OECD Due Diligence Guidance on responsible supply chains of minerals

Louis Maréchal – Policy Adviser
Responsible Business Conduct Unit
OECD Investment Division

Presentation contents

- Presentation of OECD Due Diligence Guidance and implementation
- Questions for discussion on tailoring the Guidance to new minerals
- Available tools and projects under development
- Q&A
Presentation contents

Presentation of OECD Due Diligence Guidance and implementation

Questions for discussion on tailoring the Guidance to new minerals

Available tools and projects under development

Q&A

Addressing conflict and serious human rights abuses in mineral supply chains

• Exploitation and trade of mineral resources is a source of growth, but can be associated with significant adverse impacts, including
  – Serious human rights impacts (e.g. child labour, forced labour)
  – Financing conflict
  – Money-laundering, terrorist financing & sanctions violations
  – Bribery
• Global issue (Africa, Asia, Latin America, Europe)
• Affects all mineral resources (tin, tantalum, tungsten, gold, cobalt, precious stones, coal, oil & gas, etc.)
• For mining, affects to different extent ASM and LSM

Artisanal gold from the Democratic Republic of the Congo
• Informally and/or illegally mined
• Estimated annual output: ~15 tonnes (low estimate)
• 90% estimated to be smuggled out; 65% of mines recorded presence of illegal armed groups
• Estimated market value: $570 million
Responsible mineral supply chains
Global support for OECD Due Diligence Guidance (2011)

**Political**
- OECD Council Recommendation (2011)
- EU Parliament; CSR strategy + Commissioners statement on raw materials
- China-OECD Programme of Work

**Industry & Consumer**
- Consumer campaigns and civil society (e.g. Amnesty Int'l, Global Witness, Human Rights Watch, PAC, Enough Project)
- Industry: EICC (electronics), AIAG (automotive), AIA (aerospace) LBMA, RJC & WGC (gold & jewellery), CCCMC (China), and DMCC (Dubai)

OECD-benchmarked industry audits cover ~85-90% of total refined gold production
OECD-benchmarked industry audits cover ~93% Ta, ~75% Sn, ~60% W production

**Legal & regulatory**
- Section 1502 of U.S. Dodd-Frank Act conflict minerals reporting
- EU regulation on responsible mineral supply chains
- Legal requirement in DRC, Rwanda, Burundi & Uganda
- Conflict Minerals Bill in Canada
- Relevant legislation on modern slavery & child labour (e.g. UK & US)
- AQSIQ China national standard & decrees (forthcoming)

OECD Due Diligence Guidance for Responsible Mineral Supply Chains

**Objective**
- To provide clear, practical guidance for companies to ensure responsible operations and sources of supply
- To promote responsible investment in international mineral supply chains

**Method and scope**
- 5-step risk-based due diligence process, applies to all minerals & all companies throughout the entire mineral supply chain that potentially contribute to conflict, serious abuses, bribery, tax evasion and money laundering through mining or mineral sourcing practices

**The Guidance**
- 5-step due diligence framework for all minerals, globally (Annex I)
- Model Supply Chain Policy (Annex II) outlining key risks and appropriate responses
- Measures for Risk Mitigation (Annex III)
- Supplement on 3Ts; Supplement on Gold
- Appendix on Artisanal and Small-Scale Mining
Common 5-Step Framework for Due Diligence across mineral supply chains

1. **Establish strong management systems:** Policy, internal capacity, supplier & business partner engagement, internal controls, data collection, grievance mechanism

2. **Identify, assess and prioritise sourcing risks:** Map operations, business partners & supply chains, prioritize based on severity of harm – carry out enhanced checks when location, supplier or circumstance red flags are identified

3. **Manage risks:** Inform senior management, fix internal systems, build leverage individually or collaboratively, use existing networks to manage risk (e.g. industry, monitoring groups etc.), build internal and business partner capacity

4. **Refiner audits:** 3rd party independent audit at identified control point in the supply chain: for gold this is the refiner!

5. **Report on due diligence:** Publicly report annually with due regard for commercial confidentiality and competitive concerns

Underlying due diligence principles

- On-going, proactive and reactive due diligence approach
- ‘Conflict-affected areas’, ‘high-risk areas’ and other ‘red flags’ trigger heightened due diligence, not disengagement from trade e.g. upstream on-the-ground assessments, downstream smelter transparency & audits
- **Due diligence is risk-based**, i.e. intensity of due diligence proportional to risk
- Progressive improvements over time and good faith and reasonable efforts promoting constructive engagement with suppliers
- Global scope - intended to enable investment and trade in conflict-affected and high-risk areas, i.e. no blacklists, no embargoes, no protectionism
- Collaboration is encouraged to undertake most due diligence recommendations (lower costs, increase efficiency), although companies retain individual responsibility for due diligence
“Whole of supply chain” due diligence
e.g. simplified metal supply chain for 3TG

Mine → Road transport → Trading house → Refiners & Smelters → Metal traders & exchanges → Component manufacturers → Consumer goods manufacturers

Critical “choke point” for mineral traceability and on-the-ground due diligence

“Upstream” companies:
- Establish chain of custody
- Basic KYC + KYT due diligence. For “red flagged” supply chains, undertake on-the-ground assessments of mines, producers & traders for conflict, serious abuses, bribery, tax evasion, fraud, money-laundering
- Collaborative engagement with local gov’t, CSOs, local business to prevent & mitigate impacts & monitor conditions
- Publicly report

“Downstream” companies:
- Identify “choke points” in supply chain
- Collect information on their upstream due diligence (e.g. both through individual efforts and/or industry auditing)
- Use collective industry leverage to encourage improvement of upstream due diligence
- Publicly report

Multi-stakeholder Steering Group (2017)

Countries & international organisations:
(Chair)

Industry:
(Chair)

Civil society & ASM reps:
(Chair)

MPEDH Rwanda
BEDEWA
Observatoire Gouvernance et Paix
Working with the rest of the world to implement the OECD Guidance

12th Forum on Responsible Supply Chains of Minerals – 17 to 20 April 2018

• Over 850 participants – 50% private sector
• Main relevant topics covered:
  – Launch of the Alignment Assessment report
  – Global regulatory and policy developments, including implementation of due diligence in Indian context
  – Due diligence in diamonds, mica, 3TG and cobalt supply chains.
    • Expected future expansion to additional supply chains after LME announcement
• More here: http://mneguidelines.oecd.org/forum-responsible-mineral-supply-chains.htm
Presentation contents

Presentation of OECD Due Diligence Guidance and implementation

Questions for discussion on tailoring the Guidance to new minerals

Available tools and projects under development

Q&A

Transparency, traceability and/or chain of custody? Up to what point in the supply chain?

- **Is chain of custody or traceability possible** for the supply chain? Are there specific points where it is not possible to maintain traceability or chain of custody to mine or production site level (due to mixing, etc.)?

- **Are there current systems already being used by the industry to maintain chain of custody or traceability**? E.g.:
  - Documentation to mine of origin, all actors, key information (export documentation, weigh bills, transportation doc, etc.)?
  - Radio-frequency ID (RFID) tagging of lots at mine and during transport in producing countries?

- **What information should be shared among suppliers and business partners** to enable their own supply chain due diligence?

- **How can commercially sensitive information** be protected?
Industry collaboration v. company responsibility

• Industry and multi-stakeholder collaboration is crucial to address systemic risk, increase efficiency, reduce costs, help SMEs, etc.

• Industry or multi-stakeholder collaboration can be effective for:
  ✓ Assessing risk and monitoring at shared mine sites, transportation routes and points of trade
  ✓ Maintaining traceability systems and analyzing related data for inconsistencies
  ✓ Grievance mechanisms
  ✓ Governance of audit/assurance scheme
  ✓ Capacity-building on company due diligence, enhancing stakeholder roles
  ✓ Risk management on systemic issues, government and stakeholder engagement

• Collaboration cannot fulfill company’s own responsibility for due diligence & carry out all due diligence tasks, such as:
  ✓ Policy, communications to suppliers and business partners, inclusion in contracts
  ✓ “KYC”, sanctions, and risk assessments of company’s own activities
  ✓ Fixing internal systems, internal reporting, stakeholder engagement, other risk management
  ✓ Reporting

Complementary risk assessment + auditing & assurance at key “choke points”

• Given different levels of visibility and control, how should risk assessments differ for upstream or downstream companies?

• OECD Guidance says auditing and assurance should focus on “choke points” or key points of control in the supply chain.
  – Where are these points in various mineral supply chains?

What are “choke points” in the supply chain?

✓ Key points of transformation
✓ Stages in the supply chain that generally include relatively few actors that handle or process majority of material
✓ Stages in the supply chain with higher visibility and control over upstream stages (e.g. production and trade)
✓ Key points of leverage over mineral production and trade
Presentation contents

- Presentation of OECD Due Diligence Guidance and implementation
- Questions for discussion on tailoring the Guidance to new minerals
- Available tools and projects under development
- Q&A

Alignment Assessment of industry programmes against the OECD Due Diligence Guidance

Design and test a methodology for assessing the alignment of industry programmes with the OECD Due Diligence Guidance.

Pilot test the methodology with key industry programmes, assessing:

- The alignment of industry programmes’ standards and systems with the OECD Due Diligence Guidance
- The alignment of the industry programmes’ implementation efforts with the OECD Due Diligence Guidance

The Alignment Assessment methodology developed by this project is being integrated into a Delegated Act of the EU Regulation on mineral supply chain due diligence.
Alignment Assessment: participants

Participating industry programmes

Informal Advisory Group

Alignment Assessment methodology

Alignment Assessment of programme design and implementation
- Overarching due diligence principles
- Alignment with the five-step framework
- Specific responsibilities of programmes

Programme governance review
- Assessment of programme management and governance (separate from Alignment with the OECD Guidance)
## Overall programme results

<table>
<thead>
<tr>
<th>Organisation</th>
<th>2016 rating (Standards and Implementation)</th>
<th>2018 rating (Revised Standards and 2016 Implementation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DMCC Dubai Multi Commodities Centre</td>
<td>Not Aligned</td>
<td>Partially Aligned</td>
</tr>
<tr>
<td>International Tin Supply Chain Initiative</td>
<td>Partially Aligned</td>
<td>Partially Aligned</td>
</tr>
<tr>
<td>LBMA London Bullion Market Association</td>
<td>Partially Aligned</td>
<td>Partially Aligned</td>
</tr>
<tr>
<td>Responsible Jewellery Council</td>
<td>Not Aligned</td>
<td>Partially Aligned</td>
</tr>
<tr>
<td>Responsible Minerals Initiative</td>
<td>Not Aligned</td>
<td>Partially Aligned</td>
</tr>
</tbody>
</table>

### OECD Portal for Supply Chain Risk Information – *under development*

A 5-step framework for supply chain risk management:

1. Establish strong company management systems
2. Identify and assess risk in the supply chain
3. Implement a strategy to respond to identified risks
4. Carry out independent third-party audit of supply chain due diligence
5. Report annually on supply chain due diligence

- The Portal intends to help enterprises implement step 1 and 2 of the Guidance by:
  - providing information to help companies identify the risks of non-financial adverse impacts related to the production and trade of minerals and understand where they are most prevalent
  - helping companies prioritize when exercising mineral supply chain due diligence
  - covering the risks arising in production and trade, to inform the entire supply chain
What the Portal does not do

- This Portal **does not provide any recommendations** on how to exercise due diligence in the supply chains covered (i.e. the Portal will not lead to the development of additional “supplements” to the OECD Due Diligence Guidance)

- The Portal **does not intend to reinterpret** existing due diligence expectations.

Structure of the Portal

- **Supply chain information**
  - Mineral production information by country (primary & intermediate, ASM, LSM)
  - Trade data by country (import & export)
  - Smelter / refiner information if available
  - End-use information
  - Relevant industry bodies

- **Country risk reports**
  - Country pages linking to authoritative information on:
    - Serious human rights abuses
    - Conflict
    - Money-laundering
    - Bribery & corruption

- **Mineral-specific risk reports**
  - Third party reports of risk associated w/ specific minerals:
    - Links to reports from governments & international orgs
    - Reports from business, civil society & media subject to additional filter
    - No names of specific entities
    - Later counter-factual reports & updates linked via “threads”
Sources of Risk Information
Non-exhaustive list!

- General country risk information
  - INFORM - Index for risk management
  - World Bank Governance Index
  - Transparency International Country Profiles
  - FATF List of High Risk Jurisdictions

- Abuses of human rights
  - US Department of Labor Findings on Child Labor
  - UN Global Database on Violence against Women
  - Institute for Economics and Peace: Global Peace Index
  - Heidelberg Conflict Barometer

- Conflict and security

- Money laundering / corruption / non-payment of taxes

Recent (within 1 year)
Contextualized (including counter factual reports)

From specific sources:
- Governments and regional / international organisations (i.e. the United Nations, European Union, African Union, International Labour Organisation, international financing institutions, etc.)
- Civil society organisations (domestic and international)
- International press
- Industry reporting
For further information on the OECD’s work on Responsible Business Conduct

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

FAQ on sourcing gold from artisanal and small scale miners

Gold industry and sector initiatives for the responsible sourcing of minerals (2014)

Mineral supply chain and conflict links in Eastern Democratic Republic of Congo

Report on due diligence in Colombia’s gold supply chain

OECD Council report on the implementation of the due diligence guidance

Contact: louis.marechal@oecd.org