is known or suspected to have links with a larger group of which it may be part.</p>

Subsidiary	As used in this methodology, a <i>company</i> of which another company (its <i>parent</i>) legally owns 50% or more of the voting rights. If information on the voting rights conferred by different classes of shares is unavailable, a company in which another company is the <i>legal owner</i> of 50% or more of the shares may be assumed to be a subsidiary. NB This is purposefully more restrictive than some other definitions, which include different forms of control in the parent-subsubsidiary relationship; these other forms of control are covered separately in this methodology for clarity purposes.
Sustainability commitment	The Accountability Framework initiative gives the following definition: <i>A public statement by a company that specifies the actions that it intends to take or the goals, criteria, or targets that it intends to meet with regard to its management of or performance on environmental, social, and/or governance topics.</i>
Sustainability policy(ies)	Policies defining an organisation's commitments to ethical, social and environmental practices, including to any relevant laws, regulations and other established standards, such as the principle of 'No Deforestation, no Peat and no Exploitation' in agricultural commodity supply chains. ² See also <i>Sustainability commitment</i> .

ACRONYMS

AFi	Accountability Framework initiative
HCSA	High Carbon Stock Approach
HCVN	High Conservation Value Network
FATF	Financial Action Task Force
FSC	Forest Stewardship Council
RSPO	Roundtable on Sustainable Palm Oil

I. INTRODUCTION

1. GROUP-LEVEL RESPONSIBILITY

The principle of group-level responsibility is a key element of regulatory requirements, sustainability policies and due diligence as they relate to supply chains, finance, certification etc. Essentially it means that any company can potentially be held accountable for breaches of laws, regulations or sustainability policies arising from any companies or operations with which it is under common control, regardless of separate legal ownership structures or trading names; and that any sanctions imposed by a supplier, customer, lender, investor or certification body in response to such breaches should be applied to **all the companies and operations under common control**. A supplier, customer, certifier or financier should regard a breach of a law, regulation or sustainability policy by any of the companies under common control in the same way, whether it occurred in operations that are part of its supply chain, in receipt of its finance, certified as compliant with its standards or in a separate part of the group.

The definitions of 'control' and 'common control' for the purposes of this methodology are given at the start of this document (see Definitions). As the definition of 'control' acknowledges, there are different ways that control can be exercised, and there is not always transparency around the identity of controlling entities.

Defining group-level responsibility to include all companies under common control extends the reach of sustainability policies beyond companies strictly under the same formal ownership structure. The aim is to compel actors in potentially unsustainable industries to act to improve the sustainability of those industries across the board, rather than letting them pick and choose when and where to comply with sustainability policies, and when and where they prefer to violate them.

Logically it then makes sense that this principle should also extend **across all commodities and sectors** with which a group is involved. In other words, if a group has control of companies involved in palm oil, industrial forestry plantations and open-cast coal mining, a breach of sustainability policies by a group member in one of these sectors should also be considered as a breach of sustainability policies by that group as a whole, including members in the other sectors. In practice, however, certain commodities (such as palm oil) have come under much greater scrutiny than others, and to date there have been few cases of a group being successfully held accountable for its operations in a different sector.

Similarly, the principle of group-level responsibility should be considered to have **worldwide scope**, i.e. if companies are under common control then the same standards should apply to their operations regardless of where in the world they are carried out.

In summary, group-level responsibility applies:

- across the group (i.e. to all companies under common control)
- across all commodities and sectors with which the group is involved
- to all operations of the group's companies, globally.

2. PURPOSE OF THIS DOCUMENT

This document describes a methodology, based on the Accountability Framework initiative (AFi)³ definition of a corporate group, for fairly evaluating evidence of common control, especially in cases where suspicions exist that control is being concealed or otherwise not publicly acknowledged. It is hoped that it can form the basis for investigations into group membership as part of sustainability due diligence procedures related to the finance, supply chains and certification of commodities that entail sustainability risks, as well as providing guidance to NGOs and journalists on how to approach the issue of concealed control.

Since there are no publicly available databases containing full details of who ultimately controls companies and natural resource exploitation operations, research is required to determine control and group-level responsibility, especially in cases of multi-jurisdictional control structures. Many operations belong to formally established, publicly listed companies organised into groups with conventional parent–subsidiary structures, which list their subsidiaries and/or projects more or less comprehensively on their websites or in their annual reports. Companies and operations can be attributed to groups on the basis of these published formal structures or declarations by the company or group without extensive further research, as long as there is confidence that the parent or individual owner is in fact the controlling entity or that members of the declared group are indeed under common control. Even in these formal cases, however, complex structures (e.g. farm-ins, operating contracts and joint ventures) may make the management and control of some operations difficult to determine.

Other companies and operations have much less straightforward ownership and control, belonging to complex or informal networks owned by individuals or families, whose links are not (or only in part) publicly acknowledged, and/or where decision-making power does not lie with the legal owner. In some cases, a formal or acknowledged group may have a cluster of clandestinely controlled ‘shadow companies’ in addition to its acknowledged subsidiaries; in others there is no single ownership structure or declared links, and the group consists of separate privately held companies. Different family members may be the legal owners of different companies, or parts of the group may be owned by companies registered in secrecy jurisdictions, rendering the ultimate owner unknowable. In other cases, named legal shareholders may be nominees, i.e. individuals commissioned to serve as shareholders on behalf of the (actual) beneficial owners, whose identity is not publicly disclosed (see Definitions).

These and other arrangements (see discussion of potential concealed beneficial ownership in Section II, Stage 3) are often entirely legal, and are common in many parts of the world. This means that an approach to determining group membership which relies only on company self-reporting and publicly available information on share ownership will risk failing to identify parts of the group. Such an approach fails to take account of the loopholes by which a group that wishes to do so can conceal its full extent, and is therefore insufficient in itself.

There are a number of reasons why a controlling entity may want to obscure its control over operations, including:

- tax avoidance/evasion
- avoidance of accountability for greenhouse gas emissions, environmental destruction or social harm
- avoiding reputational damage in order to protect the market access of its publicly acknowledged members
- avoiding anti-monopoly restrictions
- mitigating legal risks to a wider group, for example in countries where bribes are expected in order to obtain licences
- credit enhancement: setting the corporate perimeter to include or exclude certain assets so as to manage the cost of capital
- taking advantage of privileges or avoiding restrictions on certain types of companies (e.g. where there are limits on foreign investments or tax breaks for companies meeting certain ownership criteria).

In order to ensure accountability, it is necessary to take a broad view of what constitutes a corporate group, going beyond straightforward ownership links to include other forms of control (including financial, management and operational control).

The AFi’s Terms and Definitions⁴ (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 present document aims to transform this list into a set of indicators which will form the basis for a practical methodology enabling the researcher to establish the likely full extent of a group and to assess the confidence level of their conclusions.

APPLICATIONS OF THIS METHODOLOGY

Two principal applications of the present methodology may be identified:

1. Mapping the composition of an entire group.

A potential supplier, customer, financier or certifier may wish to conduct such an exercise as part of due diligence before entering into a relationship with a group or one of its members. NGOs, sustainability consultants or investigative journalists may wish to establish the full extent of a group as part of their research. This case assumes that the researcher will aim to identify all companies and operations which may be part of a corporate group. **This is referred to throughout the methodology as full group mapping.**

2. Determining whether certain companies are under common control or whether a company is under the control of a given corporate group. The use of the present methodology may be triggered by a claim made by a third party that a group has control of particular companies or operations which it does not acknowledge, or by allegations already submitted through a complaints or grievance procedure, or a regulatory or other investigation; in these cases the investigation may be limited to the companies identified. This case assumes that the researcher will aim to discover whether or not a certain set of companies of interest is part of a known corporate group, but will not need to identify other potential group members beyond those companies. **This is referred to throughout the methodology as partial group mapping.**

Partial group mapping may allow the researcher to simplify some of the steps of the process. Where this is the case, it is highlighted in the text.

Examples of when full or partial group mapping would be used	
Full group mapping	Partial group mapping
A bank with sustainability commitments which recognise group-level responsibility conducts due diligence before making a loan to a company.	An NGO has submitted a grievance to a commodity trader with sustainability commitments alleging that one of its suppliers is under common control with a company that is currently clearing forest.
In the course of investigating a grievance about one of its members, a certification body starts to suspect that the member has not declared the full extent of its corporate group and decides to investigate.	A consumer branded products company performs due diligence on all its suppliers, including evaluating the extent of their corporate groups. However, after a media report highlighting land conflicts in a company allegedly linked to one of its existing suppliers which has not been identified in its due diligence checks, it decides to investigate.

EXPECTED OUTCOME

This methodology offers a basis by which to determine whether companies are part of a corporate group and to estimate an overall rating of confidence in these findings, based on evidence encountered during an investigation and the response of companies concerned. Elements of doubt cannot be entirely eliminated, for example when beneficial ownership is concealed through the use of offshore companies, or where available evidence is not up to date. The methodology has been designed primarily to provide a robust framework to enable stakeholders to make decisions, show their justification, and, crucially, take appropriate action even where uncertainty remains.

GLOBAL APPLICABILITY AND LIMITATIONS

This methodology was developed by researchers with a background investigating corporate groups in the palm oil and pulp and paper sectors in Indonesia, and to a lesser extent elsewhere in Southeast Asia. While it is hoped that it will be applicable to other commodity sectors around the world that entail risks associated with environmental crime, human rights or other legal issues, and present challenges in terms of identifying control, the reader may encounter some bias toward the situations encountered in the areas of which the authors have most experience. Development of the methodology to improve applicability to other sectors and regions is desirable.

3. THE ACCOUNTABILITY FRAMEWORK INITIATIVE CORPORATE GROUP DEFINITION AND ITS INTERPRETATION

The AFI's Terms and Definitions⁵ (2019) give a definition of corporate group which includes a list of factors potentially indicative of group membership.

The AFI's list of factors makes it clear that the word 'control' as used in its definition of a corporate group is to be understood in a broader sense than merely possession of a simple majority of shares or voting rights, thereby intentionally going beyond the usage typical in some financial contexts (see also Definitions).

The present methodology employs a slightly modified and expanded definition (given below) which is intended to be identical in meaning to the current AFI definition. The changes in wording are intended to reduce potential ambiguities and facilitate the application of the definition to real-world situations where control may be in doubt. An explanation for each of the changes made is given in Annex 1.

Corporate group [of a company]: The totality of legal entities to which the company is affiliated, directly or indirectly, in a network of relationships in which one party controls the actions or performance of the others, or which are controlled by the same individual/s.

Control may be exercised in one or more of the following ways (see also Definitions):

- **Legal ownership:** registered, official or formal ownership of a company or other asset, or a stake in a company or asset, for example through share ownership. The term is often used in contrast to beneficial ownership, in recognition that legal ownership does not necessarily entail control.
- **Beneficial ownership:** ultimate ownership and/or control of a company or other asset or the right to benefit financially from such assets.
- **Family control:** common control by a family – the situation that occurs when a close family relationship exists between beneficial owners of different companies, and those companies are managed by, or in the interests of, the family.
- **Management control:** the power on the part of a group (or one of its members) to take management decisions over a company.
- **Operational control:** the situation that occurs when a landholding or facility is operated by a company that is part of a group.
- **Financial control:** any arrangement (other than share ownership) in which a group, its controlling entity or one of its members has invested in or otherwise financed a company with the result that it is able to exert control over that company. Financial control may also be assumed to exist as a result of an agreement in which a group or company is the sole buyer of another company's product through a contract or other tied arrangement, and the producing company is thus financially dependent on the purchasing group or company.

Indicators that are used to determine whether a company is part of a broader corporate group are shown in the following table.

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

It is also important to bear in mind that more than one entity can have control over a given company's operations – a simple example is that of a plantation company X, owned by company Y but operated under contract by a third party, company Z. In such a case both companies Y and Z will normally have the power to make key decisions over company X's actions, even though that power is distributed and will vary according to the precise circumstances. The key point is that both have sufficient influence over company X's operations for the respective groups to which they belong to be deemed accountable for them. In such a case, company X will be considered as part of company Y's corporate group **and** company Z's corporate group.

SETTING THRESHOLDS

The level of influence for which it is appropriate to hold a group accountable for actions taken by a company is subjective, and different users of this methodology may wish to determine this according to their own standards or requirements. The present methodology defines control in terms of the ability to exert **effective influence** (see Definitions), and considers the definitions of each type of control set out in the stages below as the minimum standard for adequate due diligence. However some users may wish to expand the threshold for accountability to include those groups exerting a lower level of **significant influence** than that set out here.

In terms of legal or beneficial ownership, users may require a threshold for accountability which is less than the majority of shares or voting rights which is widely understood to constitute control. In such cases, users should determine a **critical stake** for associated companies, which is the minimum stake in a company which needs to be owned in order for the ultimate owner of that stake to be treated as a controlling entity of the company.

Users who choose to define a critical stake lower than 50% (or other threshold for significant influence which is lower than that set out here) should explain this clearly in their policies and procedures, and make this information available to companies/groups which may be impacted by these thresholds.

Further considerations regarding options for setting critical stakes are provided in the Investigation Guidance, 'Guidance on setting and applying a critical stake'.

II. STEP-BY-STEP METHODOLOGY

The set of indicators above forms the core of the proposed methodology, which is articulated in five stages.

The process outlined below may be used for either full or partial group mapping. For full group mapping, each of the stages should be followed in its entirety. For partial group mapping, some of the steps may be omitted or simplified. When this is possible it is indicated under each stage.

Investigation guidance is provided separately in Section III of the document to accompany each main stage of the methodology: this is intended to help the researcher deal with some of the practical situations which they are likely to encounter.

- **Stage 1:** Map the current known corporate structures

**This relies in most cases on proof of formal ownership structures and/or group membership declarations (Indicators 1 and 2) but may also make use of other evidence directly from the group or company/ies, or from government sources, that clearly demonstrates group control.*

- **Stage 2:** Identify companies of interest for further investigation

**Where an existing formal group has been identified, this entails collating initial evidence relating to the indicators to determine whether there is a possibility of the group encompassing more members than those found at Stage 1 and, if there is, identifying the companies of interest for further investigation. Companies of interest may also be identified where there is a suspicion of common control but a formal group has not been identified.*

**The companies of interest are organised where possible into subgroups based on formal ownership structure and/or self-declaration, to facilitate the analysis of evidence.*

- **Stage 3:** Collect and analyse evidence by indicator

**The various forms of evidence which may be deployed for each of the indicators are gathered, analysed, and rated according to strength.*

- **Stage 4:** Summarise evidence and invite the company to comment

**Confidence ratings are combined to draw conclusions on group control. If the conclusion is that a group is likely to control one or more of the companies of interest identified at Stage 2, the group and other relevant parties are presented with a summary of the evidence and analysis and invited to comment on it.*

- **Stage 5:** Monitor and update

**A periodic review of findings is conducted to determine whether conclusions reached remain valid.*

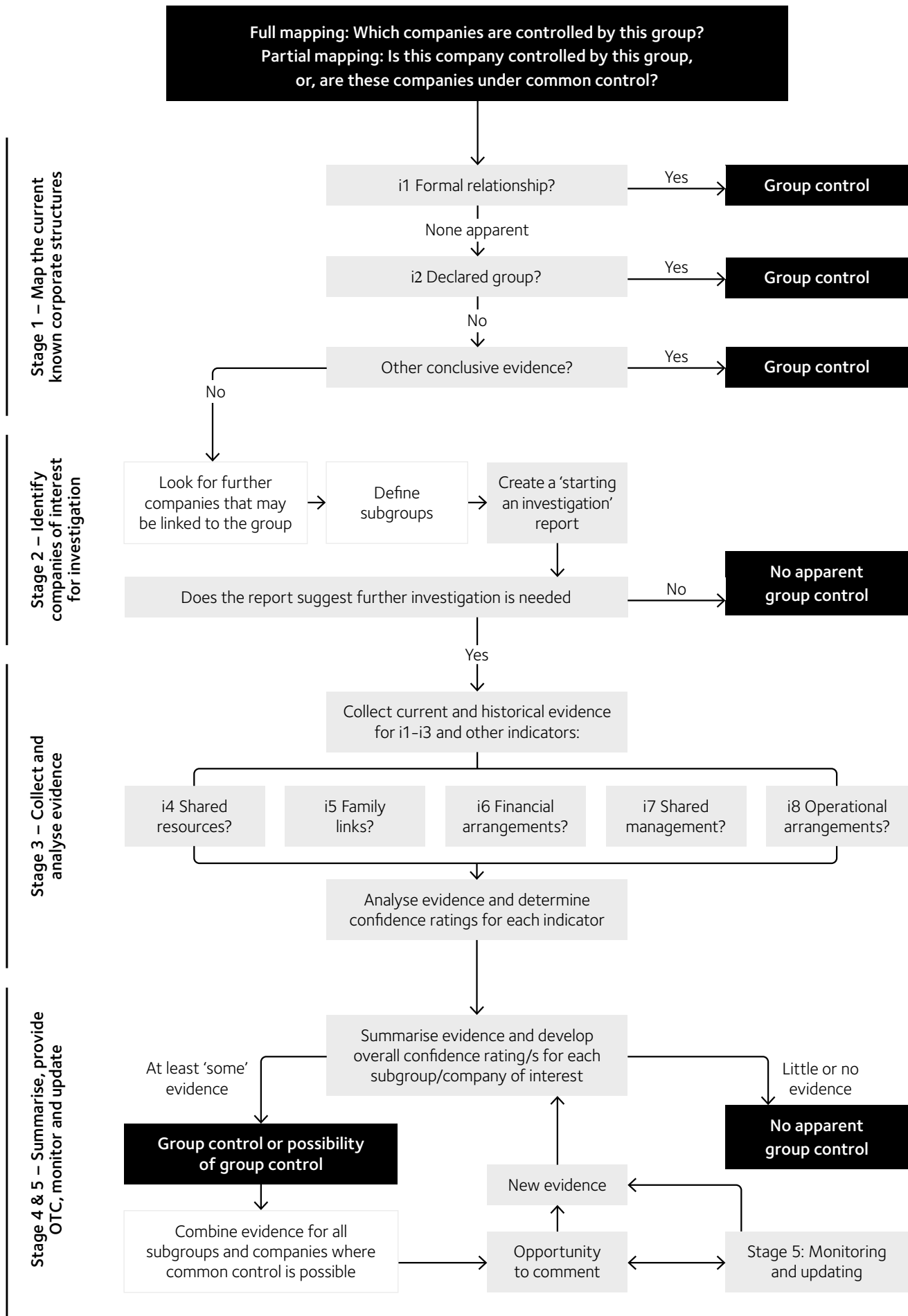


Figure 1: Methodological process to establish corporate control. All steps apply for full group mapping, steps in white may be omitted for partial group mapping.

STAGE 1 – MAP THE CURRENT KNOWN CORPORATE STRUCTURES

FULL GROUP MAPPING

The aim of this stage is to establish the minimum extent of a corporate group by listing companies or operations that can be easily shown to be part of the group and that would not reasonably be expected to be contested. This may be achieved on the basis of:

- evidence of a legal ownership structure between companies, appearing in official sources such as national official company registries, annual reports, audited financial statements or company disclosures that detail ownership.
- a declaration that companies are part of a group, made through an official or trustworthy medium such as
 - an annual report or statement to a stock exchange
 - an official company or group website
 - a declaration made to a certification body that has membership or association policies based on group-level accountability (such as an annual communication of progress to the Roundtable on Sustainable Palm Oil (RSPO) or a declaration of association to the Forest Stewardship Council (FSC))
 - a letter from the company, parent or controlling entity, for example in response to an opportunity-to-comment invitation from an NGO before the publication of a report.
- other conclusive evidence of forms of control which would not be expected to be contested – for example a copy of a contract stating that group A operates a certain plantation owned by group B, which would constitute conclusive evidence of Group A's operational control of the plantation.

To be considered as definitive evidence, sources are considered valid for the time period during which they show that the ownership structure existed. Sources used must be up-to-date if the investigation aims to determine current control. If the investigation aims to determine historical control, sources should correspond to the date range required.

If a user of the present methodology has decided that it is acceptable to regard a significant minority shareholding above a critical stake (see discussion on 'Setting thresholds' in Section I.3) as definitive evidence for control (thus forgoing the need for a more detailed investigation), that critical stake should be clearly communicated in any relevant policies or procedures and in any report or other document in which findings reliant on this decision are published. Otherwise such findings may be open to challenge by the groups, companies or individuals concerned on the grounds that they do not hold a majority share in the companies that they have been alleged to control.

PARTIAL GROUP MAPPING

In cases where only partial group mapping is required, the researcher may not need to determine the full extent of the corporate group. This stage may therefore be omitted, unless the researcher feels that it would be of use for the analysis of evidence at later stages.

STAGE 2 – IDENTIFY COMPANIES OF INTEREST FOR FURTHER INVESTIGATION

FULL GROUP MAPPING

The aim of this stage is to identify additional companies and operations that may be part of the group whose acknowledged extent was established at Stage 1; or, in cases where no acknowledged group has been found, to identify companies suspected of being under common control, and to determine whether to investigate further.

Identifying companies of interest relies mainly on gathering initial evidence relating to the indicators of control; a list of examples of situations to look out for is given in the Stage 2 Investigation Guidance, along with a suggested structure for reporting the results of this stage. Ultimately, the researcher will decide on the basis of the initial evidence gathered whether a full investigation is warranted.

The researcher may decide to group identified companies of interest into subgroups. These are sets of companies outside the known corporate structures identified in Stage 1 which either share a common legal owner or which are acknowledged as a group by the companies themselves. Identifying subgroups is intended to make the researcher's work easier, since companies with the same ultimate holding company or that are self-declared as a group may be assumed to have the same controlling entity, and any evidence subsequently uncovered concerning ultimate control of one company within the subgroup can be assumed to be valid for the subgroup as a whole. See Stage 2 Investigation Guidance for more detail on subgroups.

PARTIAL GROUP MAPPING

In cases where partial group mapping is required, the companies of interest for the investigation will already have been identified, and so it may be possible largely to omit this stage of the investigation. The researcher should nevertheless attempt to identify any other companies that form a subgroup or subgroups with the companies of interest, including any holding companies, as evidence relating to those companies may prove relevant to their investigation. Evidence found at this stage which conclusively links the company of interest with the known group (see stage 1) or, conversely, with a different group known to be independent (and with no evidence for shared control), precludes the need for further investigation.

Cases may also be encountered where it may be necessary to broaden the scope of investigation to include other companies of interest which are not part of the same subgroup. For example, if a partial group mapping investigation is concerned with links between group X and subgroup Y, and finds evidence linking both X and Y to another subgroup Z, then the companies in subgroup Z should also be included in the investigation's remit.

STAGE 3 – COLLECT AND ANALYSE EVIDENCE BY INDICATOR

If, on the basis of the initial evidence gathered, a full investigation has been judged desirable, relevant additional information which may serve as evidence for or against the suspected relationships of control under investigation should now be compiled and evaluated according to the eight indicators listed in Section 1.3. Both current and historical information can be considered as evidence: see Investigation Guidance for potential sources of information and the assessment of historical data.

ANALYSING EVIDENCE: PRINCIPLES

Evidence relating to each company or subgroup under investigation should be grouped separately under the applicable indicators. Specific guidance on which types of evidence may be relevant to each indicator is given in the rest of stage 3, including notes on the likely robustness of different types of evidence and how to draw conclusions from them (note that the examples listed are indicative only and not intended to be exhaustive). The following principles should be applied throughout the analysis:

1. Consider all available evidence

Under each indicator it is important to take into consideration all evidence both for and against common control, as well as alternative explanations for the evidence that has been discovered. The aim should be to evaluate the evidence objectively rather than constructing a one-sided argument alleging common control.

2. Rate all evidence

Each type of evidence for (or against) control of each company or subgroup of interest should be evaluated and a confidence rating produced. Evidence for a form of group control may be rated as 'strong evidence' or 'some evidence'. Evidence that the suspected group does *not* control the company or subgroup of interest may be referred to as counter-evidence. This includes both evidence of no control by the suspected group (e.g. a court case brought by a company of interest against an acknowledged group company) and evidence that a different group is in full control of the company or subgroup of interest. As with evidence in favour of control, counter-evidence should be rated as 'strong counter-evidence' or 'some counter-evidence'.

'Supporting evidence' may also be found which is not direct evidence for or against control, but may be interpreted alongside other evidence to strengthen or weaken the conclusions obtained – for example, evidence of some kind of link that falls short of control, such as a common minority shareholder or financial arrangements that do not meet the threshold for control.

If two or more distinct and unrelated types of evidence are relevant to the same indicator, the researcher may choose whether to produce separate confidence ratings for each type of evidence, or to add the evidence together to produce one rating for the indicator. In some cases, multiple pieces of evidence of distinct types may be found relating to the same indicator, none of which is 'strong' in itself, but which together constitute strong evidence. For example, consider the case of a group suspected of having operational control of Plantation A, where:

- local media reports refer to Plantation A as part of the group,
- satellite images indicate a pattern of continuous planting between Plantation A and neighbouring Plantation B which is owned by the group, and
- workers on Plantation A report being trained by the group then sent to work on Plantation A without a further job application.

None of these alone would class as strong evidence for operational control, but the picture of control builds up and the separate items when considered together may strengthen the confidence rating, in the absence of alternative explanations.

3. Assess direct and indirect links

If multiple subgroups have been identified, the analysis must be carried out in such a way as to enable an independent evaluation of the apparent links between each subgroup and the suspected controlling entity. However, evidence linking the subgroups to one another can also be considered. For example, if there is strong evidence linking subgroup A to a controlling entity but little or no available evidence linking subgroup B directly to the controlling entity, then it is useful to consider evidence linking subgroup B to subgroup A, thereby demonstrating an indirect link to the controlling entity. In such cases it should be acknowledged that the indirect nature of the link established increases its uncertainty and thus reduces confidence in the findings.

PARTIAL GROUP MAPPING

In some partial group mapping cases, especially grievances, evidence may have been provided by a stakeholder which has raised a suspicion of group membership. If this is the case, the researcher should aim both to verify the evidence provided and evaluate whether any interpretations offered are reasonable, and also to conduct their own investigation to search for other evidence. If the group about which allegations have been made has responded by offering different interpretations of evidence or other rebuttals, the researcher should consider any evidence presented, and also search for evidence which might confirm the group's version of events.

1. FORMALITY OF RELATIONSHIP (INDICATOR 1)

<p>Definition / guidance</p>	<p>A formal relationship (i.e. legal ownership) is in most cases determined by means of documented shareholding structures. Ownership can be direct (Company B is a subsidiary of Company A) or indirect (Company B is a subsidiary of company C which is a subsidiary of company A). Any other holding structure where a company is declared as another company's asset in audited accounts is also considered a formal ownership relationship.</p> <p>Formal control through legal ownership can be determined by the proportion of either voting rights or total number of shares held. These proportions may differ if a company has issued different classes of shares which confer different voting rights to the owner (e.g. there may be voting shares and non-voting shares). Where data is available, the proportion of voting rights is usually regarded as giving a more accurate indication of control.</p> <p>In the case of indirect ownership, a basic figure for 'effective ownership' can be calculated by multiplying the percentage share in each level of ownership. For example, if an entity owns 90% of company A, which in turn owns 80% of company B, then the entity can be said to own 72% of company B. However, some groups may structure their corporate hierarchy in a way in which the parent is able to maintain overall control despite not having majority effective ownership. This and other special cases are discussed in the investigation guidance for Indicator 1.</p>
<p>Indicative confidence rating</p>	<p>Strong evidence</p> <p>Evidence of a majority stake (or a stake higher than the critical stake, if one has been determined) that comes from a reliable source including:</p> <ul style="list-style-type: none"> • an official national company register • an annual report • an audited financial statement <p>and in the case of a publicly listed company:</p> <ul style="list-style-type: none"> • a public document • a disclosure of an ownership interest stake. <p>If information on voting rights is unavailable (in some jurisdictions this may only be disclosed in a company's articles of association, which may not be made public), evidence of a simple majority of shares of all classes may be regarded as strong evidence.</p> <p>Some evidence</p> <ul style="list-style-type: none"> • Evidence of a majority stake (or a stake higher than the critical stake, if one has been determined) that comes from a less reliable source, for example a historic company disclosure which may not represent the current situation, or evidence from a corporate database that cannot be independently verified. • Evidence of a complex or circular holding structure where there is ambiguity about the legal owner, or about the effective control which one company may exercise over others in that structure (see Investigation guidance). <p>No evidence and counter-evidence</p> <p>Evidence from a reliable source (see list above) of an unrelated legal owner should only be regarded as counter-evidence if the researcher is confident that the legal owner is also the beneficial owner of the company (and not a nominee shareholder, for example).</p> <p>Supporting evidence</p> <p>When a member of a group owns a small minority stake (less than the critical stake) in a company, this cannot be regarded as direct evidence of control by that group. However it does indicate a link between the company and the group which could be investigated further. A group member's ownership of a minority stake in a company may suggest that the company is part of a wider group structure, especially when there is no transparency around the full group structure (for example if some parts of the group rely on holding structures in secrecy jurisdictions). If evidence for control is found under other indicators, minority stakes held by group members may in certain circumstances be interpreted as supporting evidence. However, care should be taken since ownership of such a stake may also serve as an alternative explanation for other pieces of evidence that might otherwise have been seen as suggestive of control (for example, many minority shareholders are allocated a place on, or allowed to appoint a representative to, the board of directors of a company; in the light of evidence of minority shareholding, the fact that a group employee holds a directorship should be considered less likely to constitute evidence of management control).</p>

2. DECLARED AS A MEMBER OF A GROUP (INDICATOR 2)

Definition / guidance	<p>A company is considered to be declared as a member of a group if this declaration originates from the company itself, or from its parent or controlling entity, and is made through an official company medium.</p> <p>Statements made by company officers or key management through non-official channels are not considered as group declarations, although this evidence should also be recorded and evaluated.</p>
Indicative confidence rating	<p>Strong evidence</p> <p>A declaration originating from the company or group of interest through official channels such as:</p> <ul style="list-style-type: none"> • an annual report • a statement to a stock exchange • an official and current company or group website • a declaration to a certification body that has membership or association policies based on group-level accountability (examples include an annual communication of progress to the Roundtable on Sustainable Palm Oil (RSPO) or a declaration of association to the Forest Stewardship Council (FSC)) • a letter from the company, parent or controlling entity, for example in response to an opportunity-to-comment invitation from an NGO before the publication of a report. <p>Some evidence</p> <p>Any declarations contained in less reliable sources than the ones listed above. Examples of such declarations might include:</p> <ul style="list-style-type: none"> • a recording of a statement by a director of the group • a media article quoting a director of the group • a statement on a website that cannot be confirmed as an official company site • information on an out-of-date or undated website or in a letter sent some time ago. <p>How to include other declarations which may implicitly suggest group membership (such as declarations concerning single forms of control or declarations of related parties) into confidence ratings are considered in the investigation guidance.</p> <p>No evidence or counter-evidence</p> <p>Statements by staff who are not officers or key management, and group logos displayed at plantation sites or other facilities operated by the company of interest, on correspondence or presentations produced by the company, or on banners at events organised by the company, should not be regarded as declarations of group membership but may be evidence for operational control (see Indicator 8 below).</p>

3. POTENTIAL CONCEALED BENEFICIAL OWNERSHIP (INDICATOR 3)

Definition / guidance	<p>Beneficial ownership denotes the ultimate ownership and/or control of a company and/or the right to benefit financially from it. This may or may not correspond to the company's legal ownership (the formal legal title held by another company or person).</p> <p>At the core of the concept of beneficial ownership is the idea that all companies are ultimately owned and controlled by human beings. A beneficial owner is a 'natural person' (i.e. an individual rather than a 'legal person' such as a company) who ultimately, alone or with others, owns and/or controls a company, securities or other assets or has the right to benefit financially from such assets.⁶ The concept is often used in contrast to the term 'legal owner' (i.e. the holder of formal legal title over a company), especially in cases where the beneficial owner and legal owner may not be the same. A legal owner may be either a company or other 'legal person' or else a 'natural person' (i.e. an actual living individual).</p> <p>Beneficial ownership is obscured when companies are held in secrecy jurisdictions – in such cases the highest discoverable level of ownership will be a company or other legal person that cannot be regarded as a beneficial owner because it is not a natural person. Other common examples of arrangements in which beneficial and legal owners are different include the use of nominee shareholders, trusts, foundations, ownership through custodian banks and bearer shares. Suggestions of how to identify and evaluate evidence for some of these cases are given in the investigation guidance.</p> <p>In typical uses of the concept of beneficial ownership, including by the Financial Action Task Force which uses it in guidelines to prevent money laundering, control is interpreted broadly (as it is in the AFi definition of a corporate group), and includes forms of family, management and financial control. In this methodology, these forms of control are dealt with separately under other indicators.</p> <p>Research into the beneficial ownership of a company should seek to answer two distinct questions:</p> <ul style="list-style-type: none">• Has the beneficial ownership been concealed?• Who is/are the beneficial owner/s? <p>Evidence as to whether beneficial ownership of a company of interest may be concealed can help to assess whether or not the suspected control of that company by a particular group is plausible, as concealment may indicate the possibility that the company has unacknowledged links to other companies or groups, prompting further investigation to discover those links.</p> <p>In such cases the question of who the beneficial owners are may be approached in the course of collecting evidence for other indicators when seeking to establish a form of corporate control (ownership, family control, financial control, management control, operational control). If evidence of corporate control is found but the identity of the beneficial owner remains hidden, an opportunity to comment letter should be sent to the company and/or group of interest, requesting this information.</p>
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Indicative
confidence rating

Evidence for identity of beneficial owner: Strong evidence

- A declaration in an official corporate source (e.g. annual report, audited accounts, stock exchange declaration, official website) that a company (defined as including trusts, funds, foundations etc.) is an asset of the group making the declaration.
- A declaration of beneficial ownership to a government register or regulatory authority.

Evidence for identity of beneficial owner: Some evidence

- Information from a leak or whistleblower.
- A non-recent declaration of beneficial ownership in an official corporate source, or to a government register or regulatory authority.

Evidence for identity of beneficial owner: No evidence or counter-evidence

Naming of a beneficial owner unrelated to the group under investigation (for example to a government register or regulatory authority) should not necessarily be interpreted as counter-evidence if based on company self-declaration.

Evidence that beneficial ownership is potentially concealed: Strong evidence

- Registration of a company or its parent in a secrecy jurisdiction.
- Use of complex or circular shareholding structures (e.g. where subsidiaries indirectly own shares in their own parents - see investigation guidance for Indicator 1).
- Use of a nominee account or accounts held with a custodian bank, if the identity of the nominator is undisclosed.
- Use of a nominee shareholder or shareholders who are disclosed as such.
- Use of any other legal arrangement that enables a separation of legal ownership and beneficial ownership of assets, such as a trust or foundation, if the beneficiary is undisclosed.

Evidence that beneficial ownership is potentially concealed: Some evidence

Unless a company is based in a jurisdiction that requires public disclosure of whether shares are beneficially held (and this requirement is complied with), it can prove difficult to ascertain the existence of certain arrangements through which the legal owners named on a company register are not the company's actual beneficial owners. Examples of evidence for such arrangements that falls short of being rated as strong evidence because of the uncertainty involved include:

- indications that named shareholders and/or officers may be acting as nominees through nominee arrangements that are not made public (see investigation guidance for Indicator 3 'Suspected nominee arrangements')
- evidence of use of power of attorney (PoA) arrangements, especially where the PoA is held by someone without obvious links to the company – it is common for nominee shareholders and officers to hand back practical control of a shell company to the beneficial owner through a PoA arrangement.⁷

Specific types of evidence that could point to the existence of such arrangements are suggested in the investigation guidance.

4. SHARED RESOURCES (INDICATOR 4)

Definition / guidance	<p>Evidence of shared resources may be a sign that there is common management control or operational control between companies. Examples of shared resources that may indicate common control include a registered or office address, facilities such as processing plants, transport infrastructure and internal company services such as recruitment and procurement.</p> <p>However, the sharing of resources does not always in and of itself signify common control. In some cases unrelated companies may also share certain resources to reduce operational costs: this should not be considered as constituting common control if it is undertaken purely for reasons of economic efficiency, if the shared resources relate to only a small part of the companies' business activities and if the arrangement does not require joint decisions to be made over core operations.</p> <p>Where there is evidence relevant to both shared resources and a form of control, e.g. operational control, it should be considered as shared resources where the direction of control is not inherent in the relationship, as in the examples given below, and under the relevant control indicator where the evidence suggests one company or subgroup controls the other.</p> <p>Shared registered or office addresses</p> <p>Several addresses may be associated with a company, including:</p> <ul style="list-style-type: none">• its official registered address• the official registered addresses of parent companies, including intermediate holding companies• the address of its head office where administrative activities are carried out• mail addresses that it uses on official documents (sometimes companies use interchangeably several addresses associated with their group)• addresses of branch offices that companies or groups maintain in towns near their operations, as well as of field offices at operational sites. <p>Shared facilities and transport infrastructure</p> <p>In some cases, different operating companies send their output to the same processing facilities (e.g. palm oil mills) or use the same storage facilities and/or transport infrastructure (e.g. palm oil bulking stations, private access roads). This is not by itself necessarily evidence of common control, since it is also far from unusual for smaller companies to sell their production to unrelated companies that own processing facilities or reach agreement to use their infrastructure.</p> <p>Accordingly, processing and storage facilities and transport infrastructure should only be considered 'shared' (and thus indicative of the likelihood of common control) if there is evidence that they are operated by or for more than one of the companies suspected of being linked, rather than the companies simply having a commercial relationship. For the possibility that supply contract relationships may represent financial control, see guidance for Indicator 6.</p> <p>Other shared resources</p> <p>There are many other kinds of resources that may be shared. Even considering plantation industries alone, such resources may include heavy machinery and vehicles; infrastructure to service plantations; plant nurseries; procurement of fertilisers and other inputs; and recruitment and training of staff. As with processing and storage facilities, the researcher should look for evidence of whether the sharing of such resources represents merely a commercial relationship between unrelated companies, or whether it indicates the possibility of shared management or operational control.</p>
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Indicative
confidence rating

Strong evidence

- Evidence from a reliable government or company source that companies use the same registered or office address, unless an alternative explanation has been found which does not involve common management or operational control.
- Evidence of sharing of facilities, infrastructure and/or other resources. This should be considered as strong evidence of common control if there is also evidence of more than just a commercial relationship between the companies using the facilities or infrastructure.

Some evidence

- Evidence that companies use the same registered or office address contained in a less reliable source, such as a business directory.
- Evidence of sharing of facilities, infrastructure and/or other resources including evidence which suggests that the sharing of resources is because of common control rather than a commercial relationship between independent companies, but where the reason for sharing resources has not been firmly established.

No evidence or counter-evidence

If companies share registered addresses, but these addresses appear to have been arranged by corporate service providers which provide legal or administrative services to multiple corporate groups, no evidence of common control should be inferred.

Supporting evidence

If evidence of sharing of facilities, infrastructure and other resources has been found but is not accompanied by any evidence that there is more than just a commercial relationship between the companies using them, this should be considered only as supporting evidence of potential common control, although it may warrant further investigation if other evidence of control is also found.

5. FAMILY LINKS (INDICATOR 5)

<p>Definition / guidance</p>	<p>Common control by a family may be considered to occur when there is evidence both of a close family relationship between beneficial owners of different companies, and of those companies being managed by, or in the interests of, the family. Close family relationships here should generally be taken as meaning first- or second-degree relationships.</p> <p>Different companies can of course be owned or managed by members of the same family without it necessarily following that they are under common control. It is entirely possible, for example, for a brother and sister to own or run completely independent businesses. However, it may prove difficult in practice to find evidence that the companies are not managed in the interests of the family, especially as arrangements within the family are likely to be informal. Therefore, where a close family relationship between individuals controlling different companies can be demonstrated, but a family member argues that a company he or she controls is wholly independent of the other company or companies, the burden of proof should lie on the family member or company in question to prove that no significant benefits from the company accrue to family members who control or are minority shareholders in other companies and vice versa, and that family members who control other companies have no involvement in its management. If no adequate proof can be furnished, then the company should be considered as being under common control with the family's other companies.</p> <p>Where different branches of a family can be shown not to be working together, a finding of family control may still apply to companies controlled by any members who are presumed to be working together.</p>
<p>Indicative confidence rating</p>	<p>Strong evidence Evidence for a close family relationship between owners, officers and/or key management of different companies. Common control by the family may be inferred even if the families claim that companies are run independently, unless they can provide compelling evidence to back up this claim.</p> <p>Some evidence Evidence for a close family relationship between owners, officers and/or key management of different companies should be rated only as 'some evidence' of common control if:</p> <ul style="list-style-type: none"> • uncertainty remains as to whether individuals are part of the same family • there are reasonable grounds to doubt that companies are being managed by or in the interests of the family • family members are involved with companies as officers or shareholders, but it cannot be shown that their involvement represents a position of control. <p>No evidence or counter-evidence Evidence that family members are likely not working together for the benefit of the family, such as a well-documented family feud or disagreement between two branches of a family, may be interpreted as counter-evidence.</p>

6. FINANCIAL ARRANGEMENTS (INDICATOR 6)

<p>Definition / guidance</p>	<p>'Financial control' refers to any arrangement (other than share ownership) in which a group, its controlling entity or one of its members has invested in or otherwise financed a company with the result that it is able to exert control over that company. Examples include lending money to a company, purchasing company bonds and buying up existing company debt.</p> <p>Control may be explicit through the terms of a contract signed as part of the financial arrangement, or implicit, if the amount invested in or lent to the company is judged to be significant enough in terms of its turnover or assets that an investor or lender could reasonably be expected to make demands over how the company is run.</p> <p>Financial control may also be assumed to exist as a result of an agreement in which a group or company is the sole buyer of another company's product through a contract or other tied arrangement, and the producing company is thus financially dependent on the purchasing group or company – for example where a company operates a logging concession supplying a group's timber mill.</p> <p>Financial control may derive from an investment in or loan to a company by a third party who is not suspected of being the legal or beneficial owner of the company. Such investments or loans in many cases give the investor/lender some degree of influence over the company's operations, but this will only count as control when the investment or loan is on such a scale that the investor/lender could reasonably be expected to be able to intervene in management decisions. Users of this methodology may differ in the degree to which they wish to hold large financial institutions such as banks or pension funds accountable for the operations of companies they invest in or lend to, and accordingly users are recommended to draw up their own criteria to identify the level of finance that in their view constitutes control.</p>
<p>Indicative confidence rating</p>	<p>Strong evidence</p> <ul style="list-style-type: none"> • Evidence of explicit financial control (e.g. a copy of a contract). • Evidence from a reliable source (e.g. audited accounts) of a loan or investment in a company on a scale that makes it highly likely that the financing party could reasonably make demands on how the company is run. • Evidence of a (formal or informal) agreement by a company to supply its product exclusively to a member of a group, which may include statements by the companies or testimony of company staff. <p>Some evidence</p> <ul style="list-style-type: none"> • Evidence of a significant loan to or investment in a company, but where uncertainty exists as to whether this investment would allow the financing party to make demands on how the company is run. • Evidence that a company sells its product to a single client, where the researcher's knowledge of the case or of local industry dynamics allows them to be confident that an exclusive supply agreement exists, but where they do not have direct evidence of the existence of such an agreement. <p>Supporting evidence</p> <p>Financial arrangements that are not of a magnitude to be interpreted as giving financial control in their own right may in some circumstances be considered as supporting evidence of control if other evidence exists under other indicators. Sometimes such arrangements, for example a loan to a company from a known group or one of its members, or bonds issued by the company to a member of the known group, may be an indication of the dynamics of capital management within a group, with money from a profitable company within the group being used to finance expansion in another part of the group.</p>

7. SHARED MANAGEMENT (INDICATOR 7)

<p>Definition / guidance</p>	<p>Management control is the power on the part of a group, its controlling entity or one of its members to take management decisions over a company, even if that company does not have the same legal or beneficial owner as the group taking the decisions. Shared management may indicate common management control. Common management control may be considered to occur when there is <u>extensive overlap in officers (see Definitions) and/or key managers between a company of interest and a group or other companies that are part of the group, and/or when a company's officers and/or key managers have verified links to a known group.</u> This includes situations where managers in the group are officers of the company of interest, or vice versa – the nature of the post held does not have to be the same in both cases.</p> <p>What constitutes extensive overlap will be partly a matter of the researcher's judgement, based not just on the number of individuals with simultaneous posts, but on the nature of their roles and decision-making powers, as well as apparent links between the individuals concerned.</p> <p>For the purposes of evidencing shared management, an individual is considered to be an officer or key manager of a company if they:</p> <ul style="list-style-type: none"> • are named as an officer in the national company register (or in annual reports in the case of publicly listed companies); and/or • hold a role within the company with a significant public profile and/or effective decision-making power and/or a practical management function – this includes senior executives, field managers, company spokespeople, sustainability managers, HR managers etc.
<p>Indicative confidence rating</p>	<p>Strong evidence</p> <ul style="list-style-type: none"> • Evidence of extensive direct overlap in composition of official board membership between companies. • In complex cases involving many companies, the finding that a large proportion of key managers (or officers) have worked for companies in different subgroups, indicating that the companies of interest are drawing from the same pool of personnel. <p>Some evidence</p> <ul style="list-style-type: none"> • Evidence of overlap in board or key management roles between companies based only on media reports or other less reliable sources. • Evidence of some overlap, but without extensive overlap having been established. • Evidence of overlap, but without the management roles held by the individuals concerned having been clearly established. <p>No evidence or counter-evidence</p> <p>A single shared officer is not evidence of common control (but see 'Supporting evidence' below).</p> <p>Minority shareholders often have the right to appoint one or more board members, which would not represent management control.</p> <p>Nominee directors of holding companies who are appointed by corporate service providers and are not involved in actual management should not be considered under evidence of management control.</p> <p>Evidence that there is no overlap of named officers between companies should not be interpreted as counter-evidence of management control, because the named officers may not be the people with actual decision-making power (e.g. in the case of nominee directors).</p> <p>Supporting evidence</p> <p>The existence of a single shared officer between companies indicates the possibility of a relationship between those companies. While it is not regarded as evidence of management control, it may be useful to consider alongside evidence found under other indicators.</p>

8. OPERATIONAL ARRANGEMENTS (INDICATOR 8)

<p>Definition / guidance</p>	<p>This indicator refers to arrangements which may be evidence of operational control. Operational control by a group may be considered to occur when a landholding or facility is operated by a company that is part of that group. Evidence of operational control may form part of a case for a suspected 'shadow company' relationship of concealed control by a group with the same beneficial owner as the shadow company. Operational control may also exist when the landholding or facility in question has a different beneficial owner from the operating company, for example through contractual arrangements. In such cases, both the owner of the landholding or facility and the operating company would be considered to have control over the landholding or facility.</p> <p><i>For example, if an investor wishes to set up a palm oil plantation and establishes company A to own the plantation, but does not have the practical experience to operate the plantation, they may contract company B to do so. In this case, company B has operational control over company A, and is treated as a second controlling entity (company A's owner is also a controlling entity). When interested parties assess the overall compliance of company B's group with a sustainability policy, they may expect the group to apply the same standards to the operations it is contracted to manage as to the operations it owns. If it fails to do so in the case of company A's plantation, then company B (and by extension all companies in its group) could be held accountable for any resultant breaches of sustainability policies there.</i></p> <p>Where a contract covers only one aspect of the operations at a site, for the purposes of this methodology it should be recorded as constituting operational control only if the activity covered is of direct relevance to potential violations of sustainability policies (e.g. a land-clearing contract to prepare for a plantation).</p> <p>Where there is evidence relevant to both operational control and shared resources, it should be considered as shared resources where the direction of control is not inherent in the relationship, as in the examples given under Indicator 4, and under operational control where the evidence suggests one company or subgroup controls the other.</p>
<p>Indicative confidence rating</p>	<p>Strong evidence</p> <ul style="list-style-type: none"> • Conclusive evidence of a contract to manage a landholding or facility. • Conclusive evidence of a contract to provide services to a landholding or facility, especially when these represent a significant part of its operations and are associated with breaches of sustainability legislation or policies – e.g. a land-clearing contract to convert forest to a palm oil plantation. • A statement by a group or one of its members that it operates a landholding or facility. • Testimony from field staff that a group or one of its members operates a landholding or facility – provided that it has been assessed as credible, clear and up-to-date and that the source has been judged free from bias or incentive to misrepresent. • Multiple pieces of evidence that individually constitute only 'some evidence' (see below), but that considered together meet the threshold for 'strong evidence' (see investigation guidance). <p>Some evidence</p> <ul style="list-style-type: none"> • The group's name or logo (or that of one of its known member companies) is displayed at the site of operations. • Evidence of regular visits to the site of operations by known group personnel. • Evidence from a staff member's social media account that describes their workplace as being operated by the group (or one of its members). • Attribution of the operating company to the group by a provider of goods and services that has had extensive dealings with the operating company, for example on a list of clients on their website. • A planting pattern observed on satellite or aerial images that shows no clear boundary between neighbouring operations of different companies of interest when compared with maps of landholdings.

STAGE 4 – SUMMARISE EVIDENCE AND PROVIDE AN OPPORTUNITY TO COMMENT

The aim of this stage is to combine all evidence evaluated in Stage 3 to produce overall confidence ratings for whether each company or subgroup under investigation is part of the suspected group. There is no one way to do this, and different approaches (or a combination of approaches) may be the most appropriate in different cases. Several possible approaches are set out below, including suggestions for when they are most useful.

APPROACH 1: COMBINE CONFIDENCE RATING(S) PER INDICATOR INTO AN OVERALL CONFIDENCE RATING

The researcher will have identified 'strong evidence', 'some evidence', 'no evidence' and/or 'counter-evidence' under each indicator (or each type of evidence for an indicator, if the researcher has chosen to analyse distinct types of evidence for that indicator separately). These should be combined to give an overall confidence rating for group control of the company or subgroup concerned. If supporting evidence has also been identified, this may provide useful context to interpret other evidence, or may be taken into account where an overall confidence rating is considered to be a borderline case.

Suggested criteria for combining indicator confidence ratings into an overall confidence rating are given in the table below.

Overall confidence rating	Criteria
Strong evidence	There is a 'strong evidence' rating for any of the indicators or types of evidence of group control evaluated for the company or subgroup of interest, and no counter-evidence has been found.
Some evidence	There are at least two ratings of 'some evidence' for different types of evidence, under one or more indicators, for group control of the company or subgroup of interest. For example, both interviews with local people and evidence from a contractor's website suggest that the group has operational control of a plantation. This overall rating may also be appropriate where 'strong evidence' for group control has been identified, but some counter-evidence has introduced an element of doubt.
Little or no evidence	'Some evidence' of group control of the company or subgroup of interest has been found for one type of evidence under one indicator only; or no evidence has been found.
Counter-evidence	The 'counter-evidence' discovered, suggesting that the group does not control the company or subgroup, and/or that the company or subgroup is controlled by a different group (with no evidence of shared control), is more significant than the evidence for group control.

When to use this approach: The default approach for most cases, as it is the most closely aligned to the methodological steps taken so far. Where strong counter evidence exists for one or more indicators, alongside evidence for group control under other indicators, approach 4 may be more appropriate – see below.

APPROACH 2: PRODUCE OVERALL CONFIDENCE RATINGS FOR SPECIFIC TYPES OF CONTROL

This approach aims to evaluate how well the evidence demonstrates each of the six types of control identified in the expanded definition of corporate group given in Section I.3 (legal ownership, beneficial ownership, family control, financial control, management control, operational control). This may be important where companies have different beneficial owners but are found to be under common operational, financial, management or family control. In this approach the researcher would aim to identify which forms of control are indicated by the evidence, and the level of confidence for each. Evidence is evaluated in a similar way to Approach 1 in relation to each company or subgroup of interest, but the conclusion would be framed in reference to the specific types of control, rather than aiming to establish an overall confidence rating for group control.

When to use this approach:

- This approach enables the researcher to be more precise about the nature of control that has been discovered and relate different forms of control to different controlling entities, where relevant.
- In cases where the findings of the investigation are likely to be contested by the companies under investigation, it may be helpful to be more specific about the forms of control involved.
- This approach may be useful in cases involving multiple subgroups or companies of interest, where similar patterns of control are visible in the different cases, suggesting a common set of control mechanisms used by the group.

APPROACH 3: MAP CONFIDENCE RATINGS BETWEEN MULTIPLE SUBGROUPS

For complex groups with several suspected subgroups, separate confidence ratings (as in Approach 1 or 2) may be obtained covering the relationships between each set of two subgroups. It may be useful to lay these out graphically (as shown in Figure 2 below) to build up a network map of all the connections between subgroups, and produce a narrative conclusion based on this. This approach may aid interpretations in cases in which strong evidence of control by the same group has been found for some but not all of the subgroups. It provides a way to visualise confidence ratings for which subgroups are under common control with one another, which may aid in building up a picture of the wider group. For example, if there is conclusive or strong evidence linking subgroup A to a controlling entity but little or only weak evidence linking subgroup B directly to the controlling entity, then it is useful to consider evidence linking subgroup B to subgroup A, which would represent an indirect link to the controlling entity. Strong evidence that subgroup A is under common control with subgroup B may enable conclusions to be drawn about wider group structure. As a general rule, if two subgroups are both suspected of containing shadow companies of an acknowledged group, and there is a strong overall confidence rating that they are under common control with each other, evidence that *either* is under common control with the acknowledged group may count as evidence that *both* are under common control with the acknowledged group. However, in such cases it should be acknowledged that the indirect nature of the link established increases its uncertainty and thus reduces confidence in the findings.

When to use this approach:

This approach may be necessary in complex cases involving multiple subgroups, especially where evidence of the relationships between different subgroups is necessary to visualise the group as a whole.

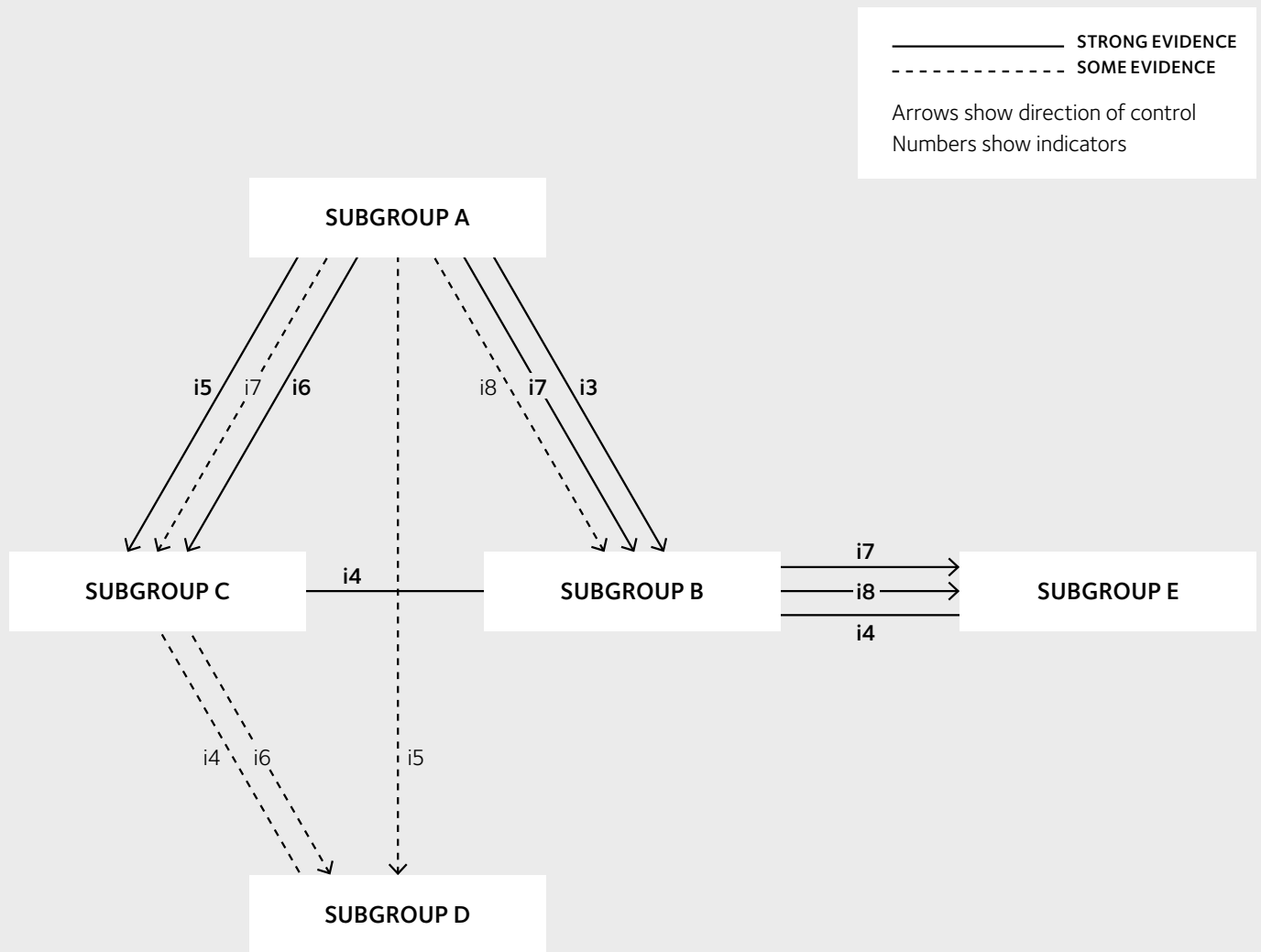


Figure 2: Example diagram of links between multiple subgroups suspected of being under informal control by a family.

- There is strong evidence of common control of subgroups A and C, which are owned by known members of the same family and where A has been the key financier which has enabled C to expand, as well as evidence of some overlap in officers.
- There is also strong evidence of common control of subgroups A and B. As well as extensive management overlap between the subgroups, the principal shareholders of subgroup B companies have been shown to be employees of subgroup A and evidence has found they are acting as nominees. There is also some field evidence of subgroup A having operational control of subgroup B. Jointly, the evidence suggests Subgroup B consists of shadow companies of Subgroup A.
- Less evidence has been found directly linking Subgroup B and Subgroup C, although Subgroup B's holding company shares a registered address with Subgroup C companies.

- Subgroup E has no direct links to subgroup A but shows strong links to subgroup B, with use of shared office addresses, overlapping management and strong evidence of operational control by subgroup B in the form of recent testimony from field staff that they were employed by subgroup B.
- Subgroup D is part owned by a suspected family member, and shows some links to subgroup C.

In this situation, it would be fair to conclude with reasonable confidence that subgroups A, B, C and E can be regarded as a family group under common control, while noting that the indirect nature of some links (e.g. between subgroups C and E) mean that caution is required in any follow-up decisions based on this conclusion. Subgroup D may require further investigation to conclude whether or not it is part of the group.

APPROACH 4: EVALUATE POSSIBLE SCENARIOS

The researcher should hypothesise scenarios as to how a controlling entity might control a particular company or subgroup, and then examine the evidence across all indicators to see which hypothesis, if any, it confirms. The advantage of this approach is that it more explicitly allows the local, historical, legal, economic and political context around the case to be taken into consideration, and also allows for interpretation of supporting evidence (e.g. evidence of a link between companies which is not explicitly evidence for or against control). The researcher should produce evaluations of the evidence as a whole for each of the scenarios examined, clearly setting out their reasoning and stating the level of confidence in their findings. As this approach does entail a risk of subjective bias, it may be helpful to engage a neutral party who has not participated in the research to peer-review the findings.

When to use this approach: This approach may be especially useful in addressing grievance cases where a complainant alleges control of companies by a group, and the group responds with a counter-explanation. In such cases the allegations and counter-explanation comprise the principal scenarios under investigation and it makes sense for the researcher to base their evaluation around these.

A scenario-based approach may also be more appropriate in cases where the researcher has identified significant counter-evidence alongside evidence for common control, and where simply combining the confidence ratings for each indicator (Approach 1) might mean that important contextual information was disregarded. Similarly, where significant supporting evidence has been encountered, it may be more practical to evaluate all forms of evidence together qualitatively rather than combining confidence ratings per indicator.

PRODUCE SUMMARIES AND PROVIDE OPPORTUNITY TO COMMENT

The results of the investigation and any pertinent information relating to it should be summarised into tables (see Investigation Guidance section for examples) along with the main conclusions of the investigation.

Where suspected group links have been found, this summary report can be used to provide relevant persons and companies of interest with an opportunity to comment on the investigation's findings. In presenting the conclusions of the investigation, care should be taken not to compromise sources, if any, and to protect their anonymity.

Relevant parties to be provided with opportunity to comment include:

- parent companies of subgroups (full group mapping)
- the company or companies investigated (partial group mapping, or where subgroup parents' addresses are not available)
- any (self-identified) groups that companies claim to be part of, including the declared controlling entity, if any

- any other presumed controlling entity. In the case of informal groups headed by a family or individuals, where there is no known address for them, this may mean writing to them care of the subgroup they are most linked with, as well as to parent companies of subgroups.
- any other significant companies in the acknowledged group (e.g. relevant industry sector or national-level subsidiaries of a conglomerate or multinational group).

Any of those contacted may then respond, either to confirm the findings of the investigation or to provide counter-evidence to the finding of group control. A letter simply denying the conclusions of the investigation is not by itself sufficient to disprove group control: the findings of an in-depth investigation based on the AFi definition of a corporate group should be dismissed only on the basis of credible, concrete and up-to-date evidence, usually identifying a different controlling entity, which will have to be provided by the respondent and made available for review alongside the evidence gathered during the investigation.

In cases in which a body of evidence has indicated the probability of group control, the burden of proof is thus placed on the presumed controlling entity to show that they do not control the company or companies in question. The researcher should assess any response received in the context of the existing body of evidence, and will ultimately have to decide whether or not any new information provided would alter the conclusions reached at Stage 4.

The following questions should be addressed when assessing the implications of opportunity to comment responses (see Figure 3):

1. Does the response present new evidence?
2. Is the new evidence presented up to date and official (or otherwise credible)?
3. Does the new evidence supersede or undermine some or all of the evidence used by the investigation to draw a conclusion of group control?
4. Does the new evidence identify a different controlling entity from that presumed by the investigation, or demonstrate separation between companies or subgroups such that they do not share a controlling entity?
5. Is there any reason to believe that any other controlling entity identified is in fact not independent but is controlled by the presumed controlling entity identified by the investigation?
6. Taking the new evidence into account, what conclusions can be drawn regarding the presumed group control identified by the investigation?

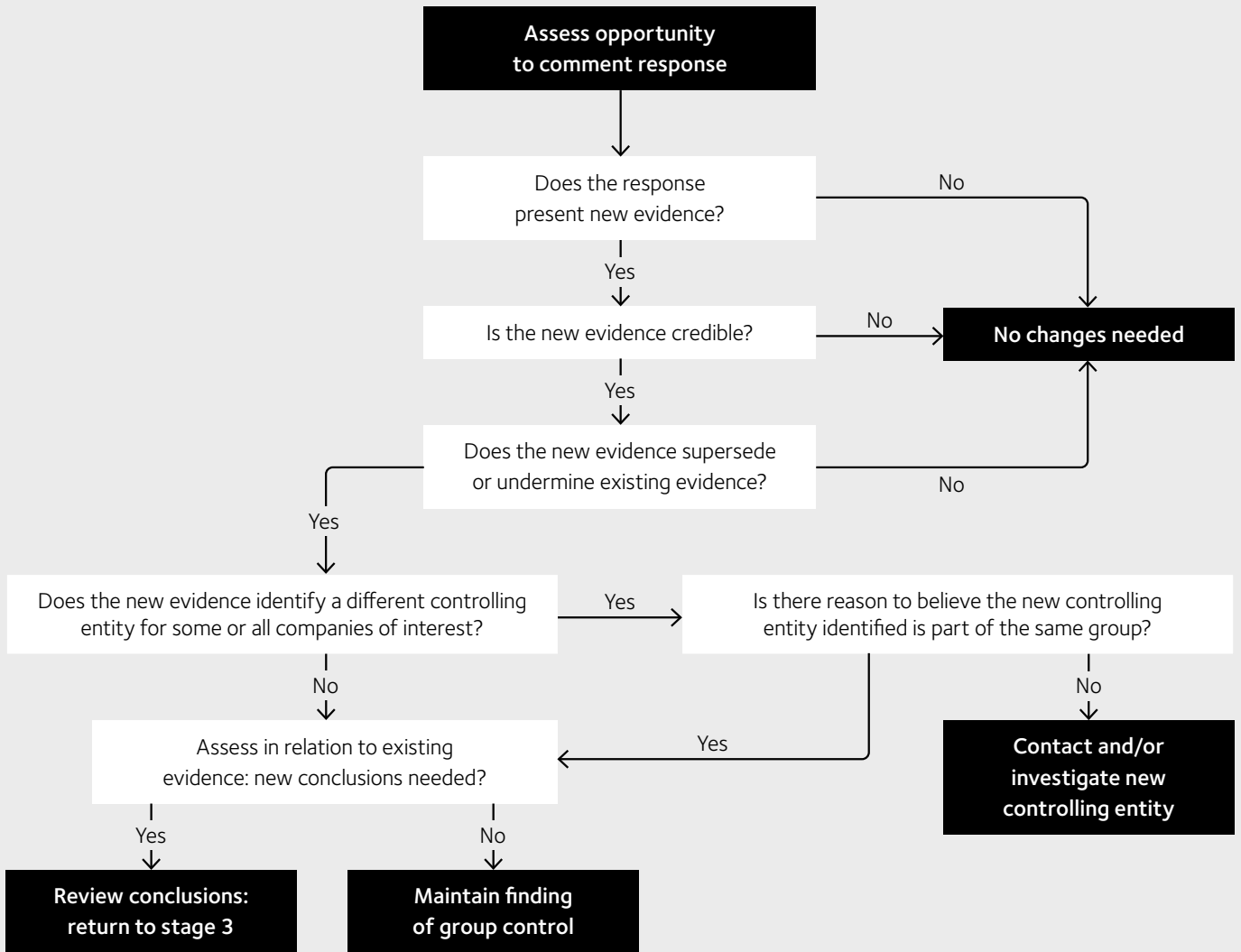


Figure 3: Process for assessing opportunity to comment responses

FOLLOW-UP ON FINDINGS OF INVESTIGATION

By this point an overall confidence rating for group control should have been obtained for all companies of interest. The table below gives an indication of the appropriate follow-up steps to take in the context of the two principal uses identified for this methodology: full group mapping conducted by a potential customer, supplier, financier or certifier as part of a due diligence exercise prior to engaging with a group, and partial group mapping to investigate allegations raised in a grievance case.

Overall confidence rating	Examples of appropriate follow-up steps in a due diligence exercise (full group mapping)	Examples of appropriate follow-up steps in a grievance case (partial group mapping)
Strong evidence	The group should be held accountable for all violations carried out by all companies or subgroups identified as belonging to it.	The group under investigation should be held accountable for all violations carried out by companies or subgroups identified as belonging to it.
Some evidence	There is a significant risk that companies or subgroups are part of the group. Further research should be considered before engagement.	There is a significant risk that companies or subgroups are part of the group, but a case for punitive action against the group has not been proven. Caution should therefore be exercised. Consider further research or enhanced monitoring.
Little or no evidence	No identified risk in terms of engagement with the group.	Grievance may be settled.
Counter-evidence	No identified risk in terms of engagement with the group.	Grievance may be settled.

STAGE 5 – MONITOR AND UPDATE

The task of establishing the structure and extent of a complex, non-transparent or informal corporate group is a difficult one, as evidenced by the wide range of potential sources listed in this methodology and associated guidance, and the results obtained by any investigation must be considered as potentially incomplete and evolving. In particular, some commodity producer groups frequently restructure the ownership and/or management of their plantation companies – perhaps in part to obscure their true control. The work of mapping these structures is therefore ongoing, and the optimal frequency of information review will depend on how dynamic the structures of the groups of interest are.

As a general rule, after completion of the initial investigation using this methodology **a monitoring run is recommended once a year**. This could involve running through a ‘light’ version of this methodology where only key data sources are checked.

When a beneficial owner remains concealed or is suspected of doing so, the techniques set out in Stage 3 and associated Investigation Guidance (see in particular ‘Using historical information’) for identifying and evaluating key events that may represent a change in control may be usefully employed during monitoring checks.

III. INVESTIGATION GUIDANCE

GUIDANCE ON SETTING AND APPLYING A CRITICAL STAKE

A 50% stake is the level normally regarded as constituting control of a company through legal or beneficial ownership. However, some users of this methodology may decide to set a lower threshold at which they believe a legal or beneficial owner should generally be held accountable for the actions of the company or operation in which they hold a stake. This threshold will be termed a *critical stake* (see Definitions).

A critical stake should be set at the level at which the user assumes that a shareholder, group or subgroup will have sufficient influence over a company's management to exert at least partial control, and therefore to be held accountable for environmental and social harms (see below for examples of levels set by existing standards). Control via a minority ownership stake may be joint control with other owners, which will themselves also generally be considered to have control if they hold more than the critical stake.

Once a critical stake has been established, its suitability for any particular case should be kept under review as the investigation progresses. As various pieces of evidence are gathered, emerging facts may make it appropriate to assume that control via ownership exists at a different level – either higher or lower than the established critical stake – to reflect the specific facts of the relationship.

If a shareholder's holding in a company exceeds the critical stake, they may be considered to have some control of the company by virtue of ownership alone (i.e. without the need to find additional proof of other forms of control), unless there are specific conditions indicating that they do not have control. These include cases where the significant minority shareholder shares ownership of the company with other significant shareholders

through force of circumstance rather than by choice, for example if they retain a minority shareholding in a company they previously controlled but which has recently been subject to a hostile takeover. In such cases the significant minority shareholder can be invited to present evidence that they do not in fact have control through the opportunity to comment process (see Stage 4).

Conversely, in some instances significant control may exist via ownership in cases where the shareholder owns less than the critical stake. For example, consider a listed company with one shareholder which owns a significant minority of voting rights while the other shareholdings are small and dispersed among multiple owners, to the extent that while the larger shareholder cannot always determine decisions, it has a sufficiently dominant voice that it would be hard for other shareholders to reach a decision the larger shareholder did not vote for. Other relevant examples may be found under Indicator 1 guidance.

Users may also choose to define a critical stake only in the case of formal partnership arrangements, such as joint venture agreements. A joint venture agreement or other contract which gives a significant minority shareholder important rights and responsibilities over operations (e.g. appointment of officers, approval/veto of business plans) can be treated as proof that they have partial control.

Users of the methodology are recommended to decide and communicate their own policy on this issue before addressing specific cases, if possible, in order to forestall potential challenges from groups to which they attribute control on the basis of a critical stake alone. Where control via ownership has been determined for a particular case at a different level from the previously adopted critical stake, the justification should be set out in the investigation report and if possible clarified via the opportunity to comment process.

Thresholds set by some existing standards

The following examples were not specifically designed as the thresholds for which controlling entities should be held accountable for environmental or social harms, but they nevertheless give an indication of how critical stakes are used in other contexts:

- The Financial Action Task Force, which sets standards for governments on disclosure of beneficial ownership in the context of prevention of money laundering and terrorist financing, recommends setting the threshold at no higher than 25%.⁸
- International Accounting Standard 28 sets a threshold of 20% above which a shareholder is deemed to hold significant influence over a company.⁹
- The UK Takeover Code defines 'control' as 'an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights... of a company, irrespective of whether such interest or interests give de facto control.'¹⁰
- The Singapore Code on Takeovers and Mergers defines 'effective control' as 'a holding, or aggregate holdings, of shares carrying 30% or more of the voting rights [...] of a company, irrespective of whether that holding (or holdings) gives de facto control'.¹¹

STAGE 2 GUIDANCE

This guidance section provides:

- notes for gathering information to identify companies and subgroups of interest and determine whether to carry out a full investigation
- a suggested report structure for organising and presenting this information
- guidance on when to consider several companies part of a subgroup under common control – and why

1. STARTING AN INVESTIGATION: NOTES FOR IDENTIFYING COMPANIES OF INTEREST

For full group mapping, identifying companies of interest mainly relies on gathering initial evidence relating to the eight indicators of control defined in section 1.3. Legal ownership of the companies identified, along with that of their parent companies where applicable, should be traced using data from national company registers to determine the ultimate knowable shareholders.

Things to look out for at this stage include (but are not limited to) subgroups or companies where:

- there are published allegations of links to the group, for example in NGO reports, journalistic investigations or grievance lists
- the group (or its beneficial owners) have a significant minority shareholding, which may give it a degree of control

- relationships are apparent from lists of 'related parties' or 'interested persons' in annual reports or accounts; these may include owners, officers or key managers as well as companies themselves
- beneficial ownership is not transparent, for example when the ultimate knowable shareholders are not natural persons or there are grounds to suspect nominee arrangements
- addresses are shared with known group member companies or with other subgroups/companies
- owners, officers or key managers appear to have family relationships with those in the group, or other subgroups/companies
- there are commercial relationships with the group or with other subgroups/companies that may involve a degree of control
- officers or key management are shared with known group member companies or with other subgroups/companies.

2. STARTING AN INVESTIGATION: SUGGESTED REPORT STRUCTURE

At this stage the researcher needs to decide whether to carry out a full investigation and to explain the decision. The following template suggests one way to present this.

Group name:

The name of the known group for which new subgroups/companies are being investigated, and the name of the suspected higher-level group if relevant. For an informal group, the researcher may need to assign it a name - see 'Group naming protocol' in Annex 2. If a higher level group is suspected, in the rest of this template the known group should be treated as a subgroup of the higher-level group.

Type of group mapping:

'Full' or 'Partial'. If partial, state aim, e.g. 'Establish ultimate control of companies A and B'

Subgroups:

See 'Defining subgroups' below for guidance. For each subgroup:

1. Subgroup name:
2. Brief description: e.g. 'formally owned subgroup' or 'companies trading as Y'
3. Companies in this subgroup: *full names and types of company*

Other companies of interest not part of a subgroup:

Full name, type of company (e.g. timber plantation, holding company).

Reasons for concern around control (red flags):

See list above. For each subgroup/company, note initial evidence under the indicators, summarise and link to sources.

Reasons for concern around company/subgroup activities:

Why is an investigation being considered? For example environmental, social or legal concerns. Summarise and link to sources.

Other groups that may be involved:

For example joint venture partners or if the group is thought to manage an operation owned by a different group. Specify which subgroups/companies the other group may be involved with.

3. DEFINING SUBGROUPS

Subgroups are sets of companies outside the acknowledged or formal group that share a common legal owner or which are acknowledged as a group by the companies themselves. Identifying subgroups is intended to make the researcher's work easier, since companies with the same ultimate holding company or that are self-declared as a group may be assumed to have the same controlling entity, and evidence concerning ultimate control of one company within the subgroup can be assumed to be valid for the subgroup as a whole. Companies sharing a legal owner who is an individual may also be assumed to have the same controlling entity unless there is reason to suspect that person is a professional nominee, in which case this requires further investigation.¹²

In some cases all companies of interest will share a legal owner and therefore form a single subgroup; however, in other cases an array of separate shareholding structures may be used. In these cases, several subgroups will need to be defined, some of which may consist of a single company if that company has a different structure from all the others.

Complications may arise in cases where individual companies have moved between subgroups over time (as opposed to being acquired by a subgroup from a third party). It may therefore be useful also to identify historic subgroups composed of companies that shared a common owner at some point in the past. This can be achieved by constructing timelines using the techniques described in Stage 3 guidance below.

Cases where multiple legal owners own stakes in various companies through complex holding structures may also prove difficult or impossible to divide into distinct subgroups. In such cases it may prove more practical to identify subgroups consisting of all companies in which each legal owner holds a significant stake, accepting that this means that some operating companies and intermediate holding companies may be in more than one subgroup. If the situation is just too complicated, it may be more straightforward to forgo the subgroup approach entirely and deal with each company individually.

STAGE 3 GUIDANCE

This guidance section aims to address:

- how to identify sources of information
- how and when to use historical information
- how to collect and analyse information and evidence
- how to assess the credibility and strength of the information collected

COLLECTING AND ANALYSING EVIDENCE

1. SOURCES OF INFORMATION

There is a wide range of sources of information that may be useful in compiling evidence under each indicator, providing details about companies themselves or about individuals associated with them. The following list is not exhaustive and moves broadly from more to less reliable sources:

1. Official national company registers. Note that the extent, completeness and accuracy of the information included in such registers, as well as their accessibility, varies significantly between countries. In some instances, such as in offshore jurisdictions, there is no access at all to such information.
2. National and local cadaster and/or property/real estate registers if publicly available.
3. Certification assessments, e.g. assessments for RSPO or FSC certification, assessments posted on the High Conservation Value (HCV) Network and High Carbon Stock Approach (HCSA) websites, and assessments for certification under government programmes. These may include names of company contacts with or without information on the position these individuals hold within the company.
4. Reports by bank research analysts and/or corporate intelligence reports can offer detailed and verified sources of information.
5. Material produced or commissioned by the company or group, including annual and sustainability reports, environmental impact assessments, stock exchange announcements, letters, and presentations to communities.
6. Company or group websites – as long as it is probable that the website was set up by the company or group itself (or, in the case of a company, by its parent company or the group). Check whether websites are up to date, and note if material is undated. Old, unmaintained sites may provide historical information.
7. Court records – if a company has been involved in a court case or undergone any court sanctioned restructuring, the court records may be available online.
8. Commercial and finance industry databases such as Bloomberg or Orbis (usually paid-for services) provide recent information on group or company structures and officers. Dates and sources should be checked where possible.
9. Field investigations by the researcher themselves or trusted third parties, or from credible published sources such as academic studies, as well as interviews with local residents, company workers, service providers etc.
10. Whistleblowers and leaks.
11. Registers of beneficial ownership. Several jurisdictions have introduced obligations on companies to report beneficial ownership, and make this information available to the public. Caution must be exercised when this information is based on self-declaration by the companies themselves.
12. Recruitment advertisements apparently produced by the company but posted on third-party websites (typically recruitment websites or university careers pages for students/alumni).
13. Information available from government agencies and local administrations – for example, local government bodies or local offices of national government agencies will sometimes produce lists of the companies operating or applying for permits within their area and include contact details or concession maps. Local government records may also include administrative documents such as copies of permits or tax records, details of fines etc.
14. Media reports – greater weight should be given to well-known and/or reputable media, and to information contained in a direct quote from a named source.
15. Social media profiles – individuals often give their job description and employer on LinkedIn and sometimes on other social media.

2. USING HISTORICAL INFORMATION

What is historical information?

Historical information in this context means information that is no longer current (or that may not be current) concerning a company. Such information may for example include names of former shareholders, officers and key managers; previous company addresses; and past statements from employees, local people or contractors.

Why use historical information?

Often, when investigating activities within the commodities sector, while the overall aim is to ensure accountability, the specific objective of an investigation may be to establish either who currently controls a company, who controlled it at some specific moment in the past (perhaps when it is believed to have been responsible for a legal or policy violation), or who controlled it prior to its acquisition by a new owner – or more than one of the above.

In order to establish the current control, the most immediately relevant information is the most recent information on shareholdings, management etc. However, in cases where the controlling entity is concealed or in doubt, simply looking at the latest information available may provide insufficient evidence. Being able to interpret historical information is particularly important where there is a suspicion that a group may have taken steps deliberately to conceal its control of a company or operations, as is often the case in commodity sectors that have come under increasing pressure to demonstrate sustainable supply chains and financing, and in various industries as a litigation defence strategy to ring-fence assets and liabilities. In order to conceal its control, such a group may have decided to take more care to ensure that available information on its shareholding structures, officers and addresses does not reveal any links between it and the companies of interest. In such cases, information from several years ago may provide more clues to a company's controlling entity than the latest data, provided that due caution is exercised (see 'Precautions' below).

The use of historical information is also vital when it is necessary to establish group control at a point or period in the past, for example in the calculation of remedy liability by a certification body, or in order to ensure that a company is held to account for past legal violations or breaches of its own or a customer's sustainability policies.

Precautions

While historical information may give some clue as to the present control of a company, it is vital to recognise that it may not reflect the current situation accurately: if a company has been sold to a new independent owner, any previous controlling entity will have no further control over the company's operations.

Consequently, if historical information is to be of value then its use needs to be qualified by a fair analysis of the degree of confidence with which it can be applied to the present, and careful consideration of other plausible scenarios. Rigorous attention should be paid to the possibility that control has genuinely changed and the former controlling entity no longer has any influence over the company of interest. This analysis should be facilitated by systematically investigating all the types of corporate control included in the AFI definition (see Stage 3).

How to use historical information

In order to determine control of a subgroup or company, historical information can be visualised and managed by constructing a timeline (see below), divided into periods bounded by significant events recorded in the evidence gathered (such as changes in shareholding, management etc). For each period, an analysis is then conducted of (i) any links to a suspected controlling entity and (ii) possible explanations for each significant event recorded.

Evidence of a link to a controlling entity from an earlier time period may be considered as valid (though not conclusive) evidence of an ongoing link, but confidence in this finding will be reduced when there is evidence that a significant event in the timeline may represent transfer of control to a new controlling entity.

Constructing timelines can be quite detailed and become a very time-consuming process when the number of companies of interest is large, or if there have been numerous changes in board composition or shareholdings. Consequently, if there appears to be adequate recent evidence to establish that a relationship of control exists without recourse to analysis of historical information, and the researcher is only attempting to determine the current group control, historical analysis may not be appropriate and may be omitted. It is also feasible first to undertake a thorough search for evidence and then to produce a timeline only if historical evidence that may indicate control is discovered. If historical evidence is to be relied upon, it is imperative to follow the process set out below carefully. Where historical company information is not available (for example if historical shareholding and board changes are not made publicly available through a national company register), the risk that a controlling entity may have changed should be taken into account when evaluating other types of historical evidence.

Constructing a timeline

Using official data for companies of interest from national company registers or other available sources, construct a spreadsheet (or equivalent) including all the companies of interest. Include all changes of shareholders, officers, registered addresses and any other information deemed relevant for each company of interest. It is paramount to complete this initial step thoroughly, taking care to avoid mistakes, as the resulting dataset will form the backbone of further research and analysis.

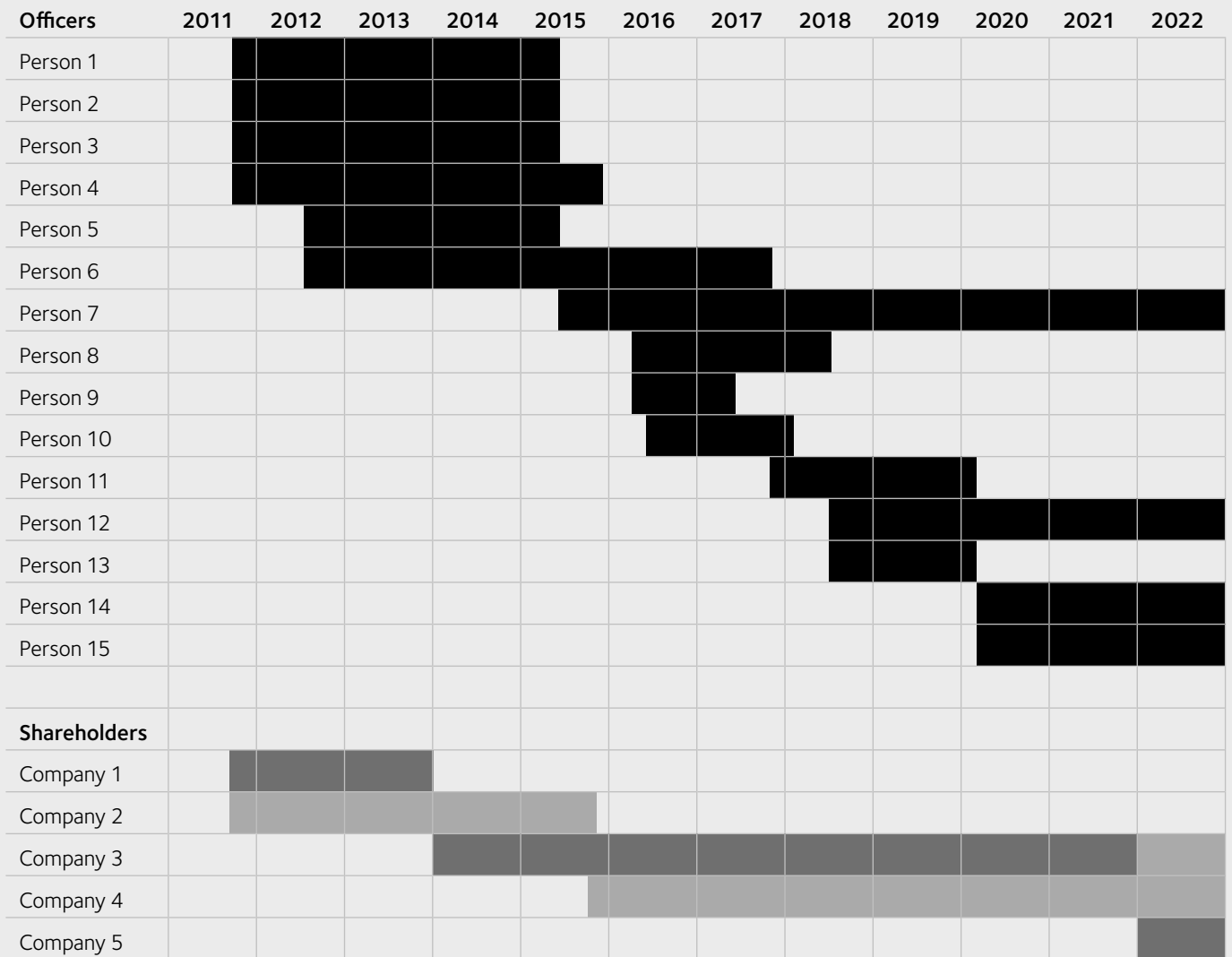


Figure 4: Example of a timeline showing changes in officers and shareholders of a company of interest, recorded from company registry documents.

In this example, dark and light grey bars show that the company has had one majority and one or two minority shareholders since it was established in 2011. These shareholders have all been offshore holding companies. Although the majority shareholder has changed twice (at the start of 2014 and again at the start of 2022), the timeline shows the officers (black bars) remained the same at these times, suggesting that the changes in ownership are more likely to represent restructuring within a group than changes in control of the company. There have been multiple changes to the board of directors, but always with some degree of continuity as individual directors have been replaced. The minority shareholdings also changed in 2015 independently of majority holdings and board changes.

For each of the subgroups identified in Stage 3, examine the spreadsheet entries for all companies in the subgroup. On a timeline, mark dates where one or more changes considered to be significant occurred, especially major changes of ownership or officers, noting whether they occurred in a single company, or in several or all of the companies within the subgroup. Which events are considered significant will be decided by the context, taking into account what is already known of the group and companies being investigated (ownership structure, links with other companies or groups, known reorganisations, etc).

For each significant change identified, evaluate the initial evidence to decide what is the most likely explanation for the change (e.g. internal reorganisation, acquisition by a new (unrelated) owner, acquisition from a former (unrelated) owner), and whether this explanation indicates a change in control at that point. The most important objective is to identify all changes possibly explained by a change in control (rather than an internal reorganisation of the subgroup). Keep a record of other possible explanations.

Some questions to consider include:

- Did officers and shareholders change at the same time?
- Was there a change of registered address at the same time as a change of officers and/or shareholders?
- Were similar changes observed in all subgroup members at the same time?
- Did changes to officers and/or addresses in subgroup holding companies and their subsidiaries occur at the same time?
- Are there indications that the changes were made in response to a new legal requirement (for example, in Indonesia many companies made changes to comply with a new company law introduced in 2007)?

The most significant events are those in which there are extensive changes to both the ultimate knowable shareholders and the officers at the same time (or within a short period of time, e.g. less than two months).

Events which are less likely to indicate a change of control include:

- only the shareholding or the officers change.
- only one or two officers change, with no evidence of other changes.
- officers change for some members of a subgroup but not for others, without a change in legal owner or other extensive change in shareholdings.

Such events do not need to be highlighted on the timeline.

For each subgroup, revise the timeline in light of the above evaluation to include only that subset of the previously identified significant events that may indicate a change in control. It may also be helpful for ease of reference to highlight the names of significant individuals, such as members of a suspected controlling family or officers with known links to an acknowledged group.

Other events which may help to understand the history or development of a company may be added to the timeline, especially where company registry information is open to interpretation. Relevant historical information to be noted includes (list not exhaustive):

- Dates at which any relevant permits were issued or concessions awarded.
- Approximate dates at which any forest (or other natural ecosystem) conversion took place on land controlled by companies.
- Dates during which companies were subject to legal action.
- Any other dateable evidence that connects a company to the group or subgroup under investigation, or the company under investigation to a group or subgroup.
- Dates at which companies or groups issued sustainability policies or applied for certification.

Sources for such information include CSO publications, press releases, or complaints implicating the company/ies.

GUIDANCE FOR INDICATOR 1 - FORMALITY OF RELATIONSHIP

DEALING WITH SPECIAL CASES

Using indirect ownership structures to maximise control. A parent company may design a corporate structure which allows it to maintain effective control even though it does not technically own a majority of shares. For example, if company A owns 60% of company B, which owns 60% of company C, which owns 60% of company D, then company A effectively owns only 21.6% of company D (calculated by multiplying the proportions of each share). However, because at each level of the hierarchy the immediate parent has a majority share and can direct decision-making, company A is able to maintain effective control over company D. Such cases should be regarded as constituting control through a formal relationship.

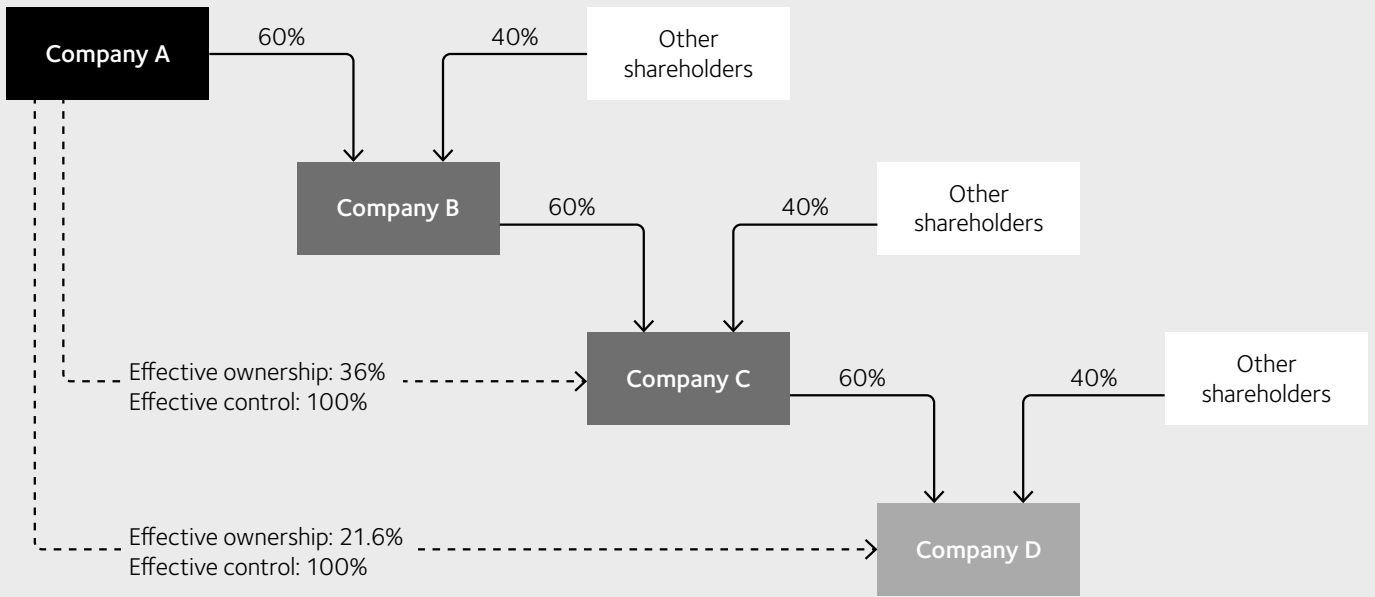


Figure 5: How indirect ownership can allow Company A to obscure control of Company D

Super-voting shares. Some jurisdictions allow super-voting shares or ‘golden shares’¹³ which offer a veto over major changes to the company.¹⁴ Where this is the case, control through a formal relationship may be inferred.

Circular holding structures. Where circular holding structures exist (the simplest example would be that company A owns shares in company B and company B holds shares in company A, although real-world cases tend to be more complex), the ultimate parent may not be clear. Companies in a circular holding structure with each other may be regarded as part of the same group (assuming effective ownership is above 50% or the critical stake determined by the user). However, such structures may make it difficult to determine whether those companies are under common control with other companies outside the circular structure. Such cases may warrant further investigation under indicator 3 as circular shareholdings are one method of concealing beneficial ownership.

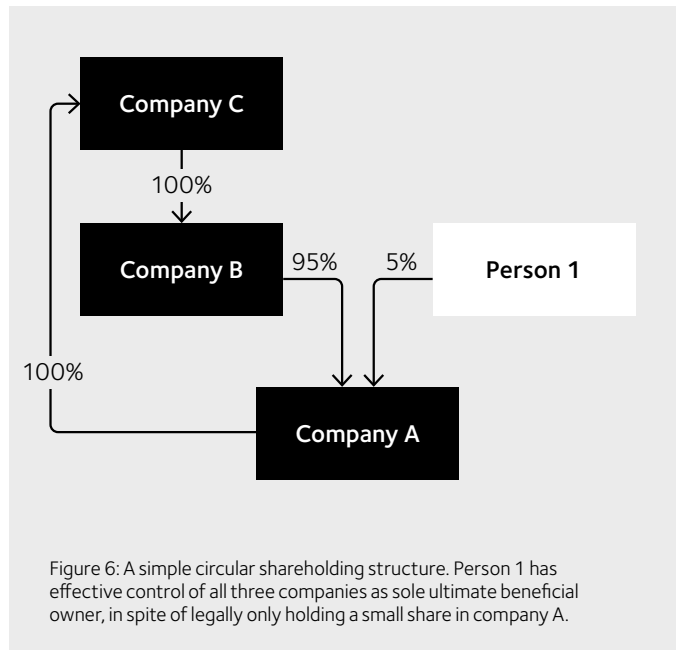


Figure 6: A simple circular shareholding structure. Person 1 has effective control of all three companies as sole ultimate beneficial owner, in spite of legally only holding a small share in company A.

State-controlled companies. State-controlled companies or landholding bodies present their own issues of definition, which will vary according to the jurisdiction. Ultimate control of these entities is presumed to lie with the central government, but it may not be practical to treat all state-owned entities as one group, and decisions must be made based on national context. Some principles include:

1. Such companies or groups should always be named as 'state-controlled'.
2. State-controlled companies in the same industry or commodity sector should be identified as a single group, unless covered by point 3 or 4.
3. Where entities are owned by different parts of the state which have a degree of de facto autonomy (depending on the country, examples include ministries, government agencies, armed forces or royal families), groups should be defined to the level at which high-level management decisions are made. For example, logging concessions belonging to the army may be identified as a separate group from concessions run by a national forestry agency, but both should be named as 'state-controlled'.
4. Companies owned and run by sub-state entities such as a regional government should be considered as separate groups from those directly controlled by the central government, and principles 2 and 3 may be applied at sub-state level.

Legal owner is not beneficial owner. (See also Indicator 3)

There are certain cases where the legal owner of a company or securities is not the same as the beneficial owner, for example nominee shareholders or trustees of trusts. These arrangements are often put in place by corporate service providers, which may or may not be regarded as controlling entities depending on the types of services provided, and other relevant contexts. Further consideration should be made of whether the legal owner is in a position of control or should be held accountable, paying attention to the following:

- Whether the legal owner has any decision-making power over the company in question
- Whether the legal owner also offers management services
- Whether the legal owner entered the relationship of their own free will
- Whether the legal owner has chosen to set up the relationship in a way which enables the beneficial owner to evade scrutiny or be held accountable for the company's actions.

Companies with many shareholders. Stock-exchange listed companies in particular may have many shareholders, none of which holds a majority share. Share ownership is likely to be dynamic as shares are traded.

- If there is no dominant shareholder it may be appropriate to define the listed company as the controlling entity of the group.
- If there is a single large shareholder holding a significant minority share (even below a critical stake) and the rest of the shares are dispersed among many small shareholders, it may be that the large shareholder has effective decision-making power, because it would be very difficult for the small shareholders to push through decisions without its agreement.

Such arrangements may be taken to imply a degree of control, especially if evidence is also found under other indicators.

GUIDANCE FOR INDICATOR 2 - DECLARED AS A GROUP

Declarations may be encountered which are not explicitly declarations of group control or group membership, but which indicate a relationship which may constitute group control. Such declarations should never be recorded as 'strong evidence' under this indicator, but may be recorded as 'some evidence'. Any declaration which makes it clear that a single form of control exists between parties (i.e. management control, operational control, financial control, family control or beneficial ownership) should be recorded under the appropriate indicator, where it may be regarded as 'strong evidence' or 'some evidence'.

Declaration as a 'related party'. Accounting standards (for example the International Accounting Standards to which many national accounting standards are aligned) define a 'related party' in terms that include many of the same aspects of control covered in the Afi definition of a corporate group (including for example family and management control). It follows that a declaration of a company as a 'related party' in an annual report or audited financial statements of a group or one of its subsidiaries may be reasonably interpreted as evidence towards those indicators of control, although care should be taken to consider alternative reasons it might have been described as related.

GUIDANCE FOR INDICATOR 3 - POTENTIAL CONCEALED BENEFICIAL OWNERSHIP

Investment holding structures where beneficial ownership may be concealed

There are several possible forms of ownership that are based not on shareholdings but on some other holding structure. Some of these structures do not require transparency around beneficial ownership. Nevertheless, in such cases there may still be evidence that a formal ownership relation exists, for example declarations in a company's annual reports or official announcements. Such declarations may be regarded as strong evidence of beneficial ownership. Examples of such arrangements include the following:

- Ownership by an investment fund such as a private equity fund owned/managed by a member of a group.
- Ownership through a trust. Many jurisdictions place no obligation on trusts to reveal publicly the beneficial owners of assets that they manage, though these may be identified in annual reports or other official publications.
- Ownership by a foundation. In some countries, businesses may be owned by a foundation or similar legal body (often not-for-profit) which does not have a shareholding structure.

Data from government registries

To comply with international guidelines, jurisdictions are increasingly implementing policies to require disclosure of beneficial ownership by companies. In some cases the information in these registers are available to the public.

If a natural person is named as a beneficial owner in such a register, then this may be interpreted as strong evidence that they are the beneficial owner. However, care should be taken over whether definitions and thresholds set for that register are aligned with those used by the researcher. For example, the Financial Action Task Force recommends a maximum threshold of 25% interest for recording beneficial ownership, which may be less than the critical stake set by the researcher.

Care should also be taken if the register is based on self-declaration by companies. If this is the case, then naming an individual who is unrelated to the group under investigation should not necessarily be interpreted as counter evidence for control by that group. Consider whether there are any loopholes in the reporting requirements for companies, whether penalties are imposed for misreporting and whether these penalties are enforceable.

Suspected nominee arrangements

A nominee shareholder is a person or organisation acting as the registered owner of shares, holding and administering them on behalf and for the benefit of the beneficial owner. If a nominee shareholder is an individual and there is no legal requirement to disclose the arrangement,¹ the shares can appear to be owned by this individual and the anonymity of the people who actually control the company is preserved.

Just as nominee shareholders can be used to conceal shareholding, nominee directors who are not the key decision-makers in a company can also be used to conceal management control by a controlling entity. Care should be taken however because the term nominee directors can be applied to a wide range of circumstances, many of which are unrelated to concealing control (for example, it is normal practice for a large group to nominate individuals to sit on the board of a subsidiary so they can focus on its specific management). In some jurisdictions companies can legally be appointed as directors, which may be another way that control can be obscured.

Nominee arrangements can be put in place for a number of reasons, including routine legal business purposes. In many cases, the use of nominee shareholders or directors has a simple, legal explanation, such as a stockbroker holding shares for sale, or complying with a local regulation requiring a citizen of that country on the board of directors. However, the relative lack of legal transparency requirements on the use of nominees has meant they are now routinely abused in order to purposefully keep the identity of beneficial owners off the record. See also [Signature for Sale](#), a 2022 brief by the Stolen Asset Recovery Initiative of the World Bank.

Unless the existence of a nominee arrangement has been disclosed in a government register of companies, or the researcher is able to access copies of agreements between beneficial owners and nominees, it may not be possible to prove beyond reasonable doubt that a beneficial owner is being concealed by a nominee arrangement. There may however be clues that suggest it as a plausible hypothesis. The nature of these clues is likely to vary from country to country and can be expanded upon in national interpretations of this methodology.

As an illustration, some examples of situations commonly encountered in Indonesia may be considered. Although the use of nominee shareholders is declared invalid under Indonesia's 2007 law on investment, there is no further regulation governing the practice and there are indications that it is widely used. Sometimes indications that nominee arrangements may be in place are discovered by researching the background of named shareholders and officers. In several cases of suspected shadow companies of large well-known groups, the officers and shareholders of the suspected shadow companies have turned out to be mid-level managers in other companies with an acknowledged or undisputed link to that group. This is an unsurprising arrangement, since in a shadow company nominee shareholders and officers need to be trusted by the beneficial owner – it therefore makes sense to pick long-term employees for such roles, and mid-level managers are less likely to be publicly identified with the beneficial owner's group than more senior managers. Such an arrangement can therefore be evidence of control of a suspected shadow company even if the named individual holds quite different roles in the acknowledged group company and in the suspected shadow company.

Other indications commonly encountered in Indonesia that suggest the possibility of concealed beneficial ownership through nominee arrangements include the following:

- There is no overlap between the shareholders of the parent company of a subgroup and the officers of companies with operations on the ground or of intermediate holding companies directly under the parent's control.
- There have been frequent changes in a company's shareholding structure without any other evidence that the company has been sold to new owners.
- Individuals named as shareholders do not seem to have any other public presence, online or otherwise, which is especially suspicious when the companies they hold shares in are sizeable businesses.
- Individuals named as shareholders have stated in interview that they are nominees or do not control the company.

This list is intended to be indicative, and there may be different explanations for many of the observations.

GUIDANCE FOR INDICATOR 4 - SHARED RESOURCES

Shared registered or office addresses

Several addresses may be associated with a company, including:

- its official registered address
- the official registered addresses of parent companies, including intermediate holding companies
- the address of the company's head office where administrative activities are carried out
- mail addresses used by the company on official documents (sometimes companies use interchangeably several addresses associated with their group)
- in the case of many commodities companies, addresses of offices that they maintain in towns near their operations, as well as field offices at operational sites.

Shared addresses where actual administrative tasks are carried out is a stronger indication of common control than registered addresses where no business activities take place, but either may be rated as strong evidence of common control providing no alternative explanation for the shared address exists. Common alternative explanations include:

- Corporate service providers may arrange holding structures involving shell companies, often located in jurisdictions which are not the principal place of business. These should not be regarded as shared resources since the corporate service provider may have several different corporate clients.
- Local service providers may offer PO Box addresses where a company may receive mail while its business is carried out elsewhere. This may be for various reasons, such as to have a stable address for a company which mostly works remotely, or to have an attractive-sounding address in a business district where actual office space is too expensive. In such cases, unrelated companies may share the same address.

The following are generally regarded as reliable sources of address information, as they originate from the company itself or official submissions to the government:

- the national company register
- company web pages
- company letterheads
- permit documents, certification audit reports and company details in court records to which the company is a party
- permit lists supplied by the government (these often include a column giving contact details).

Examples of secondary sources which may be less reliable but are still valuable.

- directories of companies.
- non-official websites
- testimony from staff or other stakeholders who are familiar with a company's operation
- trade invoices or shipping records.

Where possible, visits to addresses can provide valuable information into why companies might use the same address. For example, the researcher may discover whether an address is the physical location where business is carried out, whether multiple independent companies are located at the same address, and whether any company names or logos are displayed at the location.

GUIDANCE FOR INDICATOR 5 - FAMILY LINKS

Confirming family relationships

Reliable sources of information which may confirm a family relationship include the following:

- Birth, marriage and death certificates, national registries of births, marriages and deaths, and reliable genealogical tools based on these sources.
- Stock market disclosures and annual reports. If two or more family members are involved in a listed company, that company's stock market disclosures or annual reports may state that there is a family relationship between them in order to comply with reporting requirements on related parties. This can be considered conclusive evidence of a family relationship.
- Direct admission. Family relationships may also be acknowledged by the individuals concerned or by their companies, for example in correspondence with an NGO responding to an opportunity to comment letter sent prior to the publication of a report.

Online media sources about a family are of variable reliability, but may still be strong evidence for a relationship. Wealthy families often have a high public profile, and family members may give interviews where they mention their relationships to others or talk about the nature of the family business. Details of family relationships may also appear in reports of society events, personality and lifestyle media, obituaries and social media. In such cases the strength of the evidence can be subjectively assessed from the nature of the source. In complex cases such as where different branches of a family control different subgroups, it may be useful to include a family tree.

In the absence of sources which can confirm a family relationship, the researcher can still infer likely family links from data on individuals associated with a company, for example data on officers and shareholders in company data from national registries.

- **Same family name.** If individuals have the same family name, this may be regarded as evidence of a family link. It should not however be taken as conclusive, especially in the case of more common family names, and other evidence should preferably be sought to confirm the link.
- **Same home address.** If individuals have the same home address, this may also potentially indicate a family link, although it is not uncommon for individuals listed as shareholders or officers to give an official address rather than their actual home address, in order to protect their privacy. As a result, in some instances all shareholders and/or officers listed for a company may give the same address even though they do not live together and are not related.

In many cases it will be reasonable to conclude that there is strong evidence of a family relationship if the individuals share both the same family name and the same home address, especially if there are other indications of a relationship between the companies with which they are involved.

Companies controlled by members of the same family, but which are not under common control

In general, companies which are controlled by different members of the same family are assumed to be under common control unless and until this can be shown otherwise. This is because sharing of benefits and forms of influence within families are normally informal, and for the researcher to disprove that these take place would be impossible. In the case that findings of common control through family control are disputed, the final burden of proof should rest with the family concerned to show that there is no common control. However, it is still recommended that the researcher looks for evidence of whether companies controlled by members of the same family are under common control.

Compelling evidence that companies owned by members of the same family are not part of the same group may include evidence of a family feud which has caused a former family group to split, or evidence that no significant direct or indirect benefits accrue from one company to family members involved in the other company or companies.

The researcher may wish to consider whether there is a culture of family-run business in the countries or regions they are investigating, and whether the companies being investigated fit a typical pattern for a family group in those countries and regions. It may also be useful to survey references to the companies in the media to see if they strengthen or weaken the suspicion of family control.

Statements contesting findings of family control by companies or family members

Companies or family members may assert that companies owned by different family members are not under common control while being unable to present compelling evidence to back up their claim. This may be in response to an opportunity to comment letter (see Stage 4). Where this is the case, the plausibility of this claim must be evaluated. In order to do so, it may be helpful to consider the information gathered under other indicators. Interviews with company staff or others with knowledge of the companies and family may also be invaluable in such cases.

GUIDANCE FOR INDICATOR 6 - FINANCIAL ARRANGEMENTS

Evidence for explicit financial control

Financial control is explicit when a contract has been signed making a company financially dependent on another party, and in return that party has rights or decision-making power over that company, including the ability to set minimum standards for environmental, social or governance criteria. Such contracts could form part of arrangements to provide loans or other finance, or an exclusive supply contract which governs the company's income. In practice, the details of such contracts are unlikely to be made public and so may not be available to the researcher unless they are made available by one of the parties to the contract. If the researcher is able to view such a contract, it would count as strong evidence of financial control.

Evidence for implicit financial control through loans / investment.

Financial control is implicit if the amount invested in or lent to a company is judged to be significant enough in relation to the company's turnover or assets that an investor or lender could reasonably be expected to make demands over how the company is run, including the ability to set minimum standards for environmental, social or governance criteria. However, the extent of control is very fact specific. Where possible, the terms of investments should be reviewed in order to understand any special rights granted to holders of the investments (e.g. the right to appoint board members or the right to approve budgets/expenditure, etc). The maturity of any debt or debt instruments should be looked at - debt which can be called for repayment at any time with no notice gives a far greater degree of control than long-term non-callable debt. Similarly, the financial situation of the group/company should be looked at - in a financially stressed company, debt is likely to give a far greater degree of control than in a financially healthy company.

Users of this methodology may differ in the degree to which they wish to hold large financial institutions such as banks or pension funds accountable for the operations of companies they invest in or lend to, and accordingly the researcher is recommended to draw up their own criteria to identify the level of finance that in their view constitutes control. As a general rule of thumb, a reasonable threshold might be when finance provided to a company represents a greater proportion of its turnover or assets than the critical stake determined as a threshold for legal or beneficial ownership to be considered control.

Evidence for implicit financial control through exclusive supply contracts.

Where there is evidence that a primary producer has agreed to exclusively supply a downstream processor or trader (for example where a company operates a logging concession supplying a group's timber mill), a relationship of financial control by the downstream company may be inferred, even if the terms of the contract are not known. This is because the supplying company is dependent on the purchasing company for most or all of its income, and therefore would reasonably be expected to adapt to any demands made on it by the purchasing company. By extension, the processor or trader would be effectively able to set environmental, social and governance standards and could be legitimately held to account for failing to do so, or enforce or monitor those standards.

This is not the same as a supply chain relationship where producing companies are not tied to a single processor or trader, because the producer could in theory choose to sell to a different processor or trader, so it is not under its control. Initiatives for supply chain accountability, where supply chain actors are encouraged to set and enforce sustainability policies which their suppliers must comply with should not be confused with determining control.

The key determinant of control in a supply relationship is whether there is an exclusive arrangement to supply, because it is only in such cases that the researcher can be confident that the supplier is financially dependent. Consideration of informal arrangements is also valid here. The researcher should look for evidence that such arrangements exist, including statements from the companies involved, testimony from company staff, etc.

Cases where a producing company is effectively dependent on a processing or trading company because there are no other realistic options to sell its product (for example the processing or trading company has a local monopoly) are more complex. In most cases it would not be appropriate to describe such cases as financial control in the context of a corporate group.

Assets under receivership

Cases may be encountered where a struggling or indebted company is taken into receivership, or the assets of a bankrupt company are assumed and managed by a third party. Depending on the circumstances this may also constitute a form of financial control.

GUIDANCE FOR INDICATOR 7 - SHARED MANAGEMENT

What constitutes 'extensive overlap' of officers and/or key managers?

The researcher should interpret 'extensive overlap' according to the relevant context. A single instance of an individual serving as an officer for two companies would not normally count as extensive overlap and would not on its own constitute evidence for common management control, as it is common practice for individuals to sit on the boards of multiple unrelated companies; however, it may still be judged as significant in certain circumstances, especially if a company has few officers.

Complex situations where there are many companies of interest under investigation, which do not all share the same officers or key managers, and where their boards have changed over time may be approached by considering whether the number of connections between the companies indicates that all companies are drawing from the same pool of key personnel.

It may be useful to consider management history, if historical evidence has been found to be admissible during the course of the investigation (see 'Guidance on using historical information' above). The strongest evidence is found when individuals hold concurrent management positions in companies in different subgroups, but the researcher may also consider whether a 'revolving door' pattern, where individuals move between working for different subgroups, may be construed as shared management.

It may also be legitimate to consider whether there is overlap in individuals in middle-management positions (e.g. heads of department). The researcher should exercise caution around the possibility that companies may sometimes outsource certain management functions, which could provide an alternative explanation for relationships found.

Other notes

It is not necessary for an individual to have the same management role in each company with which they are involved – indeed, if, for example, a lower-ranking manager in an acknowledged group company is also a director of a suspected shadow company, this may be an indication that they are acting as a nominee (see Definitions and Indicator 3), which may in certain cases be interpreted as evidence of management control of the suspected shadow company by the acknowledged group company.

Any uncertainty as to whether names found in separate sources refer to the same individual will reduce confidence in the conclusions reached, and should be recorded.

GUIDANCE FOR INDICATOR 8 - OPERATIONAL ARRANGEMENTS

Field visits

While desk-based research may reveal some evidence of operational control, the most reliable information is likely to be obtained through physical visits to the location of operations. Where possible, the researcher should consider whether it is practicable to carry out field visits.

Users of the methodology are encouraged to develop a protocol for field visits which takes into account any security issues for the researcher and their informants, ensuring access to relevant locations, and ensuring that the evidence gathered is as objective as possible. One important consideration will be whether it is necessary to inform the company/companies involved prior to the visit, and to obtain their consent. Different approaches are possible, but the researcher should ideally try to avoid visits where company management are their only source of information.

Stakeholders who could be approached on field visits include company workers, subcontractors, local residents, smallholders, service providers and suppliers who work with the company, etc.

Desk-based evidence of operational control

Evidence of operational control which can be discovered without field visits can come from individuals who (or organisations that) can reasonably be assumed to be familiar with a company's operations and believe that it is controlled by a particular group (or a known member of a group). The strength of the evidence will depend on the number of distinct accounts, their reliability, and whether there are plausible alternative explanations for the beliefs. Possible scenarios include the following:

- Staff of an operating company identify it as being controlled by a particular group or group member in their social media posts.
- A contractor that has provided services to a company attributes that company to a particular group (e.g. a company constructing mills lists its previous clients and their parent groups on its website).
- Analysis of planting and harvesting patterns on satellite images indicate that adjoining concessions owned or leased to different companies are being operated jointly.

Assessment of evidence

Investigating operational arrangements is the indicator most likely to produce multiple types and sources of evidence which do not individually qualify as 'strong evidence'. This applies especially when no field visit is possible and where informal operational control as part of a shadow company relationship is suspected. In these cases, the researcher may choose to aggregate multiple instances of 'some evidence' into a finding of 'strong evidence'. Issues to consider here include:

- Are the sources of evidence independent of each other, for example:
 - if considering interviews with former staff, what are their relationships with each other?
 - are different media mentions quoting a single source?
- Does the evidence cover the same time period, and is that current?
- If there is more than one company in the subgroup, which companies does each piece of evidence relate to? Is there any reason to think operational control may be different for different companies?
- Do any pieces of evidence contradict each other, and does this undermine one or both of them?

STAGE 4 GUIDANCE

This guidance section includes:

- Examples of summarising suspected group links
- Discussion of reaching conclusions on group links

The examples below show a suggested method for creating a summary of links between a group and suspected subgroup/company of interest, or between two subgroups/companies suspected of being under common control. The investigation summary should emphasise specific concerns the group needs to address in its response.

Where there are more subgroups or companies of interest, separate summaries may need to be created for each set of links.

Example 1: Summary of links between Listed company X and suspected Subgroup Y

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>

Investigation conducted June-September 2022

Example 2: Summary of links between Group A and Company B

Indicator	Evidence rating	Links between Group A and Company B
1 - Formal relationship	No evidence	
2 - Declared as a group	No evidence	
3 - Concealed beneficial ownership	No evidence	
4 - Shared resources	Some	Group A and Company B operated using some shared registered addresses up to 2018.
5 - Family links	No evidence	
6 - Financial arrangements	Some	Group A's accounts show that it made a loan to Company B in 2019. The value of the loan is estimated to represent 20-30% of the value of Company B's current assets, but the terms of the loan (including period) were not disclosed.
7 - Shared management	Some	Strong evidence of shared management control before 2012, and some evidence to 2015. No direct evidence of ongoing management overlap, but also no evidence for change in control.
8 - Operational control	No evidence	
Overall:		Some evidence of group control. More investigation required if considering engagement with Group A

Investigation conducted January-April 2022

ANNEX 1: MODIFICATIONS TO THE AFI DEFINITION OF A CORPORATE GROUP

The AFI's definition of a corporate group and the associated list of factors provide the framework around which the present methodology has been constructed:

'The totality of legal entities to which the company is affiliated in a relationship in which either party controls the actions or performance of the other. Factors that are used to determine whether a company is part of a broader corporate group include:

- *Formality of relationship: Is there formal ownership, such as through an investment holding structure?*
- *Declared as a group: Has the group publicly declared the companies are linked?*
- *Family control: Are the companies owned or run by members of the same family?*
- *Financial control: Are there contractual or other financial arrangements that indicate one party controls the performance of another?*
- *Management control: Is there extensive overlap in officials between companies?*
- *Operational control: Are landholdings under a group's operational control?*
- *Beneficial ownership: Is ultimate ownership hidden in offshore companies or by use of nominees?*
- *Shared resources: Do companies share a registered address, land or other physical assets, or provision of company functions or services?*

However, the AFI wording as it stands is considered insufficiently robust. Terms such as 'control', 'ownership' and 'extensive overlap' need clear and context-specific interpretation in order to ensure that points of ambiguity do not open loopholes in a due diligence process or grievance mechanism. For these practical purposes, it is recommended to adopt an extended definition of 'corporate group'.

The authors of the present methodology believe that the extended definition in no way changes the intended meaning or scope of the AFI definition, it merely aims to make it more practically applicable. They recommend that organisations which have committed to adopting the AFI definition refer to the extended definition where necessary, and suggest that they may also wish to choose this form of the definition in any procedures or guidance they issue.

The proposed changes are shown in the table below.

	AFi definition	Extended definition
First sentence of definition	<i>'The totality of legal entities to which the company is affiliated in a relationship in which either party controls the actions or performance of the other.'</i>	<i>'The totality of legal entities to which the company is directly or indirectly affiliated in a network of relationships in which one party controls the actions or performance of the others, or which are controlled by the same individual/s.'</i>
List of types of control	Not given explicitly	<p><i>'Control may be exercised in one or more of the following ways:</i></p> <ul style="list-style-type: none"> • Legal ownership: <i>registered, official or formal ownership of a company or other asset, or a stake in a company or asset, for example through share ownership. The term is often used in contrast to beneficial ownership, in recognition that legal ownership does not necessarily entail control.</i> • Beneficial ownership: <i>ultimate ownership and/or control of a company or other asset or the right to benefit financially from such assets.</i> • Family control: <i>common control by a family – the situation that occurs when a close family relationship exists between beneficial owners of different companies, and those companies are managed by, or in the interests of, the family.</i> • Management control: <i>the power on the part of a group (or one of its members) to take management decisions over a company.</i> • Operational control: <i>the situation that occurs when a landholding or facility is operated by a company that is part of a group.</i> • Financial control: <i>any arrangement (other than share ownership) in which a group, its controlling entity or one of its members has invested in or otherwise financed a company with the result that it is able to exert control over that company. Financial control may also be assumed to exist as a result of an agreement in which a group or company is the sole buyer of another company's product through a contract or other tied arrangement, and the producing company is thus financially dependent on the purchasing group or company.'</i>

<p>List of factors/ indicators</p>	<ul style="list-style-type: none"> • <i>'Formality of relationship: Is there formal ownership, such as through an investment holding structure?</i> • <i>Declared as a group: Has the group publicly declared the companies are linked?</i> • <i>Family control: Are the companies owned or run by members of the same family?</i> • <i>Financial control: Are there contractual or other financial arrangements that indicate one party controls the performance of another?</i> • <i>Management control: Is there extensive overlap in officials between companies?</i> • <i>Operational control: Are landholdings under a group's operational control?</i> • <i>Beneficial ownership: Is ultimate ownership hidden in offshore companies or by use of nominees?'</i> 	<p>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?</p> <p>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?</p> <p>Indicator 3 (Potential concealed beneficial ownership): Is there evidence that beneficial ownership of a company or companies under consideration may be hidden via arrangements in secrecy jurisdictions, by the use of nominee shareholders, or by other means?</p> <p>Indicator 4 (Shared resources): Do companies share a registered or office address, physical assets, or provision of company services?</p> <p>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?</p> <p>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 a company or companies under consideration and thus has financial control?</p> <p>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?</p> <p>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?'</p>
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RATIONALE FOR CHANGES

First sentence of definition. The extended definition makes it explicit that the ultimate control of a group may be held either by an individual or individuals (ie 'natural persons'), or by a company or similar legal person. The addition of 'directly or indirectly' and 'network of relationships' emphasise that the structure of corporate groups may be complex.

List of types of control. A list of types of control has been added for the extended definition. It is not particularly clear whether the list of factors in the AFi definition is intended to be understood as a list of types of control, or a set of indicators which will allow the researcher to identify control. While all the factors listed are potential indicators of group membership, some are also indicators of control while others are actually types of control: for example, 'shared resources' is a potential indicator of operational control rather than a type of control in and of itself, whereas 'family control' is a type of control. The extended definition aims to reduce ambiguity by making this distinction explicit, and listing the types of control suggested by the factors in the AFi definition. Providing a list of types of control also enables the researcher to state categorically that a company is considered part of a corporate group if that group exerts over it **at least one** of these forms of control.

This is not made clear in the AFi definition, although it may be considered to follow logically from the AFi approach, which takes a broad view of what constitutes control. However, practical investigations applying the definition are expected to require clarity on this point, especially in order to avoid disputes over the conclusions reached in any investigation.

List of factors/indicators. With types of control listed separately, the factors listed in the AFi definition can now be more clearly reframed as indicators by which the researcher can assess evidence for the various types of control. These indicators form the basis of the present methodology, and are elaborated further in Section II Stage 3 and in the Investigation Guidance.

There are eight indicators, which correspond to the eight factors in the AFi definition. In some cases they are named slightly differently to make it clear that they are indicators of control rather than definitions of forms of control (e.g. 'shared management' in place of 'management control'). Several of the accompanying questions have been rephrased, in the interests of reducing ambiguity.

ANNEX 2: NAMING GROUPS

For more complex informal groups and for conglomerate and transnational groups with many branches, it is sometimes difficult to know what to call the group for maximum clarity and accuracy.

While names are not part of the methodology for determining group responsibility, a common naming standard for groups under investigation would be useful for data-sharing among organisations. We propose introducing the following standard:

Group naming protocol

The intention with group attribution is two-fold:

1. to name the highest-level controlling entity (corporate group, family or individual/s) which may be an unfamiliar name, and
2. to name the groups most likely to be familiar to commodity consumer companies, traders or stakeholders.

Where a formal or declared group covers all the interests thought to be linked to its beneficial owners – i.e. the extent of the group is uncontroversial – there is no need to identify the individual owner/s alongside the group name. Where there is only some evidence for group control, or the conclusion of group control is disputed, the researcher may choose to add ‘suspected’ or ‘potential’ to the element of the name where there is uncertainty.

Group naming elements appear in order of control from largest to smallest.

- Where a group has interests across various sectors and holds its commodity-specific interests (e.g. palm oil) under a named subgroup or subsidiary, both the cross-commodity group and the commodity-specific group are given, to enable cross-sector comparisons while including the name more familiar to the commodity industry, *Example: ‘Conglomerate X/Palm Oil Company Y’*
- Where a family or individual controls more than one group, the family or individual name is given first (as the ‘controlling entity’), to connect their various interests, *Example: ‘Smith Family/Madeup Holdings’*
- Formal joint ventures are shown with both group names and ‘JV’.
- Where different levels of a group hierarchy have similar names, e.g. ‘Madeup Group/Madeup Plantations’, the simple name (here ‘Madeup’) is considered sufficient to distinguish the group.
- In general, brand or operational names are preferred to legal holding company names (if these differ). In the case of complex groups which have operational names for subgroups but it is not certain which companies/concessions are associated with those names, it may be better to use legal holding company names for subgroups. Alternate names can be discussed in the investigation report.
- Company type abbreviations (PT, Bhd, Tbk, Ltd etc) are omitted from group names, as is the word ‘group’.

ENDNOTES

- 1 see also Financial Action Task Force (FATF) (2022) 'Recommendations' p120 <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>
- 2 e.g. European Palm Oil Alliance NDPE Commitment accessed 20 January 2022
- 3 Accountability Framework website <https://accountability-framework.org/the-framework/contents/>
- 4 Accountability Framework 'Definitions' accessed 20 January 2022 (see 'Corporate group') <https://accountability-framework.org/the-framework/contents/definitions/>
- 5 Accountability Framework 'Definitions' accessed 20 January 2022 (see 'Corporate group') <https://accountability-framework.org/the-framework/contents/definitions/>
- 6 Financial Action Task Force (FATF) (2022) 'Recommendations' p120 <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>
- 7 Stolen Asset Recovery Initiative (2022) 'Signatures for sale: How nominee services for shell companies are abused to conceal beneficial owners' pp7-9 <https://star.worldbank.org/publications/signatures-sale-how-nominee-services-shell-companies-are-abused-conceal-beneficial>
- 8 Financial Action Task Force (FATF) (2022) 'Recommendations' p91 <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>
- 9 International Accounting Standards 'IAS 28, amended 2011' <https://www.iasplus.com/en-gb/standards/ias/ias28-2011#link7>
- 10 The Panel on Takeovers and Mergers (2022) 'The Takeover Code' Definitions pC7 <https://www.thetakeoverpanel.org.uk/the-code>
- 11 Monetary Authority of Singapore (2019) 'The Singapore code on takeovers and mergers' p15 https://www.mas.gov.sg/-/media/MAS/resource/sic/The_Singapore_Code_on_Take_Overs_and_Merger_24-January-2019.pdf?la=en&hash=8DCB4A29BF6DDA17527EC7E54A8CB5CFEDDAEE7D
- 12 For examples see Stolen Asset Recovery Initiative (2022) 'Signatures for sale: How nominee services for shell companies are abused to conceal beneficial owners' <https://star.worldbank.org/publications/signatures-sale-how-nominee-services-shell-companies-are-abused-conceal-beneficial>
- 13 e.g. Investopedia 'Super-voting shares' accessed 20 January 2022 <https://www.investopedia.com/ask/answers/company-multiple-share-classes-super-voting-shares/>
- 14 e.g. Investopedia 'Golden Share definition' accessed 20 January 2022 <https://www.investopedia.com/terms/g/goldenshare.asp>

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