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OECD Due Diligence Guidance Downstream Progress Report High-Level Summary

OECD
Multi-Stakeholder
Forum
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The objective

Of the downstream pilot:

- Assess how downstream companies use the OECD Guidance to conduct their due diligence for responsible sourcing of minerals
- Identify challenges
- Share any emerging practices aligned with the recommendations contained in the Guidance
- Create the opportunity to develop tools as may be needed

Of the cycle 2 pilot report:

- To provide more depth and detail on current practices and tools used in developing systems and processes for due diligence

Cycle 2 methodology

Cycle 2 delved deeper into the current practices, approaches, tools, and challenges of participating companies and experiences companies had while developing company systems and processes.



- Participating companies responded to a short questionnaire on company due diligence practices
- A second questionnaire was distributed to industry associations
- 28 out of 30 companies and all three industry associations responded to the questionnaire
- Three group calls were held for participants to exchange information
- Information from the questionnaires and group calls have been integrated into the Cycle 2 report
- A supplementary section on Asian smelters is featured in the Cycle 2 report and a list of smelters was compiled

Smelters Mapping

Overview

- BSR conducted a mapping of locations and key characteristics of 3T smelters in PRC, Japan, Republic of Korea, Indonesia, and Malaysia.
- Also, interviews with smelters participating through iTSCi in the implementation of the *OECD Due Diligence Guidance* to better understand the smelters' successes, obstacles, and learnings in implementation.
- Translation of the *Easy to Use* version of the *OECD Due Diligence Guidance* and the *Implementation Questionnaire* into Mandarin in order to facilitate further dissemination in China.

Key Findings

- A total of 219 smelters were mapped
 - Including: 157 across 5 countries
 - Including: 20 gold refiners
- The smelters interviewed (3 out of 4 participating in the implementation phase) seem to be taking a “compliance” approach, and to be focused exclusively on meeting stated requirements.
- They appear to be open to using tools when provided, such as the EICC & GeSI calls and materials, however are not investing time or resources in developing new approaches or validating third-party information.

High-level Findings

Policy and management systems (Step 1 A-B)

- The majority of participants have a policy in place, with a marked increase in policy adoption and the breadth of coverage since Cycle 1
 - Most do not include all elements of Annex II
 - Companies cited the need for their policies to be actionable and accountable and directly linked with their sphere of control.
 - Companies request a better understanding of the roles they should play with regard to risk of direct or indirect support to non-state armed groups, and public or private security forces
- While not all companies have finalised policies, almost all respondents are communicating with their suppliers on the issue of mineral sourcing.
 - Supplier meetings, and through supplier letters, supplier surveys, and direct communications with suppliers.

Supplier engagement (Step 1-D)

More participants are using various methods to engage with priority suppliers

Methods

- Policy and contract clauses
- Purchase orders
- Letters from company executives
- “Dear Supplier” letters through industry associations
- Webinars
- Face-to-face information sessions
- Supplier meetings
- 1:1 phone conversations

Example

- Send an initial awareness letter with general information on Dodd-Frank and the DRC situation
- Second letter with specific expectations on submitting due diligence information
- Information sessions at supplier symposia

“...The following summarizes [company]’s minimum expectations for your response:

- Suppliers are to send this same request to their direct suppliers (using the same Reporting Template).*
- Suppliers are to disclose to [company name] the names of smelters used in their supply chain for tin, tantalum, tungsten and gold (by using the MRPRO software to create a rollup of smelter names provided by your suppliers)*
- Suppliers are to adopt their own conflict minerals policy (see [company name]’s updated Supply Chain Social and Environmental Responsibility Policy (weblink)...”—Pilot participant supplier letter*

Identifying smelters (Step 2-A)

The majority of participants are still working to identify smelters through industry processes unless they have direct relationships

- Most participants are relying on the CFS program to engage with smelters and verify their due diligence practices
- Industry associations are sending smelter 'encouragement' letters and providing a template for individual company letters to engage with smelters and request that they provide data on country of origin
- Companies are providing a list of smelters that have already been identified through the CFS program to ease the burden on suppliers
- Companies are contractually obligating suppliers to provide a certain level of disclosure as a precondition for doing business
- Reevaluating business awards based on suppliers' non-compliance with requirements
- Escalate supplier refusals to company management
- Using non-disclosure agreements to overcome confidentiality issues

Risk management (Step 3)

The majority of participants are still in the early phases of developing a risk management approach. Common components that emerged include:

- **Supplier communications and trainings:**
Participants are communicating and reinforcing corporate policies during key supplier meetings
- **Setting clear requirements through policies and contractual clauses:**
Participants are enforcing compliance to their policies by requiring supplier declarations, the incorporation of contract clauses, and terms and conditions flow downs on minerals from conflict-affected areas.
- **Internal review processes with non-responsive or noncompliant suppliers with upper management**

*“SECTION 26. TERMINATION FOR CAUSE
26.01 Supplier Breach The Buyer may terminate a Purchase Order, in whole or in part, upon Written Notice to the Supplier if the Supplier fails to comply with any of the requirements of the Purchase Order. If the noncompliance relates to an obligation of the Supplier that is, in the opinion of the Buyer, capable of cure as described in Section 26.02, the Buyer may terminate under this Section 26.01 only if the Supplier has failed to either: (a) timely cure the noncompliance (as described in Section 26.02); or (b) provide the Buyer with adequate assurances of performance acceptable to the Buyer.”—Pilot participant termination clause*

Conducting audits (Step 4)

Participants with direct smelter relationships

- One of four companies with direct smelter relationships conducts its own audits on 3T&G due diligence
- The remaining three companies rely on industry processes to conduct audits
 - EICC & GeSI CFS Program
 - iTSCI
 - ATTA (the American Tin Trade Association)

Participants with only indirect smelter relationships

- Companies without direct smelter relationships are unable to request, obtain permission, or perform audits
- 13 companies are participating in the CFS program by
 - Joining smelter visits
 - Acting on the Audit Review Committee
 - Providing financial support
 - Assisting in the enrollment of smelters

Public reporting (Step 5)

More than half of the participants have started communicating publicly about their due diligence activities, while eleven stated they are waiting for Dodd-Frank

- **Proactive communication** via corporate responsibility websites, reports, blogs, and newsletters with the publication of corporate policies and codes of conduct and a description of their approach, activities, and recent developments
- **Currently externally communicating** policies on conflict-free sourcing, activities to identify smelters and mitigate risk, grievance channels, management systems, risk-assessment procedures
- **Plans for future reporting include:**
 - Reporting on the success rate of due diligence efforts with suppliers
 - Reporting efforts in the OECD Guidance implementation project
 - Quantitative results of due diligence process
 - Disclosure of smelter names in the supply chain

Challenges

Companies continue to face a number of challenges in implementing the Guidance, including:

- Managing expectations for controlling the behaviour of upstream actors where there is no direct relationship
- Uncertainty around the final implementation of the Dodd-Frank ruling
- Obtaining smelter information through complex supply chains with multiple layers, up to ten tiers deep or more. Each tier can include its own tiered supply chain as well. Moreover, supply chains change constantly.
- Stratify the supply chain into the most strategic suppliers, which presents a challenge for large OEM companies that are passing off the request to suppliers that are as equally large and complex, if not bigger.
- Supporting small suppliers to understand the OECD Guidance or Dodd-Frank requirements. Some do not have the capacity or resources to comply with them.
- Dealing with suppliers who do not wish to disclose supply chain information because of intellectual property concerns around the many components and assemblies they design and control.
- Overcoming confidentiality concerns of suppliers' suppliers where there is no contractual relationship.
- While the CFS has published a list of 11 conflict-free tantalum smelters, the tin and tungsten smelter lists are unavailable.

Industry associations: Information, resources, and education

All three industry association participants are supporting their members and industries on the issue

- **Formation of working groups:** two participants have formed working groups to provide information, facilitate industry and stakeholder engagement, form alliance and provide technical advocacy
- **Tools and instruments:** Associations are leading the development of systems and processes to obtain due diligence information and manage data.
 - The CFS Program is the only industry initiative in place to validate third party audits of smelters.
- **Member information:** Associations are providing general information and education opportunities for members more broadly outside of working groups through webinars, training sessions, FAQs, etc.
- **Smelter encouragement letters:** Industry associations are sending smelter 'encouragement' letters and providing a template for individual company letters to engage with smelters and request that they provide data on country of origin
- **Non-member benefits:** Associations are inviting non-members to participate in meetings and conferences, sharing available tools, and engaging with a broad range of stakeholders including NGOs, governments, and other industry sectors
- **Education on OECD Guidance:** All participants support their membership to better understand the Guidance through publications, web communications, event presentations, releases, direct mail and/or conferences.

Discussion & Questions