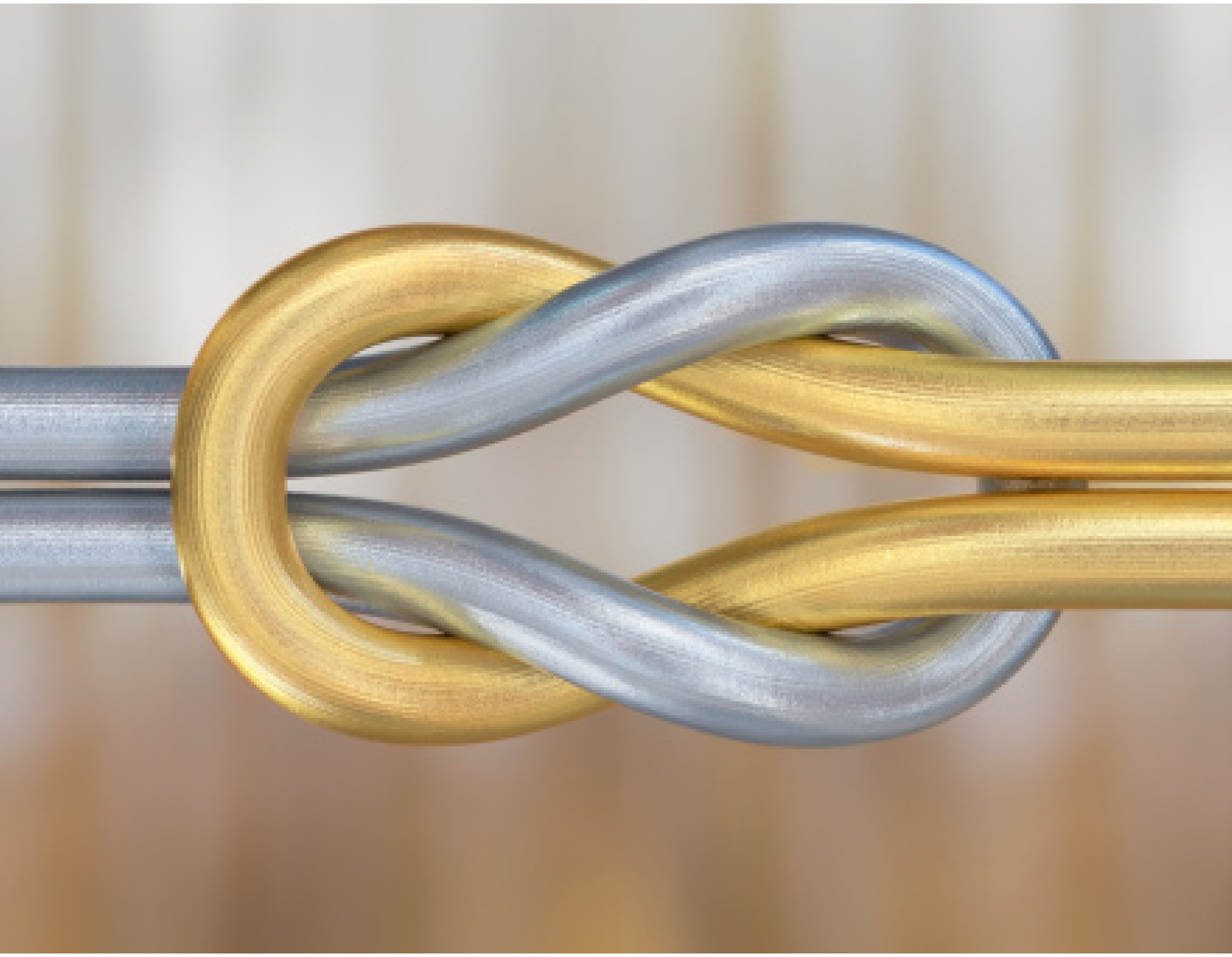
RESPONSIBLE BUSINESS CONDUCT

An introduction to the OECD Due Diligence Guidance for Responsible Mineral Supply Chains for Upstream Actors



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Introduction

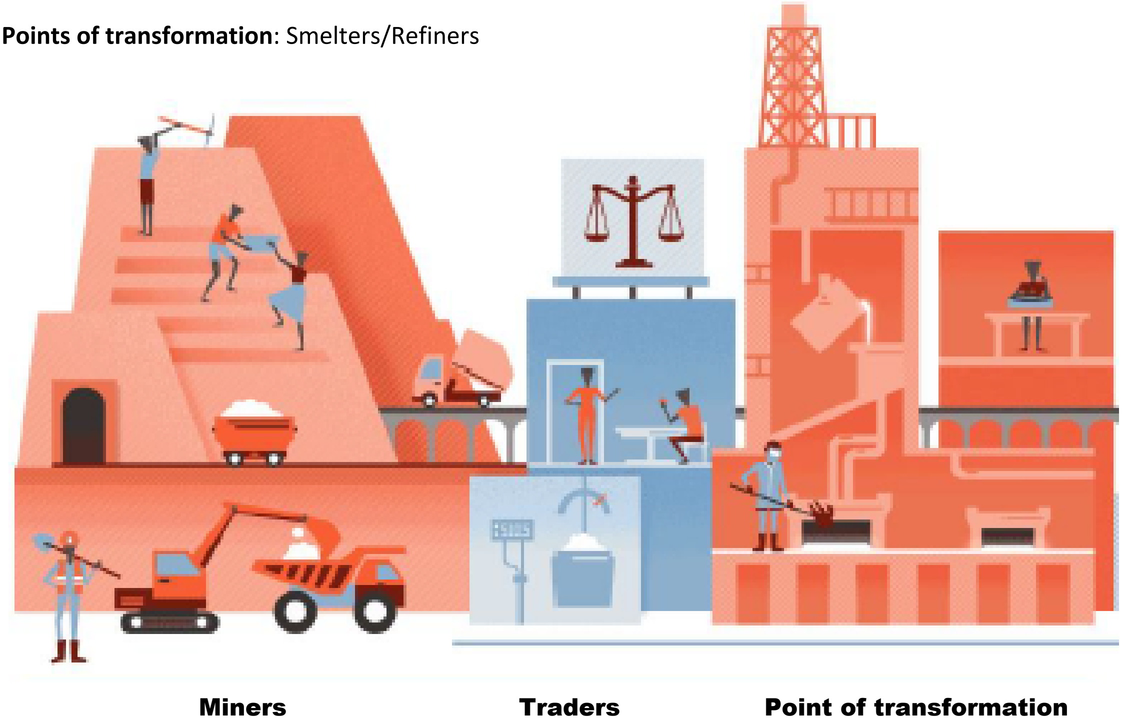
Trade and investment in natural mineral resources hold great potential for generating income, growth and prosperity, sustaining livelihoods and fostering local development. However, a significant share of these resources is located in conflict-affected and high-risk areas, where they may contribute, directly or indirectly, to armed conflict, including terrorist financing, human rights violations and hinder economic and social development.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the Guidance) clarifies how companies can identify and better manage risks throughout the entire mineral supply chain, from miners, local exporters and mineral processors to the manufacturing and brand-name companies that use these minerals in their products. It applies to all minerals and is global in scope.

The Guidance was developed by OECD and non-OECD countries (including countries from the International Conference on the Great Lakes Region), industry and civil society, as well as the UN Group of Experts on the Democratic Republic of the Congo. It integrates recommendations developed by the Financial Action Task Force (FATF), the Extractive Industries Transparency Initiative and the Voluntary Principles on Business and Human Rights.

This simplified guide explains the basic elements of due diligence for upstream actors in mineral supply chains, in line with the Guidance. It is intended for use by upstream supply chain actors including, among others:

- **Miners**: Artisanal and small-scale mining entities (ASM) and Large scale mining entities (LSM)
- **Traders**: Processors or other treatment/conversion entities; Mineral trading houses and exporters; International commodity traders
- **Points of transformation**: Smelters/Refiners



Simplified model of upstream supply chain

What is due diligence for responsible supply chains?

Due diligence is an on-going, proactive and reactive process through which companies can identify and address actual or potential risks in order to prevent or mitigate risks of contributing to adverse impacts associated with their activities or sourcing decisions.

A company assesses risks by identifying the factual circumstances of its activities and relationships and evaluating those facts against relevant standards provided under national and international law, recommendations on responsible business conduct by international organisations, government-backed tools, private sector voluntary initiatives and a company's internal policies.

For upstream companies, the most critical due diligence steps are:

- Establish traceability or chain of custody to mine of origin
- For red flagged supply chains, undertake on-the-ground assessments of mines, producers, and traders for conflict, serious abuses, bribery, tax evasion, fraud, money laundering
- Collaborative engagement with local government, CSOs, local business to prevent and mitigate impacts, monitor
- Report publicly on due diligence efforts

What are supply chain risks?

All actors in the mineral supply chain can be at risk of contributing to adverse impacts of the mineral trade — regardless of their position in the supply chain. Due diligence helps companies identify whether their supply chains are risky and prioritise the most severe risks associated with sourcing minerals from high-risk areas:

- Serious abuses of human rights
- Support to armed groups
- Abuses by security contractors
- Bribery and fraud
- Money laundering
- Non-payment of dues

The OECD five-step framework for risk-based due diligence

Step 1	Adopt due-diligence policies and build internal capacity to implement them. Engage with suppliers and business partners. Develop internal controls and transparency over the mineral supply chain, collect data, and set up grievance mechanisms.
Step 2	Review information on the supply chain to identify any red flags that would trigger enhanced due diligence. Delve deeper and map the factual circumstances of the red-flagged operations, supply chains, and business partners. Prioritise risks as set out in Annex II of the Guidance (see risks below)
Step 3	Report risk assessment findings to senior management and improve internal systems of control and oversight. Only disengage from suppliers associated with the most harmful impacts (serious human rights abuse and conflict finance). In all other cases, take steps to increase leverage, either individually or collaboratively, to prevent or mitigate risks. Build internal and business-partner capacity.
Step 4	For upstream actors up to the smelter/refiner (e.g. miners and traders): Allow access to company sites and relevant documentation. Facilitate on-site visits and contacts with suppliers selected by the audit team. For smelters/refiners or other "control points" in supply chains: Carry out independent third-party audits to verify that due-diligence practices have been implemented properly. Auditors should gather findings and recommend specific improvements to existing processes.
Step 5	Publicly report on supply chain due diligence policies and practices including by publishing the supply chain risk assessment and management plan, with due regard to business confidentiality and other competitive concerns. Respond to stakeholder questions, concerns, and suggestions.

Why carry out supply chain due diligence?

Carrying out due diligence can help companies to:

- Know and show that companies are not supporting conflict, human rights abuses, corruption or other financial crime
- Assure buyers that all the measures to prevent or mitigate these risks have been taken
- Find new business opportunities and responsible, long-term buyers as trust in company due diligence builds
- Certify mineral exports under industry responsible sourcing programs and national/regional industry certification mechanisms
- Move towards meeting expectations of customers looking to comply with the EU Conflict Minerals Regulation (EU 2017/821) or section 1502 of the US Dodd Frank Act

Step 1: Establish strong management systems

What should companies do before making sourcing decisions?

- Obtain and review the Guidance, available in French, English, Spanish, German, Mandarin Chinese, Korean, Japanese, and Turkish at: http://mneguidelines.oecd.org/mining.htm.
- Adopt a policy for responsible supply chains of minerals consistent with Annex II of the Guidance and support the implementation of the Extractive Industry Transparency Initiative.
- Assemble an internal team to oversee supply chain due diligence. Ensure that the necessary budget resources are assigned and that a senior manager is ultimately accountable.
- Establish an internal system of transparency, information collection, and records of supply chain due diligence processes, findings and resulting decisions.
- Assign a unique internal reference number to each mineral input and output and affix it to each output in such a way that any tampering will be evident.
- Compile information related to mine of origin production, transport, trade and export, including, if relevant, the identities of any suppliers of minerals. Disclose this information to immediate downstream purchasers or to any mandated institutional mechanism.
- Collect stakeholder grievances through individual or collaborative grievance mechanisms.
- **For miners (ASM and LSM):** If sourcing minerals from any third parties, communicate the company policy, actions and expectations related to responsible sourcing to any suppliers. Companies should incorporate these expectations into supplier contracts and consider other ways to support the capabilities of suppliers to fulfil responsible sourcing expectations.
- **For traders and smelters/refiners:** For red-flagged supply chains (see Step 2 for more information on red flags), seek to progressively collect and maintain the following information on the chain of custody or traceability:
    - the identity of all suppliers and relevant service providers handling the mineral in the upstream supply chain from the mine of origin until the refiner; the ownership (including beneficial ownership); the corporate structure including the names of corporate officers and directors; the business, government, political or military affiliations of those companies and officers within conflict-affected and high-risk areas
    - all taxes, fees or royalties paid to government related to the extraction, trade, transport and export of mineral
    - all payments or compensation made to government agencies and officials related to the extraction, trade, transport and export of mineral
    - all payments made to public or private security forces or other armed groups at all points in the supply chain from extraction onwards, unless prohibited under applicable law

Step 2: Identify, assess, and prioritise risks

- Determine whether your company mines, transports, or purchases minerals in or from a conflict-affected or high-risk area or is associated to any other red flags.
- Map the factual circumstances of red-flagged operations by reviewing research reports and consulting with local and central governments and civil society organisations.
- For red-flagged operations, set up on-the-ground assessment teams and generate and maintain information on the circumstances of extraction, trade, handling, refining, and export.
- If an on-the-ground assessment was already carried out (e.g. by a supplier, an industry scheme, or other third party), review the assessment to ensure they are credible, up-to-date, and cover risks specific to your supply chain.
- Assess risks in the supply chain by determining whether the circumstances in the supply chain meet the companies supply chain policy and standards in Annex II of the Guidance.

Risks covered by the Guidance

Serious abuses of human rights associated with the extraction, transport or trade of minerals, such as worst forms of child labour, forced labour, degrading treatment, torture and widespread sexual violence. More detail on the definition of the worst forms of child labour can be found in Box 3. The International Labour Association (ILO) defines forced labour as "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily" (ILO, 1930).

Direct or indirect support to non-state armed groups, public or private security forces: for example, in cases where such groups control mine sites or transportation routes or points where minerals are traded, illicitly tax or extort money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded. Public and private security forces should solely maintain the rule of law, including safeguarding human rights and providing security to mine workers, equipment and facilities, and protecting the mine site or transportation routes from interference with legitimate extraction and trade. Companies are expected to engage security forces in accordance with the Voluntary Principles on Security and Human Rights (VPs), and ensure that individuals or units of security forces that are known to have been responsible for gross human rights abuses are not hired. Companies are also expected to take steps to improve transparency, proportionality and accountability in payments made to public security forces and avoid or minimise the exposure of vulnerable groups, in particular artisanal miners, to adverse impacts associated with the presence of security forces.

Bribery and fraudulent misrepresentation of the origin of minerals: Bribery or fraud occurs when supply chain actors offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or any other improper advantage, for example to secure mine site concessions, to facilitate smuggling, or to fraudulently misrepresent the origin of a mineral. (OECD, 2011) Bribes can take the form of money or other pecuniary advantages (e.g. sub-contracting firms linked to public officials) or non-pecuniary advantages (e.g. favourable publicity).

Money laundering is the process by which criminals disguise the illegal origin of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source.

Tax evasion. Under the Guidance, in addition to paying taxes, fees and royalties due to governments, companies are expected to disclose payments in accordance with the principles set forth under the Extractive Industry Transparency Initiative (EITI).

How do companies know if they are sourcing from a conflict-affected or high-risk area?

Conflict-affected and other high-risk areas are characterised by institutional weakness, political instability, insecurity, armed conflict, widespread violence, or other risks of harm to people. When companies recognise the following red flags, they should apply the enhanced due diligence standards and processes recommended in the Guidance:

Mineral origin and transit red flags

- The minerals originated in or have been transported through a conflict-affected or high-risk area.
- The declared country of origin for the minerals is one where the known mineral reserves or stocks, probable resources, or expected production levels are limited (i.e. the declared volumes of minerals from the country are disproportionate to its known reserves or expected production levels).
- The minerals are declared to originate in a country through which minerals from conflict-affected and high-risk areas are known or reasonably suspected to be transported.
- The minerals are declared to originate from recyclable, scrap, or mixed sources and have been refined in a country through which minerals from conflict-affected and high-risk areas are known or reasonably likely to be transported.

Supplier red flags

- Suppliers or other known upstream companies operate in one of the red-flag locations of mineral origin and transit, or suppliers hold shareholder or other interests in suppliers of minerals from one of the red-flag locations of origin and transit.
- Suppliers or other known upstream companies are known to have sourced minerals from a red-flag location of origin and transit in the last 12 months.

Red flag circumstances

- Based on anomalies or unusual circumstances identified in the information collected in Step 1, it is reasonable to suspect that the minerals may contribute to conflict or serious abuses, bribery, or other serious financial crimes associated with mineral extraction, transport, or trade.

How do companies carry out a risk assessment?

Companies can carry out the risk assessment by reviewing chain of custody and/or traceability documentation and by establishing an on-the-ground assessment team. This can be done individually or by cooperating with suppliers and/or customers (e.g. mineral traders, transporters, exporters, smelters).

Companies should consult with local and central governments and civil society organisations with local knowledge and expertise.

Companies should also consider how to share information throughout the entire supply chain, preferably through IT-based system accessible by other companies or any institutionalised mechanism.

Where appropriate, companies should establish or support the creation of community-monitoring networks to feed information into the assessment team.

Chain of custody or traceability?

Under the Guidance, “chain of custody” refers to the document trail recording the sequence of companies and individuals that have custody of minerals as they move through a supply chain, such as production records, bills of lading, export certificates etc. “Traceability” refers to physical tracking of minerals at all points of the supply chain, from their mine of origin to the refiner or smelter.

RISK ASSESSMENT INFORMATION	SOURCES OF INFORMATION	QUESTIONS TO ASK
Context of the conflict-affected and high-risk area of mineral origin, transit and/or export	Study profiles on the conflict-affected and high-risk areas of origin, neighbouring and transit countries (including potential transportation routes and the locations of extraction, trade, handling, and export). Relevant information will include public reports (from governments, international organisations, NGOs, and media), maps, UN reports and UN Security Council sanctions, industry literature relating to mineral extraction, and its impact on conflict, human rights or environmental harm in the country of potential origin, or other public statements (e.g. from ethical pension funds).	Are there international entities capable of intervention and investigation, such as UN peacekeeping units, based in or near the area? Can these systems be used to identify actors in the supply chain? Are there local means for recourse to address concerns related to the presence of armed groups or other elements of conflict? Are relevant national, provincial, and/or local regulatory agencies with jurisdiction over mining issues capable of addressing such concerns?
Suppliers and business partners	Identify all significant actors in the supply chain, collecting information on ownership (including beneficial ownership), corporate structure, the names of corporate officers and directors, the ownership interests of the company or officers in other organisations, the business, government, political or military affiliations of the company and officers (in particular, focusing on potential relationships with non-state armed groups or public or private security forces).	Who are the suppliers or other parties involved in financing, extracting, trading and transporting the minerals between point of extraction and the point at which the company undertaking the due diligence takes custody of the minerals? What procurement and due diligence systems do these suppliers have in place? What supply chain policies have suppliers adopted and how have they integrated them into their management processes? How do they establish internal controls over minerals? How do they enforce policies and conditions on their suppliers?
Conditions of mineral extraction	On-the-ground due diligence; consultation with local stakeholders such civil society representatives; due diligence reports from other mining operations	What is the exact origin of the minerals (what are the specific mines)? What was the method of extraction? Identify if minerals were extracted through artisanal and small-scale mining ("ASM") or large-scale mining and if through ASM, identify, where possible, whether extracted by individual artisanal miners, artisanal mining cooperatives, associations, or small enterprises. Identify the taxes, royalties and fees paid to government institutions, and the disclosures made on those payments.

		Do conditions of extraction involve the presence and involvement of non-state armed groups or public or private security forces, including in one or more of the following: direct control of the mine or transportation routes around mine; levying of taxes on miners or extortion of minerals; beneficial or other ownership interests in the mine site or mineral rights by non-state armed groups or public or private security forces and/or their families and/ or associates; engagement in mining as a second income when "off duty"; or provision of security paid by miners or through taxes arising from production. Do any of these armed groups or military units have an involvement or interest in the conflict? Do any of them have a history of involvement in widespread human rights abuses or other crimes? What are the conditions of extraction? Are there any human rights abuses occurring in extraction?
Conditions of mineral transport, handling and trade	On-the-ground due diligence; consultation with local stakeholders such civil society representatives; due diligence reports from other mining operations	Were downstream purchasers situated at the mine site or elsewhere? Were the minerals from different miners handled and processed separately and kept separate when sold downstream? If not, at what point were the minerals processed, consolidated and mixed when sold downstream? Who were the intermediaries that handled the minerals? Identify whether any of those intermediaries have been reported or suspected to be extracting or trading minerals associated with non-state armed groups. To what extent, if any, are public or private security forces or non-state armed groups directly or indirectly involved in the trading, transportation or taxing of the minerals? Are the public or private security forces or non-state armed groups benefiting in any way from the trading, transporting or taxing of minerals being carried out by other parties, including through affiliations with intermediaries or exporters? To what extent, if any, are the public or private security forces or non-state armed groups present along trade and transportation routes? Are there any human rights abuses occurring in trading, transportation or taxing of the minerals? What information is available to verify the downstream trade, such as authentic documents, transportation routes, licensing, cross-border transportation, and the presence of armed groups and/or public or private security forces?

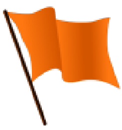
Conditions of export	On-the-ground due diligence; consultation with local stakeholders such civil society representatives; due diligence reports from other mining operations	What was the point of export and have there been reports or are there suspicions of facilitation payments or other bribes paid at points of export to conceal or fraudulently misrepresent the mineral origin? What documents accompanied mineral export and have there been reports or are there suspicions of fraudulent documentation or inaccurately described declarations (on type of mineral, mineral quality, origin, weight, etc.)? What taxes, duties or other fees were paid on export and have there been reports or are there suspicions of under-declaration? How was export transportation coordinated and how was it carried out? Who are the transporters and have there been reports or are there suspicions of their engagement in corruption (facilitation payment, bribes, under-declarations, etc.)? How was export financing and insurance obtained?

Step 3: Manage risks

- Report identified supply chain findings to senior management.
- Devise and implement a mitigation plan.
- Monitor risk management plan and commitments, including by engaging with impacted communities and stakeholders to support monitoring.
- Monitor your supply chains and undertake additional risk assessment for any change of circumstances.

How should companies respond to different types of risk?

Immediately suspend or discontinue engagement with specific upstream suppliers if there is a reasonable risk that they are sourcing from or otherwise affiliated with any party **committing serious human rights abuses** or **providing direct or indirect support to non-state armed groups**.



For other risks, depending on the risk appetite of the company, sourcing from upstream suppliers is possible. This includes a reasonable risk of direct or indirect support to public or private security forces (e.g. criminal networks within the police, army units, or private mine security), corruption, money laundering, non-payment of dues, or an inaccurate or fraudulent chain of custody. However, in such cases, *the company should immediately implement a risk-management plan* with suppliers and other stakeholders to eliminate these risks.

How can companies manage risk?

The Guidance is flexible with regards to what form risk management plans should take. It depends largely on the context of the situation including the company's resources, position in the supply chain, source of the risk, etc. That said, basic principles of due diligence always apply. Risk management should be an **on-going process**, involving up-to-date **monitoring** of how the situation develops, engagement with stakeholders (i.e. business partners, affected communities, and NGOs), and **public reporting of efforts**. More information on principles of due diligence can be found in the OECD Due Diligence Guidance for Responsible Business Conduct.

Possible risk management actions a company can take include:

- Strengthening chain of custody/traceability systems, including full compliance with national chain of custody or traceability requirements, and monitoring systems for irregularities or instances of fraud.
- Formalising security arrangements, reporting abusive units to competent authorities, and/or improving and monitoring transparency systems.
- Establishing regular communications with on-the-ground assessment teams and other networks (of civil society, local government officials and multi-stakeholder commissions to follow mining activities) to monitor instances of serious abuses or direct or indirect support to non-state armed groups or public or private security forces (e.g. criminal networks within the police, army units or private mine security).
- Report any identified risks to the relevant governmental authority.
- Monitor, and adjust if necessary, grievance mechanisms to ensure accountability as well as the free flow of information from affected-persons or whistle-blowers who may want to raise an issue.

Step 4: Audit the control point

What is a control point?

Companies at identified points in the supply chain should have their due diligence practices audited by independent third parties. Such audits may be verified by an independent institutionalised mechanism. This point in the supply chain is known as a 'control point' or 'point of transformation' because it is where most of the supply chain material passes through, yet there are relatively few companies. At this point the material is often aggregated, melted down and transformed, so traceability/chain of custody information may be lost.

As part of negotiations to operationalise the Guidance, stakeholders from gold and 3T supply chains identified the smelters and refiners as control points. For most mineral supply chains, the control point is the smelter or refiner.

What should a company do to support or prepare for the audit?

Due diligence requires cooperation between different actors in the supply chain. As stated above, smelters and refiners are required to undergo a third party audit. All other upstream actors, from the mine up to the smelter/refiner, should support the audit by facilitating the information collection necessary for the smelter/refiner to conduct their risk assessments.

For upstream companies before the control point (miners/traders):

- Allow access to company sites and relevant documentation.
- Facilitate on-site visits and contacts with suppliers selected by the audit team.

For the control point (smelters/refiners):

- Plan and implement an independent third-party audit to provide assurance that your company has implemented due-diligence practices for responsible supply chains from conflict-affected and high-risk areas.
- Audits should also include visits to suppliers (i.e. the traders or exporters that supply minerals to smelters, refiners, or other points of transformation). Audit activities can be conducted through any institutionalised mechanism or industry programme.
- Allow access to company sites and relevant documentation. Facilitate on-site visits and contacts with suppliers selected by the audit team.

The OECD Guidance and industry programmes

Since the adoption of the OECD Guidance, growing numbers of programmes, often initiated by industry bodies or associations, have been set up or adapted from pre-existing programmes to put the recommendations of the Guidance into practice. The Guidance encourages collaboration and cooperation between companies and the setting up of industry programmes that can support due diligence, though companies always remain individually responsible for due diligence in their supply chains.

Advantages of such collaboration include:

- Cooperation builds capacity on due diligence, common risks and mitigation strategies
- Cost-sharing when programmes take on specific due diligence tasks
- Coordination between programme members on risk assessment and mitigation for those who share suppliers or operate in the same areas
- Increased cooperation between upstream and downstream, smaller and larger, experienced and less experienced companies
- Building partnerships with civil society organisations, government agencies and international organisations

Step 5: Communicate and report on due diligence

- Annually report publicly on the company's due-diligence efforts for responsible supply chains of minerals from conflict-affected and high-risk areas.
- Reports should focus on the actions taken by the company to address identified risks
- Provide a description of any audits in which the company has participated.
- Disclose information with due regards taken of business confidentiality and other competitive concerns (i.e. price information and supplier relationships do not need to be disclosed).

How can companies show that they have carried out due diligence?

Public reports should include:

Policy and processes

- A written statement of commitment to follow Annex II of the OECD Guidance
- A description of company management systems including the name of the person/manager responsible for due diligence
- A description and examples of your communications with suppliers regarding due diligence expectations
- A description of how the company implements chain of custody or traceability

Risks identification and mitigation

- A description of the methodology through which the companies prioritises risks
- A description of individual risks identified and steps taken to mitigate them
- A description of any risk management in place and methods for tracking performance, including a description of the time frame for improvement
- A description of how chain of custody or traceability measures and risk management have been adjusted and improved over time
- A description of the steps taken to regularly monitor the evolving circumstances of supply chains for any changes, through on-the-ground networks or other means

Audits

- A summary report of audits at the control point

Public reports should be posted annually on company websites or available in printed form if the company does not have a website.

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