

Due diligence guidelines for the responsible supply chain of minerals from red flag locations to mitigate the risk of providing direct or indirect support for conflict in the eastern part of the Democratic Republic of the Congo

Step 1: strengthening company management systems

A. There are four main elements to this part of the process. First, relevant individuals and entities should adopt, publicly disseminate and clearly communicate to suppliers a supply chain policy for minerals originating from red flag locations, and incorporate it into contracts with suppliers. The supply chain policy should include the following elements:

Recognizing the risk of exacerbating conflict through providing direct or indirect support for armed groups in the eastern part of the Democratic Republic of the Congo; criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces; and/or violations of the asset freeze and travel ban on sanctioned individuals and entities,¹ associated with extracting, trading, processing and consuming minerals from red flag locations, we commit to respect, publicly and widely disseminate and clearly communicate the following policy:

(a) We will not tolerate any direct or indirect support for armed groups from the eastern part of the Democratic Republic of the Congo; criminal networks and/or perpetrators of human rights abuses, particularly within the State's armed forces; and/or sanctioned individuals or entities through the extraction, trade, processing and consumption of minerals. "Direct or indirect support to armed groups from the eastern part of the Democratic Republic of the Congo; criminal networks and/or perpetrators of human rights abuses, particularly within the State's armed forces; and/or sanctioned individuals or entities" means making payments to, or otherwise providing logistical assistance to, or extracting, trading, processing and consuming minerals where illegal armed groups in the eastern part of the Democratic Republic of the Congo; criminal networks and/or perpetrators of serious human rights abuses, particularly within the armed forces; and/or sanctioned individuals or entities or their affiliates (including *négociants*, consolidators, intermediaries and any others in the supply chain who work directly with armed groups, criminal networks and/or perpetrators of serious human rights abuses, particularly with the State's armed forces, and/or sanctioned individuals or entities to facilitate the extraction, trade or handling of minerals) are:

- (i) In physical control of the mines of origin or transportation routes from the mines;
- (ii) Demanding forced or compulsory labour from any person, under the threat of violence or other penalty, who has not voluntarily offered to mine, transport, trade or sell minerals;
- (iii) Illegally taxing or extorting money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded;
- (iv) Illegally taxing, extorting or controlling intermediaries, export companies or international traders;
- (v) Illegally financing mining activities;

(b) We will mitigate the risk of support for armed groups in the eastern part of the Democratic Republic of the Congo and/or sanctioned individuals and entities by immediately suspending or discontinuing engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or are linked to, any party providing direct or indirect support to illegal armed groups and/or sanctioned individuals

¹ www.un.org/sc/committees/1533/pdf/1533_list.pdf.

or entities through the extraction, transport, trade, processing, handling or consumption of minerals.

(c) We will mitigate the risk of providing direct or indirect support to criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces by:

(i) Refusing to enter into business relationships with serving military personnel or their representatives;

(ii) Eliminating direct or indirect support to public security forces that illegally control mines of origin, transportation routes and upstream actors in the supply chain; illegally tax or extort money or minerals at points of access to mine sites, along mineral transportation routes or at points where minerals are traded; or illegally tax or extort upstream intermediaries, export companies or international traders; and will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation and without measurable and substantial improvements within six months. In the case of suspension, we shall re-engage with upstream suppliers after a minimum period of three months, by mutual agreement of an improvement plan, stating the performance objectives and quantitative indicators with regard to mitigating those risks that need to be met before a trading partnership may resume.

B. Second, relevant individuals and entities should structure their internal management systems to support due diligence, including:

(a) The assignation of sufficient authority and responsibility in this regard to staff;

(b) The provision of sufficient resources, ensuring that relevant information concerning due diligence, including company policy, reaches relevant employees and suppliers;

(c) Ensuring internal accountability with respect to the implementation of due diligence.

C. Third, relevant individuals and entities should establish effective systems of control and transparency over the mineral supply chain. The nature of these systems will vary according to the mineral being traded, with the gold supply chain exhibiting characteristics different to those for tin, tantalum and tungsten, and according to the position of the individual or entity in the supply chain.

(a) For those in the "upstream" of the mineral supply chains, that is to say from mine sites in the eastern part of the Democratic Republic of the Congo to smelters or refineries, the objective of these systems of control and transparency should be to establish, document and verify:

(i) The nature and exact origin of the minerals to the level of the quarry or pit shaft (*carrière*) and the date, method and quantity of their extraction. The documentation collected should include all the documents required by the Congolese authorities in this regard (see annex 58);

(ii) The value and beneficiaries of all taxes, fees, royalties and other payments made, including to armed groups, criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, and/or sanctioned individuals and entities, at or near the mine site and at any other point on the supply chain;

(iii) The exact locations where minerals are consolidated, traded, processed or upgraded;

(iv) All upstream intermediaries involved in the supply chain.

(b) The information should be relayed down the supply chain from the mine site to the smelter or refinery. Over time, the quality of this information should improve as a result of due diligence implementation by relevant individuals and entities, which should in turn yield improved risk assessments.

(c) Individuals and entities receiving the information specified above from those further upstream in the supply chain should not simply assume it to be accurate, but should instead take appropriate and effective measures to verify its accuracy. Individuals and entities that do not receive any or all of this information from those upstream of them should take effective extra measures to obtain the information.

(d) The data should be held for at least five years, preferably in computerized form, and should be made available to downstream purchasers and auditors.

(e) Cash purchases should be avoided where possible. Where cash purchases are used, they should be supported by verifiable documentation and preferably routed through official banking channels.

(f) Relevant individuals and entities should support the implementation of the principles and criteria set out under the Extractive Industries Transparency Initiative.²

(g) For those in the “downstream” of the mineral supply chains, that is to say from smelter or refinery to consumer or end-user, the objective of these systems of control and transparency should be:

(i) To identify the smelters or refineries in their supply chains;

(ii) To establish, document and verify whether the smelters or refineries they source from are themselves sourcing minerals from red flag locations;

(iii) To require smelters and refineries processing material from red flag locations to provide them with evidence of their supply chain due diligence, as detailed above;

(iv) To assess the accuracy of the evidence provided by these refineries or smelters regarding their supply chain due diligence;

(v) To take effective extra measures to obtain relevant information on due diligence not provided by upstream suppliers.

(h) All relevant individuals and entities should strengthen their engagement with their suppliers to ensure that they commit to the supply chain policy, standards and processes contained in this guidance. To that end, relevant individuals and entities should seek:

(i) To establish long-term relationships with suppliers;

(ii) To communicate this due diligence guidance to them;

(iii) To build it into contracts and other written agreements that can be applied and monitored, including the right to unannounced spot checks and access to relevant documentation;

(iv) To design measurable improvement plans with suppliers.

D. Fourth, all individuals and entities should develop mechanisms allowing any interested parties to voice and record concerns regarding the circumstances of mineral extraction, trade, handling and export in red flag locations, particularly in relation to the involvement of armed groups in the eastern part of the Democratic Republic of the Congo; criminal networks and/or perpetrators of serious human rights abuses and/or sanctioned individuals and entities.

² See <http://eiti.org>.

Step 2: identifying and assessing risks in the supply chain

A. Relevant individuals and entities need to identify and assess the risks of providing direct or indirect support to armed groups, criminal networks and/or perpetrators of human rights abuses, particularly within the State's armed forces, and/or to sanctioned individuals and entities through the import, processing or consumption of minerals from red flag locations.

B. Individuals and entities in the "upstream" of mineral supply chains in the eastern part of the Democratic Republic of the Congo should use the information collected via step one and gather additional relevant information through their own or jointly conducted on-the-ground assessments in order to map the supply chains and assess risk effectively. Mapping supply chains includes determining their factual circumstances, assessing the security context, clarifying the chain of custody, activities and relationships of all upstream suppliers and identifying the locations and qualitative conditions of the extraction, trade, handling and (where relevant) export of the mineral. While on-the-ground assessments may be performed by or on behalf of multiple relevant individuals and entities, each remains individually responsible for identifying their own risk of providing direct or indirect support to armed groups and to sanctioned individuals and entities through the import, processing or consumption of minerals from red flag locations.

C. Individuals and entities in the "downstream" of supply chains of minerals from red flag locations need to assess the due diligence practices of their smelters and refineries, which will include the assessment of the due diligence practices of their upstream supplies. Assessments may include conducting spot checks on the facilities of smelters and refineries.

E. To assess their risk of providing direct or indirect support to armed groups in the eastern part of the Democratic Republic of the Congo, criminal networks and/or perpetrators of human rights abuses, particularly within the State's armed forces, and/or individuals and entities subject to sanctions, all relevant individuals and entities both the upstream and downstream of mineral supply chains should assess the factual circumstances of their supply chains against the supply chain policy outlined above. Inconsistencies between factual circumstances and the supply chain policy should be considered as indicative of the risks of providing direct or indirect support to armed groups and/or to sanctioned individuals and entities.

Step 3: designing and implementing a strategy to respond to identified risks

A. For step 3, the Group considers it appropriate for relevant individuals and entities to design and implement strategies to mitigate the risks of providing direct or indirect support to criminal networks and/or perpetrators of human rights abuses, particularly within the State's armed forces that are different to the strategies they design and implement to mitigate the risks of providing direct or indirect support for armed groups and/or sanctioned individuals and entities.

B. The Group recommends that where risks of providing direct or indirect support to armed groups in the eastern part of the Democratic Republic of the Congo or to sanctioned individuals or entities are identified, the response should be disengagement from the relevant upstream suppliers until the risk has been removed. Disengagement may be accompanied by mutual agreement of the performance objectives and quantitative indicators with regard to the risks that need to be met before a trading partnership may resume.

C. Strategies to mitigate the risks of providing direct or indirect support to criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, should ensure that where the State's armed forces and other security services are present at mine sites and/or surrounding areas and/or along trade routes, they progressively cease any illegal involvement in mining and trade in minerals, including through illegal

taxation and extortion of money or mineral shares, and that they are present solely to maintain security and the rule of law.

D. Relevant individuals and entities should be aware that it is illegal under Congolese law for any members of FARDC to be involved in any aspect of the extraction, handling, trade or processing of minerals (see annexes 20 and 21) and should respect and obey the laws even where they are not enforced.

E. Any payments to the armed forces at or around mine sites or at any other stage in the supply chain should be solely for the provision of security and the rule of law and should be done transparently and via appropriate civilian structures, such as the provincial or national administration.

F. Strategies to mitigate the risk of directly or indirectly supporting criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, do not readily yield quantitative indicators, but must nonetheless be regularly, thoroughly and systematically evaluated by those implementing them to assess their impact. The evaluations should be considered by auditors examining smelter/refinery due diligence. The Group recommends that individuals and entities conducting these evaluations refer to the Group's description of the different types of military involvement in mining in paragraph 178 to assist in this process. If the evaluation finds that within six months of the strategy's initiation there is no substantial progress towards its ends, the strategy should shift to suspension or discontinued engagement with the supplier for a minimum of three months. Suspension may be accompanied by mutual agreement on an improvement plan stating the performance objectives and quantitative indicators with regard to mitigating the risks that need to be met before a trading partnership may resume.

G. Relevant individuals and entities should regularly review their risk mitigation strategies to ensure that they remain informed of the relevant factual circumstances of their supply chains and continue to evaluate them against their supply chain policy. Strategies to prevent such risks should be amended in the light of changes to relevant factual circumstances.

Step 4: ensuring independent third-party audits

A. There needs to be some independent checks to ensure the credibility of the due diligence process, to acknowledge individuals and entities that are carrying out due diligence and to identify individuals and entities that are not carrying out due diligence and that are providing direct or indirect support to armed groups and/or sanctioned individuals and entities, with a view to possible sanctions.

B. The Group recommends that, at a minimum, refineries and smelters be independently audited to examine their due diligence process so as to mitigate the risk of providing direct or indirect support to armed groups from the eastern part of the Democratic Republic of the Congo and/or to sanctioned individuals and entities. The audits should specifically determine the conformity of the refinery's or smelter's due diligence to the standards and processes contained in this guidance.

C. Smelter/refinery auditing should be evaluated to assess whether it captures sufficient information to enable a reasonable inference of relevant individuals' and entities' compliance or non-compliance with due diligence at the smelter/refinery level and upstream from the mine site. If, upon review, it is established that smelter/refinery auditing captures insufficient information to justify imposing sanctions on individuals and entities that have not complied with due diligence, it may also be desirable for individuals and entities trading minerals from red flag locations from the level of *comptoir* to the smelter or refinery to be independently audited in this regard.

D. In accordance with international auditing standards (and individuals and entities should consult ISO 19011:2002 for detailed audit requirements), audit organizations and team members must be independent of auditees and must not have conflicts of interest with them. The auditors must be competent to assess the due diligence practices of the relevant individual or entity and would also benefit from knowledge of the evolving economic and political context in the eastern part of the Democratic Republic of the Congo. Performance indicators may be used to monitor the ability of the auditors to conduct the audit.

E. Auditors should examine samples of all documentation and other evidence produced by the smelter's or refinery's supply chain due diligence for minerals from red flag locations in order to determine whether the due diligence is sufficient to identify and prevent the risk of providing direct or indirect support to armed groups based in the eastern part of the Democratic Republic of the Congo and/or to sanctioned individuals and entities. Documentation may include but should not necessarily be limited to documentation on supply chain internal controls, relevant communications and contractual provisions with suppliers, documentation generated by company fact and risk assessments, documents on risk mitigation strategies and their implementation and relevant documents supplied by third parties.

F. Auditors should then gather further evidence and verify the information presented to them by conducting relevant interviews, making observations and reviewing documents. Auditors should conduct on-site investigations, including of the smelter or refinery and a sample of its suppliers, visiting the whole supply chain down to the mine site if necessary. Auditors should meet with and seek relevant information from a wide variety of sources, including joint assessment teams, local and central government authorities, the FARDC *auditorat militaire*, diggers' associations, the Group of Experts, MONUSCO and civil society organizations.

G. Auditors should report, based on the evidence they have gathered, on the conformity of the smelter's or refinery's due diligence with this guidance. Auditors should make recommendations for the smelter or refinery to improve its due diligence.

H. The establishment of an institutionalized mineral supply mechanism would, in the Group's view, enable more consistency in the findings of auditors regarding due diligence implementation and strengthen the credibility of these findings. The Group recommends, therefore, that the Council give consideration to endorsing or recommending the establishment of an institutionalized mineral supply mechanism that would oversee and support the audits of smelter/refinery due diligence with regard to direct and indirect support for illegal armed groups based in the eastern part of the Democratic Republic of the Congo and sanctioned individuals and entities. The mechanism would accredit auditors, oversee the execution of audits, share audit reports, receive and follow up on grievances of interested parties with the relevant individual or entity and share experiences on mitigation strategies.

I. However, even in the absence of such a body, due diligence implementation by relevant individuals and entities should still be subject to independent audits.

Step 5: publicly disclosing supply chain due diligence and findings

A. Relevant individuals and entities should publicly and voluntarily report on the due diligence they have undertaken to mitigate the risks of the provision of direct or indirect support to armed groups, criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, and/or to sanctioned individuals and entities. This information should form part of annual sustainability or corporate responsibility reports and should include:

- (a) The individual or entity's supply chain policy;

(b) Information on how the individual or entity's system of control and transparency over the mineral supply chain is implemented and who is responsible for it;

(c) Relevant quantitative and qualitative information that the individual or entity's system of control and transparency over the mineral supply chain has generated, particularly relating to the risk of the provision of direct or indirect support to armed groups, criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, and/or to sanctioned individuals and entities, including the value and beneficiaries of all taxes, fees, royalties and other payments made or suspected to have been made, including to armed groups in the eastern part of the Democratic Republic of the Congo, criminal networks and/or perpetrators of serious human rights abuses, particularly within the State's armed forces, and/or sanctioned individuals and entities, at or near the mine site and at any other point in the supply chain;

(d) The individual or entity's assessment of the risk of providing direct or indirect support to armed groups in the eastern part of the Democratic Republic of the Congo and/or to sanctioned individuals and entities, and including the value and beneficiaries of all taxes, fees, royalties and other payments made or suspected to have been made, including to armed groups in the eastern part of the Democratic Republic of the Congo and/or sanctioned individuals and entities, at or near the mine site and at any other point in the supply chain;

(e) The individual or entity's risk mitigation strategy and information about its implementation to date.

B. Smelters and refineries that have had their due diligence audited should, in addition, publish the audit reports, with due regard for business confidentiality and competitive concerns, which means, without prejudice to subsequent interpretations, price and supplier relationships. In the event of the establishment of an institutionalized audit mechanism, relevant individuals and entities should disclose all due diligence information to this mechanism.