



ICGLR-OECD JOINT CONSULTATION ON RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

DISCUSSION NOTE ON AN INSTITUTIONALISED MECHANISM TO SUPPORT DUE DILIGENCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

I. INTRODUCTION

The revised draft *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* provides a framework and detailed due diligence recommendations for companies in the supply chain of minerals to identify and address risks of financing conflict or fuelling conditions of conflict and successfully contribute to sustainable development through their mineral or metal sourcing practices.

The OECD-hosted working group on due diligence in the mining and minerals sector has emphasized the need to preserve the integrity of the guidance while also allowing for flexibility and constructive engagement. This requires taking into account relevant factors such as the practical challenges of operating in or sourcing from conflict-affected and high-risk areas, the population of small and medium-sized enterprises (“SMEs”) in the mineral supply chain, the lack of experience and capacity to conduct supply chain due diligence among the relevant actors, and the cost of conducting in-depth supply chain due diligence measures on minerals from conflict-affected and high-risk areas. To address these concerns, the guidance highlights that most of the recommendations may be carried out jointly by upstream and downstream companies, or through other industry and multi-stakeholder initiatives.

The purpose of this note is to introduce an option for an international institutionalised mechanism capable of supporting company efforts to carry out due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas (“the institution”), in order to increase effectiveness, build capabilities, reduce costs, eliminate redundancies and thereby prevent a boycott or hasty disengagement from conflict-affected or high-risk regions, which could result in significant adverse impacts.

Governing Board

Composition - The Governing Board would have an equal tri-partite composition of governments (ICGLR, OECD and other non-OECD governments), industry and civil society.

Functions – The functions could include the following:

- The approval of membership by companies wishing to participate in the institution, on recommendation by the Secretariat.
- Acting on the recommendation of the Secretariat, the final determination to accredit auditors and the final determination of compliance of the audits with the common audit scope, criteria, principles and activities laid out in the guidance, the supplements and, where applicable, ISO 19011.
- The amendment of the constitutional agreement for the institution, including any changes to the governance and mandate.
- The appointment and removal of senior Secretariat staff.
- The approval of the annual budget.

Secretariat

Composition – The Secretariat could be composed of independent technical experts.

Functions –The functions could include the following:

- Recommend to the Governing Board accreditation of auditors and compliance with the compliance of audit reports with the common audit scope, criteria, principles and activities laid out in the guidance, the supplements and, where applicable, ISO 19011.
- Develop and implement capability-training modules, assist with risk management strategies and further indicators for measuring improvement.
- Receive, coordinate and share information provided by participating companies, audit reports and audit evidence.
- Review and assess grievances.
- Promote the activities of the institution and strive to increase the membership of participating companies in all relevant sectors.
- Recommend to Governing Board membership and participation of civil society in the Governing Board.

Participating Companies

The institution could consist of private sector members at any point in the mineral supply chain, including from any relevant downstream sector, that potentially supply or use tin, tantalum, tungsten [and gold] and their ores or smelted metal derivatives, from conflict-affected or high-risk areas.

Admission –Membership could be conditional upon an agreement to:

- Disclose to the institution all elements of its supply chain due diligence practices;
- Co-operate, if applicable, with auditors, the Audit Committee of the ICGLR Regional Certification Mechanism and the joint on-the-ground assessment team.

Benefits – Benefits to the company would include:

- Increased capacity to conduct due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
- Reduced cost and fatigue associated with due diligence and auditing.
- Enhanced legitimacy of company due diligence, including by having the option to have the audit determined as “compliant”, if applicable.

II. MANDATE

The mandate of the institution would be to support participating companies to carry out due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas, as outlined in the OECD guidance, in a transparent and accountable manner. Specifically, the institution would include the following purposes:

1. Independent third-party auditing – Participating companies, where applicable, may wish the institutionalised mechanism to determine as “compliant” the independent third-party audits of the focal point(s) in the supply chain identified in the supplements. In such cases, the institution would:

- Accredite independent third-party auditors, drawing from the accreditation standards laid out in ISO 17011(2004), ISO 17021(2006) and SAAS Global Procedure 201(2008). All participating companies would utilize only accredited auditors when ensuring an independent third-party audit at the identified focal point(s) in the supply chain.
- Evaluate audit reports and audit evidence to ensure compliance with the common audit scope, criteria, principles and activities laid out in Step 4 of the *Supplement on Tin, Tantalum and*

Tungsten [and the *Supplement on Gold and/or Other Precious Metals* (to be completed by the end of 2010)] and, where applicable, ISO 19011. Final compliance with auditing recommendations in the supplements could be determined by the Governing Board, acting on recommendations by the Secretariat.

Upstream audits should be coordinated with the Audit Committee of the ICGLR Regional Certification Mechanism, once in place. The audit reports and audit evidence should be accessible by subsequent auditors, and the Audit Committee of the ICGLR Regional Certification Mechanism. Summary reports of audits could be publicly available online.

- 2. Information-sharing and storage** – The institution could act as a recipient, coordinator and clearinghouse for information and evidence collected and progressively built through participating companies' due diligence practices, through on-going efforts to establish dynamic and inter-active maps, and through other initiatives to document abuses and militarization of mines and trade routes in the conflict-affected and high-risk areas of mineral origin or transit. The institution could provide technical and other support to the ICGLR Database on mineral flows, and transmit information between participating companies and the ICGLR as appropriate. This information could be shared amongst participating companies and support their efforts to establish a transparent and controlled mineral supply chain [Step 1(C)], to undertake supply chain risk assessments [Step 2], and would be accessible by auditors (including the Audit Committee of the ICGLR Regional Certification Mechanism) in their functions.
- 3. Risk assessments** – The institution could support industry-driven risk assessment initiatives by coordinating logistics for on-the-ground assessment teams, including by recommending personnel for assessment teams and reviewing the methods of risk assessment to ensure compliance with the standards and processes described in the guidance and the supplements.
- 4. Capability-training and risk management support** – The institution could develop and implement capability-training modules to progressively improve the supply chain due diligence of participating companies, focusing in particular on SMEs, in cooperation, where appropriate, with Global Reporting Initiative's SME supplier training programs. The institution could likewise develop tools for upstream risk management, by refining indicators for measuring improvement and by elaborating upon the principles for risk mitigation outlined in Annex III of the guidance.
- 5. Grievance mechanism** – The institution could receive grievances from parties affected by conduct contrary to the standards in Annex I (Model Supply Chain Policy for Responsible Global Supply Chains of Minerals from Conflict-Affected and High-Risk Areas), preliminarily determine whether the grievance merits consideration on recommendation by the Secretariat, communicate the grievance to participating companies concerned, and contribute to the resolution of the grievance through mediation or other appropriate means.

III. MEMBERSHIP

Companies at any point in the mineral supply chain, including from any relevant downstream sector, that potentially supply or use tin, tantalum, tungsten [and gold] and their ores or smelted metal derivatives, from conflict-affected or high-risk areas would be admitted subject to agreement to disclose to the institutionalised mechanism all elements of its supply chain due diligence practices, and to co-operate, if applicable, with auditors, the Audit Committee of the ICGLR Regional Certification Mechanism, the assessment teams. Admission would further be conditional upon the payment of an annual fee proportionate to the size of the company and determined by its position in the supply chain.