

## **OCP Latin America Legal review**

### ***Confidentiality of using the Forest Stewardship Council's Online Claims Platform (OCP); in Argentina, Brazil, Chile, Peru, Colombia, Mexico and Bolivia.***

It has been analyzed:

- data confidentiality
- data protection
- data access
- data security

Conclusion:

- the operation of the OCP, even as a voluntary tool, does not present any additional significant legal risk for the FSC or its Users
- there is no different impact of the legal issues linked to the OCP other than the ones which the FSC already has
- there is no different impact, neither for certification processes nor for the exchange of information between those who have FSC certificates.

#### **Central themes:**

- The OCP has been designed in order to complement the certification process of the chain of custody - CoC.
- The OCP is created so that the accuracy can be confirmed
- Key features and benefits of the OCP:
  - Allows having an overview of all FSC transactions.
  - Users can only view information about their own operations
  - Neither Users nor the FSC will be able to see the information in the CoC.
  - It has strong security measures in compliance with ISO27001

#### **Legal analysis**

##### **Applicable laws**

- German and European Union law will apply for the agreement of use of the OCP, which is between the User and the FSC.
- According to the legislation in the various countries analyzed, it is a willingness of the parties to determine the law applicable to their Agreement.
- The only exception would have been that what is established in the "Terms and Conditions" violates national laws, which is discarded.

### **Confidentiality**

- Safety is a major concern when hiring cloud services. This is not an exclusive concern of this service, it is common to any user of any service in the "cloud".
- There is a perception that the use of the OCP creates a greater risk for protecting your information, because, among other things, it could be "more" accessible, by judicial or administrative order.
- The key point is that each user of the OCP only has access to the CoC information concerning the operations of which he is part, that is, as a supplier or buyer.
- Another confidentiality problem relates to the "search" function. This search is only available for registered OCP Users.
- OCP Users can be sure that this system will not have a major impact on the confidentiality of their information.

### **Data Protection**

- Personal Data are those that identify an individual person. The "processing" of such data in the OCP, is minimal
- There is no requirement for further supply of personal information.
- Considering that the FSC is not collecting additional Personal Information and not using the existing one for any new or different purpose, we conclude that:
  - o The OCP does not present additional risks compared to the compliance with data protection in the current process of CoC certification
  - o The OCP operation has no significant effect on the current FSC situation regarding compliance with Personal Data protection.

### **Security**

- Users may have doubts about where their data are stored and who may have access

- The OCP offers the highest level of Internet security. Historic Futures Ltd, operates a comprehensive management system for information security (ISMS), and has the ISO 27001 security certification

### **Data Access by judicial or administrative order**

- In all cases, FSC does not have access to the stored information
- A judicial or administrative order, issued by a court in the EU or Germany can create access to such information, but this possibility existed before the functioning of the specified platform.
- For the analyzed countries, their standards already made it possible to access the database before the existence of the OCP, which could and can be done by imposing an order to anyone, whether in pursuance of a judicial ruling or national administrative provision or via the execution of foreign court ruling.
- The existence of the OCP neither increases nor decreases the opportunities for judicial or administrative authority to access the stored information.
- All these aspects must provide Users with sufficient certainty that the information that enters the OCP is safe.

### **Risks**

Risks if the OCP was operating:

- The operation of the OCP is a risk for a company that wants to carry out fraudulent activities, because with the OCP there is an opportunity to exchange online and easily accessible information, both for certification bodies and for the courts; since an agreement between the User and FSC to which German and EU law applies is subscribed
- The operation of the OCP, even as voluntary tool presents no additional significant legal risk for the FSC or its Users.

Risks if the OCP was not operating:

- Another method to prevent fraudulent activities related to the products that hold FSC certificates should be found.
- If fraudulent activities continue, a risk for the FSC certification system is generated, as this could affect its credibility very strongly, which is one of the biggest advantages of the system.

- The risk generated by fraudulent activities may not result in civil or criminal proceedings against FSC, since FSC is not liable for the information entered into the OCP.
- It will remain difficult to confirm the veracity of the information exchanged between buyers and suppliers of certified products.