Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains

CCCMC
China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters

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About these Guidelines

The objective of the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains is to operationalize and provide detail to Clause 2.4.6 of the *CCCMC Guidelines for Social Responsibility in Outbound Mining Investments* [1] by providing guidance and support to companies which are extracting and/or using mineral resources and their related products and are engaged at any point in the supply chain of minerals to identify, prevent and mitigate their risks of directly or indirectly contributing to conflict, serious human rights abuses and risks of serious misconduct.

The *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains* [2] use the *UN Guiding Principles on Business and Human Rights* and the *OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* as their basis, and will promote the integration and coordination with other related standards, regulations and initiatives. Companies are required to comply with all applicable laws and regulations. Implementation of these Guidelines cannot act as a substitute for such legal or regulatory compliance.

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[1] The *CCCMC Guidelines for Social Responsibility Outbound Mining Investment*, which were launched on 24 October 2014, call for Chinese mining companies undertaking outbound mining investment, cooperation and trade to strictly "observe the UN Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project" and to strengthen "the responsibility throughout the extractive industries value chain". The *CCCMC Social Responsibility Guidelines* further contain requirements to "conduct risk-based supply chain due diligence in order to prevent engagement with materials that may have funded or fuelled conflict" (Clause 2.4.6. of the Guidelines).

[2] CCCMC and the OECD have developed a common understanding of the necessity to develop such Guidelines. Therefore, both parties have signed a Memorandum of Understanding to cooperate in the development of these Guidelines. This task is listed in the "China-OECD Medium Term Vision and Action Plan for 2015-2016".

These Guidelines are officially published in Chinese and English and will be translated to other languages. The Chinese version is the original. If any discrepancies or inconsistencies apply in the translation, the Chinese version shall be authoritative.

This Guidelines document is to be duly revised along with the development of practices in the industry.

CONTENTS

I. Background and Challenges 6

II. Objective 8

III. Scope of Application 10

IV. Introduction to Basic Steps of Risk-based Due Diligence 12

V. Risk Categories for Due Diligence 14

VI. Warning Signs 22

VII. Framework and Processes for Due Diligence 26

VIII. Audit, Certification and Oversight 32

Annex: Model Supply Chain Policy 33

I. Background and Challenges

Extracting and trading natural resources has the potential to generate income, growth and prosperity, and foster a mutually beneficial relationship between the communities and the companies, cooperatives and individuals. However, in some countries or regions, especially in conflict-affected and high-risk areas the extraction and trade of natural resources has fueled violent conflicts and serious human rights abuses. For example, in some countries, the exploitation and trade of natural resources such as diamonds, timber and minerals have exacerbated civil war and violent conflict. The so-called “3TG” minerals (tin, tantalum, tungsten and gold) have been the focus of attention for their role in fuelling ongoing conflict in recent years.

Over the past decade, the international community has sought to address the link between business and the violation of human rights. The international community has responded with different measures ranging from UN Resolutions to the “Kimberley Process” and ultimately developed global standards, laws, and regulations aimed at breaking the link between minerals and armed conflict, with their associated human rights abuses. In 2011, the UN Human Rights Council unanimously endorsed the “United Nations Guiding Principles on Business and Human Rights” which is the first corporate human rights responsibility framework supported globally.

The primary responsibility of companies is to ensure that they do not intentionally or unintentionally cause, contribute to, or benefit from human rights abuses or armed conflict, and respect the human rights of all whom their business activities might impact. Responsible companies, therefore, must conduct ongoing comprehensive due diligence on all aspects of their business, including risks that may be present in

the supply chains through which they source natural resources. The recognized international framework to conduct supply chain due diligence in the natural resource sector is the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas” (hereinafter referred to as “OECD Due Diligence Guidance”), which serves as the basis for most industry programs on responsible mineral supply chains [3] in many countries.

[3] The international community developed a due diligence guidance for companies sourcing minerals from conflict-affected and high-risk areas, through a multi-stakeholder process, which included the International Conference on the Great Lakes Region (ICGLR), the Organization for Economic Co-operation and Development (OECD), and the UN Group of Experts. The United Nations Security Council (Resolution 1952) supported taking forward the due diligence recommendations contained in the final report of the UN Group of Experts, in response to long-term evidence of links between armed conflict and human rights abuses in the eastern Democratic Republic of Congo (DRC) and the trade in tin, tantalum, tungsten, and gold. The UN Security Council and the OECD Due Diligence Guidance were designed to be consistent.

II. Objective

The Objectives of these Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains (hereinafter referred to as "The Guidelines") are to operationalize and provide detail to Clause 2.4.6 of the Chinese Guidelines for Social Responsibility in Outbound Mining Investments (hereinafter referred to as "Chinese Responsible Mining Guidelines") [4] by providing guidance to all Chinese companies which are extracting and/or are using mineral resources and their related products and are engaged at any point in the supply chain of minerals to identify, prevent and mitigate their risks of contributing to conflict, serious human rights abuses and risks of serious misconduct, as well as to observe the UN Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project.

In so doing, the Guidelines will support companies to achieve legal and regulatory compliance for doing business with jurisdictions that have enacted or are in the process of enacting legislation requiring due diligence for responsible supply chains of mineral resources and/or achieve conformance with industry initiatives that improve market access. [5]

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[4] Clause 2.4.6 requires companies to "conduct risk-based supply chain due diligence in order to prevent engagement with materials that may have funded or fueled conflict". The sub-clauses further demand to: "(a) conduct an assessment to define whether the mining project from which traded minerals originate or the mineral trading routes used are located in a conflict-affected and/or high-risk area; (b) adapt existing due diligence measures to the specific needs of conflict-affected and high-risk areas. Measures should be third-party audited and publically reported on; and (c) when operating in a conflict-affected and/or high-risk area, take steps to monitor the business relations, transactions, and flows of funds and resources and avoid the trade of conflict minerals.

[5] For example, legal requirements for responsible mineral supply chains are included in *Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection* Act and in domestic laws of the Democratic Republic of Congo, Rwanda, and Burundi. Furthermore, the member states of the International Conference of the Great Lakes Region (ICGLR) have developed a *Regional Initiative against the Illegal Exploitation of Natural Resources* (RINR) and a Regional Certification Mechanism (RCM) – the *ICGLR*

Other expected benefits to implementing companies include:

1. Increased ability to meet expectations of customers and markets on responsible mineral resources

2. Enhanced understanding, data collection and management on a company's mineral resource supply chains and sourcing strategies, to enable more informed and strategic decision-making

3. Improve reputation of participating companies and of the Chinese industry;

4. Decreased disruptions in supply caused by conflict and weak governance

5. Provide guidance for companies wanting to undertake supply chain due diligence in natural resources other than minerals

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Mineral Tracking and Certification Scheme. Industry-Initiatives include the Conflict-Free Smelter Program (CFSP) of the *Conflict-Free Sourcing Initiative* (CFSI) developed by the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI); the *Conflict Free Gold Standard* of the World Gold Council (2012); the *Responsible Gold Guidance* of the London Bullion Market Association (2012); the *Chain-of-Custody Certification* of the Responsible Jewellery Council (2012); the ITRI Tin Supply Chain Initiative (iTSCi) and the *Fairtrade and Fairmined Standard for Gold from Artisanal and Small-Scale Mining* of the Alliance of Responsible Mining/Fairtrade Labelling Organizations International (2010). Further, complying with these Guidelines reinforces conformance with the recommendations of the Financial Action Task Force (FATF) for anti-money laundering and combatting-terrorist financing (AML/CFT), of which China is a member, as well as with the standard set forth under the Extractive Industries Transparence Initiative (EITI). Reporting payments made to governments for mineral extraction is required in 48 EITI implementing countries.

III. Scope of Application

These Guidelines apply to all Chinese companies which are extracting, trading, processing, transporting, and/or otherwise using mineral resources and their related products and are engaged at any point in the supply chain of mineral resources and their related products. This definition targets all Chinese companies which are engaged in both the upstream, i.e. resource exploration, extraction, trading, transporting and storing up to processing, including refining, and/or smelting, and the downstream parts that are engaged in using mineral resources and their related products of the supply chain (for example, electronics, electrical appliances, instruments, jewellery, communications equipment, etc.). “Chinese company” in this regard means legal (for-profit) entities which are registered in China or overseas companies (including subsidiaries) which are wholly- or majority-owned or controlled by a Chinese entity or individual.

“Mineral resources” in these Guidelines refers to all mineral resources and their related products (i.e. ores, mineral concentrates, metals, derivatives, and by-products). However, initially CCCMC will prioritise releasing audit protocols and supplementary materials covering the supply chains of the following minerals and related products:

Gold	Metals (including derivative metals), minerals, ores and mineral concentrates that contain gold
Tin	Metals (including derivative metals), minerals, ores and mineral concentrates that contain tin (cassiterite and other tin minerals)
Tungsten	Metals (including derivative metals), minerals, ores and mineral concentrates that contain tungsten (wolframite and other tungsten minerals)
Tantalum	Metals (including derivative metals), minerals, ores and mineral concentrates that contain tantalum (Tantalite, Coltan and other Tantalum minerals)

The extent of due diligence that is appropriate will depend on individual circumstances and will be affected by factors such as the size of the enterprise, [6] the sector and nature of the products or services involved, as well as on the position of the company in the mineral supply chain, and the prevalence of risks in the supply chain. These Guidelines will include resource-specific audit protocols and supplementary materials in the annex which will provide detailed guidance for companies on how to carry out due diligence in the respective sectors.

Companies engaged in the supply chain of other natural resources are also encouraged to use the Guidelines as a reference.

[6] Smaller companies are not exempt from undertaking all the steps referenced in the Guidelines but may follow a process adapted to their size.

IV. Introduction to Basic Steps of Risk-based Due Diligence[7]

These Guidelines provide a basic 5-STEP model for carrying out risk-based supply chain due diligence. According to the UN Guiding Principles, company due diligence to address adverse human rights impacts should include "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed". [8] The OECD defines due diligence as "an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in mineral resources and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions." [9]

Given how complex operating environments can be, including those considered as conflict-affected and high-risk areas, where conditions

[7] In these Guidelines "Due Diligence" is translated as " 尽责 ", " 尽责管理 ". In many occasions, this English term is habitually translated as " 尽职调查 ", including in the official Chinese version of "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas". However, "Due Diligence" is translated as " 尽责 " or " 尽责管理 "in the official Chinese version of "United Nations Guiding Principles on Business and Human Rights" which were approved by the United Nations. These Guidelines and related documents will use the official translation from the United Nations.

[8] United Nations (2011): Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy Framework, II.B.17.

[9] OECD (2013): Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, p. 13.

can evolve and degenerate rapidly, due diligence is understood as an on-going process along supply chains whereby companies take reasonable steps and make good faith efforts to identify and respond to potential risks of contributing to conflict, serious human rights abuses and to serious misconduct.

All companies that fall under the definition of Section III of these Guidelines shall carry-out the 5-STEP risk-based supply chain due diligence framework which is outlined in these Guidelines.

The 5-STEPs include:

Step1	*Establish strong company risk management systems*
Step2	*Identify and assess risk in the supply chain*
Step3	*Design and implement a strategy to respond to identified risks*
Step4	*Carry out independent third-party audit at identified choke points in the supply chain (as indicated in the Audit Protocols).*
Step5	*Report on the process and results of supply chain risk management*

A step-by-step guide for carrying out the 5-STEP risk-based supply chain due diligence can be found in Section VII and will be further specified in the resource-specific audit protocols and supplementary materials which are annexed to these Guidelines.

V. Definition of Risk Categories for Due Diligence

Risk-based due diligence is a flexible approach, meaning that the intensity of a company's due diligence requirements is proportional to the risks it faces. The risks relevant for these Guidelines are defined in this Section. If, pursuant to their due diligence, a company identifies one of those risks in their supply chain or through their sourcing practices, they have to carry out "enhanced" due diligence. "Enhanced" due diligence includes more in-depth risk assessment and management practices, notably in STEP 2 and STEP 3 of the aforementioned 5-STEP Framework.

Under these Guidelines, two different kinds of risks are being defined – Type 1 Risks and Type 2 Risks. [10] Both kind of risks are derived from requirements which are outlined in the Chinese Responsible Mining Guidelines and which require specific attention.

Type 1 Risks are risks of contributing to conflict and serious human rights abuses associated with extracting, trading, processing, and exporting of resources from conflict-affected and high-risk areas. [11] Type 2 Risks include those risks relating to serious misconduct in environmental, social and ethical issues (additional to Type 1 risks). [12]

[10] The division between Type 1 or Type 2 risks does not imply prioritizing Type 1 over Type 2 risks. Companies should identify and prioritize risks based not on the type of risk but on their severity and the likelihood of impacts for potentially affected stakeholders.

[11] The OECD Due Diligence Guidance is the major international reference point for Type 1 risks. The OECD Guidance is also the reference point for international standards and regulations, and therefore crucial for compliance with legal requirements for trading with the markets where they apply, including e.g. with US-listed companies, and in the African Great Lakes Region.

[12] The Chinese Responsible Mining Guidelines are the major reference point for Type 2 risks. The Chinese Responsible Mining Guidelines in Clause 2.3.1 demand from Chinese mining companies to "issue a code of conduct which requires suppliers to fulfil [all] relevant requirements of the [Chinese Responsible Mining] Guidelines and encourage suppliers to sign this document".

Risk mitigation strategies for each risk are contained in the relevant clauses of the Chinese Responsible Mining Guidelines which are indicated below each risk.

5.1 Type 1 Risks: Risks of contributing to conflict and serious human rights abuses associated with extracting, trading, processing, and exporting of resources from conflict-affected and high-risk areas

5.1.1 Risks of committing, profiting from, assisting with, or facilitating, or sourcing from, or being linked to, any party committing, profiting from, assisting with, or facilitating the following serious abuses:

5.1.1.1 any forms of torture, cruel, inhuman and degrading treatment

(Related to Clause 2.4 of the Chinese Responsible Mining Guidelines)

5.1.1.2 any forms of forced or compulsory labour, which means work or a service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily

(Related to Clause 2.4 of the Chinese Responsible Mining Guidelines)

5.1.1.3 the worst forms of child labour

(Related to Clause 2.5.1 of the Chinese Responsible Mining Guidelines)

5.1.1.4 other gross human rights violations and abuses such as, but not limited to, widespread sexual violence, or failing to ensure non-complicity in human rights violations, including profiting or seem to be profiting or condoning or seeming to condone human rights violations by others

(Related to Clause 2.4.1 and 2.4.2 of the Chinese Responsible Mining Guidelines)

5.1.1.5 war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide

(Related to Clause 2.4.1 and 2.4.2 of the Chinese Responsible Mining Guidelines)

5.1.2 Risks of providing, or sourcing from, or being linked to, any party providing direct or indirect support to non-state armed groups:

(Related to Clause 2.4.6 of the Chinese Responsible Mining Guidelines)

5.1.2.1 Providing direct or indirect support to non-state armed groups through the extraction, transport, trade, processing or export of mineral resources. This includes, but is not limited to, procuring mineral resources from, making payments to or otherwise providing logistical assistance or equipment to, non-state armed groups or their affiliates who:

1. illegally control resource extraction sites or otherwise control transportation routes, points where mineral resources are traded and upstream actors in the supply chain

2. illegally tax or extort money or mineral resources at points of access to resource extraction sites, along transportation routes or at points where mineral resources are traded

3. illegally tax or extort intermediaries, export companies or international traders

5.1.3 Risks relating to public or private security forces

(Related to Clause 2.4.2 of the Chinese Responsible Mining Guidelines)

5.1.3.1 Risk of providing, or sourcing from, or being linked to, any party providing direct or indirect support to public or private security forces who:

1. llegally control mineral extraction sites, transportation routes and/or upstream actors in the supply chain

2. illegally tax or extort money or minerals at point of access to mineral extraction sites, along transportation routes or at points were mineral resources are traded

3.illegally tax or extort intermediaries, export companies or international traders disrespect the rule of law and human rights, or neglect the security of workers, equipment and facilities, and the mineral extraction on site or on transportation routes from interference with legitimate extraction and trade

5.1.3.2 Failure to ensure that security forces are engaged in accordance with internationally recognized standards or guidance documents with regard to private security forces [13], particularly the adoption of screening policies to ensure that individuals or units of security forces known to have been responsible for gross human rights abuses are not hired

5.1.4 Risks of contributing to, or sourcing from, or being linked to, any party contributing to serious misconduct:

5.1.4.1 Directly or indirectly offering, giving, promising or demanding any bribes or any other undue advantages, and/or soliciting bribes to conceal or disguise the origin of mineral resources, to misrepresent taxes, fees and royalties paid to governments for the purposes of resource extraction, trade, processing, transport and export, or failing to follow relevant international standards and conventions for anti-corruption

(Related to Clause 2.2.2 and 2.2.3 of the Chinese Responsible Mining Guidelines)

5.1.4.2 Engaging in money-laundering resulting from, or connected to, the extraction, trade, processing, transport or export of mineral resources derived from the illegal taxation or extortion of mineral resources at points of access to mineral extraction sites, along transportation routes or at points where mineral resourc-

[13] There are internationally recognized standards and guidance documents for dealing with private security forces, such as the Voluntary Principles on Security and Human Rights, the "Montreux Document - On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict", the "International Code of Conduct for Private Security Service Providers (ICoC)", the "ANSI/ASIS PSC.1 Management System for Quality of Private Security Company Operations (PSC.1)" as well as the "ISO 18788: Management System for Private Security Operations".

es are traded by upstream suppliers

(Related to Clause 2.2.5 of the Chinese Responsible Mining Guidelines)

5.1.4.3 Avoiding or misrepresenting taxes, fees, and royalties or other payments to governments related to mineral resource extraction, trade and export from conflict-affected and high-risk areas and failing to disclose such payments in accordance with the principles set forth under the Extractive Industry Transparency Initiative or related transparency initiatives

(Related to Clause 2.2.5 of the Chinese Responsible Mining Guidelines)

5.2 Type 2 Risks: Risks associated with serious misconduct in environmental, social and ethical issues

5.2.1 Risks of contributing to, or sourcing from, or being linked to, any party contributing to serious misconduct:

5.2.1.1 Breaking Chinese or host country laws and regulations or industry minimum standards

(Related to Clause 1.1 and 1.3 of the Chinese Responsible Mining Guidelines)

5.2.1.2 Employing children under the minimum working age as legally prescribed by the host country laws and regulations, or if there is no relevant host country law or regulation, employing children below the minimum working age of 16 years. [14]

(Related to Clause 2.5.1 of the Chinese Responsible Mining Guidelines)

5.2.1.3 Disrespecting the rights and interests of young workers (any workers over the legally prescribed minimum working age and under the age of 18)

(Related to Clause 2.5.1 of the Chinese Responsible Mining Guidelines)

5.2.1.4 Extracting or sourcing resources from land where the free,

[14] It shall be noted that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons must not be less than 18 years.

prior and informed consent of local communities and indigenous peoples has not been obtained, including those for which the extractor holds a legal title, lease, concession, or license. [15]

(Related to Clause 2.4.5 of the Chinese Responsible Mining Guidelines)

5.2.1.5 Extracting or sourcing resources from mining operations where the culture and heritage of local communities and indigenous peoples have not been respected and protected, or where traditional cultures of local peoples have been harmed

(Related to Clause 2.4.4 of the Chinese Responsible Mining Guidelines)

5.2.1.6 Extracting or sourcing resources where a legal title, lease, concession, or license has been illegally obtained or violates national laws, or where there are pre-existing legitimate claims to the land by local populations, including those which are under customary, traditional or collective land tenure systems, or where the population residing in the extraction area has been involuntarily resettled

(Related to Clause 2.4.3 of the Chinese Responsible Mining Guidelines)

5.2.1.7 Adverse impacts and gross violation of international and national laws and regulations regarding ambient soil, air, and water conditions, including manufacturing, trading, and using chemicals and hazardous substances subject to international bans due to their high toxicity to living organisms, environmental persistence, or potential for irreversible ecological impacts,

[15] The concept of free, prior and informed consent is contained and further explained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 10 of UNDRIP states that: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." Article 11.2 further states that "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and custom. Further guidance is provided by the FAO and in the *ICMM Position Statement on Indigenous Peoples and Mining.*

and/or releasing arsenic and mercury emissions

(Related to Clause 2.7.5 and 2.7.9 of the Chinese Responsible Mining Guidelines)

5.2.1.8 Failing to avoid, minimise, or if residual impacts remain, offset the environmental impact and ecological footprint throughout the mining life-cycle by conducting thorough environmental impact assessments, minimizing waste and emissions, ensuring mine closure and site rehabilitation, conserving resources and recycling, implementing environmental risk management, contributing to the conservation of biodiversity, and seeking continual improvement of their environmental performance. Offsetting shall always be the last resort and applied only if all efforts for avoiding or minimizing adverse impacts have been exhausted. [16]

(Related to Clause 2.7 of the Chinese Responsible Mining Guidelines)

5.2.1.9 Extracting or sourcing resources from World Heritage Sites (WHS) or legally protected areas, or mining within the buffer zones of WHSs or legally protected areas; or transporting of mined resources through WHSs or legally protected areas, thereby providing a threat to the outstanding universal value for which these properties are protected. [17]

(Related to Clause 2.7.13 of the Chinese Responsible Mining Guidelines)

5.2.1.10 Failing to report, in a regular and timely manner to stakeholders, on their material impacts and disclose their ethical, social, and environmental performance to their stakeholders in ways that are appropriate and meaningful to their needs. This includes a comprehensive view of their policies, risks and re-

[16] Companies may want to refer to (PS6) for further guidance on best practice with regard to Biodiversity Conservation and Sustainable Management of Living Natural Resources. At least one resource-rich African country (Liberia) has recently required all companies operating within its borders, including those in the mining industry, to adopt and implement PS6. Other countries may follow Liberia's lead.

[17] The General Conference of UNESCO adopted on 16 November 1972 the Convention Concerning the Protection of the World Cultural and Natural Heritage which the global reference for protecting world heritage sites.

sults with regard to ethical, environmental, and social matters. It also includes proactively soliciting, respecting, and responding to stakeholder feedback and expectations including those from non-governmental organizations (NGOs) and local communities

(Related to Clause 2.1.5 of the Chinese Responsible Mining Guidelines)

5.2.1.11 Failing to take proactive steps to respect all other principles set forth in the Chinese Responsible Mining Guidelines that are not included under Type 1 risks or those risks listed above

VI. Warning Signs

As established in Section V, the trigger for enhanced due diligence rests with the presence of risks in the supply chain. However, the location of origin of the mineral resource can provide important information to aid companies in their proactive efforts to identify risks that may occur during the extraction, trade and use of mineral resources contributing to conflict, serious human rights abuses and/or instances of serious misconduct.

Therefore, as part of their due diligence, it is necessary for all Chinese upstream companies to put in place systems that enable them to gather on an ongoing basis information sufficient to trace their resources supply down to the specific location of origin, including the extraction sites, trading sites, and transport routes. [18]

Chinese downstream companies are required, on an ongoing basis and using reasonable and good faith efforts, to put in place transparency systems to identify and engage with those companies in their supply chains that can identify warning signs in the supply chains and to build leverage over key upstream actors to mitigate risks.

There is no internationally agreed exhaustive definition of what constitutes a conflict-affected or high-risk area. Most commonly, conflict-

[18] Company staff should rely on their own information sources on the ground in determining their supply chain risks. However, there are a variety of sources which can support company staff in determining the risk. The OECD recommends companies to "review research reports from governments, international organizations, NGOs, and media, maps, UN reports and UN Security Council sanctions, industry literature relating to mineral extraction, and its impact on conflict, human rights or environmental harm in the country of potential origin, or other public statements." Companies should also refer to any criteria and indicators of conflict-affected and high-risk areas developed through multi-stakeholder initiatives, including ongoing work related to the implementation of this Guidance facilitated by the OECD.

affected and high-risk areas share part or all of the following features:

1. the presence of armed conflict (armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, or civil wars)
2. the presence of widespread violence, including violence generated by criminal networks
3. fragile post-conflict areas
4. areas witnessing weak or non-existent governance and security
5. areas witnessing widespread and systematic violations of international law, including human rights abuses
6. areas witnessing systematic discrimination against parts of the population
7. areas with endemic corruption
8. areas witnessing sexual and gender-based violence

For the purposes of these Guidelines, conflict-affected and high-risk areas can be understood as any area identified by the presence of armed conflict, widespread violence, including violence generated by criminal networks, or other risks of serious and widespread harm to people. Such areas are often characterized by political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure, widespread violence and violations of national or international law, as well as a high prevalence of corruption, severe impacts on the environment, as well as land rights infringements.

To determine when to do enhanced due diligence under STEP 2 and STEP 3 all companies which are extracting, trading, processing, transporting and/or otherwise using mineral resources and its related products and are engaged at any point in the supply chain of minerals shall

use good faith efforts to identify the presence of any of the following "warning signs" in their supply chains:

Warning Sign locations of resource origin and transit	1.The mineral resources originate from or have been transported through a conflict-affected or high-risk area 2.The resources are claimed to originate from a country that has limited known reserves or stocks, or expected production levels of the mineral resource in question 3.The mineral resources are claimed to originate from a country through which resources from conflict-affected and high-risk areas are known or reasonably suspected to transit 4.The resources are claimed to originate from recyclable/scrap or mixed sources and has been processed in a country where these resources from conflict-affected and high-risk areas is known or reasonably suspected to transit 5.The mineral resources originate from a conflict-affected or high-risk area that is known to suffer from large scale environmental degradation, to be in the vicinity of World Heritage Sites, to endure land infringements, or where the worst forms of child labor are prevalent
Supplier Warning Signs	1.Suppliers or other known upstream companies operate in locations that exhibit the warning signs above, or have shareholder or other interests in suppliers from one of the above-mentioned warning sign locations 2.Suppliers or other known upstream companies used to purchased from one of the above-mentioned warning sign locations
Circumstantial Warning Signs	Anomalies or unusual circumstances are identified through the information collected in Step 1 which give rise to a reasonable suspicion that the mineral resources may contribute to conflict or serious abuses associated with the extraction, transport or trade of said resource

The sourcing from or mining of mineral resources in conflict-affected or high risk areas should not itself trigger suspension or termination of sourcing from that area. Information about where a resource is sourced from is only a means to aiding companies in the process of identifying and

managing risks in its supply chains. Companies are encouraged to stay engaged in conflict-affected and high-risk areas and engage suppliers to manage or mitigate risks.

If in the process of doing their supply chain due diligence “warning signs” emerge, and/or risks have been identified at any point along a supply chain there are several options available to companies to help them manage or mitigate these risks with the suppliers. These options include:

1. continuing trade throughout the course of risk mitigation efforts,
2. temporarily suspending trade while pursuing ongoing risk mitigation,
3. disengaging with a supplier either after failed attempts at mitigation or where the company reasonably deems mitigation not feasible or the risks unacceptable.

VII. Framework and Processes for Due Diligence

While specific due diligence requirements and processes will differ depending on the mineral resource and the position of the company in the supply chain, companies should review their choice of suppliers and sourcing decisions and integrate into their management systems the following 5-STEP framework for risk-based due diligence for responsible mineral supply chains of natural resources. The 5-STEPS will be further specified in the resource-specific audit protocols and supplementary materials which are annexed to these Guidelines, or in future will be annexed.

7.1 Establish sound risk management systems. Companies should:

7.1.1 Adopt, and clearly communicate to suppliers and the public, a company policy for the mineral supply chain originating from conflict-affected and high-risk areas. This policy should incorporate the standards against which due diligence is to be conducted which should be consistent with the standards set forth in the model supply chain policy in Annex.

7.1.2 Structure internal management to support supply chain due diligence.

7.1.3 Establish a system of controls and transparency over the mineral supply chain.

Upstream companies should establish an appropriate chain of custody or a traceability system over mineral production and trade and pass on due diligence information downstream.

Further, upstream companies are encouraged to engage with downstream companies and request that they conduct due diligence themselves. Upstream companies can also encourage downstream companies to source from companies that are conducting due diligence or work with their suppliers to conduct due diligence.

Downstream companies should establish transparency systems over the supply chain to collect data on key upstream actors in the supply chain, including, for identified choke points (see STEP 4 and Supplementary materials), and the countries and regions they source from.

7.1.4 Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts and/or agreements with suppliers, consistent with Clause 2.3.1 of the Chinese Responsible Mining Guidelines. Where possible, assist suppliers in building capacities with a view to improving due diligence performance.

7.1.5 Establish a company-level, or industry-wide, grievance mechanism as part of an early-warning risk-awareness system.

7.2 Identify and assess risk in the supply chain. Companies should do the following:

7.2.1 **Upstream companies** should gather, examine and verify chain of custody or traceability information as appropriate and engage with suppliers to identify risks and confirm basic source information of materials and any potential warning signs in the supply chain.

Downstream companies should identify products containing relevant minerals and use best faith efforts to identify the key upstream actors in the supply chain.

7.2.2 For suppliers, sources or circumstances with any potential risks or warning signs, undertake enhanced due diligence to identify risks in their supply chain.

Upstream companies should, for mined sources, carry out on the ground risk assessments, done individually or through collaborative efforts, to gather information on qualitative conditions of production, handling and trade.

For recycled resources companies should use risk-based assessments of the likelihood that raw materials are laundered through recycled channels to conceal or hide its origin.

Downstream companies should assess risks by evaluating whether key upstream actors in the supply chain, including choke points, undertake due diligence, for example, by reviewing any available audit information, publicly available policies and public reports. For very complex manufactured products, downstream companies who find it difficult to identify actors upstream from their direct suppliers may wish to engage with key upstream actors on an individual or industry-level basis and encourage their implementation of due diligence and participation in audits.

7.2.3 Assess risks of adverse impacts in light of Section V of these Guidelines and the standards of their supply chain policy consistent with the Model Supply Chain Policy (Annex) and the due diligence recommendations in this Guidance.

7.3 Design and implement a strategy to respond to identified risks. Companies should:

7.3.1 Report findings of the supply chain risk assessment to the designated senior management of the company.

7.3.2 Devise and implement a risk management plan. Devise a strategy for risk management by either:

1. continuing trade throughout the course of measurable risk mitigation efforts;
2. temporarily suspending trade while pursuing ongoing measurable risk mitigation;
3. disengaging with a supplier after failed attempts at mitigation or where a company reasonably deems risk mitigation not feasible or unacceptable

To determine the correct strategy, companies should review Annex and consider their ability to influence, and where necessary take steps to build leverage, over suppliers who can most effectively prevent or mitigate the identified risk. If companies pursue risk mitigation efforts while continuing trade or temporarily suspending trade, they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan.

Before disengaging, considering the potential socio-economic impacts on mining communities, such as the risk of extensive and/or sustained loss of livelihoods in or near the sites of mineral extraction, or loss of economic activity essential to the welfare of communities in or near extraction sites is highly encouraged.

7.3.3 Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management.

7.3.4 Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

7.4 Carry out independent third-party audit at identified points in the supply chain.

Companies at identified points in the supply chain should have

their due diligence practices audited by independent third parties. While companies are expected to identify those points through a thorough and demonstrated risk assessment of their own supply chains, they may take into account industry-wide and resource-specific choke points.

For the purposes of these Guidelines, “choke points” may be identified using a number of considerations, such as:

1) key points of transformation in the supply chain
2) stages in the supply chain that generally include relatively few actors that process a majority of the commodity
3) stages in the supply chain with visibility and control over the mineral production and trade
4) key points of leverage over mineral production and trade

While the duplication of audits should be avoided in a specific mineral resources supply chain, in some circumstances, multiple choke points for conducting third-party audits maybe necessary. Upstream and downstream companies should develop joint schemes to share the costs of conducting such audits, including, where possible, supporting the capacity building of such companies to meet the expectations and committing to adequate purchasing practices. [19]

Such audits may be verified by an independent institutionalized mechanism, e.g. established industry programs. The resource-specific choke points and related audit requirements will be further defined and explained in the Audit Protocols.

[19] Pursuant to ISO 26000, 6.6.6. Fair Operating Practices, Issue 4: Promoting social responsibility in the value chain.

7.5 Report on process and results of supply chain risk management.

Companies should publicly report on their supply chain due diligence policies and practices, including on identified risks and steps taken to mitigate these risks, and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral resource supply chain due diligence.

VIII. Audit, Certification and Oversight

The primary objective of third-party audit and certification is the expression of confidence to external stakeholders that a company has appropriate and effective policies and practices in place to prevent, identify, and mitigate risks in their mineral supply chains and source conflict-sensitively and responsibly.

Companies have an individual responsibility to carry out their supply chain due diligence, conduct any necessary third-party audit thereof, and publish their due diligence policies and practices, according to these Guidelines.

These Guidelines further set out a system that allows companies to get certified. The certification is an additional layer of assurance for companies, [20] in which a company's due diligence policies and practices, and third-party audit where appropriate, is validated by an independent oversight body.

The audit and certification systems are detailed in a separate document.

Further, stakeholders can lodge complaints with regard to the Guidelines. The grievance mechanism is formulated separately in the appendix.

[20] According to the ISEAL Assurance Code, assurance can be defined as "demonstrable evidence that specified requirements relating to a product, process, system, person or body are fulfilled (adapted from ISO 17000)".

Annex: Model Supply Chain Policy

Introduction

The Chinese Responsible Mining Guidelines demand from member companies to "issue a code of conduct which requires suppliers to fulfil the relevant requirements of the Chinese Responsible Mining Guidelines and encourage suppliers to sign this document" in Clause 2.3.1

The following "Model Supply Chain Policy" can serve as a template for priority issues contained in a Supplier Code of Conduct. Companies are encouraged to include the full set of requirements stipulated in the Chinese Responsible Mining Guidelines in their Supply Chain Code of Conduct in accordance with Clause 2.3.1.

Model Supply Chain Policy

Recognizing that risks of significant adverse impacts which may be associated with extracting, trading, processing and exporting mineral resources from conflict-affected and high-risk areas, and recognizing that we have the responsibility to respect human rights and not contribute to conflict, as well as not to contribute to adverse environmental and social impacts, we commit to adopt, widely disseminate and incorporate in contracts and/or agreements with suppliers a policy on responsible sourcing of mineral resources based on these Guidelines, as representing a common reference for conflict-sensitive sourcing practices and suppliers' risk awareness from the point of extraction until the end user. We commit to refraining from any action which contributes to the financing of conflict and we commit to comply with relevant United Nations sanctions resolutions or, where applicable, domestic laws imple-

menting such resolutions.

Therefore, we commit that we will identify and avoid the risks listed below in our business practices and actions:

1. Serious human rights abuses

We will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of:

- any forms of torture, cruel, inhuman and degrading treatment;
- any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
- the worst forms of child labour;
- other gross human rights violations and abuses such as widespread sexual violence;
- war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide

Risk Mitigation

We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious human rights abuses.

2.Direct or indirect support to non-state armed groups and public or private security forces

We will not tolerate any direct or indirect support to non-state armed groups through the extraction, transport, trade, processing or export of mineral resources. “Direct or indirect support” to non-state groups

through the extraction, transport, trade, processing or export of mineral resources includes, but is not limited to, procuring resources from, making payments to or otherwise providing logistical assistance or equipment to, illegal organized armed groups or their affiliates who:

- oillegally control extraction sites or otherwise control transportation routes, points where mineral resources are traded and upstream actors in the supply chain; and/or
- oillegally tax or extort money or mineral resources at points of access to extraction sites, along transportation routes or at points where mineral resources are traded; and/or
- oillegally tax or extort intermediaries, export companies or international traders.

We will eliminate direct or indirect support to public or private security forces who illegally control extraction sites, transportation routes and upstream actors in the supply chain; illegally tax or extort money or mineral resources at point of access to extraction sites, along transportation routes or at points where mineral resources are traded; or illegally tax or extort intermediaries, export companies or international traders.

We recognize that the role of public or private security forces at the extraction sites and/or surrounding areas and/or along transportation routes should be solely to maintain the rule of law, including safeguarding human rights, providing security to workers, equipment and facilities, and protecting the extraction site or transportation routes from interference with legitimate extraction and trade.

Where we contract, or where we source from or are linked with any company or business relationship in our supply chain, that contracts public or private security forces, we commit to or we will require that such security forces will be engaged in accordance with internationally recognized standards and guiding documents for dealing with public

and private security forces. In particular, we will support or take steps, to adopt screening policies to ensure that individuals or units of security forces that are known to have been responsible for human rights abuses will not be hired.

We will support efforts, or take steps, to engage with central or local authorities, international organizations and civil society organizations to contribute to workable solutions on how transparency, proportionality and accountability in payments made to public security forces for the provision of security could be improved.

We will support efforts, or take steps, to engage with local authorities, international organizations and civil society organizations to avoid or minimize the exposure of vulnerable groups, in particular, artisanal operators where mineral resources in the supply chain are extracted through artisanal or small-scale operators, to adverse impacts associated with the presence of security forces, public or private, on extraction sites.

Risk Mitigation

We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party providing direct or indirect support to non-state armed groups.

In accordance with the specific position of the company in the supply chain, we will immediately devise, adopt and implement a risk management plan with suppliers and other stakeholders to prevent or mitigate the risk of direct or indirect support to public or private security forces, who illegally control mine sites, transportation routes and upstream actors in the supply chain; illegally tax or extort money or minerals at point of access to mine sites, along transportation routes or at points where minerals are traded; or illegally tax or extort intermediaries, export companies or international traders, where we identify that such a

reasonable risk exists. In such cases, we will suspend or discontinue engagement with suppliers after failed attempts at mitigation within six months from the adoption of the risk management plan.

3. Corruption, Money Laundering and Payments to Governments

We will not offer, promise, give or demand any bribes, and will resist the solicitation of bribes to conceal or disguise the origin of mineral resources, to misrepresent taxes, fees and royalties paid to governments for the purposes of mineral resources extraction, trade, processing, transport and export.

We will prohibit bribery in all business practices and transactions, including those of agents and other third-parties, and set criteria and approval procedures with respect to the offer or acceptance of gifts; use the greatest efforts to promote responsible business practices with all business partners.

We will support efforts, or take steps, to contribute to the effective elimination of money laundering where we identify a reasonable risk of money-laundering resulting from, or connected to, the extraction, trade, processing, transport or export of mineral resources derived from the illegal taxation or extortion of mineral resources at points of access to extraction sites, along transportation routes or at points where mineral resources are traded by upstream suppliers.

We commit to take effective measures to prevent the involvement in money laundering and financing of terrorism, e.g. by establishing and publishing the identity and beneficial ownership of suppliers and customers; monitoring transactions for unusual or suspicious activity; and maintaining records of cash transactions that occur above the relevant defined financial threshold under applicable law.

We will ensure that all taxes, fees, and royalties related to mineral resources extraction, trade and export from conflict-affected and high-risk areas are paid to governments and, in accordance with the company's

position in the supply chain, we commit to disclose such payments in accordance with international standards.

Risk mitigation

In accordance with the specific position of the company in the supply chain, we commit to engage with suppliers, central or local governmental authorities, international organizations, civil society and affected third parties, as appropriate, to improve and track performance with a view to preventing or mitigating risks of adverse impacts through measureable steps taken in reasonable timescales. We will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation.

4. Land rights, emissions and artisanal operators

We will not engage in or tolerate extracting resources or otherwise benefiting from land where the free, prior and informed consent of local communities and indigenous peoples has not been obtained, including those for which the extractor holds a legal title, lease, concession, or license. We will not engage in or tolerate extracting resources or otherwise benefiting from mining operations where the culture and heritage of local communities and indigenous peoples have not been respected and protected, or where traditional cultures of local peoples have been harmed.

We will not engage in or tolerate extracting resources or otherwise benefiting where a legal title, lease, concession, or license has been illegally obtained or violates national law. We will ensure avoiding major adverse impacts and gross violation of local laws and regulations regarding ambient soil, air, and water conditions, including manufacturing, trading, and using chemicals and hazardous substances subject to international bans due to their high toxicity to living organisms, environmental persistence, or potential for irreversible ecological impacts, and/or releasing arsenic and mercury emissions.

We commit to regularly assess and mitigate the adverse impacts on soil, air, and water by the mining operation, consider ambient soil, air, and water conditions, and apply technically and financially feasible pollution prevention principles and techniques that are best suited to avoid, minimize, and control pollution, monitor emissions and discharges of all possible pollutants according to the relevant laws and regulations of host countries, follow up and remedy pollution issues in a timely manner, and clearly record and make public the results, as well as employ emissions control and reduction strategies.

We agree to ensure and surpass applicable legal requirements with regard to chemicals and toxic substances, avoid manufacturing, trading, and using chemicals and hazardous substances subject to international bans due to their high toxicity to living organisms, environmental persistence, or potential for irreversible ecological impacts, including rigorously suppressing arsenic and mercury emissions and managing cyanide according to the highest international standards and ensure that hazardous wastes are handled, stored, transported, treated, and disposed according to laws and regulations and in a way that eliminates leaks, spills, or other releases to the environment.

We will prohibit extracting resources from World Heritage properties or legally protected areas, thereby providing a threat to the outstanding universal value for which these properties are protected.

We will pay specific attention to risks of forced labour, child labour, unsafe working conditions, uncontrolled use of hazardous substances and other significant environmental impacts with regard to sourcing from artisanal and small-scale producers and work together and seek a productive relationship with artisanal and small-scale operators in the extraction area.

Risk mitigation

In accordance with the specific position of the company in the supply

chain, we will immediately devise, adopt and implement a risk management plan with suppliers and other stakeholders to prevent or mitigate the risk of infringing land rights, causing major adverse environmental impacts, or specific risks regarding artisanal and small-scale operators, where we identify that such a reasonable risk exists.

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