

OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

DRAFT Best Practice Paper

Upstream due diligence in circumstances of incorrect, fraudulent, unknown or insufficient information on risk, origin and chain of custody for tin, tantalum and tungsten

OECD Multi-stakeholder “Best Practice Papers”

“Best Practice Papers” outline strategies for implementing the OECD Due Diligence Guidance with reasonable and good faith efforts, as agreed by participants in the multi-stakeholder ICGLR-OECD-UN GoE Forum on Responsible Mineral Supply Chains.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“the Guidance”) recognises that due diligence in conflict-affected and high-risk areas may present practical challenges. Flexibility is needed in the application of due diligence. Companies are expected to take reasonable steps and make good faith efforts to implement the OECD’s five-step due diligence framework in order to respect human rights and avoid contributing to conflict through their mineral supply chains.

Best Practice Papers are intended to address complex challenges faced by companies implementing responsible mineral sourcing, and enable better implementation of due diligence by cultivating multi-stakeholder supported strategies and solutions. The Paper is without prejudice to other due diligence implementation efforts underway or planned. Private sector actors, including multi-stakeholder or industry due diligence programmes, may use this paper to guide them in implementing the Guidance, with the understanding that the nature and extent of the due diligence appropriate will depend on individual circumstances. Companies should always refer to the original text of the Guidance itself for their full due diligence responsibilities.

Scope & Application

This draft Best Practice Paper deals with implementation of due diligence in the upstream segments of the tin, tantalum and tungsten supply chains. This Paper focuses on the recommended actions of upstream companies.¹ However, local and national governments, downstream companies, local and international civil society and other affected stakeholders are encouraged to engage in good faith efforts with upstream companies to support their activities, including where appropriate through positive purchasing decisions. In particular, stakeholders are encouraged to collaborate in circumstances where upstream companies are recommended to seek multi-stakeholder agreement and support for due diligence decision-making and implementation.

¹ The Supplement on Tin, Tantalum and Tungsten defines “upstream companies” to include “miners (artisanal and small-scale or large-scale producers), local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners.” With regards to artisanal and small-scale mining, upstream companies, “includes artisanal or small-scale producing enterprises, rather than individual or informal working groups of artisanal miners”. Informal working groups of artisanal miners are not expected to have the capacity to carry out the due diligence recommendations in the Guidance, but are nonetheless expected to engage with companies in the supply chain to enable and support on-the-ground due diligence.

This Best Practice Paper addresses challenges with undertaking due diligence in circumstances where minerals may be associated with:

- i. Risks of incorrect or fraudulent information on risk, mineral origin and chain of custody:**
Minerals may be purchased in good faith with due diligence duly performed as described in the Guidance, however subsequent on-the-ground monitoring, audits and/or other sources reveal that the assessment of risk, or some traceability/chain of custody information (as defined in Step 1(C) of the Supplement on Tin, Tantalum and Tungsten)² is incorrect or fraudulent. In such cases, the minerals may or may not be associated with risks of contributing to conflict (as defined by Annex II of the Guidance). Information that indicates a potential supply chain risk, may be discovered at any time during the minerals' progression along the supply chain including after the mineral has been traded and initial due diligence performed.
- ii. Insufficient or *prima facie* non-existent traceability or chain of custody information:**
Minerals, such as existing or warehoused stocks of tin, tantalum and tungsten from mine sites or in trading hubs where due diligence has not yet been fully carried out, and/or do not possess all the traceability or chain of custody information recommended in Step 1(C) of the 3T Supplement. In such cases, the minerals may or may not be associated with risks of contributing to conflict (as defined by Annex II of the Guidance).

The Best Practice Paper clarifies that subsequent holders of minerals affected by such circumstances may not be contributing to conflict under the OECD Guidance, so long as companies in those supply chains carry out due diligence and the risk management recommended herein, and with the agreement and support of stakeholders (e.g. local and central government in conflict-affected and high-risk areas, industry, civil society and other affected stakeholders). The underlying rationale for this conclusion stems from existing principles in the Guidance itself. An agreement by stakeholders that reasonable steps and good faith efforts had been made to undertake due diligence inheres that the companies are identifying, mitigating and preventing all risks of contributing to conflict. As a result, all companies further downstream in the supply chain of these minerals are not considered to be linked to such risks, including the risks of sourcing from any party (i) committing serious abuses

² As outlined in Step 1(C.1, C.2, C.3 and C.4) of the Supplement on Tin, Tantalum and Tungsten for upstream companies, this includes: the mine of mineral origin; quantity, dates and method of extraction (artisanal and small-scale or large-scale mining); locations where minerals are consolidated, traded, processed or upgraded; transportation routes; the identification of all upstream suppliers, intermediaries, consolidators or other actors in the upstream supply chain; all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals; any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals; all taxes and any other payments made to public or private security forces or other armed groups at all points in the supply chain from extraction onwards; the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers; and all export, import and re-export documentation, including records of all payments given for the purposes of export, import and re-export and all taxes and any other payments made to public or private security forces or other armed groups.

(as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II).

In the case of minerals seized by national authorities: This issue is a matter of national law and enforcement in the countries concerned. Multi-stakeholder supported recommendations on the disposal of seized minerals by national authorities are nonetheless included in the final section of this Best Practice Paper, without prejudice to the sovereign authority of governments to regulate their mineral sector.

Best Practices

In implementing the Guidance, if upstream companies or related due diligence implementation programmes identify one or all of the circumstances described above, they should:

1. **FOR MINERALS LOCATED IN “RED FLAGS LOCATIONS”³ WITH UNKNOWN OR INSUFFICIENT INFORMATION ON ORIGIN AND CHAIN OF CUSTODY - Segregate and secure all minerals of unknown of insufficient information together, and by origin if known.** Upstream companies should segregate and secure minerals of different origin and chain of custody or traceability throughout the course of their risk assessment and management. This will allow companies to systematically address each batch of segregated minerals on a case-by-case basis.
 - a. Segregate minerals on the basis of the most detailed origin and chain of custody or traceability information prima facie available. Minerals with similar traceability and provenance information should be grouped together. For example, minerals may be segregated based on prima facie information on mine site of origin, supplier, trading centre, or the minerals’ inclusion in established on-the-ground due diligence programmes (e.g. minerals of similar origin and chain of custody or traceability which have already been certified or assessed under national due diligence programmes, regional programmes such as the ICGLR Regional Certification Mechanism in the Great Lakes region of Africa or joint industry and multi-stakeholder on-the-ground due diligence programmes should be segregated and secured separately from minerals produced outside such schemes).
 - b. Secure and monitor segregation of minerals to prevent leakages or contamination with minerals from other origin and chain of custody or traceability, such as on-going production from a mine site where due diligence has not yet been carried out. Monitoring should be carried out in collaboration with central and local governments, civil society and affected stakeholders. Continue segregation and monitoring of minerals until the steps recommended in this Best Practice Paper are completed and the minerals are dispatched accordingly.
2. **FOR ALL MINERALS COVERED IN THIS BEST PRACTICE PAPER - Seek to collect any additional available information on risk, origin and chain of custody or traceability information recommended under Step 1(C) of the Supplement on Tin, Tantalum and Tungsten.** Upstream companies should:

³ See “red flag locations of mineral origin and transit” in the Supplement on Tin, Tantalum and Tungsten.

- a. Engage with central and local authorities, civil society and other affected stakeholders to collect any missing origin and chain of custody or traceability information on the minerals where it exists. *Examples of where and how to obtain such origin and chain of custody information in the Great Lakes Region of Africa can be found in the OECD's simplified guide on undertaking due diligence to become certified under the ICGLR Regional Certification mechanism.*⁴
 - b. Seek to resolve any gaps or inconsistencies in the information obtained with additional qualitative information. In some cases, accurate documentation on origin and chain of custody may not exist. Companies should complement the gaps in origin and chain of custody with qualitative information to enable better risk assessments:
 - i. **FOR MINERALS WITH INCORRECT OR FRAUDULENT INFORMATION** – Reach out to suppliers of minerals with incorrect or fraudulent information and on-the-ground due diligence programmes and request details, including an explanation of due diligence conducted on the minerals and any other (documentary or qualitative) evidence of risk, origin and chain of custody (*see recommended actions below for minerals with insufficient information on risk, origin and chain of custody*). The supplier's willingness to engage and take corrective action will help determine the appropriate risk response strategy.
 - ii. **FOR MINERALS WITH UNKNOWN OR INSUFFICIENT INFORMATION ON ORIGIN AND CHAIN OF CUSTODY** - Where traceability and provenance information is unknown or insufficient, upstream companies should complement the missing information to the best of their abilities with complementary qualitative sources, which should include on-the-ground evidence and discussions with other known purchasers of minerals from the same supply, common suppliers, traders, miners and other upstream entities in the supply chain, civil society and other formal or informal networks. This complementary qualitative information should seek to enable reasonable determinations of risk, for example on the overall risk that the minerals were produced with direct or indirect support to non-state armed groups, even in circumstances when full origin and chain of custody information is unavailable.
- 3. FOR ALL MINERALS COVERED IN THIS BEST PRACTICE PAPER – Identify and assess the risk associated with the minerals and related supply chains.** Upstream companies should collaborate with central and local authorities, civil society and other affected stakeholders and *seek their agreement on the level of risk associated with minerals covered in this Best Practice Paper, on a case-by-case basis*. Reasonable determinations of risk should be made on balance of probabilities, based on all available sources of information (e.g. documentation, or qualitative information otherwise obtained through formal and informal networks). 100% certainty may not be necessary for determinations of risk, because robust risk management measures will be recommended to ensure improvements to due diligence over time, allowing for better risk assessment and management (see below). However multi-stakeholder support is recommended for all risk determinations covered in this Best Practice Paper, except for Type 1 risk below. The minerals should be grouped according to the suggested four possible risk types:
- a. **Type 1 (low risk):** There is sufficient evidence obtained through formal documentation and on-the-ground information to make a reasonable determination on origin and chain of

⁴ See Step 2, page 8: http://www.oecd.org/daf/inv/mne/EasytoUseGuide_English.pdf. Available in English, French, Mandarin, Lingala and Swahili.

custody or traceability (as outlined in Step 1(C) of the Supplement on Tin, Tantalum and Tungsten), despite some gaps, for example, because the material is existing stock from mines before due diligence programmes are put in place. Subsequent risk assessments undertaken by upstream companies with support from stakeholders and consistent with Step 2 of the Supplement on Tin, Tantalum and Tungsten have not found any circumstance inconsistent with Annex II of the Guidance. There is low risk that upstream companies are contributing to conflict.

- b. **Type 2 (indeterminable):** The origin and chain of custody of minerals cannot reasonably be determined. Upstream company due diligence have not revealed sufficient information to make a reasonable determination on origin and chain of custody. Nonetheless, there is no evidence to suggest a reasonable risk that the upstream companies are contributing to conflict, meaning there is no evidence to suggest a reasonable risk have sourced from, or linked to, a party associated with any circumstances inconsistent with Annex II of the Guidance.
- c. **Type 3 (mitigation risks):** Evidence obtained through due diligence identifies no reasonable risk that the upstream company is sourcing from, or linked to, any party (i) committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support o non-state armed groups (as defined in paragraph 3 of Annex II). However evidence suggests a reasonable risk that upstream companies are sourcing from, or linked to a party or circumstances inconsistent with paragraphs 5-14 of Annex II of the Guidance. Minerals associated with fraudulent information on origin and chain of custody are included in this category of risk. This also includes circumstances where the type 3 risk is discovered after the mineral has been traded and initial due diligence performed (e.g. through an audit or subsequent monitoring).
- d. **Type 4 (Risks of contributing to conflict):** Evidence obtained through due diligence identifies a reasonable risk that upstream companies are sourcing from, or linked to a party (i) committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II). This includes circumstances where the type 4 risk of contributing to conflict is discovered after the mineral has been traded and initial due diligence performed (e.g. through an audit or subsequent monitoring).

4. FOR ALL MINERALS COVERED IN THIS BEST PRACTICE PAPER - Put in place requisite risk response systems and disclose actions. Failure to detect risk in one instance does not mean that the due diligence systems of the company are not generally effective. The identification, management and subsequent disclosure of risks (e.g. of fraud, of contributing to conflict) can help to demonstrate that the due diligence systems of the company are operating effectively. Upstream companies should design and implement a strategy to respond to identified risks in accordance with Step 3 and Annex II of the Guidance. Upstream companies should collaborate with central and local authorities, civil society and other affected stakeholders and seek their support and assistance with risk management and monitoring of suggested follow-up measures. Depending on the risk category determined, upstream companies should:

- a. **Type 1 (low risk) response:** Accept or dispatch any segregated minerals if relevant (see paragraph 1 above). Continue to monitor the supply chain. Collaborate with upstream participants and other stakeholders to strengthen due diligence, and publicly report on due diligence in accordance with Step 5 of the Guidance.

- b. **Type 2 (indeterminable) response** - Due Diligence is an on-going, proactive and reactive process, with information progressively built and improved over time. The Guidance recommends constructive engagement with suppliers to gradually affect change and improve practices within reasonable timescales. As such, upstream companies should immediately devise, adopt and implement a risk management plan with upstream suppliers and other stakeholders to prevent any further Type 2 risks associated with a given supplier or site of production. Risk management should include, but not be limited to, the following actions:
- i. Work with national authorities, suppliers, service providers, regional or industry due diligence programmes and other stakeholders to implement stronger chain of custody or traceability systems;
 - ii. Accept or dispatch segregated minerals if relevant (see paragraph 1 above);
 - iii. Improve internal due diligence systems, e.g. improve internal data-management, any chain of custody or traceability systems, and identify and manage any risks over time as per the Supplement on Tin, Tantalum and Tungsten and Annex II of the Guidance;
 - iv. Support efforts of national authorities to improve governance of the mineral sector, for example in the inspection and classification of mine sites (e.g. as green-, yellow- or red-flagged) for sourcing purposes; establishment and implementation of chain of custody or traceability and due diligence systems; mineral export certification; data management and exchange;
 - v. Consider applying a share of mineral sales, as agreed by stakeholders, to help finance implementation of due diligence, through nationally, multi-stakeholder or industry programmes; and
 - vi. Publicly report on due diligence in accordance with Step 5 of the Guidance.

As detailed in Step 3(D) of the Supplement on Tin, Tantalum and Tungsten, companies should conduct an additional risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan, companies are still unable to make reasonable determinations on origin and chain of custody consistent with Step 1(C) of the Supplement on Tin, Tantalum and Tungsten, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship, which should include the provision of all information on mineral origin and chain of custody provided under Step 1(C) of the Supplement on Tin, Tantalum and Tungsten.

- c. **Type 3 (mitigation risk) response** – Due Diligence is an on-going, proactive and reactive process, with information progressively built and improved over time. The Guidance recommends constructive engagement with suppliers to gradually affect change and improve practices within reasonable timescales. As such, upstream companies should immediately devise, adopt and implement a risk management plan with upstream suppliers and other stakeholders, in accordance with paragraph 10 and 14 of Annex II of the Guidance, to prevent any further Type 3 risks associated with a given supplier or site of production. Risk management should also include, but not be limited to the actions described above for Type 2 risks. In addition, upstream companies should also alert authorities and national, multi-stakeholder or industry due diligence programmes of the risk. As detailed in Step 3(D) of the Supplement on Tin, Tantalum and Tungsten, companies should conduct an additional

risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is *no significant measurable improvement* to prevent further Type 3 risks associated with a given supplier or site of production, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.

d. **Type 4 (risk of contributing to conflict) response** – Companies should immediately suspend or discontinue engagement with upstream suppliers where they identify a reasonable risk that they are sourcing from, or linked to, any party (i) committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II). Specifically, companies should undertake risk management that includes, but is not limited to, the following actions:

- i. Suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship;
- ii. Alert authorities and national, multi-stakeholder or industry due diligence programmes of the risk and involve them and other affected stakeholders in risk management;
- iii. Work with national authorities, suppliers, service providers, regional or industry due diligence programmes and other stakeholders to implement stronger chain of custody or traceability systems, risk assessments and on-going monitoring;
- iv. Improve internal due diligence awareness and capacity, e.g. improve internal data-management, chain of custody or traceability systems, and identify and manage any risks over time as per the Supplement on Tin, Tantalum and Tungsten and Annex II of the Guidance;
- v. Support other efforts of national authorities to improve governance of the mineral sector, for example in the inspection and classification of mine sites (e.g. as green-, yellow- or red-flagged) for sourcing purposes; establishment and implementation of national chain of custody or traceability and due diligence systems; mineral export certification; data management and exchange;
- vi. Publicly report on due diligence in accordance with Step 5 of the Guidance. This includes, among others, a description of the nature of the risks identified (e.g. number of type 4 risks identified), and the risk response measures put in place, including the actions described above, as well as the monitoring and risk prevention efforts.
- vii. ***If minerals are segregated and secured by the upstream company already in accordance with paragraph 1 above***, [sell minerals to authorities at cost for later sale with profits used to finance implementation of due diligence, through nationally, multi-stakeholder or industry programmes];
- viii. ***If the identification of type 4 risks occurs after the mineral has been traded downstream and initial due diligence performed (i.e. during the minerals' subsequent progression down the supply chain)***, companies and on-the-ground due diligence programmes should consult with central and local authorities, civil society and other affected stakeholders to see if any further risk management measures are expected. In general, follow-up measures to identify the minerals downstream which are associated with type 4 risk should be avoided, so as to enable constructive

engagement of all companies in the supply chain in the implementation of due diligence. Specifically:

- a. Follow-up measures to identify the minerals downstream associated with type 4 risk should not be undertaken if good faith and reasonable due diligence had been performed to identify, mitigate and prevent the risk of contributing to conflict, consistent with the Guidance and this Best Practice Paper.
 - b. Failure to detect risk in one instance does not mean that the due diligence systems of the company are not generally effective. The identification, management and subsequent disclosure of risks (e.g. of fraud, of contributing to conflict) can help to demonstrate that the due diligence systems of the company are operating effectively.
 - c. As a result of the implementation of risk management outlined herein, and by agreement of stakeholders involved in upstream due diligence, all companies further downstream in the supply chain of these minerals are no longer deemed to be sourcing from, or linked to, any party (i) committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II).
- e. **FOR DOWNSTREAM COMPANIES** - The Guidance seeks to cultivate responsible investment and trade in minerals from conflict-affected and high-risk areas. Downstream companies are encouraged to consider the social and economic effects on developing countries when implementing their supply chain risk management decisions.⁵ These effects may include potential impacts of disengagement from suppliers in conflict-affected and high-risk areas using reasonable and good faith efforts to conduct due diligence, and beyond the limited circumstances where the Guidance recommends suspension or disengagement. Downstream companies or other purchasers of minerals subject to the due diligence in this Best Practice Paper are therefore encouraged to:
- i. Collaborate with upstream companies, individually or through joint efforts, to identify and manage risk in accordance with the Guidance and the recommendations contained herein.
 - ii. Remain willing to accept minerals dispatched by upstream companies using reasonable and good faith efforts to identify, mitigate and prevent the risk of contributing to conflict, consistent with the Guidance and this Best Practice Paper. In such cases, downstream companies are encouraged to report on any efforts to support upstream due diligence and avoid potential impacts of disengagement from suppliers in conflict-affected and high-risk areas. As a result of the implementation of risk management outlined herein, and by agreement of stakeholders involved in upstream due diligence, all companies further downstream in the supply chain of such minerals are no longer deemed to be sourcing from, or linked to, any party (i)

⁵ See General Policies Chapter II(B)(2) of the OECD Guidelines for Multinational Enterprises: “Enterprises are encouraged to (2) Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.” See also p. 16 (Nature of the Guidance) in the OECD Due Diligence Guidance: “This Guidance builds on and is consistent with the principles and standards contained in the OECD Guidelines for Multinational Enterprises”.

- committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II).
- iii. Integrate the principles and standards of the OECD Guidance and this Best Practice Paper into industry or other multi-stakeholder smelter/refiner audit programmes.

FIGURE: SUMMARY DUE DILIGENCE ON MINERALS WITH RISKS OF INCORRECT OR FRAUDULENT INFORMATION ON RISK, ORIGIN OR CHAIN OF CUSTODY

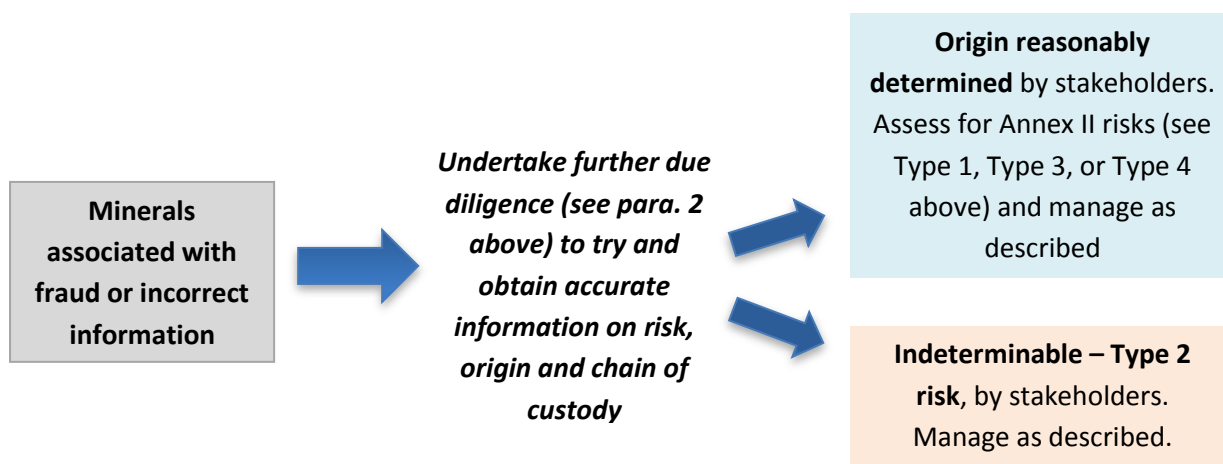


TABLE: SUMMARY OF RISK RESPONSE STRATEGIES FOR MINERALS WITH RISK OF FRAUDULENT INFORMATION, UNKNOWN OR INSUFFICIENT INFORMATION ON ORIGIN AND CHAIN OF CUSTODY

RISK	RISK RESPONSE
Type 1 (low risk)	<ul style="list-style-type: none"> • Accept or dispatch any segregated minerals. • Continue to monitor the supply chain. • Collaborate with upstream participants and other stakeholders to strengthen due diligence • Publicly report on due diligence in accordance with Step 5 of the Guidance.
Type 2 (indeterminable)	<ul style="list-style-type: none"> • Work with national authorities, suppliers, service providers, regional or industry due diligence programmes and other stakeholders to implement stronger chain of custody or traceability systems; • Accept or dispatch segregated minerals if relevant (see paragraph 1 above); • Improve internal due diligence systems, e.g. improve internal data-management, any chain of custody or traceability systems, and identify and manage any risks over time as per the Supplement on Tin, Tantalum and Tungsten and Annex II of the Guidance; • Support efforts of national authorities to improve governance of the mineral sector, for example in the inspection and classification of mine sites (e.g. as green-, yellow- or red-flagged) for sourcing purposes; establishment and implementation of chain of custody or traceability and due diligence systems; mineral export certification; data management and exchange; • Consider applying a share of mineral sales, as agreed by stakeholders, to help finance implementation of due diligence, through nationally, multi-stakeholder or industry programmes; and • Publicly report on due diligence in accordance with Step 5 of the Guidance.

<p>Type 3 (mitigation risk)</p>	<ul style="list-style-type: none"> • Same risk response as Type 2 above; also • Alert authorities and national, multi-stakeholder or industry due diligence programmes of the risk
<p>Type 4 (risk of contributing to conflict)</p>	<ul style="list-style-type: none"> • Suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship; • Alert authorities and national, multi-stakeholder or industry due diligence programmes of the risk and involve them and other affected stakeholders in risk management; • Work with national authorities, suppliers, service providers, regional or industry due diligence programmes and other stakeholders to implement stronger chain of custody or traceability systems, risk assessments and on-going monitoring; • Improve internal due diligence awareness and capacity, e.g. improve internal data-management, chain of custody or traceability systems, and identify and manage any risks over time as per the Supplement on Tin, Tantalum and Tungsten and Annex II of the Guidance; • Support other efforts of national authorities to improve governance of the mineral sector, for example in the inspection and classification of mine sites (e.g. as green-, yellow- or red-flagged) for sourcing purposes; establishment and implementation of national chain of custody or traceability and due diligence systems; mineral export certification; data management and exchange; • Publicly report on due diligence in accordance with Step 5 of the Guidance. This includes, among others, a description of the nature of the risks identified (e.g. number of type 4 risks identified), and the risk response measures put in place, including the actions described above, as well as the monitoring and risk prevention efforts. • If minerals are segregated and secured by the upstream company already in accordance with paragraph 1 above, [sell minerals to authorities at cost for later sale with profits used to finance implementation of due diligence, through nationally, multi-stakeholder or industry programmes]; • If the identification of type 4 risks occurs after the mineral has been traded downstream and initial due diligence performed (i.e. during the minerals' subsequent progression down the supply chain), companies and on-the-ground due diligence programmes should consult with central and local authorities, civil society and other affected stakeholders to see if any further risk management measures are expected. In general, follow-up measures to identify the minerals downstream which are associated with type 4 risk should be avoided, so as to enable constructive engagement of all companies in the supply chain in the implementation of due diligence. Specifically: <ul style="list-style-type: none"> ○ Follow-up measures to identify the minerals downstream associated with type 4 risk should not be undertaken if good faith and reasonable due diligence had been performed to identify, mitigate and prevent the risk of contributing to conflict, consistent with the Guidance and this Best Practice Paper. ○ Failure to detect risk in one instance does not mean that the due diligence systems of the company are not generally effective. The identification, management and subsequent disclosure of risks (e.g. of fraud, of contributing to conflict) can help to demonstrate that the due diligence systems of the company are operating effectively. ○ As a result of the implementation of risk management outlined herein, and by agreement of stakeholders involved in upstream due diligence, all companies further downstream in the supply chain of these minerals are no longer deemed to be sourcing from, or linked to, any party (i) committing serious abuses (as defined in paragraph 1 of Annex II) or (ii) providing direct or indirect support to non-state armed groups (as defined in paragraph 3 of Annex II).

Minerals seized by authorities

Minerals may be seized by national authorities, for reasons linked to implementation of due diligence or not. This issue is a matter of national laws, regulation and enforcement in the countries concerned. For example, seizure of minerals may occur if the national Division of Mines or police discover that minerals are produced or transported without the proper documentation or tags, have fraudulent information on origin, are associated with smuggling, or there is an association with contributing to conflict (as defined in Annex II). In such cases, it is the sovereign right of the country concerned to handle and dispose of minerals in the manner they deem appropriate.

This Best Practice Paper nonetheless encourages the authorities to collaborate with industry, civil society and other affected stakeholders to determine the risks associated with certain minerals and appropriate mineral disposal response. Governments, affected companies, implementation programmes and other stakeholders are encouraged to determine the ownership of seized minerals. For minerals, which have a reasonably clear source and clear ownership, authorities are encouraged to avoid selling the minerals and instead return them to the source to be properly recorded and to continue in the supply chain based on the steps above.

In some circumstances, minerals may be associated with Type 4 risks (risks of contributing to conflict, see above), and are handed over or sold to authorities as a result. In such circumstances, authorities are encouraged [to warehouse such minerals for [XX] months, and then sell these minerals in auctions, with proceeds used to finance implementation of national, regional, multi-stakeholder or industry due diligence programmes.]